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In the Matter of: :

CABLE ROYALTY DISTRIBUTION - 1982 : CRT Docket No. 83-1

Phase I :.

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(This volume contains pages 1 through 102)

2000 L Street, Northwest
Conference Room 500
Washington, D. C.

Tuesday, July 17, 1984

The hearing in the above-entitled matter commenced
at 10:05 a.m., pursuant to notice.

BEFORE:

THOMAS C. BRENNAN	Commissioner
DOUGLAS E. COULTER	Commissioner
EDDIE RAY	Commissioner
MARIO F. AGUERO	Commissioner
MARIANNE MELE HALL	Commissioner

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>BY TRIBUNAL</u>
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ALLEN R. COOPER	10	- -	- -
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P R O C E E D I N G S

10:05 a.m.)

COMMISSIONER BRENNAN: The Chair has the pleasure of noting that we have two commissioners who are making their hearing debuts this morning. At our customary recess you will have the opportunity to meet and greet the new commissioners.

The current occupant of the chair is especially gratified that New Jersey has become the first state ever to have two residents serving on this body. I am confident that Commissioner Hall will share my dismay with those attorneys who persist in misplacing television stations licensed to New Jersey. This commission for years has tried to educate our bar as to the correct description of Channel 13, and now I fear there is a need for further education so that our bar becomes acquainted with changed circumstances, namely that WOR-TV, Channel 9 should be correctly described as licensed to Secaucus, New Jersey.

The Tribunal this morning is commencing the evidentiary portion of Phase I of the 1982 Cable Royalty Distribution Proceeding. In accordance with the Tribunal's past practice, it has been proposed that the record of both the Phase I and Phase II portions of all the previous distribution proceedings be incorporated as part of the record of this proceeding.

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1 If there is no objection by commissioners, it is
2 so ordered.

3 We turn now to the direct case of the Settling
4 Parties. I understand Mr. Lane has an opening statement.

5 MR. LANE: Thank you, Mr. Chairman.

6 First of all, for the record, my name is Dennis
7 Lane, and normally I represent the Program Suppliers, but
8 today I am appearing on behalf of all of the Settling
9 Parties. Just for the benefit of the new commissioners,
10 the Settling Parties consist of the Program Suppliers, the
11 Joint Sports Claimants, PBS, the Music Claimants and NPR.

12 Tomorrow Gene Bechtel, who normally represents
13 PBS, will be presenting Mr. Chamberlain on behalf of the
14 Settling Parties.

15 The issue in this case is what share, if any,
16 should the Devotional Claimants be awarded from the 1982
17 fund. The Settling Parties continue to believe that these
18 claimants are entitled to no share of the funds. And in
19 the past we have argued that position and we continue to
20 argue that position today.

21 We believe this is the case because of the lack
22 of any record support under the Tribunal's established
23 criteria for giving these parties an award. We recognize
24 that the Tribunal very recently has issued two decisions,
25 one in the 1979 case and the other in the 1980 case,

1 awarding the Devotional Claimants .35 percent of those
2 funds.

3 We would suggest that this would be the outer
4 limit that you could award these claimants in the 1982
5 fund, because, as we will show, there is no changed
6 circumstances of any decision of significance.

7 Our direct evidence on behalf of all of the
8 Settling Parties addresses two factors that we think are
9 dispositive of this matter. The first is the lack of any
10 marketplace value for Devotional programs, this we do on
11 a two-level approach. First of all, we have approached
12 it in terms of broadcast stations, the lack of marketplace
13 value, and second, we transfer that to the lack of market-
14 place value, and hence, the lack of any benefit to cable
15 operators from carrying these programs.

16 The second part of our case addresses the dis-
17 similarity of the Devotional Claimants' programs from
18 those of PBS and also the Devotional Claimants' organization,
19 if you will, from that of PBS. And by organization I
20 mean the funding, the stations, the programs, in short
21 the whole gambit between the two.

22 Mr. Chamberlain will be presenting the PBS portion
23 tomorrow, Mr. Cooper is already on the stand and will be
24 talking about marketplace value today.

25 I just want to run over very quickly a short

1 summary of what our evidence will show. Addressing the
2 marketplace, really the lack of marketplace value today,
3 Mr. Cooper has analyzed the local station ratings for the
4 major programs of the Devotional Claimants in 1982. And
5 what you will see over and over again, you have probably
6 already seen it in looking through is the phrase BMS,
7 below minimum standards. This rating means that you get
8 less than one-half of one percent of both the ratings and
9 the shares in the market at that time.

10 We think that this evidence will show, first of
11 all, the lack of any real viewership for these programs,
12 and second, we think it will show without the purchase of
13 time by the Devotional Claimants, they simply wouldn't be
14 on the air.

15 The disinterest in the programs is extended to
16 cable, first of all, we think by the factor that the
17 Devotional Claimants' programs are in many markets through-
18 out the country. And we think that it is almost self-
19 evident that the lack of interest in all of these markets
20 on a local level would carryover to a lack of interest
21 with cable viewers.

22 Second, we presented some evidence from a multi-
23 channel news survey which shows that CBN and the PTL
24 satellite services which are not distant signals, they are
25 separate services, but they do include the same programs,

1 the same major programs of the Devotional Claimants are
2 the least valuable services to the operators.

3 I think there is sort of an anomaly in this
4 situation because while they are the least valuable, they
5 are also carried by several -- a relatively high percentage.
6 We think this can be explained by the financial benefits
7 that are extended to cable operators as a result of the
8 carriage of these services.

9 Turning to the distant signal programming on the
10 CBN specialty stations, Mr. Cooper has provided an analysis
11 of the programs carried by these stations in 1982. And I
12 think that that will show there is a very low percentage
13 of devotional programs. These programs are generally in
14 the poorer time slots and not the main attraction of these
15 stations are as Settling Parties have suggested to you
16 before, the secular programs, the sports, the syndicated
17 series, the syndicated movies that these stations carry.

18 In sum, we think this evidence will re-affirm
19 your conclusion that there has never been discovered any
20 marketplace value for these programs.

21 In the second phase of our case, tomorrow Mr.
22 Chamberlain will address what I call the "me, too" argument.
23 that the Devotional Claimants have presented to you, that
24 they are just like PBS and NPR. And, therefore, they must
25 receive an award, not like NPR of course, but an award

1 like PBS's. Mr. Chamberlain will present evidence that
2 will reiterate the differences between these parties,
3 particularly the difference in funding, the broad range
4 that PBS has, as compared to the rather narrow range that
5 Devotional Claimants has. And, second, the different kinds
6 of programming designed to appeal to various audiences
7 that are presented on PBS stations.

8 I might point out, also, that the PBS stations
9 are not all the same. I think Mr. Chamberlain will get
10 into that aspect. And in short, we will show that there
11 is a dramatic difference between these two claimants which
12 prevents you from simply taking the PBS award and giving
13 it to the Devotional Claimants.

14 Thank you.

15 COMMISSIONER BRENNAN: Thank you, Mr. Lane.

16 Mr. Cooper, would you please stand and be sworn?
17 Whereupon,

18 ALLEN COOPER

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

21 DIRECT EXAMINATION

22 BY MR. LANE:

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

24 A I am Allen R. Cooper.

25 Q What is your current business position, Mr. Cooper?

1 A I am Vice President, Technology, Evaluation and
2 Planning of the Motion Picture Association of America.

3 Q What are your responsibilities in this position?

4 A I am primarily concerned with the impact of the
5 new technologies on the motion picture business and the
6 production of programs for television broadcasting. In
7 this connection, I have devoted a considerable amount of
8 time to the issue of cable copyrights.

9 Q Before coming to the Motion Picture Association,
10 what was your prior position?

11 A Immediately before coming to MPAA, I was director
12 of Media Planning -- Media Research for the Public Broad-
13 casting Service in Washington.

14 Q What were your responsibilities in that position?

15 A My primary responsibility was to develop a
16 procedure for estimating the audiences of various Public
17 Broadcasting Service-distributed programs.

18 Q And prior to PBS, where were you?

19 A Immediately prior to joining PBS, I was a partner
20 in a consulting firm of James B. Kovac, Incorporated.
21 This firm deals primarily with consulting in the broad-
22 cast and print media field.

23 Q What were your responsibilities at that firm?

24 A Working with various clients of James B. Kovac,
25 Incorporated; for the most part, we attempted to evaluate

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1 the properties of these clients for business transactions
2 such as sales and acquisitions. Also, to provide these
3 clients with recommendations concerning changes in their
4 publications and in their media.

5 Q And, prior to that, what positions did you hold?

6 A Preceding that, for 21 years, I was with the
7 National Broadcasting Company, primarily as Vice President,
8 Planning for NBC. My entry into NBC was in the area of
9 establishing the television network, which was in an
10 amorphous stage in 1952. In this connection, we determined
11 where stations were needed, the type of affiliations we
12 needed, and so forth.

13 Subsequently, I spent a great deal of time work-
14 ing on new technology, such as satellite communications,
15 and the introduction of videotape, the introduction of
16 color television. Also, I spent a substantial amount of
17 time in connection with the programming of movies on the
18 television networks.

19 Q And prior to your employment by NBC, where were
20 you?

21 A From 1946 to 1952, before joining NBC, I was
22 employed by two major advertising agencies, Footcomb and
23 Belding, and an agency that at that time was known as
24 Hewitt, Oglivie, Benson and Maller, now known as Oglivie
25 and Maller. At those two advertising agencies my primary

1 responsibilities were in the media research field.

2 Q Have you testified previously before the Tribunal
3 in distribution proceedings?

4 A Yes, I have, sir.

5 COMMISSIONER BRENNAN: I thought I had seen you
6 around.

7 BY MR. LANE:

8 Q Could you tell us what proceedings you have
9 testified in?

10 A I have testified in all of the proceedings in
11 connection with the distribution of cable copyright
12 royalties, starting with the 1978 calendar year distri-
13 bution.

14 Q And did your testimony in any of those proceedings
15 address the issues involving the Devotional Claimants?

16 A Yes, sir, particularly for the distributions
17 relating to calendar years 1979 and 1980.

18 Q Mr. Cooper, I would like to turn now to the
19 exhibits that you prepared as part of your evidence in this
20 case, particularly to -- first of all, I would like to
21 turn to the summary. In the summary you indicate that
22 Exhibit 1 is an analysis of the A. C. Nielsen Company
23 report on syndicated programs, ROSP data.

24 Could you explain what the A. C. Nielsen Company
25 is and what it does?

1 A Yes, sir. The A. C. Nielsen Company is the largest
2 and most significant corporation involved with the measure-
3 ment of broadcast audiences in the United States, as well
4 as in overseas markets. The Nielsen Company procedures
5 in the United States are largely based upon two methodolog-
6 ies, one is metered markets, metered homes; and the other
7 is a diary study of television households.

8 The meter data are used primarily for network --
9 nationally distributed network programs, whereas the diary
10 material, also known as the Nielsen Station Index material,
11 is used primarily for local ratings.

12 In addition to their activities in audience
13 measurement, Nielsen is also involved in a large variety
14 of other activities, including coupon redemption and measure-
15 ment of sales transactions in food and drug stores, and
16 other things.

17 Very recently Nielsen announced that it was being
18 acquired by Dow Jones Company.

19 Q What role do the Nielsen ratings play in the
20 television and advertising industries, Mr. Cooper?

21 A With respect to network programming, the Nielsen
22 ratings are virtually the only service that is used by
23 networks and national advertisers, by advertising agencies
24 to determine the programming, the attractiveness of the
25 programming presented by the networks and their value as

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1 advertising media. They are relied upon completely by all
2 of the networks, all of the major advertisers and all of
3 the agencies as the exclusive source of this kind of
4 information.

5 The Nielsen Station Index, local data, are used
6 by virtually all stations; there is a competitive service
7 in the local area called Arbitron, which supplies similar
8 data based upon diary measurements. The Nielsen Station
9 Index data are used by stations for programming purposes,
10 and also to set advertising rates. Similarly, the NSI,
11 the Nielsen Station Index data, are used by advertisers
12 who are buying time locally on stations, in either locally
13 produced, or syndicated programming.

14 Q Has the Tribunal in the past relied upon Nielsen
15 data?

16 A Nielsen data has been part of these proceedings
17 since 1978, since the first distribution. In 1978, some
18 Nielsen data was introduced by the Joint Sports Interests.
19 From 1979, and subsequently, the program supplier category
20 has presented the results of special studies undertaken
21 with the Nielsen company in connection with the viewing of
22 programs as distant signals in cable households.

23 Commenting in the 1979 proceeding, the Tribunal
24 in its final report referred to the studies as follows:
25 "The centerpiece of the program syndicator's case was the

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1 Nielsen analyzing the time occupied by, and the viewing
2 of different categories of programming. We regard this
3 report as the single most important piece of evidence in
4 this record. We have concluded that this study does have
5 probative value in establishing the entitlement of claimants
6 in accordance with some, but not all, of the criteria".

7 In the 1980 proceeding the Tribunal re-affirmed
8 its opinion of the Nielsen Study as follows: "The Tribunal
9 re-affirms the finding of our 1979 determination with the
10 special report of Nielsen as an important piece of evidence
11 in this record, it does have probative value in establish-
12 ing the entitlement of claimants in accordance with some,
13 but not all, of the criteria".

14 Q Mr. Cooper, in the summary of your testimony there
15 is reference to the words "syndicated programs". Could
16 you explain what a syndicated program is?

17 A Yes, sir. Syndicated programming refers to series,
18 motion pictures, and specials which are licensed to
19 individual stations for presentation in their local time
20 periods. This is in contrast with the network programs
21 which of course are distributed nationally by NBC, CBS,
22 ABC and the Public Broadcasting Service network.

23 Q You mentioned licensing arrangements, what is the
24 typical licensing arrangement for a syndicated program?

25 A The typical arrangement for the licensing of

1 programs offered by the claimants represented by MPAA,
2 generally, fall into two categories: one is a licensing
3 on the basis of dollars per play over a period of years of
4 an episode or of a motion picture. The dollars are paid
5 by the station to the licensor, the producer or distributor,
6 or in this case we would call them a syndicator. For the
7 funds paid by the station the station then has certain
8 exhibition rights over its local facilities.

9 Another method that is used by some of the
10 claimants that we represent for some of their programs is
11 barter, where the syndicator makes programs available to
12 a station where the commercial time within that program
13 is allocated between the syndicator and the station. In
14 a typical case, if there was six minutes of commercial
15 time allocated in the program, the syndicator would be
16 given authorization to sell four of those minutes to any
17 clients that he chooses, and the local station would be
18 paying the two minutes for local sales to the station's
19 clients.

20 The funds received by the station would be re-
21 tained by the station; the funds obtained by the syndicator
22 through the sale of the time that is allocated to the
23 syndicator is the compensation to the syndicator for the
24 program.

25 Q Is there any difference, Mr. Cooper, between the

1 methods you have just described and the way in which
2 devotional programs are generally put on the air?

3 A Yes, there is a very substantial difference between
4 them. With respect to devotional programs there are two
5 ways that those get on the air; one, the most common way,
6 is for the distributor of the devotional program to buy
7 time from the station, pay the station for the time occupied
8 by the program and broadcast the program in that time
9 period. There is no payment by the station to the syndicator,
10 which is the usual way with the secular programs. Here
11 the flow of money is from the program supplier to the
12 station, rather than the reverse.

13 The other way that devotional programs, the
14 minority of them, are licensed to stations is on the basis
15 of free. In other words, the program is given at no charge
16 to the station for airing in the station's time period.

17 In no instances that I am aware of does a station
18 pay any funds to the supplier of religious programs for
19 those programs.

20 Q Mr. Cooper, in your summary there is a reference
21 made to the report on syndicated program, the ROSP, R-O-S-P
22 as it is generally known. Could you explain what that is?

23 A Yes, the report on syndicated programs published
24 by the Nielsen Company four times a year in connection
25 with what are called "sweeps", when all of the markets and

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1 stations in the country are surveyed. These sweeps take
2 place during a full week period in February, and a full
3 week period in May, a full week period in July, and a full
4 week period in November of each year.

5 The ROSPs summarize the findings from those studies,
6 separately for each syndicated program. The requirement
7 for being included within the ROSP is that the program
8 series, or special was aired by at least five stations
9 during this sweep period. If it was broadcast by fewer
10 than five stations, it is not listed in the ROSP.

11 Q Is it true that in 1982, the Nielsen Company made
12 a division of ROSP between what I will call secular
13 synciated programs and devotional syndicated programs?

14 A Yes, sir, starting in 1982 the ROSP was divided
15 into two volumes, one volume relating to devotional pro-
16 grams only, and the second one related to what we have
17 referred to as secular programs.

18 Q And do you have any idea of why the Nielsen Company
19 made such a division?

20 A I have no direct information from Nielsen, but I
21 would speculate that it was as a result of two situations.
22 Number one, the number of programs that are listed in the
23 ROSP is very substantial. The most recent ROSPs listed
24 over 270 secular programs, and approximately 80 or 90
25 devotional programs. The collection of that number of

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1 programs in a book represents a major publishing. But I
2 think that the principal reason that the books were divided
3 was the fact that relatively few of the major advertising
4 agencies or broadcast stations had any interest in acquir-
5 ing the data on the devotionals. And by separating the
6 two types of programs it made the secular ROSP a much more
7 convenient book to handle. It probably saved a lot of
8 trees, too, in the process.

9 Q Mr. Cooper, now I would like to get to the
10 exhibit itself, Settling Parties Exhibit 1.

11 MR. LANE: I take it, Mr. Chairman, since we have
12 marked these that I don't have to ask them to be marked
13 again.

14 COMMISSIONER BRENNAN: No.

15 BY MR. LANE:

16 Q Turning to the first page of that exhibit where
17 the reference is to the 700 Club, would you explain briefly
18 how this page and the other pages in this exhibit are set
19 up?

20 A Yes, sir. The data are presented, essentially,
21 in two sections, the top part of it relates to some of the
22 parameters of the programs in their entirety, and that
23 material on top comes directly out of the ROSPs. The
24 second half of each of the pages, the per telecast rating
25 section, was something that I developed from an examination

1 of the ROSPs for these particular programs, where I tabu-
2 lated the number of the rating level for each telecast for
3 each program.

4 Q But the bottom part, also, came from the ROSP?

5 A Yes, it is from the ROSP, but it was a hand-
6 tabulation that I personally made.

7 Q Referring to the first two lines in the left-hand
8 column, markets and stations, would you explain what these
9 lines represent?

10 A Markets relates to the sections of the country
11 classified by Nielsen as designated market areas. The
12 country is divided into 210 DMA, designated market areas,
13 by Nielsen. And the first line of the first markets is
14 the number of such designated market areas in which the
15 program was broadcast during the sweep period that is
16 referenced here.

17 Q And the stations line?

18 A The stations line refers to the number of stations
19 with reportable viewing levels that carried that program
20 during each of the sweep periods.

21 Q In looking at the numbers that you have presented,
22 the number of stations is greater than the number of
23 markets, is it not?

24 A Yes, sir.

25 Q Is this a phenomenon that is special to the

1 devotional program, 700 Club?

2 A It is not exclusively for the devotional program.
3 It is the result of a fact that there is another major
4 difference between the devotional and secular programs.
5 In all virtually all instances, secular syndicated programs
6 are licensed on an exclusive basis to one station in each
7 of the markets; whereas the devotionals will buy time on
8 multi-stations in a market, if the time were available to
9 them. So that you will find that generally for the principal
10 devotional series, that the number of stations exceeds the
11 number of markets; whereas for the secular programs, the
12 number of stations is generally the same as the number of
13 markets.

14 Q Referring to the next line in the left-hand column,
15 "average rating", would you explain, first of all, what a
16 rating is?

17 A A rating is the percentage of all of the households
18 in the market that viewed a particular program. For
19 example, in the market with 100,000 households, if 1,000
20 of those viewed a particular telecast of a program, it
21 would have a rating of one.

22 Q And referring to the next line which is "average
23 share", would you explain what share is and contrast that
24 with rating?

25 A Share refers to the percentage of the households

1 that are viewing television at the time a program is tele-
2 cast that are viewing that specific program.

3 To go back to the example that I mentioned, if
4 1,000 households in a market were viewing the program --
5 a particular program at a particular time, and a total of
6 10,000 households were viewing television at that time,
7 then the share would be 10.

8 So, for this program under those hypothetical
9 circumstances, you would have a rating of one and a share
10 of 10 for the same program.

11 Q Looking across the columns for average rating and
12 share for February, May, and July the initials BMS appear,
13 would you explain what they refer to?

14 A The BMS is an acronym for below minimum standards.
15 Nielsen and the other rating companies do not -- prefer
16 not to indicate that an audience for a particular program
17 is zero, that no one was watching. So, rather than show
18 that no one was watching it, they use a symbol which in-
19 dicates that the audience level was less than one-half of
20 one percent. In other words, less than the one rating.
21 And BMS can therefore mean anything from virtually nothing
22 to one-half -- to less than one-half of one percent of the
23 audience.

24 Q In the November column the average rating is one
25 and the average share is two. Would you explain the

1 significance of those numbers?

2 A The numbers incidently that are shown here are all
3 rounded numbers, the one and the two are both rounded
4 numbers. The one rating would mean that one percent of the
5 households in all of the markets in which the 700 Club
6 was broadcast in November were tuned to the average tele-
7 cast of that program; two means that the average share of
8 those people viewing television at that time was 2 percent.

9 Q The last line in the top half of the exhibit is
10 "average households", would you explain what that term
11 means?

12 A Yes, this is, again, a rounded number, it is the
13 average number of households for per telecast of 700 Club
14 in this incident. In other words, 4,000 households in
15 total viewed the average telecast of this program on the
16 115 stations that carried it in February.

17 Q Looking just at the top half of the exhibit which
18 we have just explained, would you indicate what you think
19 are the significant points to be gotten out of this?

20 A Well, clearly the principal point is the fact that
21 the average rating of 700 Club was below minimum standards
22 per telecast. In other words, that the level of viewing
23 of the 700 Club on a broadcast basis, on the stations that
24 carried it was virtually unmeasurable.

25 Q Now, referring to the bottom half of the exhibit,

1 the "per telecast" ratings, is it true that this is simply
2 dividing the top half to individual telecasts of the pro-
3 gram?

4 A That is correct, sir. In other words, the top
5 half are generated as a result of the kind of information
6 that is contained in the bottom half..

7 Q So, in other words, the bottom line, total tele-
8 cast -- and I am just referring to the first column --
9 25,018 telecasts were shown on 115 stations in February of
10 1982?

11 A During the four weeks of the February sweep, yes,
12 sir. That is an average of about 22 telecasts per station.

13 Q In the left-hand column, what do the various
14 below minimum standards one, two, three and four refer to?

15 A These refer to the ratings for the individual
16 telecasts. These are shown in the ROSP report. The BMS
17 rating we have already talked about, it is the one that
18 symbolizes being less than one-half of one percent. The
19 one rating is rounded one, two, and three rating levels
20 indicating the percentages of the homes in each of the
21 areas served by each of the stations that viewed a particular
22 telecast.

23 Q And it appears that the majority of the telecast
24 ratings were below minimum standards, is that a correct
25 interpretation?

1 A That is correct, 64 percent in February of all of
2 the telecasts of the 700 Club failed to achieve even one
3 rating point. The numbers are similar across the board,
4 in May it was 56 percent; July 62 percent; and November
5 52 percent.

6 Q Mr. Cooper; would you turn to the next page of
7 the exhibit "In Touch"?

8 A (Perusing documents) Yes, sir.

9 Q Is this set up in the same manner as the 700 Club
10 page?

11 A Yes, sir.

12 Q And do you draw any different conclusions about
13 the significance of the numbers on this page from the ones
14 you drew about the 700 Club ratings and shares?

15 A Well, obviously the In Touch program is carried
16 by many fewer stations and in fewer markets. Its average
17 rating was higher than that of the 700 Club, averaging the
18 one versus the BMS that occurred in three of the four sweep
19 periods. And its average share is at the one to two level,
20 which again is a minimal type of figure, corresponding
21 with the rating point.

22 Q And with respect to the bottom half of the
23 exhibit, are there any differences between your conclusions
24 with regard to In Touch than those for 700 Club?

25 A Not particularly, I think, first of all, the

1 number of cases is smaller, so you get a little more
2 variation, but in February, again, over 50 percent of the
3 ratings for the individual telecasts were below minimum
4 standards.

5 In November, when the number of stations and
6 markets increased substantially, the 63.6 percent of the
7 telecasts had a below minimum standard rating.

8 Q Referring to the next page of the exhibit for the
9 program entitled Listen, are there any significant differ-
10 ences between the conclusions on this page, and those for
11 the previous pages of this exhibit?

12 A None, except the overall levels are much lower,
13 even than they are for 700 Club and In Touch. In November,
14 it is rather shocking that 82 percent of the ratings were
15 below minimum standards; in May that figure is 85.2 percent.
16 For the average household figures, they are also very low
17 coming out with 2,000 in July and November in rounded
18 figures.

19 Q Mr. Cooper, as a point of comparison I asked you
20 to look at the program Wild Kingdom which has been used
21 with respect to the Devotional Claimants' evidence.

22 MR. LANE: For the new members of the Tribunal,
23 Wild Kingdom is a bartered program, which Mr. Cooper
24 earlier explained, you trade off the spots with the station,
25 and of course, it is run by Mutual of Omaha. Wild Kingdom

1 was a particular program raised in the 1979 proceeding by
2 the Devotional Claimants, and it is not a devotional pro-
3 gram, but it was raised by them as one that is comparable.
4 And I asked Mr. Cooper this morning if he would just check
5 the shares and ratings of that program, to give you a
6 basis of comparison.

7 THE WITNESS: I would like to surprise Mr. Lane
8 and tell him that they are all like the 700 Club, because
9 he hasn't been privy to what I have found. Let me give
10 you the figures for 1982, if I may. In February, Wild
11 Kingdom was carried by 173 stations, in 172 markets. It
12 had an average rating of five and an average share of
13 13.

14 MR. MIDLEN: Could you slow down a little bit?

15 THE WITNESS: Yes.

16 Do you want me to repeat anything, Mr. Midlen?

17 MR. MIDLEN: This is in November?

18 THE WITNESS: In February, 173 stations, 172
19 markets; average rating five; average share 13. It was
20 viewed by a total of 4,347,000 households, there were 642
21 telecasts, of which 11, or 1.7 percent were BMS.

22 In May, the number of stations was 174, and 172
23 markets; the average rating was four; average share 11;
24 and the total number of households was 3,041,000.

25 In July, 165 stations and 164 markets; average

1 rating of four, average share of 15; 3,094,000 households.

2 And, finally, in November, the program was carried
3 by 163 stations, in 159 markets, with an average rating of
4 four, an average share of 10; and it was viewed in 2,971,000
5 households.

6 It is quite obvious that Wild Kingdom versus the
7 programs that we have looked at up to this time has an
8 average rating at least four times greater than the 700
9 Club, particularly in average shares six to 10 times higher
10 than the devotional programs.

11 The data for February indicates that the BMS type
12 of rating is a rarity for Wild Kingdom.

13 BY MR. LANE:

14 Q Mr. Cooper, do you recall in the '79 proceeding
15 what share the Tribunal awarded Mutual of Omaha for Wild
16 Kingdom?

17 A I believe it was in the range of 0.1.

18 Q Percent?

19 A 0.1 percent.

20 Q Mr. Cooper, referring back to Settling Parties
21 Exhibit 1, and going to the next page, Another Life, I
22 just note on the heading that the heading has changed from
23 Christian Broadcast Network to CBN-Continental Productions.
24 Could you explain what significance that change has?

25 A It is my understanding that Reverend Pat Robertson's

1 Christian Broadcast Network operation is divided into a
2 profit-making and a non-profit organization. The devotional
3 programs that we referred to earlier are productions of
4 the non-profit corporation; Another Life and the following
5 program USAM, as I understand it, are productions of the
6 profit-making division of Reverend Robertson's enterprise.

7 Q Do you have any knowledge how another life and
8 USAM are offered to the television broadcast stations?

9 A I really don't have specific information. It
10 would be my opinion, based upon professional experience,
11 that they are offered on a barter basis, which I have
12 explained before, but I do not have specific knowledge
13 of that.

14 MS. FORD: For the record, we can provide that
15 knowledge.

16 BY MR. LANE:

17 Q Looking at this exhibit, is this set up in the
18 same way as the previous pages?

19 A Yes, sir. It should be noted that Another Life
20 and the data for the following program are from the
21 secular ROSP, rather than the devotional ROSP. And to
22 re-affirm what I said earlier, in February of 1982, there
23 were 267 series listed in the secular ROSP, that's a very
24 large number. And I will offer that Another Life ranked
25 258th out of 267, with respect to its rating in the areas

1 in which it was shown.

2 Q Would you explain what you consider to be the
3 significant points of the top half of this exhibit, Mr.
4 Cooper?

5 A Well, I think that the steep decline in the number
6 of markets, the number of stations that carried Another
7 Life is indicative of a rejection of the program by the
8 stations that were carrying it in the earlier part of the
9 year, dropping it in the latter part of the year. It is
10 also interesting to note that for Another Life the number
11 of stations and the number of markets is identical, which
12 suggests very strongly that Another Life was offered to
13 the stations on an exclusive basis, which is different
14 than the way that the devotional programs were offered to
15 the stations.

16 The average rating and the average share of these
17 are BMS ratings all across, and indicates that the audience
18 viewership in these markets in which the series was sold
19 was absolutely de minimis.

20 Q Would you expect that on a secular program that if
21 it received BMS ratings it would show what you characterize
22 as a similar deep decline in the number of stations offer-
23 ing it?

24 A If it were a secular program, it would disappear
25 after February; there would not be any stations carrying

1 it in May, July or November.

2 Q The bottom half of this page of the exhibit, does
3 it show the same pattern of the majority of telecasts at
4 below minimum standards?

5 A In an extreme way, I mean, in November when only
6 seven stations were carrying that program, of the 195
7 telecasts, 171 or 87.7 percent, were below minimum standards.

8 Q Turning to the next page, USAM, would you see
9 any differences between the conclusions you reached with
10 regard to Another Life and this page of the exhibit?

11 A I think what we see here absolutely confirms
12 what I made reference to before, the fate of secular
13 programs that had such low rating levels. And in July and
14 November of 1982, this program was no longer reported in
15 the Nielsen ROSP, or as a matter of fact, in the Arbitron
16 syndicated program analysis, which is similar to the ROSP.
17 It indicates that the program either went off the air
18 entirely, or more likely was carried by fewer than five
19 stations during the July and November 1982 period.

20 Q Mr. Cooper, on this page it appears that the
21 average share for this program was nine and 12, in February
22 and May. Would you explain why the seemingly high share
23 and the program is nevertheless dropped?

24 A This program was designed for broadcast between
25 6:00 and 7:00 a.m. on those stations that agreed to carry

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1 it. Because the levels of all television usage before 7:00
2 a.m. is very low, and many stations are not on the air,
3 the share that goes to any of the programs that occupy time
4 slots is relatively high. Share must always be referred
5 to in connection with the time slot in which the program
6 is aired and means very little standing by itself.

7 Q What is the significance of the Richmond-Petersburg
8 situation that you place at the bottom of this page?

9 A Actually this was not intended to be there, but
10 what it indicates again is that even for this program, in
11 the relatively few markets that it was in, it licensed to
12 two stations in the same designated market area, both
13 carrying the program simultaneously at 6:00 a.m., Monday
14 through Friday.

15 Other instances like that are probably even more
16 startling. If you would refer back to the 700 Club. Mr.
17 Lane had asked me about the difference between the number
18 of stations and the number of markets. Possibly an extreme
19 case in Seattle, in November of 1982, for the 700 Club,
20 the series was shown on Monday through Friday, from 6:00
21 a.m. to 7:00 a.m. on station KSTW in Seattle and received
22 a BMS rating. It was then carried from 7:00 a.m. to 8:30
23 a.m. by station KCPQ in the same market with a one rating.
24 It was carried from 9:00 a.m. to 10:00 a.m. by station
25 KVOX in the same market with a BMS rating. It was carried

1 again from 12:00 midnight to 1:00 a.m. by KSTW in that
2 market with BMS ratings.

3 Thus, in that market alone you have three differ-
4 ent stations with 20 telecasts of that program per week.
5 This is not atypical of the peculiar uniqueness of the
6 way devotional programs are scheduled and broadcast during
7 1982.

8 Q Mr. Cooper, would you refer now to the page in
9 the exhibit with the heading PTL-TV Network, Jim Bakker -
10 PTL Club? And I would like you to explain why this is
11 entitled Jim Bakker-PTL Club.

12 A The programs listed in the ROSP as Jim Bakker,
13 the primary program that Jim Bakker is associated with is
14 the PTL Club. However, there are other programs essentially
15 similar in nature that have Jim Bakker in the title, like
16 I think there are programs like Jim Bakker Presents --
17 programs of that nature, which are not necessarily refer-
18 red to as PTL Club.

19 This is the single listing for Jim Bakker for the
20 programs of the PTL-TV Network in the ROSP.

21 Q So, you simply picked this up from the ROSP?

22 A This is the only listing for the PTL Club program.

23 Q And looking at the top half of this page, are
24 there any different conclusions you would draw about this,
25 from those that you have drawn about the earlier programs?

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1 A I think that the figures speak for themselves.
2 The BMS rating is across-the-board, just devastating if
3 you are concerned with the appeal of a program to viewers.
4 It indicates minimal amount of appeal, and minimal value,
5 certainly, to the stations that carry that program with
6 respect to the saleability of adjacencies to it. The
7 levels of BMS ratings for the individual telecast is com-
8 parable to the previous programs that we looked at, aver-
9 aging in the mid-50s across-the-board in terms of the
10 percentage of telecasts that were BMS versus other tele-
11 casts.

12 Q And with regard to the number of stations and
13 markets, is there any difference in your conclusion?

14 A Well, the PTL Club was carried by more stations
15 than the 700 Club, that's very clear. The number of
16 stations is substantially larger, too; but the level of
17 audience rating is extremely low. I previously mentioned
18 that Wild Kingdom, which was carried on 173 stations in
19 February of 1982, was viewed by 4,347,000 households; the
20 comparable figure for PTL Club in February of 1982, is
21 423,000; 423,000 versus 4,397,000.

22 Q And turning to the last page of this exhibit,
23 Old Time Gospel Hour, and this refers to the name of the
24 show, the name of the program as well, are there any
25 differences in the conclusions you would draw from this

1 page from those that you have stated for the other pages?

2 A Well, I think, first of all, it is very clear
3 the number of stations carrying Old Time Gospel Hour, which
4 is aired primarily, and virtually exclusively on Sunday
5 morning, is much higher than that of any of the programs
6 that we have looked at previously. It is also noteable
7 that the average rating across-the-board is a one, rather
8 than the BMSs that we have seen for 700 Club, or the PTL
9 Club.

10 However, we are still dealing with the same kind
11 of a problem, a problem for broadcast and a problem of
12 the program supplier, and that is that approximately 50
13 percent of all of the telecasts received ratings which
14 were below minimum standards.

15 Q What are the overall conclusions that you would
16 draw from Exhibit 1, Mr. Cooper?

17 A The very clear conclusion for the programs that
18 we have looked at so far, based upon their broadcast
19 ratings is that they are viewed by a very, very small
20 number of people on a broadcast basis; that their appeal
21 to the general audience is minimal.

22 Q Would you expect that this minimal appeal would
23 be carried over to cable viewers?

24 A Yes, sir, it would. And one of the other factors
25 that is important to consider in that is that the number

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1 of stations that broadcast these programs is very large
2 and the coverage via broadcasting, the availability of the
3 program as a broadcast program throughout the country is
4 very substantial.

5 I would like to refer again to the Seattle exper-
6 ience where the number of different "viewing opportunities",
7 even within a market, via broadcast, is very substantial.
8 From that standpoint, I would anticipate that the additional
9 viewership via cable would be very, very small.

10 Q In other words, they can get the programs over the
11 air, and they don't have to rely on distant importation?

12 A They can get the programs locally, and generally
13 they have many opportunities to see the program over broad-
14 cast facilities in their markets.

15 MR. LANE: Mr. Chairman, there was a slight
16 glitch in the paging, at least of my copy, and the next
17 page of the exhibit, which is entitled Analysis of CBN-
18 Owned Station Programming is really part of Exhibit 2,
19 and I would ask that that be noted on the record.

20 I think it is apparent that the pages following
21 what are Exhibit 2 are simply explanatory of this summary
22 page.

23 BY MR. LANE:

24 Q Turning to that page --

25 A That's not quite correct, Mr. Lane. The next

1 exhibit refers to stations KXTX and WNXE, whereas this
2 refers to KXTX and WANX, Atlanta.

3 I will explain why the difference occurs.

4 COMMISSIONER RAY: Excuse me one moment, before
5 we move on. Mr. Cooper, could you tell me the number of
6 households that Old Time Gospel Hour reaches?

7 THE WITNESS: In February, it was 657,000; May,
8 691,000; July, 684,000; November, 624,000.

9 BY MR. LANE:

10 Q Turning to the analysis of the CBN-Owned station
11 programming, would you explain why you picked KXTX in
12 Dallas and WANX in Atlanta for this study?

13 A Yes, sir. These were two of the Nielsen special
14 studies to which we referred to before which uses a sample
15 of stations. These are two CBN-owned stations that were
16 included in the samples of 1981 and 1982.

17 Q To be included in the sample does that mean that
18 they are carried by a certain number of cable systems?

19 A They were carried by cable systems that -- they
20 were broadcast by stations that we retransmitted as a full-
21 time distant signal by cable systems with a specified
22 number of subscribers.

23 Q And do you know how many cable systems carried
24 KXTX?

25 A My memory is that in 1982, 40 cable systems

1 carried KXTX.

2 Q Do you have a memory as to how many carried WANX?

3 A The figure, I believe, is 10.

4 Q Just for a point of comparison, could you give us
5 an idea of how many cable systems carried the super-
6 station WTBS?

7 MR. MIDLEN: Your Honor, I am going to object, I
8 don't think this witness is qualified to discuss cable
9 system carriage of any of these stations. I think he
10 proved it with regard to KXTX, and now he is being asked
11 to further speculate on WTBS.

12 MR. LANE: I think, Mr. Chairman, that if anybody
13 has studied the number of Form 3 cable systems that have
14 carried particular stations, I think, it is Allen Cooper.
15 If the number that Mr. Midlen wants is exact, we would be
16 happy to provide the exact number and not rely on Mr.
17 Cooper's memory.

18 COMMISSIONER BRENNAN: The objection is overruled.

19 THE WITNESS: WTBS, during 1982, was carried by
20 approximately 2,300 Form 3 cable systems on a full-time
21 basis.

22 BY MR. LANE:

23 Q Mr. Cooper, are KXTX and WANX designated as
24 specialty stations by the FCC?

25 A They were so designated in 1976, when the FCC

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1 promulgated its specialty station category with respect to
2 the importation of distant signals by cable systems. They
3 were two of 33 stations so designated.

4 Q Do you know what the definition of a specialty
5 station was under those rules?

6 A Yes, sir. Reading from Section 76.5 of the FCC's
7 Cable Rules it refers to a specialty station as follows:
8 "A commercial television broadcast station that generally
9 carries foreign language, religious and/or automated pro-
10 gramming in one-third of the hours of an average broadcast
11 week, and one-third of weekly prime time hours".

12 Q And what was the effect of being characterized
13 as a specialty station for distant importation by cable
14 systems?

15 A As a specialty station these stations could be
16 imported as a distant signal by any cable system irrespective
17 of the limitations on the number of distant independent
18 stations that a cable system was allowed to import under
19 the FCC rules. The FCC rules, generally, limited the
20 number of independent stations that cable systems in the
21 Top 100 Markets could import to two; in the smaller television
22 markets to one. But those cable systems could import
23 specialty stations over and above the two and one limitation.

24 Q Are those FCC rules still in effect, Mr. Cooper?

25 A No, they were rescinded, effective in 1983.

1 Q Are you referring to the Tribunal's decision which
2 became effective in 1983, to increase the royalty rates?

3 A Well, the dispositive ruling involving the Malrite
4 Case on FCC de-regulation occurred, I believe, was dated
5 in May of 1982. However, the effect, in terms of the rate
6 on the signals which were not permitted to be carried under
7 the old FCC rules became effective March 15th, 1983.

8 MR. LANE: Just so that the record may be clear,
9 Mr. Chairman, I believe the date of the Malrite decision
10 of the stay was June 25th, 1981.

11 THE WITNESS: My memory is faulty.

12 MR. LANE: You never qualified as a lawyer, that's
13 your only failing with this Tribunal.

14 COMMISSIONER BRENNAN: We all have problems with
15 numbers.

16 BY MR. LANE:

17 Q Mr. Cooper, referring back to the analysis of
18 KXTX and WANX, would you explain, generally, what is
19 shown on this page?

20 A This refers to the number of quarter-hours during
21 the 16 sweep weeks in 1981 and 1982, in which all of the
22 programming that was broadcast by these two stations was
23 categorized into these classifications: local; syndicated
24 series; movies; devotional; major sports; minor sports,
25 and this categorization was made by the Nielsen company.

1 The principal finding is that these two stations,
2 both of which are owned by the Christian Broadcasting
3 Network, or its affiliated companies, that the majority
4 of its programming, between 75 and 80 percent, consists
5 of syndicated series and movies, essentially the same as
6 those carried by secular commercial independent stations.

7 The factor of some significance is that the
8 devotional programming on these stations averages about
9 18 percent, or it is very substantially below the one-
10 third requirement for categorization as a specialty station.

11 Q And is it not true that both of these stations
12 in 1981 and 1982, had what is termed "major and minor
13 sports" programming?

14 A Yes, sir.

15 Q And do you have any idea of what the types of
16 sports programs they were?

17 A For the most part, the sports programs carried
18 by these stations were college basketball; college hockey;
19 and other sports of -- not the professional sports.

20 Q Turning to the breakout program schedule of CBN,
21 WXTX, Channel 39, Dallas.

22 COMMISSIONER BRENNAN: You mentioned a break, Mr.
23 Lane. We will take a recess.

24 (Whereupon, a short recess was taken.)

25 COMMISSIONER BRENNAN: Proceed.

1 BY MR. LANE:

2 Q Mr. Cooper, referring to the page of Exhibit 2
3 entitled Program Schedule of CBN-KXTX, would you explain
4 what is shown on this page and the subsequent pages?

5 A This is the full program schedule of station KXTX
6 during the week of January 30th, 1982 through February 5th,
7 1982. This is based upon the listing in the Television
8 Guide Magazine for those dates for that station.

9 Q And is there any magic to picking that particular
10 week?

11 A No, sir, I thought an exhibit like this might be
12 of interest to the Tribunal, and we happen to have those
13 TV Guides handy.

14 Q Just to clear up the other matter, the second
15 part of this exhibit refers to WXME-Boston. Would you
16 explain why you used that station?

17 A Again, it was the matter of the convenient avail-
18 ability of the TV Guide, and also WXME, again, is a CBN-
19 owned station, and presumably would qualify on the same
20 basis that KXTX does as a specialty station.

21 Q Certain programs on this exhibit are noted with
22 an asterisk, would you explain what the asterisk means?

23 A Those are programs which are devotional or CBN
24 produced secular programs. Now, in most instances TV
25 Guide will identify a program as religious, but in some

1 instances they merely have the program title listing, and
2 I have had to speculate as to whether or not it was entitled
3 to an asterisk, or was a secular program.

4 Probably the best example of this speculation
5 relates to the listing on Saturday, January 30th, at 9:00
6 o'clock, a program called Mickey McGuire, following
7 International Health, and I had never heard of a Mickey
8 McGuire program, I have assumed it was a devotional program,
9 but it may not be.

10 Q What conclusions do you draw from looking at the
11 program schedule that you have shown us for KXTX and WXME?

12 A Well, with one exception, the schedules of these
13 two stations would, in my opinion, be comparable to that
14 of other secular, independent television stations in the
15 same markets; and that exception relates to KXTX and the
16 fact that the 700 Club is repeated from 8:30 to 10:00 p.m.
17 Monday through Friday. Other than that, the schedule is,
18 in my opinion, fungible with that of completely secular,
19 independent stations operating in these markets.

20 Q When you say "repeated", it is also broadcast in
21 the morning, is it not?

22 A That is correct, it is broadcast between 9:00 and
23 10:30. Aside from that, the programs are principally
24 movies, a syndicated series, and in the case of WXME, the
25 next one you will see, their prime time includes during

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1 the particular week that we are dealing with the two college
2 basketball games and a college hockey game in prime time.
3 There is no prime time programming of devotional programs,
4 except for, again, the 700 Club at 10:00 p.m. on WXNE
5 Monday through Friday, and the Sunday schedule.

6 Q What do you think the similarity of fungibility
7 of this station's programming with that of a secular
8 independent station?

9 A I think CBN has recognized the appeal of the
10 secular programs, rather than the devotional programs and
11 CBN operates these, sells commercial time on these two
12 stations, and in order to do so they are carrying the
13 kinds of programs that attract viewers and advertisers.

14 Q And just to make it clear for the record, is it
15 true that these programs, for example, just looking at
16 KXTX, the various syndicated series and movies would
17 be claimants to the program suppliers' category, not to
18 be devotional category?

19 A Yes, sir, with the exception of the asterisk
20 devotional programs, they are either in the program
21 supplier category, or in a few instances sports or local,
22 the broadcasters, presumably, and for the music category.

23 Q And the sports programs, the college basketball
24 games would, presumably, fall within the Joint Sports
25 Claimants' claim, and the local programs within the NAB's

1 correct?

2 A Yes, sir.

3 Q Turning to Exhibit 3 which is a copy of an article
4 from Multi-Channel News, July 4th, 1983, what is the
5 purpose, do you see, in presenting this exhibit to the
6 Tribunal?

7 A The studies are, as the article indicates, re-
8 presentative of interviews with cable system operators.
9 The cable system operators were asked a series of questions
10 and the full article, including all of the questions, are
11 presented here as part of Exhibit 3. Of special interest
12 are --

13 MR. ADAMS: Excuse me, I am going to object. I
14 note from reading the text of the article that this in-
15 volves a survey that was conducted between June 7th and
16 June 10th, 1983, and hence has nothing to do with the 1982
17 proceedings about which we are involved here.

18 For that reason it is irrelevant, and I move that
19 it be stricken from the record, and no further discussion
20 made of it.

21 MR. LANE: Mr. Chairman, I believe that the CBN
22 and all of the services were provided for several years
23 before 1983. And this is a survey showing continuing
24 interest, or lack of interest from the various services.

25 COMMISSIONER BRENNAN: The Chair, based on past

1 precedence, overrules the objection.

2 THE WITNESS: Of principal interest for the
3 Tribunal were the responses to the question which is shown
4 on page 2 of this exhibit, where cable system operators
5 were asked to respond a question, "Which basic services
6 are most valuable, and least valuable?"

7 Most of the responses are either zero or too
8 small sample to be statistically significant, with the
9 exception in the least valuable column of CBN and
10 Kaleidoscope. CBN was rated least valuable --

11 BY MR. LANE:

12 Q Excuse me, Nickelodeon.

13 A Nickelodeon, excuse me. CBN was rated the least
14 valuable by 8 percent of the cable system operators who
15 were interviewed. Nickelodeon by 5 percent, and no other
16 service by any significant amount. This, again, is a
17 reflection of the fact that, at least among this sample
18 of cable system operators, that CBN was not valued highly,
19 to say the least.

20 Q Mr. Cooper, how would you explain the apparent
21 discrepancy between that answer and the question that
22 appears immediately to the left of that, "What basic
23 channels do you carry?" Where 36 percent indicated that
24 they carried CBN and, the question to the right of it,
25 where, when asked "What services do you plan to add?" 9

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1 percent said they were going to add CBN?

2 A I think this is answered in Exhibit 4, sir. I
3 think that the reasons for the substantial carriage of
4 CBN by cable systems -- the CBN satellite service by cable
5 systems, notwithstanding the relatively low regard cable
6 system operators have for that service, is clarified in
7 Exhibit 4.

8 Q And where do you find that clarification in
9 Exhibit 4?

10 A On the first page of the article, I refer the
11 Tribunal to the lower half of the paragraph, on the left
12 margin of the first page. This is the paragraph beginning,
13 "And why not". And I will read the rest of that paragraph
14 for the record. "The enterprising net -- referring to
15 CBN satellite -- offers them -- cable system operators --
16 a deal that is tough to pass up. CBN will subsidize half
17 the cost of print and broadcast advertising of individual
18 systems and CBN cable to the tune of 10 cents a subscriber,
19 up to \$10,000. The network also will supply the ad slips,
20 TV and radio spots and lay in the systems' logos on each.
21 In addition, CBN cable promises to buy a system's spot
22 time, to promote the network on other channels, up to the
23 same amount. A cable operator can earn up to \$20,000
24 just by picking up CBN cable. MSO -- that's multiple
25 system owners -- do even better, CBN cable places no limit

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1 on the subscriber count for multiple systems, so they can
2 get 10 cents for each and every sub".

3 Q Do you know whether secular satellite services
4 pay cable systems in a similar fashion as what has been
5 described in this article?

6 A To the best of my knowledge, there is only one
7 other cable network service that may make a payment to
8 cable system operators for retransmitting that program,
9 and that is the Spanish International Network Service.
10 All others either involve a payment by the cable system
11 to the cable network, generally a monthly charge per
12 subscriber, for carrying that cable network program service.

13 Q Do you know how the CBN recoups its cost for the
14 satellite services?

15 A They sell advertising on availabilities on the
16 CBN Cable Service, and apparently they have been relatively
17 successful, at least according to this article in doing
18 so. The success that they have had, I think is clear in
19 this article, is the change in the CBN cable network's
20 service to secular programming throughout the schedule.

21 Q I would like you to refer to the last page of
22 this exhibit. Is this indicative, in your view, of the
23 change to the secular aspect of the services and the pro-
24 motion that CBN satellite does for its service?

25 A Are you referring to the advertisement with Jack

1 Benny's picture on it?

2 Q Yes, I am.

3 A Yes, sir, I think this ad is one of a series with
4 a similar message to cable operators.

5 Q And would you just state for the record what that
6 message is on this ad?

7 MR. MIDLEN: Objection, it speaks for itself.

8 COMMISSIONER BRENNAN: Sustained.

9 MR. LANE: I have no further questions.

10 COMMISSIONER BRENNAN: Any questions by Commission-
11 ers?

12 Do you want to ask yourself a question, Mr. Cooper?

13 MR. LANE: I withdraw my withdrawal.

14 COMMISSIONER BRENNAN: Mr. Adams?

15 MR. LANE: Excuse me, Mr. Chairman, I neglected,
16 there is one further exhibit. I was so taken by Jack
17 Benny that I lost my place.

18 BY MR. LANE:

19 Q Mr. Cooper, would you refer to Settling Parties'
20 Exhibit No. 5?

21 A (Perusing documents) Yes.

22 Q Would you explain to the Tribunal very briefly
23 what this exhibit shows?

24 A This exhibit is extracted from a Special Nielsen
25 Study that we have referred to earlier. The Special

1 Nielsen Studies relate to the time and the viewing of
2 programs as distant signals in cable households. We have
3 summarized on this exhibit the data for the years 1979,
4 1980 and 1981, and 1982, from the Special Nielsen Studies.
5 The studies indicate under the time level that approximately
6 1982, 6.3 percent of all of the quarter-hours of program-
7 ming time on all stations in the sample were devotional
8 programs, or programs that were categorized as devotional.

9 On the column to the right, the viewing, the
10 figure is shown as 0.7 percent, it indicates that seven-
11 tenths of 1 percent of all of the viewing of distant
12 signal programs in cable households was to these devotional
13 programs. The figures for 1981 and 1982 are relatively
14 constant, the small change in the amount of time is
15 probably reflective of the -- primarily of the change in
16 the programming offered by CBN-owned stations that switched
17 to secular from devotional programs. But the level of
18 viewing is approximately one-tenth the level of time in
19 the sample of stations that we have analyzed.

20 MR. LANE: I have no further question.

21 COMMISSIONER BRENNAN: Commissioner Coulter?

22 COMMISSIONER COULTER: Yes, thank you, Mr. Lane,
23 I did have a question on this.

24 EXAMINATION BY TRIBUNAL

25 BY COMMISSIONER COULTER:

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1 Q Mr. Cooper, what is your explanation for this
2 decline in viewing?

3 A The decline in viewing -- I would dare say that
4 the decline in viewing is a reflection of the satellite
5 carriage of CBN, PTL and other religious programming.
6 These figures on viewing do not include, of course, the
7 viewing of the satellite distributed programs. To the
8 extent that these programs that are available from other
9 sources than broadcast stations, the viewing has declined.

10 Q Do I understand you correctly that the total
11 viewing of devotional programming has remained constant,
12 but satellite viewing has picked up, and made in-roads
13 into the viewing of distant signals from local stations?

14 A Commissioner Coulter, I don't know if the overall
15 level has not declined, although I would not find that
16 unreasonable that the additional viewing opportunities
17 via satellite of the same or similar programs has cut into
18 the viewing of those as broadcast originations.

19 COMMISSIONER COULTER: Thank you.

20 COMMISSIONER BRENNAN: Off the record.

21 (Discussion off the record)

22 CROSS-EXAMINATION

23 BY MR. ADAMS:

24 Q While we are still on Exhibit 5, Mr. Cooper, does
25 the Special Nielsen Study also contain for 1982, the time

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1 and viewing figures for the Settling Parties?

2 A The answer to that is that it does.

3 Q Exactly on whose behalf are you testifying for?

4 A The Settling Parties.

5 Q Is it true that all of the Settling Parties are
6 sponsoring and support all of the Special Nielsen Studies
7 part of which, or a minor part of which is reflected in
8 Exhibit 5?

9 MR. LANE: Mr. Chairman, I think that the Settling
10 Parties, each of them can speak for themselves. I think
11 the Tribunal well knows from its past decisions, the
12 various battles that have gone on over the Nielsen Studies,
13 and I think that would be a sufficient answer. I don't
14 believe that Mr. Cooper has any knowledge of what the other
15 Settling Parties' discussions about the presentation of
16 this exhibit were -- those were all handled by either
17 Mr. Scheiner, or myself.

18 MR. ADAMS: Mr. Brennan, the Special Nielsen
19 Study is being presented as a significant piece of evidence
20 on behalf of the Settling Parties, and yet they have shown
21 us the top corner of the tip of the iceberg. If this
22 particular data is being offered by all of the Settling
23 Parties, then it would be interesting to know whether the
24 Settling Parties also support the rest of the information.

25 And, for example, if PBS, for example, or one of

1 the other parties, has strenuous objection to the other
2 data, that would certainly reflect on the accuracy of this
3 data, as well.

4 MR. LANE: Mr. Chairman --

5 COMMISSIONER BRENNAN: Why don't you attempt to
6 raise this matter, Mr. Adams, by a motion addressed to the
7 Tribunal, rather than by questions addressed to this
8 particular witness?

9 MR. ADAMS: All right. Well, the Devotional
10 Claimants then hereby move the Tribunal to strike Settling
11 Parties' Exhibit No. 5 in places where there is no evidence
12 as to whether it is sponsored by, or supported by the
13 Settling Parties.

14 COMMISSIONER BRENNAN: We will not vote on that
15 motion at this time, in part because of the change in the
16 membership of the Tribunal.

17 MR. ADAMS: One further point, and that is Mr.
18 Lane began his remarks by saying he thought the Settling
19 Parties could speak for themselves on this point. And
20 since I believe all of the Settling Parties are represented
21 here, the Devotional Claimants would move that each of the
22 Settling Parties be asked by the Tribunal to state whether
23 they support and sponsor the entire Special Nielsen Study
24 for 1982.

25 COMMISSIONER BRENNAN: The Tribunal has responded

1 to your proposal, Mr. Adams.

2 We will proceed as the Chair has indicated.

3 MR. ADAMS: Can the Tribunal state when it might
4 be in a position to rule on the motion?

5 COMMISSIONER BRENNAN: Well --

6 MR. ADAMS: And if so, will the Devotional
7 Claimants be permitted further opportunity to cross-
8 examine this, or other Settling Parties' witnesses?

9 COMMISSIONER BRENNAN: The Chair would hope that
10 the members of this body could vote on this matter prior
11 to tomorrow's session.

12 MR. ADAMS: Excuse me.

13 Dennis, will Mr. Cooper be available tomorrow?

14 THE WITNESS: Yes, I was planning to attend to
15 listen to Mr. Chamberlain.

16 COMMISSIONER BRENNAN: The Chair wants to protect
17 the rights of the new members, and to give the new members
18 a chance to study the matter before us.

19 MR. LANE: Mr. Chairman, may I have a clarification?
20 Is there going to be a written motion, or is this the end,
21 at least, of Mr. Adams' argument? Because if this is going
22 to be the only argument, I have a few points I would like
23 to raise.

24 COMMISSIONER BRENNAN: I am sure the Commissioners
25 would find it helpful to hear your oral argument on this

1 matter, and then I will give Mr. Adams a chance to respond.

2 MR. LANE: Mr. Chairman, I would like to point
3 out that the Settling Parties agree with the Nielsen numbers
4 for them. And I might point out that, as the Tribunal
5 well knows, PBS has never been represented on the Nielsen
6 Study; and therefore, to ask Mr. Bechtel, I think, maybe
7 not be a useless task, but certainly wouldn't reflect what
8 has been shown in the past on the Nielsen Study.

9 I think the important point is the Settling Parties
10 have agreed among themselves as to what share each of them
11 should receive of the funds allocated for them. And that
12 agreement was reached, as you will recall, about a year,
13 or a year and a half ago; before we even knew what the
14 results of the 1982 Nielsen Study were, or even before it
15 was undertaken. And our settlement does not reflect what
16 may or may not be contained in that study, it simply was
17 not necessarily a piece of our deliberations and our agree-
18 ment with each other.

19 So, I think whether or not all of us agree with
20 the number that is in Nielsen simply is not relevant to
21 this issue.

22 MR. ADAMS: The Devotional Claimants have no
23 particular interest in the individual shares, but it is
24 the total amount out of which the Settling Parties are
25 carving their individual shares that is important. And

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1 that is what the time and viewing figures in the Special
2 Nielsen Study proport to reflect. And that is a tiny
3 component, admittedly, it is 6 percent of the time, roughly,
4 and less than 1 percent of the viewing, according to these
5 figures. But that is not what the Settling Parties have
6 carved up.

7 They have said "We will take a particular share
8 of whatever we get". That data is not reflected here, nor
9 the compliment of that data.

10 They can't agree that we will take 99.5 percent
11 of the entire cable fund, without usurping the authority
12 of the Tribunal, and that is what we are talking about,
13 not what particular share the MPAA may get, as opposed to
14 one of the other Settling Parties, but what percentages
15 of time and viewing are represented in the cumulative
16 share that the Settling Parties are claiming.

17 COMMISSIONER COULTER: Mr. Adams, I would like to
18 ask a question. Are you asking whether or not the other
19 members of the Settling Parties agree to using the time
20 and viewing figures as a means of distribution among
21 them, or are you asking whether the other Settling Parties
22 members dispute or accept the accuracy of these particular
23 viewing and time figures?

24 Do you understand the distinction I am drawing?

25 MR. ADAMS: Yes, I do. And I am not asking the

1 latter, I am not exactly asking the former. I am asking
2 a broader question, and that is do the Settling Parties
3 acknowledge the veracity and the validity of this study
4 and all of its components?

5 COMMISSIONER COULTER: But the point is, that is
6 either the latter, or the former part of my question. I
7 don't see how you can get -- have an umbrella to include
8 both components of my question, without addressing yourself
9 to each one.

10 You said you are accepting more the former. In
11 other words, if the Parties are using this as a means for
12 their own internal distribution, then you are meaning it
13 in the sense they accept the validity of these figures.

14 MR. ADAMS: Well, the question relates to whether
15 or not the Settling Parties support their own study. And
16 what I am saying is that I don't think it is possible for
17 the Settling Parties to say, yes, we will accept the study
18 for one purpose, but reject it for another.

19 Now, I know based on conversations with Mr. Lane,
20 that there is considerable disagreement among the Settling
21 Parties about the overall validity of the Nielsen Study.
22 And I am simply trying to put that on the record.

23 COMMISSIONER COULTER: Validity in what context,
24 whether the numbers are inaccurate?

25 MR. ADAMS: If the Settling Parties believe that

1 the study is invalid in any context, it is relative to the
2 validity of the whole study.

3 COMMISSIONER COULTER: That becomes meaningless
4 at that abstract level, Mr. Adams. For instance, you can
5 agree that the figures are correct, but not agree that it
6 be used as a means of distribution. Or then you can
7 simply disagree about the figures.

8 To say it is invalid is a level of abstraction
9 that has no concrete meaning.

10 What do you mean that it is invalid for? In your
11 own context?

12 MR. ADAMS: I am simply trying to establish the
13 credibility of this study, and the purpose for which it is
14 being used.

15 Now, if Mr. Cooper, or whoever is sponsoring this
16 study can say, yes, all of the Settling Parties stand up
17 as one and say "This is a great study, we support it from
18 A to Z, it was properly carried out, properly reflects
19 all of the data that it purports to show" that's one thing.
20 But if on the other hand, the Settling Parties, among
21 themselves, are saying, well, no, we should get 5 percent,
22 rather than 10 percent that this unknown portion of this
23 study reflects, that affects the validity of the figures
24 that are being presented here. It has to.

25 COMMISSIONER COULTER: It affects them in what

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1 sense?

2 MR. ADAMS: Well, for example, if the Settling
3 Parties among themselves are saying that their cumulative
4 shares ought to be 150 percent, and you know that that
5 is happening in virtually every year, then that obviously
6 has an affect on whether the 6.3 percent is valid, or
7 whether the .7 percent is valid.

8 COMMISSIONER COULTER: Mr. Adams, I don't think
9 that logically makes any sense in this particular proceed-
10 ing, although in other proceedings the cumulative sum --
11 parties have asked for more than 100 percent. I don't
12 believe that is the Settling Parties' stance. And unless
13 you can show otherwise, I don't think it is a reasonable
14 example to present.

15 Also, what you were talking about, the point you
16 raised of whether the parties accept it as a means for
17 distribution among them. And they don't have to, while
18 acknowledging that the figures might be accurate.

19 Are you suggesting that they consider the figures
20 inaccurate, or are you suggesting that they consider these
21 figures a means for distribution among themselves?

22 MR. ADAMS: I think it is clear that some of the
23 Settling Parties consider the data to be inaccurate, and
24 have settled on some other basis.

25 COMMISSIONER COULTER: All right. Does that mean

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1 though that they consider them -- are they rejecting them
2 as a means for distribution?

3 Are you suggesting that the Settling Parties are
4 asking you to accept these figures as a means for distri-
5 bution?

6 MR. ADAMS: Well, that is what we are trying to
7 find out. But the point is, let's say the Settling Parties
8 -- well, first of all, they are offering this evidence as
9 something that is worthy of belief by the Tribunal.

10 On the other hand, they are saying among them-
11 selves "This isn't worth a piece of crap; we are not going
12 to use this as the basis for settling among ourselves,
13 though we will tender it to the Tribunal as being a
14 sufficient basis to give the Devotional Claimants an award".

15 Now, either the study was properly carried out
16 and has meaningful information in it for all the parties,
17 or it has meaningful information for none, but it can't be
18 a paragon of virtue as far as the Devotional Claimants
19 are concerned, and of no, or little value to some, or all
20 of the Settling Parties. That's my point.

21 And the Tribunal has absolutely no way of judging
22 that for themselves.

23 COMMISSIONER COULTER: How have we treated it in
24 the past?

25 MR. ADAMS: How have we treated it in the past?

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1 COMMISSIONER COULTER: No, how has the Tribunal
2 treated it in the past?

3 MR. ADAMS: The Tribunal has referred to it as
4 the "centerpiece" "and the single most important credible
5 piece of evidence in the study".

6 COMMISSIONER COULTER: Okay, then what have we
7 done?

8 MR. ADAMS: You have awarded shares based, to some
9 extent, certainly not all, on this study.

10 COMMISSIONER COULTER: That's correct.

11 MR. ADAMS: Well, there have been very, very
12 great and substantial differences.--

13 COMMISSIONER COULTER: That's correct.

14 MR. ADAMS: Between the figures shown in this
15 study, and the awards the Tribunal has made, not only as
16 to the Devotional Claimants, but to PBS, and some of the
17 others.

18 COMMISSIONER COULTER: That's absolutely correct.

19 MR. ADAMS: In fact, I go so far as to say that
20 the Tribunal's award has never been completely correlated
21 to any of the showings of the Special Nielsen Report, as
22 to any separate party. There have always been differences,
23 simply been differences of degree, rather than time.

24 But the point is in previous years you have seen
25 it. You have had an opportunity to start at page one, if

1 you so chose, and go to page 200, if you so chose and
2 arrive at a conclusion about whether or not this was a
3 document worthy of consideration and belief, or whether it
4 was not.

5 COMMISSIONER COULTER: Okay. Do you have any
6 reason to believe that for 1982, the time figure for the
7 Settling Parties is 93.7 percent, and the viewing figure
8 for the Settling Parties is 99.3 percent? Do you have any
9 reason to believe anything other than that?

10 MR. ADAMS: I have no way of knowing what that
11 figure is.

12 COMMISSIONER COULTER: May I suggest that it would
13 be extremely logical to make that assumption?

14 MR. ADAMS: I don't think that is correct at all.

15 COMMISSIONER COULTER: What could it conceivably
16 be otherwise?

17 MR. ADAMS: Well, it is extremely logical to make
18 that assumption, if we could have some testimony on that
19 point, and clear up the matter very quickly. That's my
20 point. It maybe 93.7 percent, or it may be .7 percent, or
21 maybe something in between. The study may have been based
22 completely different sampling sets than in previous years.
23 It might be any number of reasons why the 1982 Special
24 Nielsen Report is not worthy of consideration when it has
25 been in previous years. But I am not in a position to

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1 judge that fact, and neither is the Tribunal, that is my
2 only point.

3 COMMISSIONER COULTER: Okay, fine, thank you.

4 COMMISSIONER BRENNAN: Before we end this, Mr.
5 Adams, to avoid any uncertainty, would you now state
6 clearly the text of your motion?

7 MR. ADAMS: I think if you are asking for some-
8 thing that precise, I would like to further confer with
9 my counter-parts momentarily, they obviously have a stake
10 in this.

11 (Discussion off the record.)

12 COMMISSIONER BRENNAN: All set?

13 MR. ADAMS: Yes, but it must be made clear at
14 this point that my cross-examination is going to proceed
15 longer than I thought.

16 COMMISSIONER BRENNAN: I had anticipated that,
17 and perhaps we will take our recess following your report.
18 If you are proceeding on the assumption that I will
19 attempt to poll the Commissioners during lunch, you may
20 be disappointed. But give us the text of your motion on
21 the record.

22 MR. ADAMS: All right, the Devotional Claimants
23 move to strike the Settling Parties' Exhibit 5 on the
24 basis that all of the Settling Parties have not indicated
25 whether they support the study, and if they do not support

1 the study, on what basis they diverge.

2 COMMISSIONER BRENNAN: Mr. Adams, the Chair
3 observes that at least two of the seven parties are not
4 represented by counsel, separate counsel at the present
5 time, Joint Sports and National Public Radio.

6 Does any Commissioner feel a need for additional
7 information, prior to voting at some later date on this
8 motion?

9 If not, Mr. Stewart.

10 MR. STEWART: Chairman Brennan, I represent NAB,
11 NAB is not a so-called Settling Party, with an Issue --
12 capital letters -- although NAB has reached a settlement
13 in this proceeding as to its Phase I share. I am having
14 difficulty understanding Mr. Adams' request for the follow-
15 ing reasons:

16 NAB, as you know, has been one of the primary
17 critics of the MPAA-Nielsen Study in prior years. The
18 time and viewing shares that the MPAA-Nielsen Study have
19 shown in those years have been significantly larger than
20 the shares the Tribunal has awarded NAB. So, in my view,
21 NAB's support, or not of the study in '82, or any of the
22 other Settling Parties' support, or not for the study in
23 '82, is irrelevant to its relevance as a piece of evidence.

24 I might only note, in addition, that one of NAB's
25 criticisms of this study in the past has been that it seems

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1 to overweight independent stations, programming on inde-
2 pendent stations. To that degree, because, as I understand
3 it, programs such as the 700 Club and PTL show up on
4 independent stations more than network affiliates.

5 If that criticism were cured, and the MPAA-Nielsen
6 Study were improved in NAB's view, the share for the
7 devotional programmings would be smaller, rather than
8 larger that has been presented in evidence. But that is
9 an aside.

10 It seems to me that this evidence, as Commissioner
11 Coulter pointed out, is used by the Tribunal as relevant
12 and a starting point, but has not, as Mr. Adams pointed out,
13 been used to define the exact shares to be awarded.

14 Therefore, I don't see any harm in introducing
15 and accepting this evidence. And NAB, as a non-Settling
16 Party -- as a Settling non-Settling Party, has no objection
17 to the introduction, -- acceptance of this evidence.

18 COMMISSIONER BRENNAN: The last word, Mr. Adams?

19 MR. ADAMS: I don't have any comment on that.

20 COMMISSIONER BRENNAN: We will recess until
21 2:00 p.m.

22 (Whereupon, the luncheon recess was taken at
23 12:15 p.m., to reconvene at 2:00 p.m.)

24

25

AFTERNOON SESSION

(2:05 p.m.)

CHAIRMAN BRENNAN: The hearing will resume.

The motion of the Devotional claimants is denied.

Mr. Adams?

BY MR. ADAMS:

Q Mr. Cooper, let me refer you, please, to the individual pages, one by one, of your Exhibit Number 1, please. Is there a direct correlation between the average share and the number of average households per month?

A A share is not a projectable figure. Rating is projectable, share is not.

Q Okay. Well, let's look at those figures, the rating share and the average share. In comparison with the number of average households -- and I would point out to you that the number of average households across that line for February, May, July and November is 4,000 in each instance, is that right?

A That's correct.

Q Per market?

A Per station.

Q Per station. Now, in February, May and July, according to this study, the average share was less than .5 percent, is that right?

A That's correct.

1 Q And yet the average rating in November was 1, the
2 average share was 2 percent, and yet in the same 4,000
3 average households per station. Can you explain that?

4 A Yes. As I indicated when I read the 4,000, that
5 this was a rounded number.

6 Q Well, that seems to me to be rounded at least to
7 100 percent because the BMS figure is less -- is 1/2 of 1
8 percent.

9 A The 1 percent might -- I haven't calculated it --
10 could be 0.6 or 0.5.

11 Q But in any event, the minimum deviation between
12 those two figures is 100 percent, is it not?

13 A No, it isn't.

14 Q All right. Let's compare July and November.
15 You've got BMS in the July column which is less than 1/2
16 of 1 percent, is that right?

17 A Yes.

18 Q In November, you've got 1 percent?

19 A Which is more than -- which is 1/2 percent or
20 more.

21 Q That's over twice?

22 A Pardon me?

23 Q That's twice.

24 A Not necessarily. I could have -- BMS could mean
25 0.4 and 1 could mean 0.5.

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1 Q But you don't know what's the case in this
2 instance, do you?

3 A The only thing I know is, in looking at the
4 individual ratings which is shown in the table below, you
5 will see that there isn't any significant difference be-
6 tween the ratings on the individual telecasts.

7 There are a couple of 4 ratings for 700 Club, for
8 20 telecasts, all of which were on WCIV in Charleston,
9 South Carolina. But other than that, the percentage of
10 BMS ratings for individual telecasts is over 50 percent in
11 all instances. It is somewhat lower in November, which
12 accounts for it being a 1 rating.

13 Q But if the number 1 is rounded, it could be
14 rounded up or rounded down, isn't that right? It could
15 easily be 0.4?

16 A It could be. Yes, sir.

17 Q So there could be as much as a 300 percent dif-
18 ference in the average households number in that column
19 than what is actually represented there?

20 A It could be an infinite difference.

21 Q Thank you. Now referring to the next page, the
22 same general type of question. You have for an average
23 rating, a 1 all the way across, for February, May, July
24 and November, and yet the average households varies from
25 8,000 in February and July, to 7,000 in May and 5,000 in

4

1 November, as much as a 60 percent deviation given the same
2 average rating, is that not correct?

3 A With the same average rounded rating, yes, sir.

4 Q That's right. And it could be even greater than
5 that if some numbers were rounded up and other numbers
6 rounded down?

7 A Well, I also read into the record, Mr. Adams, the
8 total U.S. household audience figures for each of these
9 programs, and I think that these clarify the relationship
10 that you are referring to.

11 If you go back to the 700 Club, if you would,
12 sir, the total U.S. households for the 700 Club for February
13 are reported by Nielsen at 392,000. I believe that number
14 was previously entered into the record. For May, it was
15 375,000; July, 353,000; and November, 426,000. That is the
16 extent of the difference. The 426,000 being higher than
17 any of the previous numbers is reflected in the change in
18 the average rating, but if you compare 426 and 392, for
19 example, you are dealing there with a difference of
20 probably between 5 and 10 percent maximum, as the swing
21 in the audience to that program.

22 Q But, again, those figures are extrapolated from
23 much smaller data, are they not?

24 A Which figures?

25 Q The total viewing figures.

5 1 A No, they are extracted from exactly the same
2 figures that all the other data that is in these exhibits
3 is based on.

4 Q But they are extrapolations, are they not, from
5 diary surveys?

6 A All the data are from the diary studies, I have
7 testified.

8 Q Okay.

9 A In connection with In Touch, there are other
10 factors that are related to --

11 Q Well, I hadn't asked a question on that particu-
12 lar exhibit.

13 A Oh, that's the next --

14 Q I'd like you to refer now to your PTL Television
15 Network sheet, which is several more pages over.

16 A Yes, sir.

17 Q Now, notice, for example, in comparing February
18 and July, the average number of households is 3,000 in
19 February and 2,000 in July, and yet -- which shows a 50
20 percent reduction in viewership, does it not?

21 A These are rounded numbers.

22 Q Does it show that reduction in viewership or does
23 it not?

24 A It shows that the rounded figure for average
25 households for July is 2/3 that of the figure for May,

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6 1 February and November.

2 Q And yet, looking down below in the BMS figures,
3 the number of stations, or the number of telecasts that
4 were in the BMS category is actually about 20 percent lower,
5 is it not, which would indicate that the ratings should be
6 somewhat higher?

7 A No, sir, because in July, 54.9 percent of the
8 ratings were BMS versus 49.8 in May, for example; 54.2 in
9 February. In other words, the July figure had more BMS
10 ratings per telecast than either February or May.

11 Q Do you know the sample size that was used to
12 compute the ROSP figure?

13 A Yes, sir, it was approximately 100,000 per sweep
14 period.

15 Q That would be total, is that right, nationwide?

16 A Yes, sir, for all markets.

17 Q So in round figures, if you were in 200 markets,
18 then that would be an average of 5,000 homes per market,
19 is that right?

20 A That's correct.

21 Q Do you know what the standard deviation is for
22 that type of study, using that sample size in this study?

23 A Well, it depends upon a great deal of circum-
24 stances. For example, it depends upon the number of broad-
25 casts during the sweep period. The reliability of a rating

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1 based upon 20 telecasts in a sweep period is greater than
2 the reliability of a rating based upon a single telecast.
3 Likewise, the rating varies depending upon the level of
4 the rating. The variation for a program with a rating of
5 20 is different than the variation for a program with a
6 rating of 1 or BMS.

7 Q None of those variations are reflected in any
8 of the evidence that you have presented here?

9 A I have presented the data directly from the ROSP
10 report.

11 Q But my point is, you haven't except to this very
12 limited extent here, explained any of those deviations and
13 how they might affect the reliability of the overall study.

14 A Mr. Adams, we've discussed the variation and
15 statistical reliability of these data at length in previous
16 sessions. I do not hold out that the Nielsen data or any
17 other statistical data based on sampling are absolutely
18 precise. They are subject to errors of various kinds,
19 including sampling errors as well as other types of varia-
20 tions that occur due to entries by the diary keepers but,
21 from the standpoint of the industries which rely upon
22 audience data for making multimillion dollar decisions,
23 these data are accepted and used and relied upon.

24 Q Now, you testified during your direct that without
25 the purchase of time, Devotional programming would not

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8 1 be on-the-air, is that a correct characterization?

2 A The characterization is that the very vast majority
3 of Devotional programming distributed -- broadcast by
4 stations in the United States would not be on-the-air if
5 the suppliers did not pay the stations to carry them.

6 Q Now, wouldn't it also be true to say that the
7 vast majority of so-called syndicated secular programming
8 would not be on-the-air if the advertising time was not
9 purchased by advertisers?

10 A The advertising time is generally not purchased
11 by advertisers. Advertisers buy commercial availabilities
12 within those programs.

13 Q All right. Someone, if they didn't buy the
14 commercial availabilities, if all of a sudden every adver-
15 tiser in the United States said, "I'm not going to adver-
16 tise on commercial television anymore", then the vast
17 majority of the syndicated secular programming would not
18 be on-the-air any longer; would it?

19 A Certainly, there would probably not be any broad-
20 casting in the United States either.

21 Q Where does the advertising revenue come from,
22 Mr. Cooper, that's used to buy those availabilities?

23 A The advertising revenue?

24 Q Yes.

25 A Well, it's a -- these are expenditures based upon

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9 1 the sales of the merchandise that's advertised.

2 Q Okay. In other words, an advertising agency says
3 to a toothpaste manufacturer, "For X-dollars, we will buy
4 you an availability on the station". Now, the advertising
5 agency got the revenue from the toothpaste company,
6 correct? Is that right?

7 A The toothpaste company is paying for the adver-
8 tising.

9 Q Now where did the toothpaste company get the money
10 to pay the advertising agency?

11 A It's getting it from the sale of that toothpaste
12 to the consumer.

13 Q He's selling it to consumers, right?

14 A That's exactly right.

15 Q And some of those same consumers might be paying
16 to buy Pepsodent so they can watch MASH and at the same
17 time paying CBN so they can watch Pat Robertson, isn't
18 that the case?

19 A I don't think --

20 Q In other words, the money to buy advertising
21 is coming from the same place as if the Devotional claimants
22 bought the TV programming, isn't that true?

23 A No. I think the analogy is carried one step too
24 far. I don't think that people view a program because they
25 use the products that are advertised on that program.

10 1 Q That's exactly the point I wanted you to make
2 because people do pay PTL or CPN or Old Time Gospel Hour
3 because that's the programming they watch. They may buy
4 Pepsodent toothpaste even though they don't watch MASH,
5 but they don't contribute money to PTL when they are watch-
6 ing CBN, doesn't that stand to reason?

7 And yet in both cases there are advertising --
8 there are dollars being taken out of consumers' pockets
9 voluntarily, in both cases -- in one instance, to buy a
10 tube of toothpaste and, in another instance, to make a
11 voluntary contribution to keep a religious television
12 program on-the-air.

13 A Or for whatever purpose. They might be making
14 that contribution for salvation.

15 Q But you don't know what that purpose is, though,
16 do you?

17 A No, I don't. I do know that when they buy a
18 tube of toothpaste, they are buying it for purposes of
19 keeping their teeth clean.

20 Q And they are not making a comment on whether
21 MASH is a valuable television program or not, are they?

22 A They are not making that judgment, but the station
23 has made that judgment in acquiring the license to broad-
24 cast MASH.

25 Q In other words, there are many ways to measure

1 marketplace value, isn't that right?

2 A Generally, the only way that I know to measure
3 marketplace value is when you have someone who is willing
4 to pay money for the privilege of using your product.

5 Q Are you saying that the marketplace value of
6 television programming can only be reflected by what some-
7 one is willing to pay to purchase a tube of toothpaste?

8 A No, it is what they are willing to pay the Pro-
9 gram Supplier for the privilege of exhibiting that program.

10 Q But that, though, is a reflection of advertising
11 revenue, isn't it?

12 A It's the expectation of advertising revenue on
13 the part of the broadcaster, yes.

14 Q And the expectation of the advertising agency
15 is that if it advertises on MASH, it will sell more tubes
16 of toothpaste than if it advertises on some less highly
17 rated program, isn't that right?

18 A I think their expectation is that for each dollar
19 they spend on advertising on a particular program, that it
20 would be an efficient purchase for them.

21 Q Now, pay cable doesn't have advertisers ordinar-
22 ily, does it?

23 A Yes, it does.

24 Q HBO?

25 A Pay cable, you say? Pay cable does not have

12 1 advertising.

2 Q Does not have advertising.

3 A That's correct.

4 Q And yet it obviously has a marketplace value,
5 does it not?

6 A It certainly does.

7 Q In other words, consumers -- in other words, the
8 same person that might watch PTL on Friday night might pay
9 so he could watch HBO on Wednesday night, isn't that right?

10 A That's correct.

11 Q And he's making a conscious decision about where
12 to spend his money in both cases, is he not?

13 A In the case of HBO, he's making a conscious
14 decision to pay money to see a particular movie or group
15 of movies. I know why he's paying money for HBO.

16 Q He's paying to have that service available
17 month after month. He's not paying to watch a particular
18 movie.

19 A I said, or series of movies.

20 Q Or even a series of movies. He doesn't know
21 what's going to be on HBO six months from now, he's having
22 the service available. That's all he's paying for..

23 A No, I don't think that he's paying for the
24 service. If he finds that the movies that are presented
25 on HBO are of limited interest to him and not worth the

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13 1 money he's spending, he'll cancel HBO.

2 Q And what would happen if enough individuals made
3 that same decision about HBO and stopped the subscription?

4 A HBO would go out of business.

5 Q And what would happen to the Old Time Gospel
6 Hour, for example, if enough people stopped watching and
7 stopped making their contributions to that program? The
8 same thing would happen, would it not?

9 A Without question, it would happen.

10 Q And so the fact that at least in these three
11 instances -- PTL Club, Jim Bakker, Old Time Gospel Hour and
12 CBN -- that they have been on television for six years
13 consistently since these proceedings started, with vir-
14 tually the same level of station affiliation, does tend
15 to indicate that there is someone out there that does
16 enjoy watching the programming, isn't that right?

17 A There's no question of the fact that these
18 programs are viewed by some people, and they are viewed
19 by people who send in contributions to the various organiza-
20 tions that are paying for the time to air these programs,
21 no question about that. I understand that the figure
22 ranges in the area of a billion dollars a year.

23 Q And to that extent, that represents a market-
24 place value, does it not?

25 A It does not represent a marketplace value to the

14 1 broadcast station, and that is what we are dealing with here
2 in terms of the criteria that the Tribunal has enunciated.
3 It is the value to the cable system and the benefit to the
4 consumer, the cable system subscriber. The value to the
5 cable system is a reflection of the value of the programs,
6 what it would have paid, what it would have been required
7 to pay for those programs were it not for the compulsory
8 license.

9 Q Is it your testimony that a broadcast station
10 does not benefit by the fact that hundreds of millions of
11 dollars a year are paid to these broadcast stations to
12 run non-advertiser supported programs? Is that what you
13 are saying?

14 A I'm not hearing you there.

15 Q You just testified that the money paid by
16 religious broadcasters to TV stations was not a benefit
17 to those TV stations, or did I hear you wrong?

18 A No, I think that the stations -- a lot of stations
19 subsist entirely upon the monies paid by religious broad-
20 casters to air their programs.

21 I say that there is a difference between programs
22 that the station is willing -- sees such value in that they
23 are willing to pay the Program Supplier for the privilege
24 of exhibiting them versus programs that the station would
25 not carry except for the fact that the Program Supplier

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1 of these programs pays the station.

2 Q You are aware that for the most part Devotional
3 programming, if it's a so-called hour program, runs a full
4 60 minutes, are you not?

5 A I don't think it runs 60 minutes.

6 Q 59-plus. Essentially one hour. How long does
7 an average one-hour syndicated television program run?
8 52 minutes? 48?

9 A Well, the average program will run 59 minutes,
10 or 60 minutes.

11 Q Take out the advertising availabilities.

12 A Well, if you take out the advertising availabili-
13 ties, without commercials, an hour program would probably
14 run 52-53 minutes.

15 Q All right. Let's say that I start a production
16 company, and I make secular syndicated programming, and I
17 make it a full one hour. In other words, from the top of
18 the hour all the way around to the top of the next hour,
19 with no commercial availabilities, any type of program.
20 And I go to a television station and say, "What will you
21 pay me for the privilege of running this one-hour tele-
22 vision program?" How much do you reckon they would pay?
23 They wouldn't pay anything, would they?

24 A Except for an extraordinary program, they
25 wouldn't pay anything.

16 1 Q That's right because --

2 A An extraordinary program, sir, would be a Super
3 Bowl. A station would be very happy to carry the Super
4 Bowl without compensation.

5 Q Is there any evidence in the 1982 record, of the
6 particular syndicated programs for which a 1982 claim is
7 being made on behalf of the Settling Parties?

8 A Would you repeat that, please?

9 Q Is there any evidence in this record, the 1982
10 record, of the particular programs for which a 1982 claim
11 is being made, i.e., copyright royalties for the calendar
12 year 1982?

13 A The answer is negative.

14 Q Is there any evidence in this 1982 record of who
15 owns the copyright in any of that programming?

16 A In the record as established to date?

17 Q Yes.

18 A Since this is the first proceeding on it, obvi-
19 ously, the answer is negative.

20 Q Is there any evidence --

21 MR. LANE: Excuse me. I would like a point of
22 clarification from the Chairman. Are the claims filed by
23 the individual claimants part of this record, or not?

24 CHAIRMAN BRENNAN: Yes.

25 MR. LANE: In light of that, Mr. Cooper, I don't

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1 know whether you are aware of that. I think you may have
2 been thinking of record too narrowly.

3 THE WITNESS: I was under the impression that you
4 were dealing with the whole thousands of programs, indi-
5 vidual programs that were retransmitted as distant signals
6 by cable systems who were claimants for shares of 1982
7 royalties being compensated.

8 MR. ADAMS: That's exactly what I was asking.

9 THE WITNESS: We have not introduced into the
10 record a listing of those programs. We have submitted --
11 Program Suppliers have submitted a listing of the claimants
12 that are represented by MPAA, and each of those claims
13 includes a statement with respect to specific ownership
14 or rights to a program, series of movie.

15 BY MR. ADAMS:

16 Q That would be simply the anecdotal reference
17 to qualify for the minimum provisions under the statute,
18 is that right?

19 A It is fully responsive to the Tribunal's require-
20 ments in terms of filing a claim.

21 Q Nowhere in the record, even if you include the
22 claims that were filed, is there a statement of the indi-
23 vidual programs that were actually run during 1982 and for
24 which copyright royalties are claimed, isn't that true?

25 A Each claim lists at least one program that was

18

1 broadcast by television, commercial television station and
2 rebroadcast as a distant signal by a cable system on a
3 specific date during 1982.

4 Q That's one claimant out of the many hundreds that
5 may have been run by a single syndicator?

6 A Not one claimant. You mean one program?

7 Q One program.

8 A A minimum of one program. That's all that is
9 required by the Tribunal.

10 Q Is there any evidence of which, if any, of those
11 programs are copyrighted, in the record?

12 A There is a certified statement that the claimant
13 is authorized to receive the royalties for those programs.

14 COMMISSIONER COULTER: Mr. Adams, am I correct
15 in the understanding that you, the Devotional claimants,
16 are fulfilling precisely the -- the information that you
17 are providing in your Exhibit 7?

18 MR. ADAMS: What?

19 COMMISSIONER COULTER: Where are you providing
20 the information that you are asking Mr. Cooper, in your
21 submissions?

22 MS. FORD: We are providing a witness next week,
23 who will --

24 COMMISSIONER COULTER: But so far we don't have
25 any list of any --

1 MR. ADAMS: We haven't put our case on yet.

2 MS. FORD: We haven't introduced into the record --

3 COMMISSIONER COULTER: Okay. But so far, of what
4 we have, we don't have with us information as to the precise
5 programs and the copyright owners that you are claiming
6 for, is that correct?

7 MR. ADAMS: Not at this point, no.

8 COMMISSIONER COULTER: Okay. But you intend
9 to introduce that?

10 MR. ADAMS: Yes.

11 MR. LANE: Could I have a clarification? Is
12 there going to be further written direct that you are going
13 to submit between now and next week?

14 MS. FORD: We might have to clarify one of the
15 exhibits.

16 MR. LANE: So this evidence is going to be pre-
17 sented orally, am I correct on that?

18 MS. FORD: Pardon?

19 MR. LANE: This evidence is going --

20 MS. FORD: We'll have to explain them, yes.

21 BY MR. ADAMS:

22 Q Mr. Cooper, is there any evidence in the Settling
23 Parties' 1982 case which indicates which of the programs,
24 if any, were copyrighted prior to 1954?

25 A I don't believe this was specified, and I don't

20 1 know why it be required.

2 Q Is there any evidence in this record of which,
3 if any, pre-1954 copyrights were renewed?

4 A The record, as it stands right now, Mr. Adams,
5 does not -- the only secular program, I believe, that I
6 have mentioned as part of these proceedings, is Wild
7 Kingdom.

8 Q What share did CBN receive in the 1978 case?
9 It was 2.8 percent, wasn't it?

10 A I would not question that. Your records are as
11 good as mine.

12 Q Thank you. Now, you testified during your direct
13 evidence that you didn't know of a single instance of a
14 bartered or sold Devotional program. Was that your
15 testimony?

16 A No, sir.

17 Q Would you clarify that for me?

18 A I said that Devotional programs are generally
19 -- fall into two categories, either they are bartered or
20 sold. Okay. I said that primarily the Devotional programs
21 were provided to stations either on the basis where the
22 Program Supplier bought the time or were given free to the
23 station.

24 In connection with USAM and Another Life, I did
25 mention the fact that that program may have been bartered,

21

1 was probably provided to stations -- those programs were
2 probably provided to stations on a barter basis, but I
3 did not have the information.

4 Q Well, in fact, they were sold, but I wanted to
5 ask you if you had reviewed the Devotional Claimants'
6 exhibits which have been previously filed?

7 A Yes, I have.

8 Q Are you aware of Devotional Claimants' Exhibit
9 Number 7, do you recall it?

10 A Would you show it to me, please?

11 Q (Handing document.)

12 A I am aware of this exhibit.

13 Q Was this not a multi-page list of examples of
14 religious programming which was sold or bartered during
15 1982?

16 A It is a listing that purports to show the call
17 letters of stations to which certain programs were bartered
18 or sold. I say purports to show because we have -- my
19 own investigation of that exhibit indicates that in
20 probably a majority of instances, from no other source can
21 I verify that the stations actually broadcast those programs.
22 I refer particularly to Another Life and to USAM, which
23 are listed in that -- in your Exhibit 7.

24 Q I'm sorry -- you couldn't verify that they were
25 ever broadcast?

22 1 A That's correct.

2 Q What steps did you take to find out if they were
3 broadcast?

4 A The dates on the Exhibit 7 indicate, I believe,
5 are for May, 1982. I have examined the sources that I
6 mentioned earlier, both the Syndicated Program Analysis
7 and the Nielsen Report on Syndicated Programs, and in the
8 majority of instances, I find no indication that stations
9 that are purported to have arranged for broadcasting those
10 programs actually did broadcast them during 1982.

11 Q Did you collect any documentation --

12 MR. LANE: Mr. Chairman, I'm going to object
13 to having cross-examination of Mr. Cooper about an exhibit
14 that was prepared by the Devotionals when they haven't
15 even presented a witness, and Mr. Cooper is not rebutting
16 their exhibit.

17 MR. ADAMS: We are not asking Mr. Cooper to
18 comment directly on the exhibit except insofar as he tes-
19 tified that he did not --

20 MR. LANE: Except to show how he went through
21 the exhibit and what steps he took to do whatever you want
22 to ask him about the exhibit.

23 MR. ADAMS: Mr. Cooper testified --

24 CHAIRMAN BRENNAN: Excuse me, Mr. Adams. The
25 Chair, based on past precedents, overrules the objection.

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23 1 BY MR. ADAMS:

2 Q Mr. Cooper, do you know how many markets MASH
3 is shown in?

4 A I believe that MASH is being sold in 100 -- in
5 excess of 150 markets.

6 Q That's approximately the same number, give or
7 take a few, as the Devotional programs that you've sub-
8 mitted in Exhibit 7, is that right?

9 A I believe that that would be not true of 700
10 Club, which is at about the 100 level. It would be true
11 of the Jim Bakker Show and of Old Time Gospel Hour.

12 Q And I believe you made the point during your
13 direct testimony that the fact that PTL, Jim Bakker, CBN,
14 Old Time Gospel Hour was made available in most of the
15 markets by direct broadcast meant that as a distant signal
16 that program had little or no value, is that right?

17 A I said that the value of it as far as cable
18 viewers was diminished to the extent that it was available
19 locally usually on multiple occasions. There is a major
20 difference, however, Mr. Adams, between MASH and the
21 religious programs that we referred to before.

22 MASH probably produced -- and, again, this is
23 an estimation on my part -- some 600 different episodes,
24 and it is most likely that the stations that are broadcast-
25 ing MASH on any day are broadcasting different episodes of

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24 1 MASH rather than the same episode. Thus, in a market
2 where MASH may be available on cable from one or two stations
3 and locally from perhaps one station, there is a likelihood
4 that there will be three different episodes of MASH being
5 telecast.

6 Q I submit to you, Mr. Cooper, that exactly the
7 same situation is in existence with Devotional programming
8 because of bicycling. You very often find one or two
9 different episodes being broadcast locally in a given
10 area, and a third one perhaps being bicycled, a different
11 episode on the same cable.

12 In any event, the same situation applies with
13 regard to MASH and with regard to your typical Devotional
14 programming to the extent that the fact that it's avail-
15 able locally in a particular market does not make it as
16 valuable as a distant signal, isn't that right?

17 A I think that the extent to which the particular
18 episode is different diminishes that reduction. There is,
19 however, a factor, without question. The fact that MASH
20 is brought into markets by cable systems diminishes the
21 value of MASH to the local stations in that market.

22 Q And the same would be true with Happy Days, and
23 Laverne and Shirley, and Good Times, and any other syndi-
24 cated program that was syndicated in a large number of
25 broadcast markets?

25

1 A There is no question but that the value to the
2 local station that licensed the series is diminished, how-
3 ever, the viewership of those series by cable -- in cable
4 households is a benefit to the viewer, and the extent to
5 which these are popular for cable viewers indicates a value
6 to the cable system.

7 Q Is a benefit to the viewer one of the express
8 criteria set by the Tribunal?

9 A It is not, but we have repeatedly said that as
10 far as value to cable systems, it is directly related to
11 the value that the cable system subscriber perceives to
12 receive from that service.

13 Q And that would apply without regard to the nature
14 of the programming, would it not?

15 A Oh, indeed, it would.

16 Q Now, you gave some figures about Wild Kingdom,
17 and I wanted, first of all, to make sure I have these
18 correct. First of all, you indicated that Wild Kingdom
19 was in 173 markets, is that correct?

20 A In February, Wild Kingdom was in 172 markets.
21 It was carried by 173 stations.

22 Q And you indicated there was a 5 rating and a
23 13 share?

24 A That's correct.

25 Q So to the extent that it appears in 172 different

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1 markets, the same reduction of benefit would apply as you
2 indicated applied to MASH and the other widely syndicated,
3 secular syndicated programs, is that right?

4 A Yes, it would.

5 Q One thing puzzled me, though, and that is, you
6 indicated that in comparison to a CBN exhibit, which I
7 believe you showed 392,000 viewers, you said it had 4
8 million viewers, is that right?

9 A 4 million household viewers, right.

10 Q The numbers, the 392,000 for CBN and the 4
11 million viewers, are they comparable figures? Are we
12 talking about apples and apples there?

13 A That would be the total viewing of all telecasts
14 during the day.

15 Q I guess what puzzles me, Mr. Cooper, is that
16 -- well, let's take the November which shows a 2 percent
17 average share.

18 A Where are you referring to?

19 Q On the Christian Broadcasting Network, November,
20 2 percent average share, 4,000 average households, 426,000
21 viewers.

22 A Are you talking about the 700 Club?

23 Q Yes, 700 Club, CBN, first page of --

24 A We have multiple pages labeled CBN.

25 Q You're correct, and I apologize for being

27

1 imprecise. First page of Exhibit Number 1. The rating
2 share is 2 percent.

3 A No, that's not correct.

4 Q Average share?

5 A Share is 2 percent.

6 Q Average share 2 percent. Number of viewers
7 426,000. Let's round that off to 400,000. That means
8 that according to these figures, the viewership is one-
9 tenth that of Wild Kingdom, and yet the average share is
10 only about one-fifth.

11 A Share is meaningful only in directly competitive
12 situations where you have the same -- the programs are
13 on at the same time in the same market. Otherwise, share
14 is not significant. Share is significant if you are
15 dealing with all programs that are on between 7:00 and 9:00
16 a.m., for example.

17 Q Are Wild Kingdom and, for example, 700 Club
18 directly head-to-head?

19 A They are not.

20 Q Why is it important? Why is it relevant to bring
21 up that particular instance?

22 A I'm not making a comparison of share. I think
23 if you wanted to look at a comparison in relationship to
24 the households viewing the program, you have to use rating
25 and not share.

28

1 Q Okay. So the rating in November for 700 Club
2 was 1, the rating for Wild Kingdom was 5, and yet the
3 viewership for Wild Kingdom purports to be ten times as
4 much instead of just five times as much. How do you ex-
5 plain that? Where do the extra 2 million viewers come
6 from?

7 A There are so many different factors involved.

8 Q Well, I want to hear a few of them.

9 A Let's stay with one of them.

10 Q Let's go over them one-by-one. I want to know
11 what the factors are that can create 2 million viewers out
12 of --

13 MR. LANE: You will if you would let him answer.

14 MR. ADAMS: I want Mr. Cooper, first of all, to
15 know what the question is.

16 THE WITNESS: I understand your question, but
17 you have to start dealing with the known comparabilities.
18 For example, on this first page of Exhibit 1, it shows
19 that in November, 700 Club was carried by 116 stations.
20 I have also testified just now, and repeated for you, that
21 in the figure for February, which you prefer to use, Wild
22 Kingdom was carried by 173 stations. 173 stations has a
23 potential reach of many more television households than
24 116 stations. And so the projection of a rating point,
25 which is a percentage of the households that could view the

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1 program, is substantially different for a universe that
2 is served by 173 stations than one that is served by 116
3 stations.

4 BY MR. ADAMS:

5 Q Do you know the population of those, of the 106,
6 in the case of the 700 Club, and the 172 for Wild Kingdom?

7 A As a matter of fact, that is a figure that is
8 easily supplied.

9 Q In fact, that figure is not going to be anywhere
10 close to one-half for Wild Kingdom -- or for CBN and Wild
11 Kingdom, is it? In other words, the 106 for CBN, those
12 are the 106 major markets, and it's going to be in
13 virtually all of the same markets for Wild Kingdom?

14 A I don't accept that statement at all, Mr. Adams.

15 MR. ADAMS: Can he provide those figures perhaps
16 tomorrow?

17 THE WITNESS: Yes, but I don't accept that
18 statement that you made. I was just surprised that you
19 made it, with respect to the fact that the 106 markets
20 that 700 Club is in are all major markets.

21 MR. ADAMS: I just want to see how comparable
22 the population figures really are.

23 THE WITNESS: That is an easy one to produce.

24 BY MR. ADAMS:

25 Q Now another point is that if you compare Wild

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1 Kingdom with -- not only with one or two particular pro-
2 grams, but purported to draw a comparison between the share
3 that the Devotional claimants were requesting as opposed
4 to the share that Mutual of Omaha requested for Wild King-
5 dom, did you not?

6 A I did not ever mention the share that Wild King-
7 dom -- that Mutual of Omaha requested for Wild Kingdom.

8 Q No, but what they got compared to what we got.

9 A I did testify to that.

10 Q Well, you know, of course, that Devotional
11 claimants are a claimant group which are claiming not just
12 for these individual three television programs, but for
13 Devotional programming with the exception of certain local
14 broadcasting?

15 A Well, I don't know how you can do that because
16 except for you three, I am not aware of any other Devotional
17 broadcaster who has filed a valid claim for 1982. There-
18 fore, the only ones who can share in that claim, who have
19 a claim for any kind of programming, are you three. I am
20 not aware of any claim filed by Oral Roberts, or Jimmy
21 Swaggart, or Ernest Angley, to mention just a few of the
22 other Devotional broadcasters.

23 I think the main element of what I'm saying, and
24 I mentioned earlier, that, for example, in February, there
25 were 76 Devotional series listed in the Nielsen ROSP, and

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1 we are dealing here with five programs out of those 76,
2 and certainly not the five leading programs.

3 Q Did all the program syndicators in the United
4 States file claims for 1982?

5 A That's a question I can't answer. Although one
6 I can answer, Mr. Adams, is that we have tabulated all of
7 the programs that were transmitted during those 16 sweep
8 weeks, and the Claimants, the Program Suppliers, the
9 secular Program Suppliers who filed claims account for 98
10 percent of the household viewing hours of all the programs
11 that are involved.

12 Q To your knowledge, did all the broadcast stations
13 in the United States file claims for 1982?

14 A I am now speaking for the Settling Parties. I
15 believe that the answer is, not all.

16 Q Now you also drew a comparison between KXTX being
17 shown, I believe it was, on 20 or 30 cable systems --

18 A I said 40. I said 40, and I specified, Mr. Adams,
19 that these were 40 particular cable systems. These were
20 40 cable systems that carried KXTX as a full-time distant
21 signal, and that these cable systems all filed Form 3
22 statements of account.

23 Q All right. And you compared that figure with
24 WTBS, and the number you gave was 2,300, was it not?

25 A Yes, sir.

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1 Q Now you are aware, of course, that WTBS is avail-
2 able nationwide on satellite and KXTX is not, isn't that
3 true?

4 A That's true.

5 Q And so there is no way that KXTX could draw
6 anywhere near 2300 distant signal transmissions from its
7 broadcast area in and around Texas, is there?

8 A Absolutely no question whatsoever.

9 Q So that comparison is totally meaningless, isn't
10 it?

11 A It is not a meaningless comparison at all. I
12 think that what we are dealing with in terms of the distri-
13 bution of cable copyright royalties is the viewing of
14 copyrighted programs as distant signals by cable systems.

15 Now to the extent that Program Suppliers whose
16 programs are distributed by WTBS are affected by the fact
17 that WTBS is available by satellite throughout the United
18 States has major importance.

19 Q Wasn't your testimony to the effect that KXTX
20 was, in essence, a secular type broadcast station?

21 A Yes. I said that in 1982, with the exception
22 of prime time repeats of 700 Club, that the program schedules
23 of KXTX was virtually indistinguishable from that of
24 secular independent television stations.

25 The difference, Mr. Adams, between WTBS --

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1 Q Go ahead and say "My Friend", that's okay. I'm
2 flattered.

3 A -- between WTBS and KXTX relates to the nature
4 of the programming offered by WTBS over and above the fact
5 that it is primarily syndicated programming and sports
6 programming.

7 Q Just like on KXTX.

8 A KXTX, in its search for wholesome programming,
9 has centered on a number of series which are probably
10 less attractive on a national basis than the programs
11 distributed by WTBS.

12 Q These are all your clients' programs, are they
13 not?

14 A The ones that you are carrying on KXTX?

15 Q Yes.

16 A Yes, they are.

17 Q And, basically, the only difference between the
18 fact that WTBS is carried on 2300 cable systems and KXTX
19 is carried on 40 is that WTBS is available on satellite
20 and KXTX is not, isn't that it? Isn't that the vast
21 majority of the reason?

22 A Oh, it certainly is, without question.

23 Q Approximately how many broadcast stations were
24 on-the-air in 1982, Mr. Cooper?

25 A Commercial or total?

34 1 Q Commercial.

2 A Approximately 750.

3 Q Were you aware, or you have heard from prior
4 years' testimony that in 1980, KXTX was in the Top Ten
5 of the most widely carried cable systems?

6 A Pardon?

7 Q It's part of your exhibit, that KXTX was one of
8 the ten most widely carried networks, or stations, on
9 cable systems in 1980? It's also referred to in the
10 Court of Appeals opinion.

11 A Yes, that would be a reasonable reference. The
12 number of -- we have gone over this in the past, too, that
13 there are some 20-25 stations probably that account for
14 about 85 percent of all the cable carriage, distant cable
15 carriage in the country, and of those, KXTX has been one
16 of the sample stations for the MPAA special study since
17 the studies were inaugurated.

18 Q Mr. Cooper, do you know offhand about how many
19 Washington area stations transmit Public Broadcasting
20 Service?

21 A Washington State?

22 Q No, Washington, D. C.

23 A Oh, in this area. I think there are probably
24 around five.

25 MR. ADAMS: Mr. Chairman, before we conclude,

35 1 we'd like just a brief moment to confer, if you will.

2 CHAIRMAN BRENNAN: Certainly.

3 (Discussion off the record.)

4 MR. ADAMS: We don't have anymore questions,
5 Mr. Chairman.

6 CHAIRMAN BRENNAN: Thank you. Any additional
7 questions by Commissioners?

8 (No response.)

9 Mr. Lane, any redirect?

10 MR. LANE: No questions.

11 CHAIRMAN BRENNAN: Mr. Scheiner, are you --

12 MR. SCHEINER: I'm just carrying his bag today.

13 CHAIRMAN BRENNAN: Thank you.

14 Allen, I won't say goodbye because I suspect we
15 will be seeing you several times in the course of this
16 proceeding.

17 We will recess until 10:00 o'clock tomorrow
18 morning.

19 (Whereupon, at 2:55 p.m., the hearing In The
20 Matter Of CRT 83-1 was adjourned, to reconvene Wednesday,
21 July 18, 1984, at 10:00 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

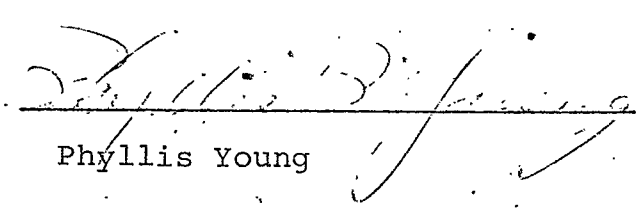
In the matter of: Cable Royalty Distribution - 1982,
CRT Docket No. 83-1.

Before: Copyright Royalty Tribunal

Date: July 17, 1984

Place: 2000 L Street, Northwest
Conference Room 500
Washington, D. C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.


Phyllis Young

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