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COPYRIGHT ROYALTY TRIBUNAL

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In the Matter of: :

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

1982 - Phase I :

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(This volume contains pages 175 through 352)

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

Tuesday, July 24, 1984

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

BEFORE:

THOMAS BRENNAN	Chairman
EDDIE RAY	Commissioner
MARIO F. AGUERO	Commissioner
MARIANNE MELE HALL	Commissioner

1 APPEARANCES:

2 On behalf of MPAA:

3 ARTHUR SCHEINER, ESQ.  
4 DENNIS LANE, ESQ.  
5 Wilner & Scheiner  
6 1200 New Hampshire Avenue, Northwest  
7 Washington, D. C. 20036

8 On behalf of Joint Sports:

9 ROBERT ALAN GARRETT, ESQ.  
10 DAVID H. LLOYD, ESQ.  
11 Arnold & Porter  
12 1200 New Hampshire Avenue, Northwest  
13 Washington, D. C. 20036

14 On behalf of NAB:

15 DAVID H. SOLOMON, ESQ.  
16 Crowell & Moring  
17 1100 Connecticut Avenue, Northwest  
18 Washington, D. C. 20036

19 On behalf of PBS:

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21 Flood, Bechtel, Ward & Cole  
22 Suite 402  
23 1000 Potomac Street, Northwest  
24 Washington, D. C. 20036

25 On behalf on ASCAP:

I. FRED KOENIGSBERG, ESQ.  
One Lincoln Plaza  
New York, New York 10023

On behalf of Old Time Gospel Hour:

JOHN H. MIDLEN, JR., ESQ.  
Suite 1200  
1100 Fifteenth Street, Northwest  
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1 APPEARANCES: (Continued)

2 On behalf Christian Broadcast Network:

3 ANN FORD, ESQ.  
4 1255 23rd Street, Northwest  
Washington, D. C. 20037

5 On behalf of BMI:

6 DAVID FURTH, ESQ.  
7 Peabody, Lambert & Meyers  
1150 Connecticut Avenue, Northwest  
Washington, D. C. 20036

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C O N T E N T SWITNESS                      DIRECT      CROSS      REDIRECT      TRIBUNAL

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EXHIBITS                                      IDENT.      RECVD.

Devotional #1	Research Report, 2 volumes	186	205
Devotional #2	Cable TV Viewer Survey	211	220
Devotional #3	Survey of Cable Managers	220	231
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P R O C E E D I N G S

(10:05 a.m.)

COMMISSIONER BRENNAN: The hearing will resume.

The Tribunal has learned with deep regret of the death of Professor Allen Lapman. Professor Lapman was a distinguished copyright scholar and able practitioner, he very effectively represented his clients before this body and was highly regarded by all of the commissioners who were acquainted with him. On behalf of the Tribunal I express our condolences to Mrs. Lapman, and the members of the family.

Commissioner Coulter is absent because of serious illness in his family.

We will commence today the direct case of Devotional Claimants. Does counsel have an opening statement?

MS. FORD: Just briefly, Mr. Chairman.

COMMISSIONER BRENNAN: Ms. Ford.

MS. FORD: The Devotional Claimants are relying on evidence previously submitted in past years, specifically in the 1978, 1979 and 1980 proceedings. However, the Devotional Claimants have taken to heart the concerns the Tribunal had concerning the benefit marketplace value of devotional programming. And in support of these two criteria, we provide today Mr. Clark and supporting

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1 documentary evidence.

2 COMMISSIONER BRENNAN: Thank you, Ms. Ford.

3 Dr. Clark, would you please come forward?

4 Whereupon,

5 DAVID W. CLARK

6 was called as a witness and, having first been duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. FORD:

10 Q Mr. Clark, for the record could you state your  
11 name, address and place of employment?

12 A My name is David W. Clark, my home is in Virginia  
13 Beach, Virginia, and I am the Vice President of Marketing  
14 for the Christian Broadcasting Network.

15 Q Could you, briefly, state your educational back-  
16 ground, and your experience in broadcasting and communica-  
17 tions, generally, please?

18 A I was a professor, teaching in the area of com-  
19 munications, radio and television. I taught while I was  
20 at the University of Iowa in a doctoral program there, and  
21 I was a professor for five years at Bowling Green State  
22 University, teaching mainly graduate courses. And was for  
23 four years the dean of CBN University's Graduate School  
24 of Communication.

25 Three years ago I moved to the network. During

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1 the time I was an academic, I was president of a marketing,  
2 research and consulting firm, both in Ohio and in Virginia,  
3 and in that role did a great deal of quantative research  
4 for a number of clients, but mainly worked with television  
5 and radio stations.

6 Q Briefly for the record, where did you take your  
7 degrees?

8 A I have graduate degrees from Northern Baptist  
9 Seminary, and an M.A. and PhD in communication research  
10 from the University of Iowa.

11 Q You mentioned that you were dean of the graduate  
12 school of communications, could you describe that for  
13 us?

14 A CBN began a graduate university in the fall of  
15 1978. The initial program was a school of communications  
16 offering the masters degree, that school now has over 200  
17 students, they have since added to that university masters  
18 programs and schools of business, education, public policy  
19 and biblical studies. They have just received their  
20 final review for regional accreditation and that should be  
21 announced in the fall, from the Southern Association of  
22 Colleges.

23 Q What does your work entail now as Vice President  
24 of Marketing?

25 A I am a corporate officer of CBN, and responsible

1 for all acquisition of time for programs, as well as the  
2 sale of programming, both domestically and internationally.  
3 The sale of programs such as the animated programs, Another  
4 Life, and programs like Expose, specials that we have done.

5 Q Turning now to 1982, and devotional programming,  
6 generally, what kind of programming was available on  
7 broadcast stations in 1982?

8 A Well, I think one would have to begin with  
9 mentioning probably the genre that we are most familiar  
10 with, namely the typical church service, which is essentially  
11 done on television. I think that is one form of program-  
12 ming that one sees mainly on Sundays. There are a couple  
13 of others that I think are significant, namely the so-called  
14 magazine format in which there are guests who are inter-  
15 viewed, but also features that are done relating to specific  
16 topics, or specific personalities.

17 What I consider to be yet a different kind of  
18 programming is the straight talk show, kind of an imitation  
19 of the Tonight Show, where you have a band, and essentially  
20 are doing interviews with guests. Another type of program-  
21 ming that was available then certainly was christian music  
22 programming, where you have various kinds of groups that  
23 are singing, or doing instrumental presentations of some  
24 kind. And I think you also have some drama, of a devotional  
25 nature. And, certainly CBN in '82, had a daily continuing

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1 drama, which is a half hour everyday.

2 In addition to that, there are programs such as  
3 This is the Life, Westbrook Hospital and other programs  
4 that are straight dramatic presentations on which the  
5 message is more implicit, than explicit.

6 Q Were there other programs that were produced by  
7 devotional -- so-called Devotional Claimants that were  
8 not overtly religious in nature, news programs and that  
9 kind of thing, documentary?

10 A Yes, there were some programs like that. One  
11 example that I mentioned, just in passing, is the five  
12 hour documentary called Xpose, on pornography in America,  
13 and there wasn't a lot of that programming, certainly, but  
14 there was some there.

15 Q How is devotional programming distributed? If  
16 you could kind of go through the many ways that it is  
17 distributed.

18 A Well, television stations, basically, are in the  
19 business of selling time, and there are two basic ways  
20 that is done, I think we recognize. One is to sell the  
21 time outright and sell an entire block of time; another  
22 way, and the most common way is to sell spot breaks in a  
23 program from which revenue is derived to pay for that time.  
24 Both amount to the same thing from the standpoint of the  
25 station, in that the station must receive so much revenue

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1 per hour of time that they have. This, in effect, is their  
2 inventory. Most stations can't increase that inventory,  
3 there are only 24-hours in a day, so they have to receive  
4 a certain amount of revenue for every hour. Either they  
5 will sell spots in the programs and derive revenue for an  
6 hour, or in some cases they may sell an hour of time to  
7 someone who buys that time, in the case of devotional  
8 programs, the people who do devotional programs would not  
9 want commercials in their programs because it would destroy  
10 the continuity of what they were trying to do, so you have  
11 that kind of a situation.

12 But sometimes stations will sell blocks of time  
13 to a commercial program broker, or time broker who will,  
14 in turn, bring in programming and then sell the spot time,  
15 and in that way the station will have sold a block of time,  
16 gotten the revenue for the time and the broker will sell  
17 the spot time, and derive revenue and make, hopefully, a  
18 profit on brokering that time.

19 Q Before you go on, could you give us some examples  
20 of commercial entities that would do that, that would  
21 buy the time for the broadcasting? Give me an example  
22 of a program that might have been conducted that way.

23 A There are a number of groups that have done this,  
24 it used to be called the Tanner Organization, which was  
25 purchased by another entity, would do this sort of this,

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1 they would buy blocks of time, and then, in turn, barter  
2 out or sell the spots in that time period. There are a  
3 number of syndicators though who buy time, supply the  
4 programming -- this is done, I know, in children's program-  
5 ming, in syndication of children's programming. They will  
6 either buy the time and sell the spots in the time, supply-  
7 ing the programming themselves. And the only thing that  
8 comes to mind at the moment is a series for children  
9 called Teddy Bear, which was a special series for children  
10 in which the individual syndicating of the programming  
11 bought an hour of time, ran the special in there and then  
12 sold the spot himself, to derive revenue from that.

13           It is not a common practice, but certainly it is  
14 done in the industry.

15           Q   What other methods are used to distribute  
16 devotional programming, besides outright acquiring time,  
17 are there others?

18           A   Yes, there are some barterers being done for pro-  
19 gramming, so that what happens is something of value is  
20 supplied to the station, in terms of programming, and  
21 for that the station will, in turn, give time back to  
22 whoever has this product for devotional programming. An  
23 example of that would be what we have done -- we produced  
24 104 hours of animated -- half hours of animated children's  
25 programming. And we have bartered that, as well as sold

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1 it to stations around the country. But in the barter  
2 situation, we will expect to receive back a half hour of  
3 time for every half hour they use that animation. If they  
4 run it five times, or 10 times, we would expect to receive  
5 back 10 half-hours, which is then credited to us for our  
6 devotional program of the 700 Club.

7 We have also done this with a number of stations,  
8 around 30 stations with the continuing drama, Another Life,  
9 which is a daily half-hour program, which we produced 260  
10 half-hours annually. And we have bartered that, as well  
11 as sold that program. But the barter then allows us to  
12 air devotional programming without actually spending hard  
13 dollars, so it works out to be a trade for us.

14 Q Let's turn now to the exhibits that we have  
15 exchanged with the other claimants. If you could turn  
16 first to Devotional Claimant's Exhibit 1, which I will  
17 identify for the record as a two volume exhibit, entitled  
18 Religion in Television, a Research Report, by the Annen-  
19 berg School of Communications, University of Pennsylvania  
20 and the Gallup Organization.

21 (Whereupon, the documents were marked  
22 for identification as Devotional  
Claimant's Exhibit No. 1.)

23 BY MS. FORD:

24 Q Mr. Clark, are you familiar with this study?

25 A Yes, I am familiar with this study. I have been

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1 involved with the group which sponsored the study from the  
2 time that the group came together. This was the result  
3 of an ad hoc group that realized that there was a need for  
4 some specific hard data on religious television in America.

5 So, I was part of that initial group, that ad  
6 hoc group which met to try to launch this kind of a study.  
7 And then later served as chairman of the design committee  
8 that this group had interfacing with both the Gallup  
9 Organization and the Annenberg organization.

10 MR. SCHEINER: Would you excuse me, Ann?

11 Mr. Chairman, I would like counsel to advise as  
12 to whether the entire document identified as Exhibit 1 is  
13 considered to be relevant and material to the issues in  
14 the proceeding, and if not, to designate those portions  
15 which are being relied upon. And that request is made  
16 pursuant to the provisions in Section 301.51 of the  
17 Tribunal's rules.

18 COMMISSIONER BRENNAN: I take it, Mr. Scheiner,  
19 you did not previously make this request of Ms. Ford?

20 MR. SCHEINER: I did not, sir.

21 MS. FORD: Mr. Chairman, I have never heard this  
22 Tribunal ask a claimant to exclude portions of any exhibit  
23 and much of it has been placed in the record over the last  
24 five years. I did not want to be held to deliberately  
25 exclude relevant or irrelevant evidence. I am not trying

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1 to hide anything, so I placed the whole study into evidence.  
2 You can accord weight to the relevant portions. I think  
3 that has been appropriate.

4 COMMISSIONER BRENNAN: The Chair has previously  
5 consulted the commissioners on issues that might arise in  
6 connection with this document. And you may proceed, Ms.  
7 Ford, as you desire.

8 MS. FORD: Thank you.

9 BY MS. FORD:

10 Q Mr. Clark, could you briefly summarize the purpose  
11 and basis of this Annenberg Study?

12 A I think the main purpose was, first, to assess  
13 the nature and size of the audience for religious tele-  
14 vision in America. And, secondly, to determine how people  
15 use -- how viewers of religious television use religious  
16 television, what part it plays in their lives, particularly  
17 as it relates to their involvement in their local church  
18 or synagogue.

19 In other words, does it in anyway detract from  
20 that involvement, or does it seem to in someway aid or  
21 abet that involvement with the local church or synagogue.

22 Q Does the study deal with viewership and ratings  
23 of religious programming?

24 A Yes, it does; in fact, it contains two major  
25 surveys, one of which was conducted by Arbitron based on

1 their diary data. And viewers of television specifically  
2 mentioned in their diaries that they had watched what we  
3 are calling devotional programming.

4 Q Could you elaborate on that, as far as --

5 A All right, I think that -- first, I think we need  
6 to say there are two surveys here, one is the one which  
7 I just alluded to which was a re-interview of diary keepers  
8 conducted by the Arbitron organization. I think we all  
9 recognize that there are essentially two rating systems  
10 in America, one is Nielsen and the other is Arbitron. Both  
11 rely on diaries for local market viewing measurement, with  
12 the exception of about 10 markets where they have meter  
13 measurements. Which simply means that television sets  
14 are actually connected to computers, so that the television  
15 set itself can be monitored versus a diary system, where  
16 viewers are asked to record, as they are viewing, what  
17 they watched, what channel they watched and so forth.

18 Now, there are many problems connected with the  
19 diary measurement systems, some of these problems are  
20 problems, which in my judgment relate directly to religious  
21 viewing. Let me just mention one or two of those, first  
22 of all, most devotional programming is carried on UHF  
23 stations in America. That isn't the case in every market,  
24 certainly, but in most markets you find this devotional  
25 programming on UHF, independent stations.

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1           And it has been well established that UHF stations  
2 are under-represented consistently in diary measurement.  
3 The reason for that seems to be that diaries -- the people  
4 who fill out diaries tend to do them maybe a day or two,  
5 or even several days after their viewing. And selected  
6 recall seems to work in such a way that they tend not to  
7 remember these newer UHF stations as well as the traditional  
8 VHF stations in markets.

9           I think the impact on the audience of devotional  
10 viewing there is obvious, if they are not recalling UHF  
11 stations, then they are not going to be recalling the  
12 devotional programming. And this report alludes to that  
13 fact, and alludes to the problems of the measurement of  
14 this audience.

15           The diary system tends to be most effective when  
16 it is measuring two stations in a market. In most markets  
17 actually there are only 120 or so diary keepers every week  
18 for four weeks that are measuring the audience for a  
19 given market. So, you have roughly 500 people, actually  
20 125 per week for a four-week period that are telling us  
21 who is viewing in a given market.

22           Now, if those audiences are truly randomly selected,  
23 that size sample base would give us some confidence, if  
24 we are measuring essentially a 50-50 split in audience.  
25 But when you get down to breaking an audience into five,

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1 six and seven, and eight, and more different units or parts,  
2 you are beginning to segment that audience into such small  
3 units that the level of confidence of ratings are very,  
4 very low.

5 And all you have to do is pick up a rating book  
6 and look at the back, where there is table which allows  
7 you to judge level of confidence, based on rating numbers.  
8 And the level of confidence on a one or two rating, on a  
9 station, is very, very low indeed.

10 So, what this study, taking cognizant of that,  
11 realized that surveys had to be done and two regional  
12 surveys were done by Arbitron for Annenberg, and then  
13 Gallup, as part of what is called their Omnibus Study,  
14 their national surveys, did a national survey here, to  
15 try to get at the size of the audience, and also, to try  
16 to get at how people use religious television -- what part  
17 it plays in their lives.

18 An analogy I think that we have to use here is  
19 that if you want to catch whales, i.e., big audiences, you  
20 can use nets that are rather coarse and you can catch whales.  
21 But a lot of the smaller fish are going to swim through  
22 those nets. And the measurement devices, namely ratings,  
23 for small audiences, are just inadequate. They are not  
24 designed to measure small audiences, they are designed to  
25 measure with most accuracy two stations in a market.

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1 Q Did the Annenberg Study come up with its own  
2 specific rating information?

3 A Well, the Annenberg Study makes two estimates of  
4 audience size; one is a conservative estimate and the other  
5 is an estimate based on self-reported data in the Gallup  
6 Survey.

7 It might be appropriate for me to call attention  
8 to this particular discussion on audience size, it is  
9 found on page 60 in the study, if the commissioners have  
10 it there. There is a rather long discussion of how they  
11 came to estimate audience size, and the reason this dis-  
12 cussion was necessary was because in the Gallup Survey,  
13 the national survey that Gallup did, they found that 32  
14 percent of their respondents watched a religious television  
15 program in the past month, and 18 percent watched one in  
16 the past week.

17 Now, if one projected that to the population, 32  
18 percent would represent something like 73-74 million  
19 persons; and 18 percent would represent something like  
20 41 million persons.

21 In looking at the diary data, however, the  
22 Annenberg group, or Arbitron, came up with a more con-  
23 servative estimate. And that estimate was that there are  
24 something like 13.3 million viewers -- this is found on  
25 page 64, where they get through a long discussion there,

1 and then finally say, here is what we estimate the audience  
2 to be. Duplicated viewership was estimated to be 24.7  
3 million, and non-duplicated viewership 13.3 million, or  
4 about 6 percent of the national television audience.

5 Now, this is a very conservative estimate, but  
6 I think it is important to point out that when they looked  
7 at those who said they watched devotional programs, and  
8 compared it to those who had put down on the diary  
9 devotional programs, they found about 25 percent disparity  
10 there.

11 In other words, this kind of supports what I  
12 suggested earlier, that people who watched devotional  
13 programs often don't mention them on their diary. They  
14 found if they asked someone, "Have you watched a program  
15 in the last seven days?" Twenty-five percent more than  
16 those who actually put down such programs on their diaries  
17 said yes.

18 On the other side, there were some who actually  
19 put down a devotional program on their diaries, about  
20 10 percent, who didn't mention that they watched devotional  
21 programs.

22 Again, what this illustrates is that the diaries  
23 as instruments for measuring recall of devotional program  
24 viewing are not a very effective instrument, there is some  
25 slippage there which this recognizes.

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1           Now, the Gallup Study in self-reported data found  
2 a very large audience, their estimate is much more con-  
3 servative around 13.3 million, or 6 percent who are weekly  
4 viewers of devotional programs. My own opinion is that  
5 that estimate is low, and that the audience, the weekly  
6 audience is in the 20 million neighborhood for devotional  
7 programs..

8           Q   Did the study go on to reveal anything about why  
9 people watch the religious broadcasting programs?

10          A   Yes. Let me direct your attention to the back  
11 of the book which contains the Gallup portion of the study,  
12 and Gallup wrote their own separate report, that was a  
13 requirement of the committee; they wanted both the Gallup  
14 organization and the Annenberg group, George Gerbner --  
15 Annenberg, I think we all recognize, or perhaps we don't,  
16 but the Annenberg School is a part of the University of  
17 Pennsylvania, a free-standing graduate program there.

18           I could direct your attention to the Gallup study  
19 which is at the back of the report you have, and if you  
20 look there on page 14, Table 3, and the question was asked  
21 "From the list, what things do you especially like about  
22 religious programming that you watch?" And this is the  
23 appeal that religious programming has, the sermon, the  
24 music; item number three, having your spirits lifted.

25           COMMISSIONER BRENNAN: I'm sorry, Dr. Clark, what

1 page?

2 THE WITNESS: I'm sorry, page 14, Table 3. It  
3 is entitled Gratification from the Viewing, clear at the  
4 back of the book, Volume 2.

5 It says at the bottom Gallup Organization, Inc.,  
6 at the bottom of the page.

7 COMMISSIONER BRENNAN: Off the record.

8 (Discussion off the record.)

9 THE WITNESS: Let me start with the preceding  
10 table, Table 2, page 11. People were asked, "What is your  
11 main reason for watching religious television programming?"  
12 And you can see the reasons given there, 22 percent said  
13 they enjoyed it, they liked it; 14 percent viewed it as  
14 a substitute for not attending church.

15 And by the way, this particular appeal is most  
16 important with people over 55 years of age. And I think  
17 what we know about people over 55 years of age is that  
18 their mobility for all kinds of out-of-home activity  
19 diminishes. But in any case, it is very important for  
20 some people who cannot get to church.

21 And then I think the third reason is, 13 percent  
22 said it is uplifting, it is inspiring, it gives me a lift,  
23 and so forth. Ten percent religious beliefs, I share the  
24 same beliefs; 9 percent, talk about spiritual growth; 8  
25 percent the sermon; 8 percent, information and learning.

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1 I think that is important, people do derive information,  
2 and so forth. You can see the other -- music, speaker's  
3 point of view, to grow in my religion, and so forth.

4 Then a slightly different approach, the respondents  
5 were given a list of gratifications that they might receive  
6 from this kind of programming, and they were asked to pick  
7 from these the ones that fit their own gratification the  
8 best. And you can see there, on page 14, Table 3, the  
9 preaching of the sermon was important; again, music;  
10 spirit lifting. And in the other research that I have  
11 done in secular programming, we speak about this as mood  
12 enhancement; feeling close to God; general enjoyment;  
13 knowing more about what is happening in the world -- there  
14 definitely is an information use in this programming,  
15 people are getting information from it, information about  
16 moral or social issues; the experience of worship; feeling  
17 you are better or a stronger person; companionship and  
18 so forth.

19 I think this is very important because this kind  
20 of gratification information as to what people really are  
21 getting from this programming had never been available  
22 in such a study before. There had been a bit of research  
23 done at a couple of universities, but never with this  
24 size sample.

25 BY MS. FORD:

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1 Q Could you turn to page 65 of Volume 1 of Exhibit 1  
2 and briefly summarize the findings as to why viewers watch  
3 devotional programs, other than what we have just discussed?

4 A (Perusing document) Well, I think what this study  
5 showed -- and I will come back to, 65, but I would like to  
6 go to page 3 of Volume 1, where there is a summary para-  
7 graph there which Dr. Gerbner read at the presentation of  
8 this research. I am alluding to the first paragraph on  
9 page 3 of Volume 1. And then let me come back to 65, if  
10 I may.

11 The profile of the audience for religious pro-  
12 grams tends to be fairly coherent and well-defined. It is  
13 what religious audiences have always been, somewhat older,  
14 lower in education and income, more conservative, more  
15 fundamentalist, more likely to live in rural areas, and  
16 in the South and Mid-West, than those who do not watch  
17 religious programs. The size of the audience is more  
18 stable and compact than had been supposed. And then they  
19 mention their calculations and indicate that regular viewers  
20 of any religious programs, or any denomination number about  
21 13.3 million, or 6.2 percent of the estimated total number  
22 of persons in television households.

23 Now, if I may go to 65. I think the point being  
24 made here by the researchers is simply this, the programs  
25 -- these programs offer satisfactions that are simply not

1 available in mainstream television programming, especially  
2 for many older, less-educated. And I might add that  
3 minorities, namely blacks, are highly represented in these  
4 audiences. Rural viewers and those in the South and Mid-  
5 West.

6 This survey shows us that the viewers of these  
7 programs derive a significant and important gratification  
8 from the programs, that they are very cohesive, that at  
9 least part of this audience is very regular in its viewing,  
10 and relies on these programs for a point of view, for  
11 information, and for mood enhancement, or to lift their  
12 spirits. And, also, as we have seen, for those who can't  
13 make it to a worship service.

14 I think one would have to compare this somewhat  
15 to the kind of thing that PBS offers, it is an alternative  
16 kind of programming, and those who watch it are very  
17 committed to it. It is not a huge audience, but it is a  
18 significant audience, and they watch this kind of program-  
19 ming very religiously, you might say.

20 Q There have been some allegations made in past  
21 proceedings before this Tribunal that Devotional Claimants  
22 may be benefitted by expanded cable carriage of their  
23 programming. Does this study provide any findings on this  
24 point?

25 A No, in fact, the researchers found just the



1 opposite, they note that this survey does not provide any  
2 support for the idea that cable enlarges or enhances the  
3 audience of devotional programming. By that they mean  
4 they couldn't find any people who seem to be subscribing  
5 exclusively for religious purposes to cable.

6 I think in a way what they are -- I think we have  
7 to remind ourselves that correlation is not causation. I  
8 think one would have to look at this question from other  
9 perspectives as well. There is a certain sense in which  
10 everybody who is carried on cable benefits by carriage of  
11 cable, in that there is a certain, I think, in my judgment  
12 there is a status conferral by carriage on cable of all  
13 signals to some extent, beyond that there is not much  
14 evidence, at least not in this study, that devotional  
15 programming is being enhanced by cable carriage.

16 Q The audience has also been advanced that devotion-  
17 al programming, basically, addresses very narrow issues,  
18 in other words, the content of the programming is pretty  
19 similar and there is not much diversion in content. Does  
20 this study support that theory?

21 A No, it doesn't support that. What this study  
22 -- let me just reiterate again on three parts of this  
23 study, two surveys; one which was a national survey, a  
24 second survey was composed of two parts and was done  
25 regionally in the northeast and the southeast. And then

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1 the third part was the content analysis. Now, the Annenberg  
2 School and George Gerbner are noted for their content  
3 analysis. In fact they have been doing content analyses  
4 of prime time television programming for 14 years. They  
5 have a data base there called the Cultural Indicators  
6 Data Base and their theory is that the themes presented in  
7 television programming are in some sense predictive of --  
8 they are both an index and an agent of what is happening  
9 in the larger society.

10 So, they have been very systematically analyzing  
11 television programming for the past 14 years. And some  
12 of you here might remember that they annually release a  
13 television violence index, which is often picked up in the  
14 press and discussed.

15 The reason that Annenberg was chosen to do the  
16 content analysis is because of this long record of dis-  
17 tinguished scholarly research in analyzing the content of  
18 television programming. And so they analyzed a total of  
19 101 television programs; 68 programs which aired in both  
20 Philadelphia and Atlanta; 14 which aired only in Philadel-  
21 phia, and 19 which aired only in Atlanta. This was a  
22 total of 75 hours of religious programming that they  
23 analyzed.

24 And I think the findings in this area are very  
25 significant, and I would call your attention to Volume 2.

1 There are two tables there that I would like to make  
2 reference to, to point out the kind of things that they  
3 found. First, Table 4, No. 1.9 which is about a quarter  
4 inch in to that Volume 2. It is entitled "Social, Moral,  
5 Political Issues in Religious Television Programs".

6 COMMISSIONER BRENNAN: One point, what?

7 THE WITNESS: It is Table 4, 1.9, Social, Moral,  
8 Political Issues in Religious Television Programs.

9 BY MS. FORD:

10 Q And this Table 4, 1.8, is that also --

11 A Also, 1.4 which deals with theological issues.  
12 Now, this is important because most of the discussion of  
13 content of these programs in the popular press has been  
14 anecdotal, and has been, in my judgment, based on rather  
15 cursory viewing of these kinds of programs.

16 I think what these tables will show us, more  
17 specifically, Table 1.9 --

18 MS. FORD: Wait just a minute, Mr. Clark.

19 THE WITNESS: It would help to have pages on this,  
20 I don't know why the report doesn't.

21 Often the television media critics have written  
22 of this programming from a very -- as though it was from  
23 a very narrow perspective and appealing to a kind of  
24 fanatical fringe. I think what this content analysis  
25 shows -- and I have a great deal of confidence in the

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1 methodology used here. I might say that doing content  
2 analysis like this is an exceedingly difficult and complex  
3 task, when it is done well, as they have here.

4 But you can see the themes that have been mentioned  
5 in these programs, and they have broken them out into the  
6 television ministry, mainline ministry, miscellaneous and  
7 then all programs. Television ministry they define as  
8 these major ministries, such as CBN, who have a national  
9 outreach and devotional programming, and are unattached  
10 explicitly to denomination. Mainline programming was  
11 produced by denominations, and the miscellaneous was  
12 various other kinds.

13 But if you just look at the mentions, both pro  
14 and against, of these various topics: abortion, the new  
15 morality, sexual deviance. I think it is very important  
16 to notice that there is a variety of viewpoints being  
17 expressed on these social-political topics, they are not  
18 all one way, or the other -- pornography, homosexuality,  
19 drug use, death penalty, communism, socialism, welfare,  
20 the environmental movement, prayer in the public schools,  
21 theory of evolution, war, violence and family life, and  
22 sexual sin.

23 Now, if you look then at personal problems that  
24 are mentioned, again, you have a rather surprising variety,  
25 health and life-threatening problems, suicide, alcohol

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1 problems, suicide and family tension. And coming back to  
2 Table 4, 1.4, there, again, is a surprising, at least in  
3 my judgment, surprising variety of theological issues  
4 being mentioned in these programs. They are not just  
5 carrying one or two strains, they are talking about a  
6 number of different theological issues in these programs.

7 I think this shows us that there is a great deal  
8 of variety in the programming, the topics discussed are  
9 various, and represent different viewpoints, at least some  
10 of the topics.

11 Q Did the study discuss the religious background  
12 of those viewers that watched religious programming?

13 A Yes. First of all, let me tell you that the  
14 coalition or ad hoc group that sponsored this research  
15 was composed of a cross-section of mainline and evangelical  
16 denominational and para-church organizations, including  
17 such mainline churches as the Methodist Church; United  
18 Methodist Church; Presbyterian Church; the Lutheran Church;  
19 Missouri Synod; the National Council of Churches; the  
20 Catholic Council of Bishops contributed \$20,000 to the  
21 project; the Episcopal Church was involved; Seventh-Day  
22 Adventists.

23 In addition to those, a number of what I call  
24 para-church organizations, such as CBN, National Religious  
25 Broadcasters and so forth, provided support, a total of

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1 now something like 45 organizations that contributed,  
2 anywhere from \$20,000 to \$500 to raise the budget for this  
3 study, which was over \$175,000.

4 But to answer your question, let me turn to  
5 Table 4, 2.2 which is just a little further on from where  
6 we were. And this is a list of the denominations represent-  
7 ed among the viewers of religious television programming  
8 in America. And if you just look at that table, you can  
9 see that the American Baptist, Southern Baptist, other  
10 Baptist; ALC and LCA, that's Lutheran synods, and then  
11 the Missouri Synod which is another Lutheran synod; other  
12 Lutheran; United Methodist, other Methodist; Presbyterian  
13 Church in U.S.A. and PCUS and UP USA, other Presbyterian;  
14 Episcopalian; United Church of Christ and Disciples;  
15 Pentecostal denominations, Independent, other Protestant,  
16 Roman Catholic, Jewish, other and other faiths.

17 I think, again, what this shows us is this  
18 audience for religious programming is characterized by  
19 membership and involvement in a wide range of church and  
20 parish organizations, including a very heavy representation  
21 of Roman Catholic and mainline Protestant church organi-  
22 zations. These television viewers are not fringe people  
23 by any sense of the way that term might be used, they are  
24 mainline people, in terms of their religious beliefs.

25 Q Could you turn your attention to the table just.

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1 to the left of that, Table IV 2.1, what is that table?

2 A This is a listing of the programs that people  
3 named, recalled viewing when they were asked what programs  
4 do you recall having watched.

5 MS. FORD: I would like to move Exhibit No. 1 into  
6 evidence.

7 COMMISSIONER BRENNAN: So ordered.

8 (Whereupon, Devotional Claimant's  
9 Exhibit No. 1 was received in  
evidence.)

10 COMMISSIONER BRENNAN: Are you going to turn now  
11 to Exhibit 2?

12 MS. FORD: That's correct.

13 COMMISSIONER BRENNAN: Before you do that, Ms.  
14 Ford, let me ask Dr. Clark, for my benefit, at least,  
15 could you summarize for us what you regard as the relevance  
16 of this report and study, to this particular proceeding?

17 THE WITNESS: It is my understanding, Mr. Chairman,  
18 that we are focusing here on the extent to which devotional  
19 programming is viewed on cable systems carrying this  
20 programming, which is originating as original signals,  
21 as opposed to must carry local signals. And I think this  
22 study shows that there is a significant audience in  
23 America for this kind of programming, which will consume  
24 this programming wherever they can get it. And if that  
25 happens to be on cable, from a distance source, they are

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1 going to be there watching it.

2 And I think it is very clear that this programming,  
3 at least to me, this programming is very important to these  
4 people and fulfills an important role in their life.

5 EXAMINATION BY TRIBUNAL

6 BY COMMISSIONER HALL:

7 Q You mentioned briefly some of the kinds of pro-  
8 grams that you bartered, and you mentioned a cartoon group.  
9 The programs that you do barter, do they represent  
10 devotional programming, in that that is the religious  
11 message, or are these more secular type programs?

12 A Well, let me speak to the specifics, if I may.  
13 The animated half-hours that I mentioned are stories based  
14 on the Old Testament and New Testament for children. They  
15 are characters that children that go through kind of a  
16 time-machine and get to the place where the story is going  
17 on, and they are more or less observers of what is happen-  
18 ing and comment, from a child's point of view, about what  
19 is going on. They do not teach doctrine, per se, but they  
20 do teach honesty, the importance of telling the truth and  
21 not stealing -- those moral lessons that I think most  
22 people would find to be morally relevant. But they cer-  
23 tainly don't teach any religious perspective.

24 In other words, the Old Testament stories could  
25 be watched by someone who had no religious orientation, or

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1 they could be watched by a Christian family, or a Jewish  
2 family, and there would be nothing in those stories that  
3 they would find objectionable.

4 And we do barter that animation throughout the  
5 United States. I think we have a list of the stations  
6 we are bartering that with.

7 The soap opera, or continuing drama that we are  
8 doing is, in terms of production values, as good as the  
9 network soap operas; it contains pretty much the same kinds  
10 of conflicts as that genre of programming. There always  
11 seems to be a lot of time for people to get together in  
12 the middle of the day and have long lunches, men and women.  
13 I often wonder how people have that much time, but there  
14 is certainly the theme of adultery and the career crisis  
15 that are typical of all soap operas.

16 I do think that the morality play -- and I think  
17 all soap operas to some extent are morality plays -- I  
18 think the morality lessons are written somewhat larger in  
19 Another Life, but it has entertaining value to it. And,  
20 again, it doesn't teach any specific perspective.

21 In other words, a Roman Catholic watching it  
22 would not feel it was Protestant, or a Jewish viewer would  
23 not feel it were Protestant or Roman Catholic -- it is  
24 more implicit in its message.

25 Q It would help me in distinguishing your types of

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1 programming from other types of bartered programming, if  
2 you could provide the kind of information that would  
3 suggest that other bartered programs also contain messages,  
4 be they political, or otherwise. I understand the kind  
5 of messages that the Christian Broadcasting programs are  
6 presenting, and it would be helpful for me in my comparison  
7 if I could distinguish it against other types of bartered  
8 programs.

9 A Other types of devotional programming?

10 Q No, other types of bartered programming, such as  
11 that which might be political oriented, or the like. I  
12 don't know if you can do that.

13 A The term "entertaining programming" is a very  
14 broad term. My feeling is that all programming calculated  
15 or designed to entertain, also, to some extent, teaches  
16 and perhaps even propagandizes. I am not able to cite  
17 any specific kind of bartered programming that would be  
18 political to you. Although I think if we had time to do  
19 some digging, we could give you some examples.

20 I do think though that even entertainment program-  
21 ming, such as sitcoms make a statement which may be  
22 political, at least intrinsically.

23 COMMISSIONER HALL: Thank you.

24 BY COMMISSIONER RAY:

25 Q Dr. Clark, the Arbitron and Gallup surveys, they

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1 were directed to broadcast television, primarily, is that  
2 true? And did not cover cable markets?

3 A Well, the Arbitron books and diaries are placed  
4 in cable households. So, these numbers in a given market  
5 would not exclude cable, they would include cable.

6 Q They would include cable households, but not  
7 specific information as to who was viewing certain programs  
8 on the cable system?

9 A That is true, that is true. I think that Arbitron  
10 has the capability through their computer to determine  
11 that, if it was a distant signal. But that was not part  
12 of this study, you are right.

13 Q In other words, you cannot give me -- or can you  
14 give me any information as to what percentage of the  
15 television viewers could be represented as viewers of  
16 distant signals on the cable systems?

17 A No, I cannot give you any specifics, I can venture  
18 an opinion on that. Given the size of these surveys, I  
19 don't think that we have any reason to think that it would  
20 be any different than the national level of viewership for  
21 cable and imported signals. I think these are national  
22 surveys, they are very large. It means that we can have  
23 a lot of confidence in the findings, when you have a sample  
24 of 3,000 or 2600, you have a pretty good data base.

25 So, I think that we could assume, though that was

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1 not addressed here, that the viewing of imported signals  
2 would be analogous to what it might be.

3 Q In your opinion, would there be an overlapping  
4 of the television broadcast signal and the cable signal,  
5 as great, or greater than in any other type of programming?  
6 In other words, duplication of the program in a given  
7 market?

8 A I am not sure this will answer your question, but  
9 we air the 700 Club daily on WOR in New York --

10 COMMISSIONER BRENNAN: We have two commissioners  
11 from New Jersey, and they hate for you to give WOR to  
12 New York.

13 THE WITNESS: Right, WOR in New Jersey.

14 But they have roughly 5 million households out-  
15 side of the New York area on cable systems. And we have  
16 received a good deal of mail generated through the program  
17 from WOR, outside of New York. I don't have with me any  
18 specific statistics on that, but it is enough for us to  
19 know that these imported signals in Ohio and the Northeast,  
20 generally, of WOR have some audience.

21 COMMISSIONER RAY: Thank you.

22 COMMISSIONER BRENNAN: Ms. Ford, we will go on  
23 to Exhibit No. 2.

24 MS. FORD: Okay. I would like to identify as  
25 Devotional Claimants' Exhibit 2, a one-volume document,

1 with an introduction page and 17 pages of responses. The  
2 Exhibit No. 2 is entitled "Cable Television Viewer Survey"  
3 and it was prepared, according to the cover sheet for the  
4 Christian Broadcasting Network in Virginia Beach, Virginia,  
5 dated June 18th, 1980. And it was prepared by the Market  
6 Research Group, Inc.

7 MR. SCHEINER: I would like to object to any  
8 testimony with respect to this exhibit, and ultimately,  
9 when it is offered for admission, in light of the fact  
10 that it was prepared, and Ms. Ford has indicated the cover  
11 sheet states June 18, 1980, and as a consequence, can have  
12 no relevance -- it cannot contain any information of  
13 probative value in this proceeding, which is concerned with  
14 1982.

15 MS. FORD: I am rather surprised by counsel's  
16 objection, based on the Tribunal's prior ruling which con-  
17 sistently held that information and evidence submitted on  
18 prior years is, indeed, relevant; and based on the fact  
19 that Mr. Scheiner's case is totally supported, nearly, by  
20 prior year evidence.

21 COMMISSIONER BRENNAN: The objection is overruled.

22 (Whereupon, the document was marked for  
23 identification as Devotional Claimants'  
Exhibit No. 2.)

24 BY MS. FORD:

25 Q Mr. Clark, what was the purpose and methodology

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1 of this study entitled Cable Television Viewers Survey?

2 A The purpose of this study was to assess cable  
3 viewers and subscribers' attitudes on a number of questions  
4 related to their viewing on cable and the kinds of programs  
5 which they would find interesting on cable.

6 Q Could you elaborate on the methodology and, perhaps  
7 we can go into detail?

8 A There are two samples or populations represented  
9 in this survey; the first was a sample of partners, and  
10 there were 200 interviews completed of what are called  
11 "partners", "partners" in this study, the operational  
12 definition of CBN partners are cable subscribers and viewers  
13 who regularly are supporting, or were at this time, support-  
14 ing the ministry of CBN through the 700 Club. We define  
15 that more specifically internally in terms of regular  
16 contributions, or a number of contributions over a one-  
17 year period.

18 The other population represented here was a  
19 general population of cable subscribers who were not  
20 partners of CBN. They were, however, subscribers to  
21 cable systems where CBN was carried.

22 Q What kinds of findings were made in this survey  
23 which you believe may be relevant in this proceeding?

24 A Well, I think we need to look specifically at  
25 page one, where there is some of this table information,

1 that is the quickest way to move through it.

2 Q Sure. If you would explain for the Tribunal's  
3 sake, what happened in question one? What is question one?

4 A Well, the first question was a filter question  
5 and the reason it doesn't appear there is if they were not  
6 subscribers to cable, they were terminated. So, it was  
7 merely to -- there is a questionnaire which basically says,  
8 "Are you a subscriber to cable?" And if they said yes,  
9 they continued; if they said no, they were terminated at  
10 that point.

11 Q If you could, as you proceed through the question-  
12 naire, explain where other possible filter questions  
13 appear.

14 A There is a filter question at question nine, which  
15 is the reason why the population numbers decrease after  
16 that, but I will get to that as we go along here. I think  
17 from the standpoint of this Tribunal today, if you look  
18 at question number three, "What are the main reasons you  
19 subscribe to cable TV?" Among CBN partners, as you might  
20 expect, there is a high percentage who indicated they  
21 subscribe to receive the CBN programming and the 700 Club.

22 But what I also think is important is that among  
23 those who were in the general population, 4 percent of  
24 the population indicated that this was one of the main  
25 reasons. By the way, notice this totals more than 100

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1 percent, in other words, they could choose multiple reasons,  
2 they weren't asked to choose one main reason.

3 Also, looking down under the topic "More Christian  
4 Programs", the partners, 15 percent said this was one of  
5 the main reasons; and among the general population, 2 per-  
6 cent indicated that getting more Christian programs was  
7 one of the main reasons they subscribed to cable. And then  
8 I think another relevant point is the one, the third from  
9 the bottom, "Option of not watching commercials", and I  
10 think that we generally think of this in terms of movies,  
11 but in actual fact, devotional programming is also free  
12 of commercials. And this could be related to devotional  
13 programming.

14 I think if we can skip --

15 Q Just a second, do any of the answers in this  
16 question relate to PBS, and do any of the answers to this  
17 question relate to family programming?

18 A Well, there are some others -- as you can see,  
19 PBS is listed here, an interestingly enough, you get a  
20 four and a two percent. I find it interesting that CBN  
21 partners are somewhat more interested in PBS than the  
22 general population. But educational programs are relevant,  
23 and better childrens' programs.

24 I think the point here is these people are look-  
25 ing at cable as a way of getting access to a specific

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1 kind of programming that they want, and that they are  
2 willing to pay for.

3 And in the case of devotional programming, they  
4 actually support it two ways; one, by subscribing to the  
5 cable, and two, since most of these programs rely on  
6 viewers donations to fund the production of the program,  
7 and the purchase of time, they are really supporting it  
8 that way, as well; and that is what is true of the partners  
9 here.

10 So, what we are looking at in the partners column  
11 are people who, number one, are paying for the cable  
12 service, and number two, are regularly supporting the  
13 programming. To me that represents a level of commitment  
14 that -- maybe amazing may be an overstatement, but it is  
15 certainly a very high level of commitment.

16 Q Does this question address those who view cable  
17 as providing an alternative to network fare, is there any  
18 answer response that would relate to that?

19 A Well, I think, basically, most of these questions  
20 deal with programming that is somewhat different than the  
21 general run of network programming.

22 Q Go on.

23 A I think if we look now at question seven, on page  
24 five, question seven is broken out into four demographic  
25 groups within this survey, namely, adult males; adult

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1 females; teenagers; young children, 12 and under. And the  
2 question is "What are the three top favorite type programs  
3 watched recently by you and other members of your family  
4 on cable television?"

5 And comparing partners and general population,  
6 on Christian programs, you can see for adult males it is  
7 66 percent for partners, and 9 percent for the general  
8 population; adult females, higher numbers, 87 percent for  
9 partners; 13 percent for general population. And, by the  
10 way, my opinion of why more women watch is not just because  
11 women prefer this kind of programming, I think it is more  
12 related to the fact that they are often in the home at a  
13 time when this programming is on, as well.

14 And then skipping to page six, teenagers, again,  
15 29 percent of the partners -- teenagers in partners' homes  
16 and 12 percent of the general population mentioned Christian  
17 programs, and even young children, 21 percent and 5 percent.

18 I think what this illustrates is that in recall  
19 of favorite types of programming among adult males, adult  
20 females, teenagers and children, Christian or devotional  
21 programming clearly is recalled as a significant -- or as  
22 the question says, a top three favorite type program.

23 Q You alluded earlier to so-called filter questions?

24 A Yes.

25 Q Could you explain what that is, and explain how

1 it bears on the findings?

2 A The question for question nine is "How familiar  
3 are you with CBN, the Christian Broadcasting Network,  
4 sponsor and producer of the 700 Club, and other Christian  
5 television programs appearing on cable television? Would  
6 you say, very familiar, somewhat and so forth -- if they  
7 said not at all familiar, they were skipped to the last  
8 few questions of the survey, which was the demographic  
9 information.

10 So, the next few questions are people who are  
11 either partners, and thus are familiar, or people who are  
12 in the general population, who said they were familiar.  
13 And as you can see there, 57 percent were not at all  
14 familiar, so they were eliminated from the next few questions.

15 Then question 10 shows us the actual recall  
16 viewing behavior of partners versus the general population.  
17 And that is broken down further into adult males, adult  
18 females, teenagers and children. And question 11, in  
19 terms of total -- I think we can skip 11, it alludes to --  
20 unless you have questions on that, it just alludes to the  
21 amount of viewing time that -- their estimate of the per-  
22 cent of time that they would be watching Christian tele-  
23 vision programming.

24 We can point out the general population -- page  
25 12, at the bottom, adult males estimate that 12 percent of

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1 their viewing time would be Christian programs; adult  
2 females, 20 percent of their viewing time; teenagers, 15  
3 percent; and children under 12, 12 percent.

4 So, again, we see a pattern here, where there is  
5 certainly a regular percentage of time that these people  
6 are spending watching Christian or devotional programming.

7 Q Is there another filter question on this survey,  
8 referring to page 13?

9 A (Perusing document) Yes, in 12, again, the sample  
10 under general population is diminished because if they  
11 answered no, that they are unfamiliar with a program pro-  
12 duced by CBN, the Christian Broadcasting Network, 31 percent  
13 there answered no, and they were skipped out, and 12A and  
14 12B are the skips there.

15 So you have somewhat smaller samples, 27 in 12A,  
16 and 59 in 12B.

17 This kind of skip pattern, by the way, is very  
18 common, you are slowly segmenting the audience down, and  
19 I think the key point is to notice that the numbers answer-  
20 ing these questions are somewhat smaller in certain parts  
21 of the survey.

22 Q Are there any findings on page -- well, let's  
23 look at page 14, that could be relevant?

24 A (Perusing document) Yes, I think the question,  
25 13 certainly is relevant, "During a typical 10-day period

1 of watching television, what would be a good guess at the  
2 number of days out of 10 that you watched the 700 Club?"  
3 And keeping in mind that partner sample stays about the  
4 same size, the general population, because of the skip  
5 pattern, has been reduced to 59. But you can see that  
6 even there, in the general population, 5 percent of the  
7 59 said that they watched the program about 100 percent  
8 of the time, but overall 30 percent of the general popu-  
9 lation -- this sample of the general population, said that  
10 they had watched the Club in a previous 10-day period.

11 Q We don't want to mislead the Tribunal into think-  
12 ing it is 30 percent of the general population --

13 A It is not 30 percent of 200, it is 30 percent of  
14 59; so roughly 18 people, of the 59 who were familiar  
15 with CBN.

16 Q There have been arguments advanced throughout  
17 this proceeding that studies submitted on behalf of the  
18 individual claimants, which were prepared deliberately for  
19 this proceeding were skewed, or biased, to purport what  
20 they wanted to purport. How would that allegation fare  
21 against this particular study?

22 A Well, this study was done by an independent  
23 secular research organization, in Detroit, Southfield,  
24 Michigan; their major client is General Motors, and they  
25 do all kinds of other research.

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1 Q Was this survey prepared for this proceeding?

2 A Oh, no, this was done in 1980, as part of an  
3 ongoing study by CBN of the emerging cable marketplace.

4 Q Do you think that CBN would want to mislead it-  
5 self, as to the accuracy --

6 A CBN used this to determine if there was a  
7 tremendous interest in family programming, as well as a  
8 surprising viewership of the 700 Club among people who  
9 were not in anyway affiliated with it.

10 MS. FORD: I would like to move into evidence  
11 Exhibit 2, Devotional Claimants' Exhibit 2.

12 COMMISSIONER BRENNAN: I note Mr. Scheiner's  
13 exception, but it is received.

14 (Whereupon, Devotional Claimant's  
15 Exhibit No. 2 was received in evidence)

16 COMMISSIONER BRENNAN: We will take our recess.

17 (Whereupon, a short recess was taken.)

18 COMMISSIONER BRENNAN: Ms. Ford.

19 MS. FORD: I would like to identify for the  
20 record Devotional Claimants' Exhibit 3, which is a one-  
21 volume exhibit with a five page introduction and 40 pages  
22 of text. And it is entitled Cable Systems Managers'  
23 Attitude Toward Programming.

24 (Whereupon, the document was marked  
25 for identification as Devotional  
Claimants' Exhibit No. 3.)

1 BY MS. FORD:

2 Q Mr. Clark, what was the purpose of this particular  
3 survey?

4 A The purpose of this survey was to help CBN in  
5 their planning of programming of CBN Cable, to determine  
6 from the decisionmakers in cable systems their attitude  
7 toward programming, what they would like to see on, and  
8 what might encourage them to carry CBN Cable.

9 Q Was this survey prepared for this proceeding?

10 A No, no this was done in September of 1980.

11 Q Do you believe that there are findings in this  
12 survey that are relevant to this proceeding?

13 A Yes, I think there are definitely findings that  
14 are relevant, inasmuch as the previous survey we just  
15 discussed which was targeted for viewers, this survey was  
16 targeted to the decisionmakers in cable systems, who would  
17 determine what channels would be carried on a given system.

18 Q What specific findings in the survey do you be-  
19 lieve are relevant to this proceeding?

20 A Well, I think the easiest way to move to those  
21 is to move to the second section and just look at some  
22 table data, rather quickly. Let me mention that the survey  
23 included 226 cable managers -- the sample included 226  
24 cable managers with systems that had over 10,000 subscribers,  
25 and 125 with systems under 10,000 subscribers. The purpose

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1 was to sample the larger -- medium to larger systems,  
2 because that was deemed important. The result was that a  
3 total of 166 interviews were actually completed, that is  
4 roughly 50 percent of those who were contacted. And I  
5 think that is relevant here.

6 Now, in looking at page T-1, question one, these  
7 managers were asked, "What kinds of programming do you  
8 feel -- what types of programming do you feel there is  
9 enough of, not enough of, and too much of?" And I think  
10 if you look down the list here, you can see that right  
11 away -- well, Christian programming is found on the second  
12 page, the table is continued to the second page -- 18.7  
13 percent, or 31 of these managers said they felt there was  
14 not enough Christian programming; 116 said there was enough;  
15 and 14 said there were too many.

16 I think what is interesting here is to compare  
17 that to other specific kinds of programs, such as sports,  
18 if you compare it to sports, it is quite similar actually,  
19 37 said there is not enough sports; 103 said there is  
20 enough, and 22 said there is too much.

21 Talk shows, you can see the comparison there,  
22 similar to the profile for Christian programs. The point  
23 here is that in late 1980, there was a group of managers  
24 of cable systems who felt at that point there was not  
25 enough devotional programming, at least on their system.

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1 That is broken down on the next page in terms of the  
2 bigger systems and the smaller systems. I don't think the  
3 difference there is significant, on page T-3, the third  
4 from the bottom. But the point is that the larger systems  
5 saw somewhat, slightly less of a need than the smaller  
6 systems for Christian programming.

7 One has to look at this in the context of all of  
8 the type of programming discussed here, and you don't see  
9 an inordinate difference between this and other kinds of  
10 programming, except perhaps in the case of documentary,  
11 public affairs and westerns, those stand out as the types  
12 of programs the managers said, overwhelmingly, there was  
13 a need for more of those, and, also, news weekly and  
14 news magazines. The rest are all pretty much similar.

15 Q Let's turn to page T-9, question three. Could  
16 you explain to me what a CBN-type devotional program is?  
17 What is a CBN-type program?

18 A What this is alluding to here is a magazine-type  
19 program; such as the 700 Club, which is -- the term  
20 magazine has been used as an analogy to a magazine, which  
21 typically a magazine is, by definition, narrow casting,  
22 but within a magazine there are different features appeal-  
23 ing to different segments of that group that it is targeted  
24 to.

25 And so a program like the 700 Club will typically

1 have 20 or 30 minutes of content that is not religious,  
2 per se, of general interest; it might be on some current  
3 issue, it might be on a domestic issue, some international  
4 issue; it might be on something related to health; it  
5 might be on something related to exercise, or nutrition.  
6 It might be a feature, or an interview with a well-known  
7 person in America who may, or may not be religious in their  
8 orientation. It is that kind -- those kinds of different  
9 elements that is being alluded to here.

10 Q Could you turn to question number nine, which I  
11 believe is found on page T-18?

12 A (Perusing documents)

13 Q What do the results of this question say about  
14 the use of ratings, as a measurement of benefitting cable  
15 operators, their perceived benefit?

16 A I think it is very important because it illustrates  
17 that the typical cable manager in developing a line-up of  
18 programs that he or she might carry on their cable system,  
19 is more concerned with viewer response and viewer requests,  
20 and appeal to specific target audiences, than ratings, per  
21 se.

22 Q Could you go down the factors that are listed?

23 A Well, I think we can all see those, viewer  
24 response is very critical and I think most cable systems  
25 do surveys of their subscribers, more or less regularly.

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1 either through telephone, or mailouts, and so forth. And  
2 I think many cable operators pay very close attention to  
3 this in making up the mix of the various tiers that they  
4 have.

5 Costs are certainly a factor, the cost of import-  
6 ing such a program; Viewer requests; program quality, as  
7 you can see there, 8.7 percent alluded to that; appeal to  
8 target audiences, 6.4 percent. And then, finally, you  
9 get prior ratings with 4.5 percent.

10 Q Could you read to the Tribunal the actual language  
11 of that question?

12 A Sure. The question is worded as follows: "What  
13 factors are most important in your deciding whether to  
14 carry a particular program, or not?" And the options  
15 given are cost; quality; ratings, before carried; viewer  
16 response, once it is carried; viewer requests; availability;  
17 signal carrier advice; promotional aids; personal advice  
18 from friends and colleagues, and then there was an open-  
19 ended category for other.

20 Q What percentage of cable operators use prior  
21 ratings as their factor in selecting programs?

22 A Only 4.5 percent of this survey.

23 Q Is this sample size a good sample size for a  
24 study of this type, in your opinion?

25 A Actually, given the difficulty of actually doing

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1 an interview with these kinds of people, it represents  
2 a healthy sample size. These kinds of people are difficult  
3 to get to, they don't like to do questionnaires, they don't  
4 like to do interviews. And it took a great deal of per-  
5 sistence of this research group to get the 166 interviews  
6 completed.

7 Q Could we turn now to Question 12, which is on  
8 page T-20? Would you explain this question?

9 A This question is a probe as to how often these  
10 cable operators carried two programs, the 700 Club, and  
11 the Ross Bagley Show. Now, let me just comment, the Ross  
12 Bagley Show was a music program in which Ross Bagley would  
13 introduce various gospel music groups, or performers, and  
14 was aired on our cable network four times daily, as was  
15 the 700 Club.

16 Q Were these the same programs that were carried on  
17 broadcast stations?

18 A Yes, both the 700 Club and the Ross Bagley Show  
19 were carried on broadcast stations. Although the Ross  
20 Bagley Show was done primarily for CBN Cable, but it was  
21 carried on broadcast stations.

22 Q To what extent did cable operators have discretion  
23 on carrying the 700 Club and Ross Bagley? In other words,  
24 they wanted to carry it four times -- they wanted to carry  
25 it twice rather than four times, did they have that kind of

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1 discretion?

2 A Yes, they had a great deal of discretion. And  
3 in some cases, cable operators would take a channel and  
4 mix -- pick and choose from sources available on the  
5 satellite, and create their own format. That wasn't done  
6 by a lot of cable operators, I would estimate about 20  
7 percent did that sort of thing, but some did that.

8 Q But they had the discretion to do that?

9 A Absolutely.

10 Q What percentage --

11 A But naturally, we prefer them to carry all 24-  
12 hours of our programming, but they do have that discretion.

13 Q What percentage of the cable operators -- the  
14 cable managers that were surveyed carried the 700 Club  
15 four times a day?

16 A Well, it says here 45.8 percent.

17 Q Let's turn to page T-21, Question 13, could you  
18 explain this page?

19 A Well, this indicates the time of day the Club  
20 was being carried, the 700 Club is aired on the cable  
21 network -- was aired on the cable network live every day  
22 at 10:00 a.m. The percentage at 7:00 to 9:00 a.m. would  
23 be there because we were on the West Coast and therefore,  
24 the time difference would account for that. But it ran  
25 live at 10:00 a.m. to 11:30; live every day at 3:00 to

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1 4:00; live every evening from 9:00 to 10:30 and there was  
2 a feed at 3:00 a.m., I believe.

3 Q Was the 700 Club and was the Ross Bagley Show  
4 only carried at fringe periods on the cable --

5 A Absolutely not, in fact, as you can see, if you  
6 look at the period of time between 7:00 to 9:00 p.m. and  
7 9:00 to 11:00 p.m., a total of, roughly, 21 percent were  
8 carrying the 700 Club during that period of time, and that  
9 is anything but fringe time, that is prime time.

10 Q Could you turn your attention now to Questions  
11 16 and 17, T-24 and T-25 and discuss the findings of these  
12 two questions?

13 A Well, as indicated there were 141 that responded  
14 to this question, and they were asked to give their  
15 perception to their viewers' reaction to the 700 Club and  
16 the Ross Bagley Show.

17 Q Would you discuss the findings of those?

18 A There were two questions, one was their personal  
19 reaction, Question 16; and Question 17, was their perception  
20 of their viewers' reactions. If you look at Question 16,  
21 I think you can see there the 700 Club, their personal  
22 reaction to the Club, 16 percent felt it was excellent,  
23 or they were positive; 6.3 percent said it was very good;  
24 15.4 percent said it was good; 5.6 percent said it was  
25 good for those who watched it; and there was a mixed

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1 reaction of 1.4 percent; 7 percent mentioned the professional  
2 quality, and so forth. I think you can see the rest of  
3 those.

4 Under Ross Bagley, again, you have some positive  
5 reactions, and very few who scored it as being poor, or  
6 didn't like it. In the case of the Club, only 2.8 percent  
7 said it was poor, or they disliked it. And in the case of  
8 Ross Bagley, 2.5 percent. But, again, with Bagley not as  
9 high a percentage, but 11.5 percent felt it was excellent  
10 or very positive.

11 Q What about Question 17?

12 A Seventeen was asking cable operators their  
13 perception of their viewers' reaction to the Club, and  
14 I think you can see that 44 percent were very positive;  
15 9.9 percent had received notes of appreciation; the mixed  
16 were 11.3 percent -- there had been some complaints, some  
17 said there was a small, but loyal audience, 7.1 percent,  
18 and so forth.

19 Q And page T-26, Question 18, would you discuss  
20 briefly the results of that question?

21 A Let me read that question, quickly, I think it  
22 would make it a little clearer. Question 18, "Have viewer  
23 reactions made you more likely to carry these programs,  
24 less likely to carry these programs, or had no effect at  
25 all on your decision to carry these programs?" The programs

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1 alluded to here are the 700 Club and Ross Bagley Show, and  
2 the response was 55.7 percent said that viewer reaction  
3 had made them more likely to carry these programs on their  
4 cable systems; only 2.5 percent said it made them less  
5 likely, and 41.8 percent said that it would have no effect.

6 Q I have been told that this page may be missing  
7 from the exhibit -- we will supply that page.

8 Finally, you stated this questionnaire, and I  
9 believe some of the back questions deal with the cable  
10 satellite channel that CBN had in 1980, and still does  
11 have. And in 1982, the year in question, did CBN directly  
12 compensate cable systems who carried that signal?

13 A No, CBN has never directly compensated a cable  
14 system for carrying their signal.

15 Q Are you talking about 1982 now?

16 A Yes. CBN has, as is a common practice in the  
17 industry, provided some co-op dollars for advertising,  
18 in other words, if the local system wanted to advertise  
19 their system CBN, up to a point, a formula, based on 10  
20 cents per subscriber, would compensate the cable system  
21 for their advertising, as I have said, based on the number  
22 of subscribers up to 10 cents per subscriber. In actual  
23 fact, very few systems have taken advantage of that com-  
24 pensation opportunity.

25 The other way CBN has helped cable systems, again

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1 to promote, rather than to compensate them, to promote the  
2 cable system, all our support of systems has been designed  
3 to build viewership for cable.

4 The second way we have supported systems in their  
5 promotional efforts has been in buying the spots that may  
6 be available on other cable networks, such as CNN, ESPN,  
7 these networks, as does CBN, gives the local operator so  
8 many spots per hour that he can sell to generate additional  
9 revenue. And we have offered to buy these spots to promote  
10 CBN Cable, again on a formula of 10 cents per subscriber.

11 Here, again, we wish more systems would take  
12 advantage of those promotional dollars, and in actual fact,  
13 fewer than 30 percent of the systems ever use those  
14 options.

15 So, in terms of supporting systems on any kind  
16 of a formula, based on subscribers, CBN has never done that  
17 and does not do that to this day.

18 Q Do other satellite channels -- well, let's stick  
19 with 1982, in 1982 did other satellite channel -- program-  
20 ming channels have similar co-op or advertisement arrange-  
21 ments?

22 A Yes, other systems have had that, and of course,  
23 other systems, such as CNN and WTBS paid \$1 per subscriber  
24 a flat amount per subscriber for carriage of those signals.  
25 ESPN, in '82, I believe was paying 30 cents. But, in

1 addition to that, they did -- let me just say that the  
2 purchase of available spots from other cable networks was  
3 something which CBN initiated in the industry. And,  
4 frankly, it was kind of the talk of the industry, and when  
5 other cable networks saw that CBN was being advertised on  
6 their networks, on these local systems, as you might  
7 expect, it created somewhat of a stir.

8 It has become a more common practice now, for  
9 these local available spots to be purchased for promotional  
10 purposes.

11 MS. FORD: I would like to move that Devotional  
12 Claimants' Exhibit 3 be moved into evidence.

13 COMMISSIONER BRENNAN: It will be received.

14 (Whereupon, Devotional Claimants'  
15 Exhibit No. 3 was received in evidence.)

16 MS. FORD: Let's turn now to Devotional Claimants'  
17 Exhibit No. 4. I would like to identify Devotional  
18 Claimants' Exhibit 4 for the record, it is one-volume  
19 exhibit, entitled News Articles Concerning Religious  
20 Programming. I should add that when this exhibit was  
21 first submitted and exchanged it had a different title.  
22 Oh, I'm sorry, that is Exhibit 7 -- this is correct, it  
23 is a 28-paged exhibit, containing news articles concerning  
24 religious programming.

25 (Whereupon, the documents were marked  
for identification as Exhibit No. 4)

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1 BY MS. FORD:

2 Q Mr. Clark, are you familiar with this exhibit?

3 A I have read it.

4 Q Do you have any comments regarding these articles?

5 A Well, I think what the articles show is that CBN  
6 is producing a variety of programming, that this program-  
7 ming has won wide acceptance by the public; awards have  
8 been given within the industry for some of this programming.  
9 I think the thing that I would mention specifically, are  
10 the kinds of coverage of the 700 Club and Ben Kinchlow,  
11 the black co-host of the 700 Club, that has been given in  
12 various national magazines.

13 Having traveled a time or two in public airports  
14 with Pat and Ben, I know the immediate recognition that  
15 these people have by the larger public in the United  
16 States, based on the way they are deluged -- it makes  
17 it difficult for them to do that -- but another item I  
18 would mention is this prime time special "Ask God" which  
19 was aired not in '82, but in '83 and early '84, and  
20 achieved the highest rating for a syndicated religious  
21 program in the history, as far as we can determine, as  
22 far as Nielsen can determine, in the history of such  
23 syndicated programs.

24 Q How did it air --

25 A It was aired in 154 markets, and in the top 15

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1 markets since net affiliate time was not available in  
2 prime time, it aired on strong independents. And in spite  
3 of that, it achieved a 10.5 national rating and the audience  
4 estimate is 15.5 million who saw this one one-hour program.

5 I think what this shows is that if so-called  
6 devotional programs can be aired in a prime time slot,  
7 it will, indeed, attract very healthy audiences.

8 Q Two things; one, you know this proceeding deals  
9 strictly with 1982.

10 A I understand that.

11 Q But do you believe --

12 A I think the point still is there, and that is  
13 if these programs are aired in really good time periods,  
14 they have -- they can attract really competitive audiences  
15 with the other kinds of programming that are aired in these  
16 time periods.

17 In other words, the size of the audience is not  
18 related, necessarily, to the program, it is related to  
19 the fact that religious programs or devotional programs  
20 are almost never aired in prime time.

21 Q How did this program fare in relation to the  
22 other commercial programs that were carried at that time?

23 A For 1984 it was among the top syndicated specials  
24 of all specials, the top four in America. And I have  
25 already said, in terms of devotional and religious specials,

1 for the last four years, it rated number one.

2 MS. FORD: I would like to move Devotional Claim-  
3 ants' Exhibit 4 into evidence.

4 COMMISSIONER BRENNAN: So ordered.

5 (Whereupon, Devotional Claimants'  
6 Exhibit No. 4 was received in evidence.)

7 MS. FORD: I would like to identify for the record  
8 Devotional Claimants' Exhibit 5; it is a one-page exhibit  
9 entitled "Representative Sample of Broadcast Stations  
10 Carrying Large Amounts of Religious Programming".

11 (Whereupon, the document was marked for  
12 identification as Devotional Claimants'  
Exhibit No. 5.)

13 BY MS. FORD:

14 Q Are you familiar with these stations?

15 A Yes, I am familiar with most of them.

16 Q And what does this exhibit show?

17 A Well, I think it shows that it is possible to  
18 establish a viable television station concentrating, not  
19 exclusively, but primarily on religious programming.  
20 Although a couple of these stations are exclusively  
21 religious in their programming; one that I see here is  
22 -- 100 percent of their programming would be considered  
23 religious, WCFC in Chicago; WCLF in Clearwater, Florida;  
24 WTJC, in Springfield, Ohio, I believe is pretty much all  
25 religious; WYFC, I know, is all religious, and there maybe

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1 others, but those for sure are 100 percent devotional pro-  
2 gramming format.

3 Q What about KXTX?

4 A KXTX has about 35 percent devotional.

5 Q Does it carry devotional programming at prime  
6 time?

7 A Yes, it carries the 700 Club at 9:00 p.m.

8 Q Is this purported to be an exhaustive list of  
9 all speciality stations, or religious speciality stations?

10 A No, I think if you carried stations which had  
11 maybe 20 percent -- if you listed stations that had maybe  
12 20-25 percent devotional, you would have a much longer list  
13 than this.

14 MS. FORD: I would like to --

15 COMMISSIONER RAY: Were all of these stations in  
16 operation in '82, and carrying a large percentage of  
17 devotional programming in '82?

18 THE WITNESS: Yes, yes. And, as I mentioned,  
19 about four or five that I know of carry exclusively  
20 devotional programming format.

21 COMMISSIONER BRENNAN: Exhibit 5 will be received.

22 (Whereupon, Devotional Claimants' Exhibit  
23 No. 5 was received in evidence.)

24 MS. FORD: I would like to identify for the record  
25 a two-part exhibit, Devotional Claimants' Exhibit 6, which

1 is entitled Cable Carriage of Listed Stations Carrying  
2 Large Amounts of Religious Programming, and Revised Devot-  
3 ional Exhibit 6, which we are providing now, which is  
4 entitled Distant Signal Carriage.

5 (Whereupon, the documents were marked  
6 for identification as Devotional  
Claimants' Exhibit No. 6) and Revised 6)

7 BY MS. FORD:

8 Q Could you explain to the Tribunal the content  
9 of these two exhibits, or let's just say it is one exhibit,  
10 it is in two parts?

11 A The first part is a computer printout of the  
12 cable station carrying -- cable systems carrying the  
13 various stations listed at the top. For example, on page  
14 one you have Channel 27, Portsmouth, and all of the cable  
15 systems that the FCC has on record as carrying this station.

16 COMMISSIONER RAY: Excuse me, Dr. Clark, again,  
17 are we talking about 1982?

18 THE WITNESS: Yes,

19 MS. FORD: You will notice the date, I think  
20 there is a date on the first page, it says 1-10-84, but  
21 this information is only current up to 1982. This is  
22 directly off the FCC microfich, it is dated '84, but the  
23 information is current up to '82.

24 BY MS. FORD:

25 Q Dr. Clark, did you directly go down to the FCC

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1 and Xerox this microfich, did you prepare it yourself?

2 A No, I didn't.

3 Q Does this exhibit how cable carriage, both distant  
4 and local of those stations that were listed in Exhibit 5?

5 A No, it shows both must carries and distant carried.  
6 And, therefore, the second part of this exhibit which was  
7 an analysis of distant carriage by these stations, in the  
8 case of Channel 39, KXTX, you can see all of the communities  
9 in the various states where cable systems and the number  
10 of subscribers carrying Channel 39-KXTX, as a distant  
11 signal.

12 Q I notice by looking at the Revised Exhibit 6  
13 that there are some subscriber listings that have been  
14 omitted, is there a reason for that?

15 A I think it is a result of the FCC recordkeeping,  
16 either they have dropped this, or their subscriber listings  
17 are not up-to-date.

18 Q They are not listed in this prior exhibit, is that  
19 what you are saying?

20 A Yes.

21 Q Could you look briefly on the amount of cable  
22 systems that carry the broadcast station KXTX as a distant  
23 signal? I am referring to the second part of that exhibit,  
24 revised Exhibit 6. Approximately how many cable systems  
25 carry KXTX as a distant signal?

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1 A Well, there are eight and a half pages, there are  
2 roughly 50 perpage, so somewhere around 400.

3 Q And these systems are both large and small?

4 A Large and small, some quite large like Little  
5 Rock, 34,000; Fort Smith, 21,000; out in West Texas and  
6 Oklahoma, Tulsa, 79,000 in that system, some in Tennessee.  
7 A lot of carriage outside of the Dallas area.

8 Q And were all of these broadcast stations carried  
9 at least once as a distant signal?

10 A Yes.

11 MS. FORD: I should note for the record that there  
12 is one station which has been omitted on Revised Exhibit 6  
13 and that is WYAH, and it was not because it wasn't carried,  
14 it was because the FCC record shows it was carried all  
15 over the place, from Alaska to Hawaii, and it didn't  
16 appear to be accurate.

17 THE WITNESS: That is a function of the fact that  
18 early on, in '77 and '78, when CBN Cable was being launched,  
19 a lot of systems that signed up, signed up as carrying the  
20 program for WYAH, and as the CBN Cable system developed  
21 the programming for CBN Cable became totally different  
22 from that of WYAH, but they maintained their records say-  
23 ing they carried YAH.

24 MS. FORD: I would like to move Devotional  
25 Claimants' Exhibit 6 and Revised Exhibit 6 into evidence.

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1 COMMISSIONER BRENNAN: So ordered.

2 (Whereupon, Devotional Claimants'  
3 Exhibit 6 and Revised Exhibit 6 were  
4 received in evidence.)

5 MS. FORD: I would like to identify for the record  
6 Devotional Claimants' Exhibit 7. When this exhibit was  
7 initially exchanged it read Examples of Religious Program-  
8 ming Which Was Sold or Bartered, 1982, and it was sub-  
9 sequently revised and the copy that has been handed to  
10 the reporter has been revised to read, Examples of Devotional  
11 Programming Which Was Sold or Bartered During 1982.

12 (Whereupon, the document was marked  
13 for identification as Devotional  
14 Claimants' Exhibit No. 7.)

15 BY MS. FORD:

16 Q Could you address yourself, Dr. Clark, to this  
17 exhibit?

18 A This exhibit lists the markets where a number of  
19 different programs was sold or bartered in 1982. The  
20 first program Super Book, Christmas Special was a half  
21 hour Christmas special, animated special of the Christmas  
22 Story. As you can see here the list of stations includes  
23 stations, it includes many network affiliates, as well as  
24 independent stations who cleared this half-hour special.  
25 And the barter arrangement was that the station kept  
three 30-second spots and CBN kept three 30-second spots,  
which we, in turn, sold to various advertisers.

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1 Q Is this similar to arrangements that are done with  
2 commercial --

3 A It is identical, this is exactly what a kid's  
4 special would do, they clear all these stations and sell  
5 the spots, give the local stations some of the spots,  
6 retain, usually 50 percent of the spots, and sell those  
7 out, and thus derive revenue for them.

8 Q Let's turn to the next page which discusses the  
9 program USAM. Could you explain the date on the upper  
10 lefthand corner? Does this necessarily mean that USAM  
11 was broadcast on these particular stations in May and/or  
12 June 1982?

13 A Yes, this is an internal document that was copied.

14 Q Does it necessarily mean that it was broadcast,  
15 or could it also mean that an agreement was signed and it  
16 was broadcast some other time in 1982?

17 A It could indicate that an agreement had been made,  
18 and the broadcasting was to start in the next few weeks  
19 of the program. USAM, again, was a morning program, it  
20 was a one-hour program designed to air on net affiliates  
21 from 6:00 to 7:00. At the time that USAM began, it was  
22 designed to fill a vacuum that most network affiliates  
23 have at that time of the day.

24 Partly as a result of USAM, the networks notified  
25 their affiliates that they were going to do programming

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1 in this time period, and since it is difficult, if not  
2 impossible, for an affiliate to not accept a daily network  
3 program -- to pre-empt a daily program, at least without  
4 threatening their compensation rate of the network, and  
5 their affiliation with the network, once the decision was  
6 made by CBS and NBC and ABC to move to that early time  
7 period, it became clear to us at CBN that the possibility  
8 of maintaining this program had diminished greatly; although  
9 it was disappointing because the clearances were coming.

10 We had cleared the Corinthian station in Cleveland,  
11 Houston was going to clear it, and we were rapidly approach-  
12 ing the magic number of 65 percent, which is what we have  
13 to clear in a program like this, before you can get  
14 national spot sales. And partly because of this, and  
15 also because of CNN's move into selling an hour of their  
16 time early in the morning to local stations, the networks  
17 moved into this time period to fill that vacuum.

18 Q So, what happened to the program USAM?

19 A We had to pull the plug.

20 Q Were the ratings going up or down when you  
21 pulled the plug?

22 A The ratings were moving upward and a couple of  
23 them threatened litigation -- and some of the net affiliates  
24 that we were on were very disappointed, a couple of them  
25 threatened litigation because they wanted this program.

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1 Q Let's turn to the next program that is listed,  
2 you alluded to it earlier, Another Life. Could you  
3 elaborate on this part of the exhibit?

4 A The clearance list for Another Life at the time  
5 that we were attempting to syndicate Another Life as a  
6 broadcast program, as Another Life gained in momentum,  
7 the decision was made to make it pretty much exclusively  
8 a CBN Cable property, unless the stations would pay cash  
9 for it, or would barter against 700 Club time.

10 Q What was the barter arrangement for Another Life?

11 A The barter arrangement for Another Life,  
12 initially, was four and two; CBN kept four spots and the  
13 local station took two spots.

14 Q Is that similar to commercial?

15 A No, it is not, a typical arrangement is 50-50.

16 Q Would CBN's Another Life bartering arrangement  
17 be to the advantage of the broadcaster, or would it be  
18 unfavorable to the broadcaster?

19 A It would be seen as being unfavorable to the  
20 broadcaster from the typical pattern.

21 Q And it was still carried?

22 A It was cleared yes, in these markets.

23 Q To the extent that you have any knowledge of  
24 any cash transactions whereby these programs were sold  
25 directly to broadcast stations, you may be able to share

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1 that knowledge with the Tribunal?

2 A Well, in this period of time Another Life was  
3 strictly a barter, since then we have pulled it out of  
4 that arrangement, and we are now selling Another Life in  
5 a number of markets. I have a list here, Columbus, Ohio;  
6 Pittsburg, Allentown, Pa; Chicago; Santa Rosa; St. Louis;  
7 Dayton; Red Lion; Lima; Prescott; Columbia; Greenville;  
8 Washington; Peoria; Ashland, Kentucky; Leesburg, Florida;  
9 Coco, Florida -- some of these are traded against 700  
10 Club time, but they are real dollars. In other words,  
11 the dollars are subtracted from our bill; others are cash  
12 buys, such as St. Louis is a cash buy, \$33,000 a year;  
13 Washington, D. C., WHMM, is a cash buy for \$65,000 a year.  
14 Ashland, Kentucky is a cash buy, \$14,625, and so forth.

15 Q WHMM in Washington, what kind of a station is  
16 WHMM?

17 A It is public television station. I might add,  
18 the reason they have carried the program is because of  
19 their assessment of the realistic portrayal of minorities  
20 and families of minorities.

21 Q Who is the licensee of WHMM?

22 A I believe it is Howard University.

23 MS. FORD: I would like to move Devotional  
24 Claimants' Exhibit 7 into evidence.

25 COMMISSIONER BRENNAN: So ordered.

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1 (Whereupon, Devotional Claimants'  
2 Exhibit No. 7 was received in evidence.)

3 COMMISSIONER RAY: I have one question on this  
4 Exhibit 7, is this exhibit a clearance, or is it an  
5 example of actual broadcasts?

6 THE WITNESS: Would you repeat that?

7 COMMISSIONER RAY: Exhibit 7 is a list of programs  
8 that had been cleared, do you have any information about  
9 the actual broadcast?

10 THE WITNESS: Yes, they would have been broad-  
11 cast.

12 COMMISSIONER RAY: They would have been?

13 THE WITNESS: Yes. The only exception would be  
14 in the case of USAM, if we had a station that appeared on  
15 a clearance list, but we cancelled the program before they  
16 actually began airing. And I can't tell you if that  
17 happened or not, I don't believe that it did actually  
18 happened, I don't think anyone was caught that way.

19 MS. FORD: I would like to identify for the record  
20 Devotional Claimants' Exhibit 8, which was exchanged on  
21 June 25th, 1984. It is a two-page exhibit, a cover page  
22 and a page of text. The cover page is entitled Examples  
23 of Awards Given Xpose, Devotional Program, Broadcast in  
24 1982.

25 (Whereupon, the document was marked  
for identification as Devotional  
Claimants' Exhibit No. 8.)  
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1 BY MS. FORD:

2 Q Dr. Clark, what is Xpose?

3 A Xpose was a five-hour documentary on various  
4 aspects of the pornography industry in America. And the  
5 awards here are either for the entire series, or specific  
6 episodes of it. For example, International Television  
7 and Film Festival, was for the one-hour segment dealing  
8 with child porn, and Odyssey Institute, Corporation also  
9 gave an award for that one-hour dealing specifically with  
10 pornography in children.

11 Q The fourth item down, it alludes to a National  
12 Cable Association, should that not read National Cable  
13 Television Association?

14 A Yes, it should.

15 Q What relevance would that award have to this  
16 proceeding, insofar as cable television's opinion of  
17 this kind of program?

18 A Well, I think it certainly would indicate that  
19 as a finalist for a documentary series that the cable  
20 industry saw this as worthy of some recognition, the  
21 kind of programming cable would hope to foster.

22 MS. FORD: I would like to move Exhibit 8 into  
23 evidence.

24 COMMISSIONER BRENNAN: So ordered.

25



(Whereupon, Devotional Claimants!  
Exhibit No. 8 was received in evidence)

BY MS. FORD:

Q In 1982, were devotional programs carried on the  
so-called "super stations" WOR, WTBS?

A Yes, in 1982 PTL was carried on WOR. Depending  
on how one defines "super stations", we have had our  
program on KTLA which is -- perhaps doesn't quite fit  
that description, but certainly it is carried on hundreds  
of cable systems in the West Coast, all up and down the  
West Coast.

Q What about WTBS?

A WTBS was carrying some Sunday religious programs.

Q Such as Jerry Falwell?

A Yes, Falwell, and I think First Baptist in Atlanta.

MS. FORD: This concludes the direct case.

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

(Whereupon, the luncheon recess was taken at  
12:30 p.m., to reconvene at 2:00 p.m.)

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AFTERNOON SESSION

(2:05 p.m.)

COMMISSIONER BRENNAN: Commissioner Hall.

## EXAMINATION BY THE TRIBUNAL

BY COMMISSIONER HALL:

Q Dr. Clark, you mentioned in your testimony that you received contributions upon which you relied to fund programs. What percentage of the cost of programming is funded by the contributions, and does that money come directly from the viewers into a programming area, or does it come to the general church and get redistributed, how is the money which you receive expended?

A The main source of revenue is the 700 Club.

MS. FORD: Are you talking strictly of CBN, just one devotional program, not all devotional programs?

COMMISSIONER HALL: Yes, he is only qualified on his.

THE WITNESS: The 700 Club does not solicit contributions in every program, some devotional programs do, many in fact. The people are invited to become members of the 700 Club, but twice a year we have telethons, which resemble, in fact are identical to the telethon format of Public Television. And that results in pledges which accrues as income monthly -- on a monthly basis. The income from that fund-raising activity pays for the

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1 production of the program and air time clearances, and  
2 provides, as well, some margin on which to develop program-  
3 ming of other types.

4 BY COMMISSIONER HALL:

5 Q Does any of that contribution money go to the  
6 support of the church itself?

7 A Well, CBN is not a church, per se. We are a  
8 non-denominational organization and no one in our organi-  
9 zation is required to attend any specific church. People  
10 who are, for example, in my division are Protestant,  
11 Catholic and they all attend their own church, whatever  
12 that may be. So, we are not a church, per se. That would  
13 differ from other devotional programmers, such as, for  
14 example, Jerry Falwell is, obviously, a large local  
15 congregation, and I suspect that most of the people in  
16 that organization in Lynchburg do attend that church,  
17 although I don't know that to be the case.

18 So, I think if a local church is involved, you  
19 can assume that membership is part and parcel of those  
20 who go there, or who work there.

21 So we are not a church. We see ourselves as  
22 broadcasters, period. And we see ourselves as broadcasters  
23 who, among other things, want to provide devotional pro-  
24 grams, but also, general interest programs that are pro-  
25 family and uphold the Judeo-Christian heritage that we

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1 feel is the point of consensus of our society. And we  
2 are troubled by the fact that much programming today does  
3 not necessarily uphold that world view, or create that kind  
4 of consensus.

5 Q Could your CBN survive any length of time without  
6 your telephone -- is there any backup to keep you going,  
7 or are you strictly segregated from --

8 A The 700 Club is maintained through a non-profit  
9 corporation. The CBN also owns and operates commercial  
10 stations in Atlanta, Dallas, and Norfolk, Virginia --  
11 actually Portsmouth. The cable network, CBN Cable Network,  
12 which we have discussed, is a commercial network. Certain-  
13 ly the stations in the network are self-sustaining and  
14 in the future are beginning now to provide positive cash  
15 flow, and in the future certainly will provide positive  
16 cash flow. But they are a separate for-profit corporation  
17 called Continental Broadcasting.

18 Now, to answer your question, would the 700 Club  
19 survive without contributions? And the answer to that  
20 is no, we would not. It relies on contributions, both  
21 for production costs and for air time clearances.

22 COMMISSIONER HALL: Thank you.

23 COMMISSIONER BRENNAN: Commissioner Ray.

24 BY COMMISSIONER RAY:

25 Q Dr. Clark, I know you are testifying or representing

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1 CBN, but if you care to answer this, or if you have the  
2 information, I would appreciate it. Number one, do you  
3 have any idea of the Devotional Claimants' that have come  
4 before us, what percentage of their contributions are  
5 from cable communities, cable networks, as opposed to  
6 broadcasting?

7 A We have -- I can give you an estimate, I will  
8 give you the rationale for my estimate. At the present  
9 time we have not yet been able to tract contributions by  
10 cable viewership. We hope to be able to do that in the  
11 future, we very much want to do that, because that is very  
12 important to us. I think you can see that if we knew  
13 what part of contributions were yielded by cable, versus  
14 broadcast, -- cable carriage of broadcast, we could adjust  
15 the kind of stations we would want to be on very precisely,  
16 possibly at a significant saving to us.

17 But what we have tried to do is determine the  
18 -- via zip code to track mail from zip codes and then  
19 cross-tabulate that with zip codes that have cable. And  
20 it has not been a scientific kind of study, I don't want  
21 to suggest that it has.

22 But our estimate is that around 40 percent of  
23 contributions to the 700 Club may be coming through cable.

24 MS. FORD: I would just like to clarify, is this  
25 the satellite channel?

1 THE WITNESS: It would be difficult to pull those  
2 apart. I would be referring to CBN-Cable, the satellite.

3 BY COMMISSIONER RAY:

4 Q But for distant signals carried, it probably  
5 would not be that high?

6 A No, it would be lower than that.

7 Q One last question, in your opinion, do you think  
8 contributions -- the contributions of viewers reflect any  
9 marketplace value for the program?

10 A Yes, I certainly do. We define a partner or a  
11 member as someone who contributes something nine or 10  
12 times a year, and in my way of thinking, that sort of  
13 behavioral response on the part of the viewer, especially  
14 since they are not forced to do it, no one can coerce them  
15 to do it, they are not asked for money on a daily basis --  
16 that sort of response represents to me a strong vote on  
17 the part of the viewer that this program is significant  
18 and important to them.

19 Beyond that, I have done a lot of focus-groups,  
20 as well as surveys, and what I find people saying is this  
21 kind of programming is kind of a spiritual vitamin for me,  
22 that I find very useful daily, and weekly, to help me get  
23 through life.

24 So, I think that when you have people, as I pointed  
25 out earlier, in one of the surveys, all of these people

1 who were cable subscribers who got the basic fee, maybe  
2 \$9, \$10 a month, and then if they were partners, that  
3 means they have contributed to CBN in the last eight, nine,  
4 or 10 months -- or eight, nine or 10 times in the previous  
5 12 months. I think that is pretty strong evidence that  
6 these people find the programming very important to them.

7 COMMISSIONER RAY: Thank you.

8 COMMISSIONER BRENNAN: Mr. Scheiner.

9 CROSS-EXAMINATION

10 BY MR. SCHEINER:

11 Q Dr. Clark, we introduced ourselves outside, but  
12 for the record, my name is Arthur Scheiner, and in this  
13 stage of the proceeding I appear on behalf of the Settling  
14 Parties.

15 Let me follow-up with some questions along the  
16 lines raised by the Commissioners. First, I would find  
17 it very helpful if you were to explain to us the organi-  
18 zation and structure of CBN, and the other entities which  
19 it owns. Can you do that?

20 A Well, I can tell you -- I can certainly give you  
21 a perspective that I have. I have already mentioned the  
22 700 Club, and the part of CBN which relates to that pro-  
23 gram, which we see as ministry, outreach; is a non-profit  
24 organization.

25 Q Which organization is this now? The 700 Club or

1 CBN?

2 A Well, this is CBN, CBN is a non-profit organization.  
3 and produces the 700 Club, as well as some other forms of  
4 programming.

5 Q It is the producer and copyright owner of the  
6 700 Club?

7 A That's right.

8 Q Is CBN operated by a board of directors?

9 A Yes.

10 Q And who are members of the board? And who is  
11 the chairman?

12 MS. FORD: I would object, I don't see the  
13 relevancy of that question.

14 COMMISSIONER BRENNAN: Mr. Scheiner.

15 MR. SCHEINER: I think it would be helpful to  
16 complete the record on the structure. As I indicated in  
17 my earlier question, the structure of CBN and the various  
18 properties, interests, corporations which it owns.

19 COMMISSIONER BRENNAN: The objection is overruled.

20 THE WITNESS: The Board of CBN is composed of  
21 Pat Robertson, his wife, Adele Robertson; Tucker Yates;  
22 Bob Slauser; and Harold Bratis.

23 BY MR. SCHEINER:

24 Q And how is the ownership of CBN held, do members  
25 of the board participate in ownership?



1 A (Shaking head)

2 Q Who owns CBN?

3 A CBN is a non-profit organization, and in the  
4 eventuality of the death of Pat Robertson, the board would  
5 assume control of CBN.

6 Q And in this non-profit corporation, there is no  
7 owner and there is no division of interest?

8 A No.

9 Q None at all?

10 A (Shaking head)

11 Q CBN, in turn, owns some other corporations, does  
12 it not?

13 A CBN has another for-profit corporation, called  
14 Continental.

15 Q And that is wholly owned by CBN?

16 A That's right.

17 Q And does it own any other properties or interests?

18 A When you speak of properties, do you mean real  
19 estate?

20 Q First, does it own any business entities?

21 A I have already mentioned that --

22 Q Other than Continental?

23 A Not that I am aware of.

24 Q Who is the owner of the several broadcast stations  
25 operated by CBN?

1           A    The for-profit corporation is controlled by the  
2 non-profit corporation.

3           Q    But who is the licensee of the television broad-  
4 cast stations you mentioned earlier?

5           A    I am not certain of that. Mr. Scheiner, I don't  
6 really know that.

7           Q    But those entities are -- it is your understand-  
8 ing that those entities are owned by CBN, the non-profit  
9 corporation?

10          A    Yes.

11          Q    And the broadcast licensees are organized for a  
12 profit, is that correct?

13          A    Yes, that is correct.

14          Q    Are they corporations, do you know, or a corpor-  
15 ation that owns --

16          A    My understanding is they are privately held  
17 corporations.

18          Q    And how is the ownership of those corporations  
19 held?

20          A    I don't know that.

21          Q    Do you know whether -- is it Dr. Robertson?

22          A    He has a law degree.

23          Q    Most of us do.

24          A    How do you like to be called?

25               COMMISSIONER RAY: It is better to ask him that,

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1 than ask someone else.

2 COMMISSIONER BRENNAN: Don't ask us.

3 BY MR. SCHEINER:

4 Q Does Mr. Robertson, Esquire, own any interest  
5 in the licensee of the broadcast television station?

6 A No.

7 Q He does not?

8 A Not personally, no.

9 Q His family?

10 A No.

11 Q You had earlier mentioned three stations KXTX,  
12 WANX and WYAH, should you also have included WXNE in Boston?

13 A I meant to mention Boston. Did I say Atlanta?  
14 Boston, Dallas and Portsmouth, YAH. We had a station in  
15 Atlanta, which was sold last year.

16 Q Does Continental produce television programs?

17 A Yes, Continental --

18 Q Incidentally, I am confining my questions to 1982.

19 A Continental is the entity which produces Another  
20 Life for the CBN Cable Network.

21 Q Who is the -- strike that, please. Is the CBN  
22 Cable Network an entity, other than the three that you  
23 have mentioned thus far? CBN Cable Network?

24 A What I understand, Mr. Scheiner, is that it is  
25 part of CBN -- rather part of Continental.

1 Q So, Continental -- you don't know how the owner-  
2 ship of the network is held?

3 A No, I don't.

4 Q But that, too, is for profit, is it not?

5 A Yes, yes, it is.

6 Q And I presume that you don't know where the profits  
7 go, do you? If any?

8 A Yes, if any. I could not speak to that, except  
9 to tell you that my understanding is those profits are  
10 used to expand the network and produce programming.

11 Q Who owns the programs produced by Continental for  
12 CBN Cable Network?

13 A Well, I don't know that I can answer that directly.  
14 The revenue generated from spot sales for Another Life,  
15 and other such programs --

16 Q While you are at it, would you name the other  
17 programs, please?

18 A That are produced --

19 Q By Continental for CBN Network?

20 A At this point --

21 Q In 1982.

22 A In 1982, as we have seen, Continental was produc-  
23 ing every day Another Life, they produced a five-hour  
24 series called Xpose.

25 Q Was that in 1982?

1 A Yes.

2 Q Quite sure?

3 A I am quite sure, yes.

4 Q Do you want to check that, please?

5 A Yes, it was in '82.

6 MR. SCHEINER: Bear with me a moment. (Perusing  
7 documents) I won't take the time now.

8 BY MR. SCHEINER:

9 Q What else?

10 A For part of that year, we have already discussed  
11 USAM, which was a daily one-hour program.

12 Q Does that complete the list?

13 A Yes.

14 Q Does CBN Cable Network produce any other programs  
15 for itself?

16 A Well, let me say that we do a 90-second update  
17 news four or five times during the broadcast day, and  
18 that is a commercial program, but it is obviously of a  
19 special kind, it is an update headline news kind of thing.

20 Q Pursuing Commissioner Hall's question, with  
21 respect to the revenues earned by the 700 Club, I think  
22 you indicated -- you tell me, where do those revenues go?

23 A Well, I have already indicated that the production  
24 cost of the program are considerable, we have, for example,  
25 30 fulltime producers working on the program. And so the

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1 cost of just producing the program are significant, as  
2 well as clearance of stations for that program. So, the  
3 revenues go to meet the expenses of producing that program,  
4 and I think we are all aware that the cost of television  
5 production is significant, particularly on a daily basis,  
6 for 90-minutes.

7 So, revenues go for that, for clearance of time,  
8 some of these revenues are utilized for international  
9 airing of the 700 Club, particularly in Latin America.

10 Q What are the arrangements pursuant to which CBN  
11 makes the 700 Club available to CBN Cable Network?

12 A The Cable Network makes four -- well, actually  
13 the prime time slot is a one-hour version of the Club, it  
14 is not the 90-minutes, but the other three time periods  
15 are made available to CBN by the Cable Network for airing  
16 of the program.

17 Q Sir, I understood that they were made available  
18 by CBN, what I was asking you was what is the nature of  
19 the arrangement, pursuant to which they are made available?  
20 Does any money change hands? Does any consideration pass?

21 A Yes, there is some consideration in that at the  
22 present time -- we have two major studios in CBN Center,  
23 and one of them is utilized by CBN Cable, as well as.  
24 certain other portions of the production center for use  
25 of the network, the Cable Network. And in consideration.

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1 for the use of that equipment, on a daily basis, CBN is --  
2 the 700 Club is aired on CBN Cable.

3 Now, if you are asking me as to the exact account-  
4 ing procedure in terms of how much, how many dollars are  
5 credited against that, I cannot speak to that.

6 Q Well, your answer isn't clear to me. CBN owns  
7 and produces the 700 Club?

8 A That's right.

9 Q CBN owns the facilities where they are produced?

10 A That's correct.

11 Q CBN makes the 700 Club available to the Cable  
12 Network?

13 A Yes.

14 Q All of the consideration is flowing from CBN to  
15 the Cable Network. What goes back?

16 A The production center that CBN owns in Virginia  
17 Beach, is a complex comprising 100,000 plus square feet.  
18 It includes two major studios, plus post-editing equipment,  
19 one of those studios, virtually half of those facilities,  
20 has been available and traded out to CBN Cable at no cost  
21 to them, and in return for that, they air the 700 Club four  
22 times daily.

23 Now, when I say there is no cost, there may be  
24 an accounting arrangement in which, you know, dollars are  
25 charged against an account, but I am not aware of the

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1 nature of that arrangement; certainly somebody at CBN  
2 would be.

3 Q Nor, I presume, can you tell us what portion, if  
4 any, of the revenues are retained by the Cable Network?

5 A Revenues from their sales of spots?

6 Q Yes.

7 A Well, in a way -- no, I can't speak to that,  
8 because until the current year, the Cable Network has been  
9 in a cash negative situation. So, there hasn't been  
10 revenue retention to worry about.

11 Q Nor can you tell me who suffered the losses until  
12 the present year, the Cable Network, or CBN?

13 A No, I can't speak to that.

14 Q Does CBN also own the school -- also own CBN  
15 University?

16 A No, CBN University is a totally separate entity,  
17 incorporated as a separate entity. It is a non-profit  
18 organization, has a separate board of directors with, I  
19 think, 10 members. Pat is a member of the board, and  
20 Tucker Yates, who I mentioned earlier, also is a member  
21 of that board, but the other members are totally different.

22 Q When did the university first seek accreditation?

23 A Their initial application for accreditation I  
24 believe was filed -- I believe it was filed in 1980, and  
25 they were at that time -- in the fall of 1980, they were

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1 given candidacy status in the Southern Association, which  
2 is the first step of a two-step process for full accreditation.  
3 They have been reviewed for that second step this past  
4 spring, and the final decision of the accrediting body  
5 is to be announced in the fall.

6 So, until that time, no one can say exactly what  
7 will happen, however the preliminary reports have been  
8 very positive.

9 Q What is a typical period of candidacy status?

10 A Well, typically, most accrediting situations are  
11 for undergraduate programs, and usually when a school  
12 begins with an undergraduate program, they have to graduate  
13 their first class, and then that class has to be out for  
14 two or three years, so that they can monitor the success  
15 of that class in graduate school, and other career activit-  
16 ies. So, a five, six or seven-year period would be  
17 typical.

18 Q You will be pleased to know, we will get off this  
19 in just a moment. One final question in this regard,  
20 did I understand you correctly that Continental, the for-  
21 profit corporation, is the producer and owner of Another  
22 Life, Xpose and USAM?

23 MS. FORD: You are mischaracterizing his testimony.

24 MR. SCHEINER: I am asking him the question.

25 MS. FORD: Well, I think you are mischaracterizing

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1 his testimony. I believe his testimony was that they  
2 produce the program, I don't believe he made a comment on  
3 who owned the copyright, or anything else about the program.

4 MR. SCHEINER: I'm sorry, but let's take it in  
5 parts.

6 BY MR. SCHEINER:

7 Q I am correct, am I not, that Continental is the  
8 producer of those programs?

9 A Yes, that is correct.

10 Q And can you tell me who the owner of those pro-  
11 grams is?

12 A I guess one would have to -- in the normal sense  
13 of someone owning it, I think you would say Continental.

14 Q And to your knowledge, Continental is not a  
15 claimant in this proceeding?

16 A Yes, I think -- no, I wouldn't say to my knowledge,  
17 that is the case. I think Continental, since it is owned  
18 by CBN, is certainly a claimant in this proceeding.

19 Q Let's move on to Exhibit 1.

20 A (Perusing documents)

21 Q In your direct testimony, I believe you indicated  
22 your understanding that the purpose of this proceeding  
23 was to determine the shares of the rightful claimants  
24 by reason of the cables carriage of distant television  
25 broadcast stations and the copyrighted programs contained

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1 on those programs, is that your understanding, sir?

2 A Yes.

3 Q Where in Exhibit 1 do I find anything that would  
4 be helpful in resolving that issue, namely cables carriage  
5 of television broadcast programs?

6 A I think the issue could be addressed in this way:  
7 the appeal of religious programming, regardless of how  
8 it is carried, is established by this study. And I think  
9 that is very critical and very important, I think  
10 devotional programming is established by this rather  
11 massive study as an important part of the free marketplace  
12 of programming in America.

13 My own thinking is that the delivery of that  
14 programming, whether through importation of signals, or  
15 through some other means, the programming will still  
16 perform its function, it is still desirable. And in that  
17 sense, I think it bears on the question.

18 Q Do I understand you correctly, the value of  
19 Exhibit 1 in this proceeding is not determined or based  
20 upon cable carriage of broadcast signals, but rather  
21 the value of devotional programs, whether or not retrans-  
22 mitted by cable signals, is that what you are telling me?

23 A Yes, I think that is true.

24 Q Are you also telling me that there is nothing  
25 in Exhibit 1 that relates to cable's carriage --

1 MS. FORD: I think you are mischaracterizing his  
2 testimony. He already answered that question as to the  
3 relevancy of this exhibit to cable carriage.

4 COMMISSIONER BRENNAN: Overruled.

5 BY MR. SCHEINER:

6 Q Are you also telling me, sir, that there is  
7 nothing in Exhibit 1 that bears on the issue as I have  
8 stated it?

9 A No, I think I cannot say that, inasmuch as there  
10 is a section, beginning on page 64, that speaks specifically  
11 to the issue of cable as it relates to religious broad-  
12 casting. So, I certainly couldn't say there is nothing  
13 that relates to cable carriage.

14 Q Other than what appears on page 64, is there any  
15 other portion of this exhibit that bears on the issue?

16 A Well, there are some table data here that relates  
17 to subscription to cable, and the correlation of cable  
18 subscription with religious viewing, which was non-  
19 significant.

20 Q Non-significant, yes. Anything else?

21 A Which simply means -- correlation is not causation  
22 it simply means that there was no evidence that heavy  
23 religious viewers do not, or do subscribe to cable. I  
24 think a better way to look at that, or at least another  
25 way to look at that would be to see if cable subscribers

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1 are using more religious programming, or devotional pro-  
2 gramming.

3 Q Is there anything else in this exhibit?

4 A The fact that this exhibit establishes that there  
5 is a confirmed and, depending on how one looks at it, a  
6 significant audience for religious viewing. I think that  
7 is the main thrust of this exhibit.

8 Q Is it not correct that the main thrust of this  
9 exhibit is set out on page three of Volume 1; the size  
10 of the audience is more stable and compact, than had often  
11 been supposed?

12 Incidentally, what is meant by "compact"? Is that  
13 a euphorism for small?

14 A I don't know, I think you would have to ask the  
15 person who wrote this survey. If you have read the review  
16 of literature here, there are some who claimed an  
17 audience for religious programming as high as 100 million.

18 Q And that is fully discounted and rejected in this  
19 document?

20 A That's right.

21 Q More like 6 percent, is that correct?

22 A That is the most conservative view. I have  
23 already pointed out at some length, that Gallup, who also  
24 I think one would have to respect for his polling of  
25 attitudes and behavior of Americans, has found a significantly

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1 higher group in terms of self-described viewing, of  
2 religious programming.

3 Q Mr. Clark, if time permits, we will get into the  
4 Gallup Poll, as well. Turn to page 39 of Exhibit 1.

5 A (Perusing document)

6 Q I'm sorry, sir, at the bottom of page 38. Do you  
7 see the reference there to 86 programs and so on?

8 A Yes.

9 Q Continuing to the top of the next page, it is  
10 pointed out that all of the electronic church programs  
11 are syndicated and about half of the local programs were  
12 provided by mainline church groups. In your earlier  
13 testimony you talked about the variety of devotional or  
14 religious programs which are made available to broadcast  
15 stations, do you recall that?

16 A Yes.

17 Q And --

18 A I spoke about the variety of topics.

19 Q And the topics, right. And it is clear, is it  
20 not, that some substantial portion of those programs is  
21 provided by so-called mainline church groups, is it not?

22 A Well, I think you would have to say, looking  
23 at page 39, eight out of 86 are provided by mainline and  
24 are syndicated in seven out of 15. So, the mainline  
25 churches are much more heavily represented in the local

1 programming than in national syndicated programming.

2 Q Well, let's start with the weekend -- and I am  
3 referring to page 38 -- TV ministries, 10 are listed as  
4 prominent and 34 as other. Of the -- what is the meaning  
5 of the term "prominent"?

6 A I think what they are talking about there, and  
7 they do operationalize that term somewhere --

8 Q Would you refer me to it, please?

9 A I don't know that I can.

10 Q Perhaps in a recess.

11 A Okay. What they are referring to as prominent  
12 as programs that are syndicated in a majority of the  
13 country, a majority of the market. Over 50 percent of the  
14 viewing public would have access to them.

15 Q And of the -- I am moving over to daily, the  
16 number is 28, correct?

17 A That is correct.

18 Q Of those prominent TV ministries, how many are  
19 claimants in this proceeding?

20 MS. FORD: I object. I think we have made it  
21 very clear that we are providing a case on behalf of all  
22 devotional programmers that have syndicated in 1982.

23 And heretofore, we have not been permitted to  
24 interrogate as to the NAB, or MPAA as to which of those  
25 claimants within the category are claimants to this

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1 proceeding. And I am not quite sure what that means.

2 COMMISSIONER BRENNAN: Mr. Scheiner, would you --

3 MR. SCHEINER: I think the record is otherwise.

4 COMMISSIONER BRENNAN: Would you respond, bearing  
5 in mind that we have two commissioners, perhaps, are not  
6 familiar with some of these previous decisions.

7 MR. SCHEINER: The question had arisen in earlier  
8 proceedings as to the category that we have referred to  
9 as "unclaimed funds", namely programs produced and distri-  
10 buted which fell into a particular category, but where  
11 the claimants before the Tribunal were less than all of  
12 the producers and syndicators, or distributors of such  
13 programs.

14 It is my recollection, that testimony was permitted  
15 as to the percentage of potential claimants in any one  
16 category that were represented by persons who were claimants  
17 in this proceeding. My recollection is that in earlier  
18 proceedings, with respect to program suppliers, the number  
19 that had surfaced ranged between 95 percent and 98 percent.

20 It is also, to conclude this, in the Tribunal's  
21 final determination in the several proceedings, that I  
22 referred to, it said it would not set up a separate  
23 category for so-called "unclaimed funds", but rather  
24 would let the claimants before the Tribunal who fell within  
25 the category, receive the fund for the programs allocated

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1 to that particular category.

2 MS. FORD: I would like to speak to that.

3 As the Chairman will no doubt remember, back in  
4 1979, three of the Devotional Claimants were not really  
5 Devotional Claimants at all, we were program syndicators,  
6 and we were individual claimants that were considered part  
7 of the MPAA as syndicated programmers.

8 In 1980, a separate category was established for  
9 all devotional programming, and I submit to you that, for  
10 example, the claimant group under the umbrella of NAB,  
11 has never provided evidence that all broadcast stations  
12 have filed claims, and yet they have purported to represent  
13 all broadcast stations.

14 And to my knowledge, they did not have a percentage.  
15 Now, NAB, that might be correct, at least in last year,  
16 but the separate category was established for all devotional  
17 programmers. We didn't want the category, it was handed  
18 to us. So, subsequently, we are representing all  
19 Devotional Claimants.

20 And I think it would be exceedingly unfair to  
21 have the Devotional Claimants put in evidence as to  
22 separate claims, when the NAB was not forced to do that.

23 MR. SCHEINER: May I have a brief word in response?

24 COMMISSIONER BRENNAN: Then I will be allowing  
25 Ms. Ford a sur-response.

1 MR. SCHEINER: If permitted to go forward, for  
2 example, I would ask the Tribunal to refer to Table IV,  
3 .2.1 which lists some -- I'm sorry, that is Volume 2.

4 COMMISSIONER BRENNAN: And, again, give us the  
5 page reference.

6 MR. SCHEINER: There is no page, IV, and it is  
7 .2.1. And you will note -- I have made the count -- of  
8 73 programs listed where there is a mere handful that have  
9 appeared before us as claimants in the devotional category.

10 COMMISSIONER RAY: We are having difficulty hearing  
11 you.

12 MS. FORD: If I may speak to this, please? The  
13 MPAA has, over the years, provided evidence as to the  
14 claimants, the individual claimants and has never provided  
15 a complete list of all programming for which it was  
16 claiming. And, again, I will have to repeat this, the  
17 NAB has never provided a list of broadcast stations, out  
18 of the 600 or so broadcast stations that were around in  
19 the last two years. What percentage of that filed claims?

20 I would have to say that not very many. But  
21 that was never permitted to be discussed. The copyrighted  
22 programming of MPAA, whether it was in the public domain,  
23 or not, was never permitted to be discussed, or cross-  
24 examined. It was never given any weight at all.

25 And I think to do this to the Devotional Claimants

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1 would be exceedingly unfair.

2 COMMISSIONER BRENNAN: We will take our recess  
3 at this point.

4 (Whereupon, a short recess was taken.)

5 COMMISSIONER BRENNAN: The hearing will resume.  
6 The objection is overruled.

7 BY MR. SCHEINER:

8 Q Dr. Clark, turning to Table IV 2.1 in Volume 2,

9 A (Perusing documents)

10 MS. FORD: Chairman Brennan, I would like a  
11 continuing objection to this line of questioning, in its  
12 entirety.

13 COMMISSIONER BRENNAN: The objection and the  
14 exception is noted.

15 BY MR. SCHEINER:

16 Q Do you have that before you, sir?

17 A Yes, I do have.

18 Q I counted some 73 programs listed under the  
19 caption "Total list of programs named as viewed by  
20 regional survey's respondents". Of the programs listed  
21 there, how many are represented by claimants in this  
22 proceeding?

23 A Well, first of all, most of these are weekly  
24 programs, rather than daily programs, but to answer your  
25 question, we have Another Life, we have the Jim Bakker

1 Program, which is a daily one-hour program; we have Jerry  
2 Falwell, which is a one-hour weekly program and the very  
3 last one is the 700 Club.

4 Q Thank you, sir.

5 A Which is a 90-minute daily program. What is  
6 listed as Pat Robertson there, I believe, is a program  
7 called The Lesson, which is a half-hour weekly program.

8 MR. ADAMS: I might also point out for the  
9 record that the PTL Club is also listed for this.

10 BY MR. SCHEINER:

11 Q Sir, turn to page 42, Volume 1.

12 A (Perusing documents) All right.

13 Q Would you agree with me that a substantial part  
14 of the study set out in Exhibit 1 is devoted to the  
15 question of solicitations of contributions?

16 A Say that again.

17 Q Would you agree with me that a substantial part  
18 of the showings set out in Exhibit 1 are devoted to  
19 solicitation of contributions?

20 A Well, there is one table on it and there are  
21 two and a half pages here where it is discussed. I don't  
22 know if I would characterize that as a "substantial part",  
23 but it certainly is a part of this study.

24 Q Would you refer please to Volume 2, Table IV.1.5?

25 A (Perusing documents)

1 Q Do you have that before you?

2 A Yes, I do.

3 Q What is the difference between the caption "Funds  
4 solicited" and "monies requested"?

5 A I think the funds solicited, as I recall -- bearing  
6 in mind, I did not write this study, I am interpreting it,  
7 as you are. But the funds solicited, I believe, is a  
8 more generic appeal for support, whereas the monies re-  
9 quested is a breakdown of the specific requests that were  
10 made, dollar requests that were made for contributions.

11 Q Well, if I read this correctly, looking under  
12 the caption "funds solicited" one or two times, 23.7 and  
13 monies requested, 21.1 in the first column, under  
14 prominent, and should I add those together, to get the  
15 total percentage of funds and monies requested?

16 A I am not sure they are added. I don't think those  
17 can be added. I think the break there the bottom three  
18 categories may break out together.

19 Q Could you explain that, please?

20 A Well, it looks to me like what they did was code  
21 uses of funds, the solicitation of funds and they counted  
22 in each program whether they requested one or two times  
23 or more than that. And that is one unit of analysis, funds  
24 solicited. And then uses of funds that were described,  
25 that is another unit of analysis. And then the monies

1 requested, minimum requested and maximum request, maybe  
2 another unit of analysis.

3 Q But we can't be sure of that?

4 A No.

5 Q Okay.

6 A It would be helpful to have one of the Annenberg  
7 researchers.

8 Q Going back to the top of that column, how many  
9 times is "many times"?

10 A Obviously, it is more than two.

11 Q Obviously.

12 A And some programs there is a frequent request  
13 for funds, and others there is never a mention, it varies.

14 I don't see that this is, in any sense -- if  
15 anything, this demonstrates the appeal of this kind of  
16 programming.

17 Q And the frequency of requests demonstrates the  
18 appeal of programs?

19 A The frequency of requests and the fact that people  
20 respond to those requests, and maintain these programs,  
21 demonstrates the appeal of the programs. It is not a  
22 measure of the invalidity or validity of this program,  
23 anymore than the frequency of requests a public television  
24 station makes for donors to keep it on the air, it is  
25 just the fact that somehow you have to pay for programming.

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1 you either do it through spot sales, or you do it directly  
2 with people contributing to keep it on the air.

3 Q You don't see any difference between the two?

4 A Not in terms of the station, or the viewer, the  
5 viewer pays for the programming, either in the cost added  
6 to the product that is advertised, or it pays for it  
7 directly.

8 Q In your earlier testimony you placed heavy  
9 emphasis on a statement that it makes no difference to  
10 the station. Does it make a difference to the cable  
11 system?

12 A Does what make a difference? I am not sure what  
13 I am being asked.

14 Q Does the lack of appeal, attractiveness or poor  
15 ratings of a program make a difference to a cable system?

16 A If it did --

17 Q It would be reflected in low viewing, would it  
18 not?

19 A Not necessarily.

20 MS. FORD: If counsel could be requested to wait  
21 until the witness is finished his answer?

22 COMMISSIONER BRENNAN: You are so admonished, Mr.  
23 Scheiner.

24 THE WITNESS: I think if there were evidence that  
25 this were the case, then I think you would see public

1 television stations being dropped from cable systems, be-  
2 cause they have low viewing levels, in many markets, and  
3 they also solicit for funds.

4 BY MR. SCHEINER:

5 Q Would you turn to the next table, please?

6 A (Perusing documents)

7 Q IV.1.6, items offered for sale. Now, the data  
8 set out there with respect to the types of offerings is  
9 in addition to the solicitations set out on the previous  
10 page, is that correct?

11 A Yes, I think they have to be seen as discrete  
12 appeals, however, often they are couched together. In  
13 other words, just as public television would say if you  
14 send \$50, we will send you this tote bag, or we will send  
15 you an umbrella. I think it is in that context that this  
16 is done.

17 I am sure there may be some, but I am not aware  
18 of any minstry that actually says "If you will send \$20  
19 we will sell you this -- whatever, this book, this cassette.  
20 It is usually in the context of a contribution.

21 Q Well, then I don't understand the category "For  
22 sale"?

23 A Well, it is for sale, or gift on religious TV.

24 Q I am sorry, those are separate categories, are  
25 they not?

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1           A    They have obviously grouped them together here.

2           Q    I'm sorry, sir, just look at that column, books,  
3 not mentioned; next item, for sale; next item, gift to  
4 viewer, and so on.

5           A    But I was saying though, in terms of the category  
6 at the top of this table, they have said, let's look at  
7 for sale and gifts for religious programs.

8           Q    And some programs, as indicated in the prior  
9 exhibit, will solicit funds or monies, some will offer  
10 items for sale, and some will do both, correct?

11          A    Yes.

12          Q    And when items are offered for sale, are they  
13 offered at a profit, at cost, or at a loss?

14          A    Well, we don't offer items for sale, so I don't  
15 know, but I can't imagine anyone offering things for sale  
16 at a loss, I think that would be foolhearty. I am certain  
17 that people who would offer things for sale, would do  
18 so hoping to realize the cost of the product, shipping  
19 and realize some margin to maintain their ministry.

20          Q    When a viewer responds with a purchase, is any  
21 use made of the name, telephone number in follow-up  
22 requests, not on the air?

23          A    What do you mean by use? All of these ministries  
24 have computerized data bases in which to store names and  
25 addresses, to issue receipts for items sold, or contributions

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1 given, and certainly they maintain contact with the people  
2 who have sent in support, or requested items through the  
3 mail.

4 Q And does that --

5 A Just as does public television.

6 Q And does that contact at times consist of a  
7 further request or solicitation for contribution?

8 A I am certain that it does, yes. I don't think it  
9 would be correct to say that every letter or communication  
10 that follows is a solicitation, but I am certain that there  
11 is continued urging to support the program and keep it on  
12 the air.

13 Q Refer to the next table, please, IV.1.7.

14 A (Perusing document)

15 Q Is the purpose of those communications, again,  
16 to solicit contributions in some form from viewers?

17 A When you say the purpose, are you talking about  
18 telephone calls?

19 Q Yes.

20 A This is referring to calls that viewers make to  
21 the ministries, not ministries calling viewers.

22 Q This is -- do I read it correctly, this is a  
23 suggestion or urging by the ministry that viewers call in,  
24 and the purpose for it is to, among other things, make  
25 a donation?

1           A    Make a donation, offer counseling, prayer, or  
2 free gifts, yes. Or nothing, just call in.

3           Q    But their names are lined up in the computerized  
4 data bank and one of those purposes is to solicit additional  
5 contributions?

6           A    From having called on the telephone?

7           Q    Yes.

8           A    I don't think that is true, that they would wind  
9 up in the computer bank. They may, or may not, it depends  
10 on how -- you know, whether those names can be entered  
11 into a computer.

12                   I might say, along this line, we maintain 70  
13 counseling centers in the United States, staffed by  
14 volunteers, where counsel is provided and prayer is provided  
15 on the local level. Last year CBN received over 3 million  
16 calls for counsel and prayer.

17           Q    That is referred to, I believe, on page 33, at  
18 the bottom, the bottom line, and the top of 44.

19           A    (Perusing document)

20           Q    Is that a fair description of the data set out  
21 in the exhibit we have been referring to?

22           A    Could you be more specific, Mr. Scheiner, as to  
23 what sentence you are referring to?

24           Q    Let me pass that, if I may. Turn to page -- the  
25 bottom of page 44 and the top of 45, under the caption

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1 "personal problems". And at the top of 45 the statement  
2 is made "Only one specific cure for ailments could be  
3 reliable coded, making a financial contribution to the  
4 program". Could you explain that, please?

5 A Well, I think you have to put it in the context  
6 of the previous sentence, which says, "The solutions offered  
7 for viewers programs were usually spiritual in nature" as  
8 opposed to spiritual solutions, which would be to pray,  
9 to read the Bible, to seek the counsel of some other person  
10 who could help you, only one specific cure for ailments  
11 could be coded.

12 In other words, there was not a specific "Do  
13 these three things to get over alcoholism", rather they  
14 grouped the spiritual solutions together and apart from  
15 that, one specific other thing that was mentioned, and  
16 certainly not in every program, but one specific cure  
17 could be reliably coded, making a financial contribution  
18 to the program.

19 Q And, as the text indicates, this was suggested  
20 in one-quarter of the most prominent television ministries,  
21 but never in mainline church programs, correct?

22 MS. FORD: Could I ask for a clarification,  
23 please? Are you asking the questions directed to these  
24 three claimants that we have isolated out of all  
25 Devotional Claimants, or are we talking about the universe?

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1 BY MR. SCHEINER:

2 Q Let me make it clear. Dr. Clark, is it not  
3 correct that you have previously identified, certainly  
4 CBN in the category of prominent ministry?

5 A Yes.

6 Q And you also put PTL and OTGH in the same category?

7 A Yes.

8 Q And is it your view that the sentence that I have  
9 just read from page 45, correctly describes the activities  
10 of those three prominent television ministries?

11 A Would they be in this one-quarter group?

12 Q Yes.

13 A No, I don't think so.

14 Q Would you explain that, sir?

15 A Well, I don't think that Falwell, or the 700  
16 Club, Pat Robertson, makes this kind of a claim, that if  
17 you send money, problems like this will be solved. I am  
18 not certain about PTL, because, frankly, I haven't watched  
19 the program that much recently. I doubt that they do it,  
20 but it is possible that claim might have been made.

21 Q The variety of solicitations that we just covered,  
22 you analogize to advertising on secular programs, is that  
23 correct?

24 A I think from the standpoint of the station  
25 deriving revenue, the programmer -- the time period must.

1 be paid for in some manner. This is a direct way in which  
2 the viewer supports the program.

3 In the case of advertising, the public still pays  
4 for the program, by paying more for the products that  
5 are advertised and the cost of advertising, as we all know,  
6 is amortized into the -- added in to the cost of the pro-  
7 duct.

8 In either case, the consumer, either directly or  
9 indirectly, pays for the program.

10 Q The station may take an inferior program because  
11 it gets money for that program, correct?

12 A I think that is a value judgment about -- I want  
13 more of an understanding of what you mean by an "inferior  
14 program"?

15 Q An unpopular program. As I understand your  
16 testimony, the station may take it, because ultimately  
17 the station is interested in the dollars it gets, and if  
18 it gets the dollars, it doesn't care whether or not it has  
19 a poorly rated program?

20 A In my experience, in negotiating stations, there  
21 are precious few that will take bad programs. There is  
22 a concern throughout the industry, even in secondary  
23 markets, for audiences. And that means that some stations,  
24 no matter what they would be paid for a period of time,  
25 will not accept the program. And I think that the production

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1 value and quality of these programs that we are discussing  
2 today, has increased significantly and continues to  
3 increase.

4 It is my contention that most of these programs  
5 in excellent time periods, on good stations, will compete  
6 very favorably with their secular components for audience.

7 Q And the test of their popularity, you would agree,  
8 I trust, would be how they stack up in Nielsen and Arbitron  
9 ratings?

10 A In prime time, yes; not in fringe periods.

11 Q And head-to-head in other prime time, you would  
12 regard that as a fair test, would you not?

13 A It depends on what kind of station they are on.  
14 If they are head-to-head on net affiliates, that would  
15 be a fair test. If you have a syndicated sitcom on a net  
16 affiliate, and B in a market, and you have a devotional  
17 program on a weak U, you can't say that is true, there  
18 is no comparison. All TV stations are not created equally.

19 Q Are some more equal than others? The suggestion  
20 has been made, and I would like your view, that because  
21 devotional programs do not carry commercial advertising,  
22 the entire program is to be properly judged as program  
23 time, in light of the number and frequency of solicitations,  
24 would you share the view that has been expressed?

25 MS. FORD: Again, I would like Mr. Scheiner to

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1 clarify, are you discussing the three claimants that we  
2 seem to be highlighting here, or the universe of Devotional  
3 Claimants?

4 MR. SCHEINER: I don't want to quibble, I think  
5 the purpose of my question, it really doesn't matter. The  
6 statement has been made by counsel for the devotional  
7 interests, that unlike secular programming, 100 percent  
8 of the time on devotional programs is program. And I am  
9 asking Dr. Clark, in light of the exchange that we have  
10 just had, whether he is in agreement with that statement?

11 MS. FORD: Perhaps you could rephrase the question  
12 and ask what the frequency of contribution requests are  
13 on the three claimants that you seem to be highlighting,  
14 rather than this universe that you first zeroed in on.

15 MR. SCHEINER: Mr. Chairman, I suggest, counsel  
16 may put that on redirect --

17 MS. FORD: I think you are saying apples and  
18 oranges.

19 MR. SCHEINER: I would like to rest with my  
20 question.

21 COMMISSIONER BRENNAN: Proceed, Mr. Scheiner.

22 BY MR. SCHEINER:

23 Q Can you answer the question, sir?

24 A I think the fact that these programs are not  
25 broken into every few minutes with spot advertising, ...

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1 unrelated to the program, is consistent with the notion  
2 that the entire program is a unit, as opposed to the  
3 typical program where you have a spot break.

4 Q Are you saying that interrupts of spiritual con-  
5 tent, or music, or whatever to make solicitations is to  
6 be included as program time, is that what you are saying?

7 A I don't think in most of these programs their  
8 solicitations are interruptions. Usually the solicitations  
9 occur at the close of the program, if there is a sollicita-  
10 tion in which the host says, "Remember, we need your help  
11 and support" or there is a special need for your help on  
12 this progject, don't forget us, we will see you tomorrow.  
13 It is more of that kind of solicitation, rather than a  
14 spot, where you break into a program with a 30 or 60-second  
15 spot.

16 Q Turn to page 84, please, the bottom line.

17 A (Perusing document)

18 Q At the top of the page, the findings set out under  
19 the caption "Contributions to various program types". How,  
20 if at all, are those findings used by the 700 Club?

21 A Are you referring to the findings in Table IV?

22 Q No, I am on page --

23 A The average contribution for viewers?

24 Q Yes, I didn't want to read it into the record,  
25 we all have it before us. How, if at all, do you use that

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1 in producing the 700 Club?

2 MS. FORD: Perhaps it would clarify the record  
3 if you read the sentence into the record, so that the  
4 witness could adequately respond, and make it clear in  
5 the transcript.

6 COMMISSIONER BRENNAN: That seems reasonable,  
7 Mr. Scheiner. Would you indulge us by doing that?

8 MR. SCHEINER: I just didn't want to burden the  
9 record.

10 "We also found a variation in the amount of  
11 contributions made by audiences for the different types  
12 of programs", closed quote.

13 BY MR. SCHEINER:

14 Q How does the 700 Club use that in constructing  
15 its program?

16 A Well, the 700 Club in constructing programs is  
17 primarily concerned with the creating a program that will  
18 have appeal to all viewers, whether they contribute any-  
19 thing, or not. And we have found that as we increase the  
20 quality and appeal of the program, and the audiences for  
21 the program grow, the contributions, likewise increase.

22 So, I can't say that this has been used by us in  
23 way that I am aware of, that particular sentence.

24 Q Turn to page 89, please; the bottom line.

25 A (Perusing document.)

1           Q    I am referring to the second full paragraph on  
2 that page, which makes the point that religious broadcasters  
3 rarely speak to audiences outside their natural constituency.  
4 And it goes on, an expression of agreement from the people  
5 who did the survey. Do you share that view?

6           A    I think that the study substantiates that there  
7 is a constituency out there, interested in this program,  
8 that uses this programming regularly, and these are the  
9 people who will seek out this kind of programming, and  
10 believe it, yes.

11                But that constitutency is no small audience.  
12 I don't think by any stretch, even the most conservative  
13 estimate of 13.3 million can be dismissed as a small  
14 audience.

15           Q    In that regard, let me ask you, what percentage  
16 of television homes, nationwide, if you know, are covered  
17 by broadcast stations that carry 700 Club, PTL and OTGH?

18           A    What percentage of stations --

19           Q    Households, nationwide are reached by stations  
20 that carry these programs?

21           A    In 1982 --

22           Q    Not reached, but covered?

23           A    -- we were aired in 130 markets daily. Today,  
24 we are in quite a few more markets, 166 markets today,  
25 and that represents, in '82, about 85 percent of all

1 television households in America.

2 Q Turning to Exhibit 2, please.

3 A (Perusing documents)

4 Q Is it correct that the study in Exhibit 2 was  
5 undertaken on behalf of CBN Cable Network?

6 A No, it was undertaken on behalf of the Christian  
7 Broadcasting Network, which it says in the introduction,  
8 for the CBN Cable Network.

9 Q I'm sorry, what was the last?

10 A For CBN Cable Network.

11 Q For the Cable Network?

12 A Yes.

13 Q And just to make the point clear, this study  
14 doesn't relate to cable carriage of over-the-air television  
15 broadcast stations on a distant basis, rather it relates  
16 to the CBN Cable television satellite network?

17 MS. FORD: What portion of the study?

18 MR. SCHEINER: The whole study.

19 BY MR. SCHEINER:

20 Q Correct?

21 A The study is a survey of viewers who subscribe  
22 to cable, including CBN Cable. So, their opinions about  
23 cable relate to their experience with having cable in  
24 their homes. In that sense, it is broader, it does  
25 focus specifically on CBN Cable on a number of issues.

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1           Q    The statement is made in the third paragraph,  
2 page 1-1, that, quote, "The following geographically  
3 representative national markets were used for the study".  
4 Is it your view that these are geographically representa-  
5 tive national markets?

6           A    I think that anytime you select eight markets  
7 and try to project nationally for them, you must be very  
8 careful. I think what they have tried to do here, is  
9 regionally represent -- you can see there are some from  
10 the Northeast, from the Mid-West, from the South, from the  
11 Southwest, and from the West and Florida, so I think that  
12 is what they tried to do, is try to balance geographically  
13 from that perspective.

14          Q    You were not with CBN Cable Network at the time  
15 this study was commissioned, were you?

16          A    No, I was not, I was dean of the School of  
17 Communications.

18          Q    Is it fair to conclude that you don't know who  
19 selected those markets, whether it was CBN, or the survey  
20 company?

21          A    That is correct, I am not certain who made that  
22 selection.

23          Q    I refer you, Dr. Clark, to page 3, of Volume 1  
24 of Exhibit 1, which reads, in part, "-- of the audience  
25 for religious programming tends to be clearly coherent and

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1 well-defined. It is what religious audiences have always  
2 been, some are older, lower education and income, more  
3 conservative, more fundamentalists, and more likely to  
4 live in rural areas, and in the South and Mid-West, than  
5 those who do not watch religious programming".

6 With that in mind, Dr. Clark, would you agree  
7 with me that the markets selected put emphasis, undue  
8 weight on rural areas in the South and Mid-West, and in  
9 that respect is not genuinely representative of national  
10 markets?

11 A Well, let's see, I guess Columbus, Missouri  
12 would fall in that category. Cleveland, Tennessee, perhaps,  
13 Joliet, Illinois. I don't know that the others --

14 Q St. Augustine, Florida?

15 A Well, perhaps, yes. So, those four --

16 Q Have you been in Portland, Maine?

17 A Have I been in Portland, Maine? No, I haven't.  
18 I wouldn't consider that the Bible Belt though.

19 Q Are you in agreement --

20 A I think there is another countervailing thing  
21 here, if you will allow me to comment. And that is the  
22 fact that these people, the religious viewers, tend to  
23 be of lower income and education, would suggest that few  
24 of these people ordinarily might be cable subscribers.

25 So, I think that could be something that could,

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1 perhaps eliminate the ordinary religious view of the  
2 cable sample, unless they were subscribing for the reason  
3 of getting religious programs.

4 Q You made reference in your direct testimony, or  
5 you had defined for us what a CBN partner is. I didn't  
6 run across any definition in this study, could you point  
7 me to one, if there is one?

8 A There isn't. We operationalize that in supplying --

9 Q You did what to it?

10 A We operationalized or developed that definition  
11 internally in supplying a list of partners that this  
12 research company could call for this study, in these eight  
13 cities. And we did so on the basis of their having  
14 participated regularly in support of the 700 Club.

15 Q Whose idea was it to break up the study into these  
16 two categories, of partners and so-called general? Was  
17 it the survey or --

18 A I don't know the answer to that, but I would  
19 presume it came from CBN, inasmuch -- for obvious reasons,  
20 we would be interested in supporters and their responses,  
21 versus those who are not.

22 Q Now, the definition of partner, did you also  
23 weight or consider not only the frequency, but the amount  
24 of money that was contributed?

25 A I don't know the answer to that, it is possible

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1 for us to do that, but generally, our definition is  
2 frequency.

3 Q That is an in-house --

4 A That is a better measure really, regularity of  
5 giving, from our perspective, of commitment, than say one  
6 large donation.

7 Q But you simply don't know --

8 A No, I don't.

9 Q The term partner, as I understood your earlier  
10 testimony, was kind of an in-house definition, one that  
11 had not been used publicly?

12 A That's right.

13 Q In 1982, how many partners did you have?

14 A I don't know the answer to that question.

15 Q Well, in light of that --

16 A Obviously, we had at least 200.

17 Q Let's assume you had 200, and in 1982, what was  
18 the size of the general population?

19 A In 1982?

20 Q Within this category, 25 million, 20 million?

21 A The size of the population of cable subscribers?

22 Q I'm sorry, you have interviewed 200 people in  
23 the category which you have termed "general population".  
24 And I am asking you the size of the general population.

25 A Of cable subscribers?



1 Q However you defined your general population.

2 A To CBN Cable -- these were cable subscribers,  
3 number one; who also received CBN Cable, and in 1982,  
4 my understanding is we were connected to approximately  
5 20 million households -- 20-21 million households in which  
6 there were probably, more or less, two to two and a half  
7 persons per household.

8 So, probably about 50 million.

9 Q Okay, my question to you, Doctor, is in light  
10 of that response, and some unknown number, so-called  
11 partners, can this Tribunal make any reasonable judgment  
12 by comparing responses from the two categories?

13 A Are you raising the issue of is this sample  
14 size adequate to make this information valid?

15 Q I haven't quite gotten to that question. The  
16 question I am attempting to ask, perhaps, inartfully, is  
17 a huge universe, I think you said some 50 million?

18 A It could be 50 million people.

19 Q And the universe of certainly 200 people --  
20 200 households, maybe some more, but how much more we  
21 don't know -- but what I am asking you is all other  
22 question of methodology aside, can you make any judgment,  
23 can you compare the response from 200 people in each  
24 category?

25 A It is not a robust sample.

1 Q I would agree.

2 A On the other hand, it certainly is a piece of  
3 information and provides information that is important,  
4 if not statistically significant.

5 Q It is only important to rely upon, isn't that  
6 true, Doctor?

7 A Yes.

8 Q And would you agree with me, in the light of the  
9 comparisons we have made, that this would appear to be  
10 highly unreliable?

11 A No, I would not say that.

12 Q Why not?

13 A Well, because, as I have already said today,  
14 both Nielsen and Arbitron project the audience from New  
15 York for one week in a sweep period with 125 diaries for  
16 the entire city of New York, or the entire city of  
17 Washington. The theory is -- and then they cumulate those  
18 four weeks and say, well, we had a sample of 500 in our  
19 rating book for this rating period. The point being that  
20 theoretically, if you can sample randomly and scientifically  
21 as the term is used, beyond a certain point sample size  
22 is not all that significant. And I have already said  
23 a sample of 400 here would be better than 200, no doubt  
24 about that.

25 Q Doctor, I am prepared to take whatever response

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1 you give me, but I am concerned you really haven't answered  
2 my question.

3 Do you have my original question in mind? With  
4 a universe of some 50 million, and the universe of 200,  
5 and you take an equal sample of both universes, and you  
6 purport to make a comparison of the results derived from  
7 putting the question in those two categories, can you  
8 put any reliability on that comparison?

9 A I think the part that would concern me the most  
10 would be a sample of 200 for 50 million, but even there,  
11 particularly on the questions a split -- the percentages  
12 are fairly high, your level of competence would indicate  
13 that certainly some of these percentages are reliable.

14 Q And the comparisons are reliable, in your view?  
15 Is that what you are saying? I would like to get off this,  
16 if you would just answer that question. I am talking  
17 about the comparisons.

18 A I think what we have to say is the sample for  
19 the general population and the percentages for the general  
20 population, given the sample of 200, we would have less --  
21 the confidence level would be lower for those than for  
22 the partners.

23 Does that answer your question?

24 Q Not really, but I won't spend more time on it.  
25 Can you quantify the lower confidence level?

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1 A Not off the top of my head, no.

2 Q Refer to page 1, the question --

3 MR. SCHEINER: Mr. Chairman, and members of the  
4 Tribunal, I don't believe you all have the questionnaire.  
5 Do they have the questionnaire?

6 MS. FORD: No.

7 MR. SCHEINER: If necessary, I will read the  
8 question as a predicate to the response, in Exhibit 2.  
9 The question reads, "How did you first hear about cable  
10 television?" And then six categories are furnished.

11 BY MR. SCHEINER:

12 Q Let me ask you, when you put that question to  
13 the cable subscriber, how does the respondent know whether  
14 you are talking about satellite delivered cable, or the  
15 retransmission of distant broadcast signals?

16 A I don't think he does, not on the basis of this  
17 question.

18 Q Question 3, "What were the main reasons you  
19 subscribed to cable TV?" Again, he doesn't know what you  
20 are referring to, satellite, or over-the-air, correct?

21 A That is correct.

22 Q I do not regard questions four and five as  
23 remotely relevant, and so I will pass them. Turn to  
24 question -- did I say five? I mean three and four. "Out  
25 of 100 percent of your television viewing time, what

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1 percent of the time do you watch cable TV, and what per-  
2 cent of the time do you watch local TV?"

3 Same question, no way for your respondent to know  
4 what the question really means, is there, whether it is  
5 satellite delivered, or over-the-air cable?

6 A Interviewers had some instruction with this, in  
7 their interviewing procedure, to clarify what was meant  
8 by local TV.

9 Q That was not my question, that was my next  
10 question. What percentage of the time you watch cable TV,  
11 again, they really don't know what you are talking about?

12 A Well, I think at this point some viewers might  
13 be able to distinguish between cable TV and local TV.  
14 But many would not.

15 Q Fine. Now, the question that you wanted to answer  
16 a moment ago. Isn't it a fact that a television -- a  
17 cable subscriber watches local stations on cable TV?

18 A Yes.

19 Q So what is the sense of this questionnaire? What  
20 percent of the time do you watch local TV -- how much  
21 time do you watch cable, and how much time do you watch  
22 local? It is unanswerable, isn't it?

23 A No, I don't think it is unanswerable with an  
24 explanation.

25 Q Where is the explanation?

1           A    Well, I don't have it here, as I mentioned, the  
2 interviewers who conduct these television interviews did  
3 have instruction sheets, as all interviewers do, but the  
4 point they would make, is the local stations are the  
5 ones you can see without cable.

6           Q    Can a cable subscriber view a local station with-  
7 out the cable?

8           A    It depends on the situation. I think I know what  
9 you are leading to, normally he would watch it on his  
10 cable signal.

11          Q    Exactly.

12          A    But the instructions given to the interviewers  
13 here, I am quite sure, delineated between the channels you  
14 could watch when you didn't have cable, and in some cases  
15 cable viewers, depending on how their set is wired, con-  
16 tinue to watch local channels off-the-air, and switch to  
17 one channel, through which the cable tuner is hooked up.

18                So, you get all kinds of possible combinations.

19          Q    And Gods know what the answer comes out.

20          A    Yes, it is very confusing.

21          Q    And the answers are partly reliable, in light of  
22 that confusion, agreed?

23          A    I think there is a chance for a lot of confusion  
24 with this question.

25          Q    Have you seen the instruction sheet for the

1 interviewers?

2 A I don't believe that I have.

3 Q Then you really don't know whether the instructions  
4 cover this bit of confusion?

5 A Except I do know, typically, with a questionnaire,  
6 interviewers have instructions. This is standard operat-  
7 ing procedure for a set of questions.

8 Q Do you know the length of these interviews?

9 A I think they were about 20 minutes.

10 Q Where is that indicated?

11 A I don't know that it is in this write-up, but  
12 just judging by the length of the questionnaire, a 23-  
13 question questionnaire could be done in 10-12 minutes.

14 COMMISSIONER BRENNAN: Off the record.

15 (Whereupon, a short recess was taken.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 CHAIRMAN BRENNAN: The hearing will resume. Mr.  
2 Scheiner?

3 BY MR. SCHEINER:

4 Q Dr. Clark, I will do my level best to move along  
5 as quickly as possible. I have a number of questions that  
6 I am obliged to put to you. I appreciate that you were not  
7 with the Cable Network at the time that Exhibit 2 was pre-  
8 pared and that you have not seen the instructions to the  
9 interviewers. If you don't know the answer to any question  
10 I put, let's note it and go on, and I appreciate that there  
11 are a number you cannot answer.

12 Question, sir. Responses broken down into the  
13 categories noted on pages 5 and 6. What happens if a child  
14 answers the phone?

15 A How is that handled?

16 Q Yes.

17 A They were interviewed.

18 Q They were? And the child would then be reporting  
19 on the viewing habits of the adults and teenagers in the  
20 household?

21 A No, I think he would be reporting on his own  
22 preferences.

23 Q Really? Would it no --

24 A This seems to indicate, for example, there were  
25 62 children 12 and under, 62 in the partners and 59 in the



2

1 general public.

2 Q But that might be an adult reporting on the  
3 viewing habits of the child. I'm asking you what happens  
4 if the child answers the phone. Then it would have to be  
5 that the child is reporting on the viewing habits of others  
6 in the household.

7 A There was one response per household, and the  
8 demographics of that respondent were coded in here in the  
9 demographic section. And this question, I believe repre-  
10 sents a cross-tabulation on the basis of adult male and  
11 adult females and so forth.

12 So it is simply the breaking apart -- the break-  
13 ing apart of that sample along those lines.

14 Q Are you telling me if a child answered the phone,  
15 the child was not a respondent?

16 A The child did not answer for adults.

17 Q The child answered for --

18 A For itself.

19 Q For itself. All right. Let's go on. Would that  
20 child be counted as one of the 200 interviewees?

21 A Yes, I believe they would.

22 Q So, in that case, you would get a response for  
23 only the child, but not the other members of the household,  
24 correct?

25 A No, I think I'm going to have to -- as I look at

3

1 this now -- that is, pages 5, 6 and 7 -- it appears that  
2 there were 176 adult males in the partners --

3 Q Where are you --

4 A It says the base for that projection was 176.  
5 There were multiple answers, so it equalled 297 percent of  
6 that. Adult females, 194, and teenagers 35 and children  
7 62. So -- okay. If you look at the questionnaire -- you  
8 have a copy of it, I believe -- question 6.

9 The question is structured in this way. "Includ-  
10 ing yourself, how many persons residing in your household  
11 would be classified as", okay? And you write that in the  
12 boxes below.

13 And then the next question you say, "Now, I  
14 would like to read you a list of some different types of  
15 television programs, please listen to the entire list and  
16 then tell me what are the top three favorite types watched  
17 recently by you and other members of your family".

18 Q That's perfectly consistent with the respondent  
19 being a child?

20 A It's possible a child could respond, you're  
21 right.

22 Q Let's look at questions 9 and 10., For the bene-  
23 fit of the Tribunal and others who don't have a copy of  
24 the questionnaire, question 9 reads, "How familiar are you  
25 with CBN, the Christian Broadcast Network, the sponsor and

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4  
1 producer of the 700 Club and other Christian television  
2 programs appearing on cable television?"

3 Question 10 is an open-ended question. "What  
4 are the three top favorite Christian programs watched  
5 recently by you", et cetera.

6 Is it not clear, Doctor, that question 9 has  
7 seriously prejudiced and biased the answer to question 10  
8 by cuing the respondent to CBN, the Christian Broadcast  
9 Network, and so on?

10 A Bear in mind that what happened there is that  
11 those who said they were not familiar with CBN were elimi-  
12 nated from question 10. So there is no opportunity for  
13 those who were not familiar with CBN, to even respond to  
14 question 10.

15 Q I'm sorry, Doctor. If you ask a respondent, in  
16 question 9, and alert them to CBN, and the Christian  
17 Broadcast Network, 700 Club and so on, and then in question  
18 10, you give an open-ended question -- Tell me your three  
19 top favorite programs -- three top favorite Christian  
20 programs, have you not obviously biased the response to  
21 the CBN 700 Club?

22 A I think there is an opportunity for response  
23 bias there, however, these are partners -- if you look at  
24 the partners, you'd expect them to be biased in favor of  
25 the 700 Club anyway.

1 Q I'm talking about a very -- I would expect that,  
2 of course, but I am now talking about a very special bias  
3 in the design of the question.

4 A Well, the question could be -- the question  
5 tiers the respondent to the Christian Broadcast Network  
6 and 700 Club, et cetera.

7 Q Exactly.

8 A But on the other hand, if they were not familiar  
9 with it, they were -- the skip pattern in question 9 was  
10 such that at that point they skipped to the demographics.  
11 So if they said "We are not familiar", they were not even  
12 asked the next few questions.

13 So all I'm saying is, there is certainly a chance  
14 for some response bias, but you only ask it of those who  
15 were familiar with it anyway.

16 Q I'll put one final question on this score, then  
17 we'll move on. Suppose question 9 had read instead, "How  
18 familiar are you with PTL", and would you not have expected  
19 a different response for the next question, "What are the  
20 three top favorite Christian programs?" Would you not  
21 have expected PTL to have done better than it did as re-  
22 ported in question 10?

23 A I wouldn't have expected that of the partners  
24 because they did -- next to the 700 Club, they were number  
25 2, and we know there is an overlap in audience, but I would

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6 1 -- I think that that sort of approach might have, under the  
2 general population who expressed familiarity, might have  
3 given PTL somewhat of a boost.

4 Q Turn to question 12. I have some trouble with  
5 the base. Look at 12. Have you personally ever watched  
6 -- we all have it before us, I don't have to read it. And  
7 the answer is, yes or no. And in the case of the partners,  
8 your base is 200 and in the case of the general population,  
9 the base is 86. How did that happen?

10 A What happened there is, in question 9, if you  
11 look at the questionnaire, question 9 has a filter element,  
12 namely, all those who said they were not familiar with the  
13 Christian Broadcast Network, which was 57 percent of 200  
14 which is 114, were skipped out to question 16 which was  
15 the demographics. Therefore, all that is left are the 86  
16 who said "We are familiar with CBN and Christian Broadcast  
17 Network". Then of those, 69 percent of those 86 said,  
18 yes, they had watched 700 Club. And if they said, no, then  
19 they were asked 12(a) Have you ever heard of it? If they  
20 said, yes, they were asked 12(b).

21 Q And the filter question then skipped them to  
22 what question?

23 A To 16, which is the start of the demographics,  
24 where they are asked such things as income and such things.

25 Q I note that here, too, that it bears the same date

7 1 of September '80. When is the first time that you saw  
2 Exhibit 3, Doctor?

3 A I saw this study shortly after it was completed  
4 because I was working with the marketing department of the  
5 cable network, of the network from time to time, as kind  
6 of an outside resource person and consultant, so I did see  
7 it shortly after it was completed, sometime, I believe, in  
8 1980 I saw it.

9 Q Did you have a hand in the preparation of the  
10 questionnaire?

11 A No.

12 Q Methodology?

13 A No.

14 Q Did you see the instructions to interviewers?

15 A No, I did not.

16 Q Do you know whether there were instructions?

17 A No, I don't know for certain there were, but I  
18 suspect that there were, and it's possible we could re-  
19 trieve those from this research group. I suspect they still  
20 have them in their files. I don't know that that's --

21 Q Is it not correct that this study, like the pre-  
22 vious one, was designed to determine responses as to the  
23 CBN Network?

24 A That's right. I think, though, that the typical  
25 cable viewer doesn't know whether they are watching the

1 700 Club on the CBN Cable Network or on some distant sta-  
2 tion, there's a lot of confusion.

3 Q And that's true of Exhibit 3, as well? Same  
4 type of confusion?

5 A Well, except Exhibit 3 is cable systems managers,  
6 and presumably they ought to know the difference.

7 Q Presumably.

8 A This is the audience, and we know there is con-  
9 fusion --

10 Q Do you think they might know the difference?

11 A I think they would be more likely -- if anybody  
12 would be likely to know, they would. I think all of us,  
13 once you get on cable, you tend to just flip the dial.

14 MR. SCHEINER: For Allen's benefit, we've  
15 established that the same confusion between the cable and  
16 over-the-air cable and satellite cables applies to Exhibit  
17 3.

18 BY MR. SCHEINER:

19 Q Now, unlike Exhibit 2, Dr. Clark, this exhibit  
20 -- the questionnaire which I have been furnished says at  
21 the outset, "This study should be of great interest to you.  
22 We are conducting this study for the Christian Broadcast  
23 Network, CBN, because they are currently developing many  
24 new programs".

25 Unlike the questionnaire in Exhibit 2, this one

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9 1 made clear at the very outset on whose behalf it was being  
2 taken. Does that not introduce bias into the questionnaire?

3 MR. ADAMS: Mr. Chairman, I really do believe  
4 that's -- if it has any relevance at all, it is strictly  
5 to Phase II, and it seems to me it would be PTL's objec-  
6 tion, or Old Time Gospel Hour's objection that if somehow  
7 this study reflected a bias on the part of CBN, I don't  
8 see what conceivable relevance it has to any Phase I  
9 issue.

10 MS. FORD: I was patient during the first examina-  
11 tion, but at the mention of CBN in the second exhibit did  
12 not appear until half-way through or toward the end of the  
13 survey, not in the beginning portion which we emphasized  
14 this morning.

15 MR. ADAMS: Especially since we are all pressed  
16 for time, can't we get to something that's relevant?

17 MR. SCHEINER: I think the witness has answered  
18 the question and indicated the possibility of some bias.  
19 Are you asking that it be stricken?

20 MS. FORD: I'll handle it on redirect.

21 MR. SCHEINER: May I go forward?

22 CHAIRMAN BRENNAN: Yes, please.

23 BY MR. SCHEINER:

24 Q I note at the top of page 1-2, under the caption  
25 Methodology, that this is a survey of cable systems who



1 reportedly have carried or have considered carrying the  
2 700 Club. --

3 A And CBN.

4 Q -- and other CBN programming. Would you agree  
5 with me that in so limiting the interviewees, that this is  
6 not a survey of the cable industry but rather a survey of  
7 the two categories that are described under Methodology?

8 A Well, two-thirds of the cable systems in the United  
9 States carry CBN cable.

10 Q Was that true in 1982?

11 A About that. It was slightly less, but it was  
12 about that. So it is true that this represents systems  
13 who had carried or were carrying CBN programming. That  
14 makes up the bulk of cable systems in America.

15 Q It is perfectly clear, however, that one-third  
16 was not surveyed and was not represented in the sample?

17 A That's correct, yes. And, also, that larger  
18 systems intentionally were over-represented.

19 Q There came a time following 1980, when CBN de-  
20 termined to, I believe the term used was secularized the  
21 700 Club, is that right?

22 A I don't --

23 Q Or place greater emphasis on secular content?

24 A Yes. I think -- I'm not sure that I would use  
25 that term, but certainly the contents of the program appeal

11 1 was broadened consciously.

2 Q Was this to include matters, topics that are  
3 generally described as more of a secular nature than that  
4 which had appeared before?

5 A Yes.

6 Q And that change took place along about 1981?

7 A I think that change began to take place before  
8 then, but it was pronounced in '81, yes. It was a process,  
9 it didn't happen overnight.

10 Q I'm sure. And was the study in Exhibit 3 one  
11 of the studies that prompted management to make such changes  
12 in CBN programming?

13 A Yes.

14 Q What, in Exhibit 3?

15 A Well, I think -- if you look at question 1, this  
16 mix of programming that's described here in question 1 as  
17 Not Enough, and Too Much, and so on -- I'm looking at page  
18 T-1 -- was used to help the planning of the programming  
19 for the Cable Network, in trying to fine tune it to what  
20 the operators perceived as needed in programming.

21 One has to draw a distinction, though, between  
22 what operators say is needed and what the public will  
23 actually watch. At one point, this was not observed,  
24 namely, soap operas -- most agreed there was Enough or Too  
25 Many soap operas, and we pursued the production of a soap

12

1 opera continuing drama in the face of this evidence, but  
2 certainly the indication there's not enough documentaries  
3 or public affairs programs led to the inclusion of more  
4 of that kind of content in the 700 Club.

5 The mention of Westerns was important to us and,  
6 as we've already mentioned, Christian programs proved  
7 important, and one of the things that became clear to us  
8 in analyzing some of these open-ended questions was what  
9 they were looking for were high quality devotional programs,  
10 not just any kind, and CBN Cable has been very selective  
11 in the kinds of devotional programs they carry.

12 Q In your direct testimony, you talked about the  
13 size of the sample. You started with a total sample of  
14 351 systems and wound up with 166 completed interviews.

15 A That's right.

16 Q Is my understanding correct that the number of  
17 interviews here was, in part, a function or result of your  
18 inability to get system managers to answer your questions?

19 A Yes. They are hard people to get hold of and  
20 to get to sit still.

21 Q And I appreciate your difficulty. Putting that  
22 aside, does not that number of responses -- is that number  
23 not less than a desired number of responses from the uni-  
24 verse that you've drawn?

25 A I think in this case it may be a pretty healthy

13

1 sample. If we assume there are something like 4,000 cable  
2 systems in the country, and perhaps half of those are  
3 controlled and programmed by MSOs, a number of these mana-  
4 gers were Multiple System Operator managers, so they were  
5 speaking not just for one small cable system, but for many,  
6 many thousands of homes.

7 That being the case, I think 166 represents a  
8 pretty good sample. If you assume there are maybe 2,000  
9 or 3,000 people who make these decisions in the country,  
10 166 is not too bad.

11 Q What did that percentage figure out to be? A  
12 sample size of what, 4 or 5 percent?

13 A Something like that, but the theory of sampling  
14 is the same theory that doctors use when they take blood  
15 out of your finger. It is not the amount that he takes,  
16 but what he does with what he gets. He doesn't have to  
17 take a quart, necessarily. The key is how the sample is  
18 drawn.

19 Q Question 3, T-9. What types of religious pro-  
20 gramming will you most have a need for in the future, and  
21 CBN heads the list.

22 MS. FORD: I would have to object again. This  
23 is really a Phase II kind of question, which has nothing  
24 to do with --

25 MR. SCHEINER: Do you want to withdraw this?

14

1 MS. FORD: I just don't see the relevance.

2 MR. SCHEINER: Nor do I, but if you'd withdraw  
3 this, I'd be happy to move on. Are you withdrawing the  
4 exhibit?

5 MS. FORD: Oh, no.

6 MR. SCHEINER: Okay.

7 MS. FORD: I'm just saying it's irrelevant, and  
8 there is an objection pending.

9 CHAIRMAN BRENNAN: The objection is overruled.

10 BY MR. SCHEINER:

11 Q In light of the introductory statement, Doctor,  
12 by the interviewer to the respondent, do you recognize that  
13 bias might have influenced the answers to question 3?

14 A I think there is some possibility there, but the  
15 call for CBN type programming wasn't overwhelming, even --

16 Q That is true, even with the bias. Question 4,  
17 What are your main sources of obtaining programming -- this  
18 is not an open-ended question -- subparagraph 3 lists  
19 satellite networks, e.g., PTL, CBN, Cable News, et cetera.  
20 Do you recognize the same bias there, on behalf of religious  
21 broadcasters, vis-a-vis other secular type cable satellite  
22 networks?

23 A Let me look at that question. Is that 6, did --

24 Q No, 4.

25 A PTL, CBN, Cable News?

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1 Q Yes.

2 A You have 2 out of 3.

3 Q You sure do.

4 A I think, though, that these -- bear in mind,  
5 these managers are -- the kind of decisionmakers that  
6 determine what programming goes on these cable nets are  
7 not so easily misled. I mean, we know what satellite net-  
8 works are out there. We are not educating them about that,  
9 we are asking them their opinion.

10 Q But when you are attempting to elicit the response,  
11 and you cue your respondents by CBN, PTL, savvy or not,  
12 does that not bias the answer?

13 A If your answer was asking -- was structured  
14 in such a way that you were trying to get CBN or PTL in  
15 the response, I would be more ready to agree with you,  
16 but all you are asking for here is a generic category --  
17 off-air signal carriers, program syndicators, satellite  
18 networks, local access, microwave and so forth.

19 In the context of the five possibilities there,  
20 the two things you point out, PTL and CBN are really just  
21 sub-ads of a generic category of satellite networks.

22 Q But they get two out of three mentions.

23 A Two out of three out of one of five parts of  
24 a question.

25 Q Take a look at --

15 1 A And the point is, no one said -- specifically  
2 asked about CBN or PTL. It's just a generic category  
3 of satellite networks. I suspect that Cable News, at this  
4 point in time, was thought of by most of these people as  
5 The satellite network, but that's just my opinion.

6 Q Take a look at questions -- and let's do this  
7 as a package -- 6 through 9 -- might I ask, so that we have  
8 a complete record, would you furnish the questionnaires  
9 for Exhibits 2 and 3 for the record?

10 MS. FORD: Surely.

11 MR. SCHEINER: And with that in mind, it won't  
12 be necessary to read them into the record, and I would like  
13 to share, if the members of the Tribunal are interested,  
14 there is my copy of the questionnaire.

15 BY MR. SCHEINER:

16 Q As I read 6 through 9, it's principal purpose,  
17 if not the sole purpose, was to enable CBN to better pro-  
18 mote its cable satellite network. Do you agree with that?

19 A I think this information would certainly be  
20 useful to CBN, and was useful to CBN for that purpose. I  
21 might add, it would have been useful to any other cable  
22 network as well.

23 Q I'm confident that it would.

24 A These questions were not structured in such a  
25 way that they would only have served CBN.

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17 1 Q I'm off the bias kick. I'm now on a different  
2 one. We are now talking about the thrust of this, setting  
3 bias aside, was related exclusively, principally if not  
4 exclusively, to the cable network, and not free transmission  
5 of over-the-air television broadcast signals.

6 A Well, I think we'd almost have to look at them  
7 individually.

8 Q Would you, please.

9 A All right. If you look at 6, it's an open-ended  
10 question which had to be coded later, "As a cable system  
11 operator, what kind of advice about programming would be  
12 most helpful to you?" And this, presumably, is a question  
13 which the cable operator, in which he or she could indicate  
14 the kinds of information related to programming they had  
15 a felt need for.

16 And if you look at the responses to those, on  
17 T-14, they are not all related to programming promotion,  
18 by any means.

19 Q Which are not related to cable satellite?

20 A To cable satellite?

21 Q Cable Satellite Network.

22 A The question is not referenced to Cable Satellite,  
23 it just says "As a cable operator". That includes all  
24 possible carriage -- signals he might carry. The next  
25 question, if you want to go to that one, relates to "What

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18 1 is the single most difficult problem you face as a system  
2 operator?" Again, there is no reference to satellite per  
3 se, there.

4 And getting desired programming, choosing among  
5 many sources of programming -- that could include distant  
6 signal carriage -- getting subscribers, which is a critical  
7 issue for most cable systems; meet new market demands;  
8 problems in promoting cable services; problems in promoting  
9 individual programs dealing with networks; networks off-air  
10 carriers; program syndicators, et cetera, and viewer com-  
11 plaints and, finally, technical problems.

12 I don't see anything that inherently limits that  
13 to satellite, nor do I see it in 8 or 9.

14 Q Really, not?

15 A No.

16 Q What else does 8 refer to?

17 A Well, it refers to programs, period.

18 Q Right. Cable systems pick up programs?

19 A Yes.

20 Q From broadcast stations?

21 A Yes.

22 Q Or they pick up broadcast stations?

23 A They pick up -- people watch programs, they don't  
24 watch stations.

25 Q Of course. But what does a cable system pick up,

19

1 a program or a station?

2 A It picks up a station if it has the programs  
3 it wants.

4 Q Exactly. And when you talk about ways of intro-  
5 ducing new programs, are you talking about over-the-air  
6 television broadcasts?

7 A Yes.

8 Q Really?

9 A Sure.

10 Q Tell me how.

11 A Well, I mean, if a station wants to be carried,  
12 for example, on a cable network, it might try to determine  
13 what sorts of programs it could put on that could help  
14 it be carried. I mean, that's conceivable.

15 Q Stations --

16 A If a station wanted to be carried as a distant  
17 signal on a large, multiple system operated network, they  
18 might find out, "Hey, look, what slot and programming" --  
19 I think one example of this I read recently is a situation  
20 in Chicago, in a Chicago market, where a station went to --

21 Q Doctor --

22 A -- a station went to MTV type programming, music  
23 television, and, thus, on that basis, was able to make an  
24 appeal that it should be carried on a cable system.

25 Q Doctor, when you talk about introducing a new

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20

1 program to a cable system operator, are you not talking  
2 only about Cable Satellite Network?

3 A Well, what I've been trying to say is, I don't  
4 think you would have to be only be talking about that. I  
5 think this information could conceivably be useful to a  
6 superstation.

7 Q Okay. What use of the information gathered in  
8 response to question 6 or 9 did CBN make of it? Was it  
9 not solely related to the Cable Network?

10 A Certainly. CBN did use it for that purpose.

11 Q And that was its purpose in designing the  
12 questionnaire?

13 A Yes.

14 Q Okay. Take a look at question 10 -- forgive the  
15 nitpicking, but there may be a ready explanation. The  
16 total in the grouping is somewhat familiar, 99, which is  
17 a total of 29 and 68, obviously wrong, isn't it? And the  
18 same thing in the next category, Not Familiar, the total  
19 of 7 and 16 is listed as 24. Is there something that I'm  
20 not seeing here?

21 A There's a mistake.

22 Q Clear mistake, yes. And, again, I couldn't  
23 quite accept the carelessness of this, and in response  
24 to question 11, the total of 35 and 46 is 82? In any  
25 event, they are obvious --

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21 1 A As I look at them, there are some problems that  
2 they are all 1s.

3 Q They are erroneously computed, right?

4 A There is an error of 1 in each of those, it  
5 looks like.

6 Q Let me ask you, look at question 11, full-time  
7 versus part-time carriers of CBN programming, carry full  
8 CBN schedule. The total listed here is 82. When they  
9 carry a full schedule, are they all under contract?

10 A Not necessarily.

11 Q Oh, they can carry the full schedule without  
12 being under contract?

13 A Yes.

14 Q Would you examine that footnote and explain it  
15 to me, and this is not a hostile question, I simply don't  
16 understand it.

17 A Well, I think -- as I interpret it, the footnote  
18 simply means that 48 percent, 48.8 percent of the completed  
19 survey group carried CBN programming part-time or not at  
20 all, while 49.4 percent carried it full-time.

21 Q That's what it says. What's an asterisk doing  
22 in a category who respond they do not carry it full-time?  
23 What's that 49.4 doing there?

24 A I'm not certain about that. I think that the  
25 problem here was the part-time versus not familiar. It

22

1 was combined in some way.

2 Q It is quite confusing, isn't it? You don't  
3 have an explanation for it.

4 A I don't have an explanation for that particular  
5 breakdown.

6 Q Turn to question 14. The preceding question, 13,  
7 asks about the period of the day that the 700 Club and  
8 Ross Bagley are carried. And question 14 asks, are these  
9 programs ever pre-empted. What does pre-emption mean, in  
10 this context?

11 A In this context, it means the possibility that  
12 the cable operator would choose to put some other signal  
13 into that particular channel on his system.

14 Q Would that include systems that are under contract?

15 A Yes, yes.

16 Q Is it not the fact that you contract bars such  
17 pre-emption?

18 A It depends on the negotiated contract with the  
19 system. The standard contract does, for obvious reasons,  
20 but many systems either were not under contract or had the  
21 option, which we agreed to, of pre-empting.

22 Q So you deviate from your standard contract?

23 A Occasionally, yes. Everybody deviates from  
24 standard contracts.

25 Q In the cable business?

23

1 A Yes, and in the broadcasting business as well.

2 Q You, in your direct testimony -- strike that,  
3 please.

4 Turn to question 23, cable operator reactions to  
5 CBN contract, your 71 respondents. Was that the total  
6 number of operators under contract?

7 A In this sample?

8 Q Yes.

9 A Yes.

10 Q In your direct testimony, you talked about the  
11 advances that were made, or contributions made by CBN  
12 Satellite Network to cable systems. You talked about 10  
13 cents per subscriber for advertising?

14 A Yes.

15 Q And 10 cents for general promotion?

16 A Well, 10 cents to purchase spot availables that  
17 they had on other networks, which was for promotion.

18 Q And that 10 cent limit is up to \$10,000 for each  
19 category?

20 A It's up to -- a possibility of 10 and 10 per  
21 subscriber up to a max of \$10,000.

22 Q For each?

23 A For each, yes.

24 Q Total of 20?

25 A Yes.

24

1 Q And that max did not apply to MSOs?

2 A That's true.

3 Q And is it just open-ended for MSOs?

4 A I don't know that. I know there are some limits --

5 Q You don't know what they are?

6 A No, I don't know that.

7 Q And you don't consider this 10 and 10 payment to  
8 cable systems?

9 A I consider it more of a barter. They have to  
10 give us something that they would normally, at least in the  
11 case of the spot avails they have that normally would  
12 generate revenues for, so they are giving us something of  
13 value. We are really trading them, in effect.

14 Q That's on --

15 A In other words, if they could derive revenue  
16 from these spots from somebody else.

17 Q You compared that practice to what ESPN and CNN  
18 were doing?

19 A CNN -- yes. At that point, ESPN and CNN were  
20 giving compensation per subscriber. They have since also  
21 moved to some cooperative arrangements for advertising.

22 Q CNN and ESPN and not claimants in this proceed-  
23 ing for their cable satellite network, now is CBN Cable  
24 Satellite Network a claimant, is that correct?

25

25

1 A Well, CBN Satellite Network, as we've already  
2 established, is owned by --

3 Q I understand that, but it is not a claimant for  
4 its cable satellite delivery system?

5 MS. FORD: I would stipulate that for the record.

6 THE WITNESS: My point wasn't to say they were  
7 claimants, my point was simply that --

8 BY MR. SCHEINER:

9 Q In your direct testimony, you made reference  
10 to Another Life, and is Another Life being syndicated? Did  
11 you indicate that?

12 A Yes.

13 Q In 1982?

14 A Yes.

15 Q To which stations?

16 A Isn't that part of the exhibits here? Let me  
17 just refer to that. I refer to Exhibit 7, the last 5 pages  
18 or so of that exhibit.

19 Q Okay. We'll get to that. Was it your testimony,  
20 Dr. Clark, that the contributions made in response to so-  
21 licitations is a measure of the value of the program? Is  
22 that your view?

23 A Yes.

24 Q Is it not the case that contributions are made  
25 for a variety of reasons other than programs, and I will



26

1 list them and I'd like you to indicate with respect to each  
2 of them, whether you agree or disagree. Church functions  
3 or activities. Agree?

4 MS. FORD: What was the question again?

5 MR. SCHEINER: Whether contributions are made,  
6 in part, for reasons other than an assessment or a judgment  
7 as a value of the program.

8 MS. FORD: Contributions to a program.

9 MR. SCHEINER: In response to a solicitation,  
10 and we're in agreement that church contributions is one,  
11 correct?

12 THE WITNESS: If you're asking me to agree that  
13 churches solicit contributions and receive contributions --

14 BY MR. SCHEINER:

15 Q Does PTL consider itself a church?

16 A PTL, as a matter of fact, does.

17 MR. ADAMS: It is a church.

18 MR. SCHEINER: I'm sorry.

19 THE WITNESS: We do not.

20 BY MR. SCHEINER:

21 Q Let's be clear on something. Are you testifying  
22 only on behalf of CBN?

23 A No.

24 MS. FORD: No. He's testifying to all devotional  
25 claimants, and he's trying to give you his particular

27

1 knowledge.

2 MR. SCHEINER: Well, perhaps I was misled in that.  
3 Could you -- and this is addressed to counsel -- could you  
4 furnish us with a description of the governance of PTL  
5 and OTGH that we may examine in connection with the prepara-  
6 tion of our rebuttal testimony?

7 CHAIRMAN BRENNAN: Do we need to discuss that  
8 at this particular moment, Mr. Scheiner? Can't you pursue  
9 that with counsel on some other occasion?

10 MR. SCHEINER: Will do.

11 BY MR. SCHEINER:

12 Q Do I have answer to the last question? Was the  
13 answer affirmative?

14 MR. MIDLEN: You have not defined whether you  
15 are addressing the question only to CBN.

16 MR. ADAMS: Furthermore, to the extent that it  
17 involves PTL, the question might be one and the same.

18 MS. FORD: If you could just rephrase the ques-  
19 tion and be specific, and I think the witness won't be so  
20 confused.

21 BY MR. SCHEINER:

22 Q Do you have difficulty with the question?

23 A I'm not sure whether you're asking me if I agree  
24 to the fact that churches that solicit contributions are  
25 given contributions.

28           1           Q     To support a church and not limited to the program  
2     that the viewer is viewing.

3           A     I don't know of any of these programs that tell  
4     the viewer, "We need your support for our church". It's  
5     always couched, as far as I know, in terms of "We need your  
6     support in order to keep this program on the air".

7                     Now what's inside that viewer's mind in terms of  
8     what appeals to them is pretty difficult to say, but I  
9     don't -- I've never heard anyone on PTL make an appeal for  
10    the church, to maintain the church, nor have I, I don't  
11    think, on Falwell. Now you hear talk about helping to  
12    build a college, but --

13          Q     Is that one reason why contributions are made?

14          A     Yes, I think contributions have been made to  
15    support educational institutions.

16          Q     Are contributions also made to support overseas  
17    ministries?

18          A     I suspect that they are. I mean, I don't know  
19    why people --

20                     MS. FORD: If you don't know --

21                     THE WITNESS: I don't know why people -- it would  
22    be hard for me to say why people contribute. I know those  
23    appeals are made.

24                     BY MR. SCHEINER:

25          Q     Oh, appeals are made for that?

29 1 A Yes.

2 Q And are appeals made with a promise of salvation  
3 to the viewer?

4 A If they send in money, they are going to be  
5 saved?

6 Q Yes.

7 A I've never heard such an appeal. I never have  
8 heard that kind of appeal.

9 Q We established earlier that appeals are made.  
10 25 percent of the coded responses in some category were  
11 for improving one's health.

12 A That's what the study said.

13 Q All right. Your exhibit. That's what it said.

14 A That's right.

15 Q Appeals made to further the political, social  
16 and economic positions espoused by the TV ministry?

17 A I don't know what that question means -- social,  
18 political, economic positions?

19 Q Is it not the case that Reverend Falwell has  
20 urged people to make contributions to further whatever  
21 political views he has expressed?

22 A In the context of his religious program?

23 Q Yes.

24 A I don't think he has.

25 Q Do you know?

30

1           A     I'm not -- I can't say -- I don't watch every  
2 single Falwell program, but I've never heard him make such  
3 an appeal. His appeals -- the appeals I've heard him make  
4 are always in terms of Liberty Baptist College, and the  
5 specific kinds of projects that are being undertaken.

6           Q     Turn to Exhibit 4, please. On the right-hand  
7 side of that page, there is a reference to Killing Our  
8 Children. This is an award in 1984, am I not corect, but  
9 it was a program carried in 1983? Did that refer to Xpose?

10          A     I don't think the fact that the award was given  
11 in '84 would say that it was aired in '83.

12          Q     I know, but I'm asking you, is it not the fact  
13 that it was broadcast in '83?

14          A     Well, it wasn't broadcast on one particular date.  
15 I'd have to do some checking to give you a specific  
16 response.

17          Q     At the moment, you simply don't know?

18          A     I know the program was produced in 1981-1982.

19          Q     Ask God was syndicated in 1984?

20          A     Ask God was, yes. January of '84.

21          Q     You made a reference in your direct testimony to  
22 Ask God as the highest rated program. Isn't that highest  
23 rated devotional program?

24          A     Highest rated syndicated devotional program, yes,  
25 and it was among the top three or four syndicated specials

31

1 in 1983 and '84.

2 Q Turn, please, to Exhibit 5. What is your  
3 definition of large amounts of religious programming?  
4 Do you regard 10 percent as a large amount? 15 percent?  
5 20 percent? I'll withdraw that question.

6 A Yes.

7 Q I'll withdraw that question. Did you prepare  
8 this exhibit?

9 A No, I didn't.

10 Q Do you know what standard was employed for the  
11 reference of large amounts of religious programming?

12 A These are stations that have blocks of time  
13 devoted to devotional programming, on a daily basis.

14 Q I understand that, Doctor. Now I'm asking you,  
15 do you know how much whoever designed this exhibit consider-  
16 ed to be large amounts?

17 A Well, without doing an analysis of the actual  
18 program week, which is possible for each of these and would  
19 be useful. actually, these are stations that have identified  
20 themselves to the national religious broadcasters, and are  
21 known to us and to me by virtue of the fact that they carry  
22 blocks of devotional programming daily. Some of them, as  
23 I mentioned earlier, carry exclusive devotional programming.

24 Q Do you know how much time KXTX carries?

25 A About 30 percent.

32 1 Q In your testimony, you said 35. What do you  
2 base that on, that estimate?

3 A That estimate? On the block of time every morn-  
4 ing, of at least two hours, plus the prime time airing of  
5 the 700 Club, plus a Sunday morning slot of religious  
6 programming and some weekend fringe religious programming.

7 Q I will make one final stab at this. How much is  
8 a large amount, Doctor? 10 percent? 15? 20? You tell  
9 me, if you know.

10 A Oh, I'll give you what I consider to be a defi-  
11 nition. I think any station that carries a block of  
12 religious programming daily, other than at midnight. I'm  
13 talking about in its day parts, is carrying a substantial  
14 amount of religious programming.

15 Q Carry a half an hour, from 9:00 to 9:30, that  
16 would be substantial, right? Is that the criterion that  
17 was used in this exhibit?

18 A No, I think these stations all carried more than  
19 half an hour.

20 Q But you don't know how much?

21 A No, I have no idea. I do know, as I've said,  
22 that CFC has 100 percent devotional, and several others  
23 here, KYFC in Kansas City, and several others.

24 Q Turn to Exhibit 6, please. You made it clear  
25 earlier that you didn't prepare this exhibit.

33

1 A That's correct.

2 Q Do you know the source of this exhibit?

3 A This is from the FCC records, and the second part  
4 of it was --

5 Q Well, let's stay with this for a moment. I'll  
6 get to the second part in just a moment. The caption says  
7 Cable Carriage of Listed Stations. Do you know whether,  
8 indeed, this list from the FCC purports to show carriage?

9 A That is what I believe it purports to show.

10 Q What do you base that on?

11 A I base it on the fact that these systems have  
12 asked for authorization to carry these stations one time  
13 or another.

14 Q Let me advise you that, subject to possible ob-  
15 jection from your counsel, that this list represents  
16 notifications by cable systems of the intent to carry, but  
17 do not reflect carriage. In light of that and apparently  
18 without objection, and if I enlighten that, Doctor, this  
19 is not a listing of cable carriage, is it, but a notifica-  
20 tion of intent, which may or may not be implemented?

21 A Yes, that's true, it may or may not be imple-  
22 mented. One has to ask why would such an intent be filed  
23 if there was no intent to act on it.

24 Q I can suggest a variety of reasons. In any  
25 event, we are in agreement that this is not a list of



1 carriage, but an expression of intent.

2 A Yes.

3 Q You wanted to volunteer something on Revised  
4 Exhibit 6. What did you want to tell me?

5 A I don't have it before me.

6 Q (Handing document.)

7 A These represent systems that are airing the  
8 distant signal of the stations mentioned.

9 Q I thought we agreed that this was merely a  
10 notification of registration rather than carriage. We're  
11 in agreement on that, are we not? It has nothing to do  
12 with carriage?

13 A Yes. Well, I wouldn't say it has nothing to do  
14 with carriage.

15 Q I'm sorry. That's clearly erroneous. It does  
16 not reflect carriage.

17 A It certainly includes the systems that are  
18 carried. In other words, a system that is not in here --

19 Q Very like could.

20 A So it is inclusive of the carriage systems. Is  
21 is also inclusive of some systems which may not be carrying.

22 Q And we don't know how many of those systems that  
23 are not carrying are included in this list, do we?

24 A That's true.

25 Q So to the extent that it purports to reflect

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35 1 distant signal carriage, we're in agreement that it is  
2 inaccurate?

3 A We're not -- we're not certain to what extent  
4 it is inaccurate.

5 Q True. 10, 20, 30, 40, 50 percent? We just don't  
6 know, do we? But we do know that when it purports to show  
7 carriage, it is inaccurate.

8 Turn, if you will, to Exhibit 7. The first  
9 program listed is Superbook Christmas Special. That's a  
10 one-time program, is it not? Let's pass over that. Let's  
11 turn to USAM, which is reflected on the following sheets,  
12 and Another Life.

13 My recollection is that in your direct testimony,  
14 you indicated that Another Life, or was it USAM, was trend-  
15 ing upwards at the time it was cancelled. Which one was  
16 it?

17 A USAM.

18 Q USAM was trending upwards. And what did you  
19 base that on?

20 A Well, on two counts. First of all, the numbers,  
21 the ratings were looking healthier.

22 Q What were the ratings?

23 A Market by market? I don't have that.

24 Q You don't have it?

25 A Whose ratings are you referring to? Nielsen?

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1 A Yes.

2 Q And that's what you're relying on, and they were  
3 trending upward?

4 A In some markets, yes. But also the clearance --

5 Q Were they also trending down?

6 A But the clearance levels were also -- we were  
7 clearing more and more stations with the program. And in  
8 that sense, it was growing. And as I mentioned earlier,  
9 there's a kind of a magic number. You need 65 percent of  
10 the television households in order to make national spot  
11 sales, so we're moving in that direction, but I mean we  
12 would have to look at these markets, Detroit, Dallas,  
13 Milwaukee and so forth.

14 Q And you would accept the Nielsen rating numbers  
15 as a test of whether they were trending up or down, or  
16 remaining constant?

17 A Yes, I think we have to, bearing in mind that at  
18 that time of the day all ratings are low

19 Q We made available to your counsel the ROSP report,  
20 the report on syndicated programs. Was that shared with  
21 you the last day or so?

22 A I didn't look at it. I knew that they had it.

23 Q The ROSP report, Volume I, February of '82. I  
24 ask you to refer to it, Section 1, Households and Persons  
25 Ranking Tables Ranked by Average Ratings, and ask you to

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1 refer to number 1, the highest rated show. What is that?

2 A MASH.

3 Q And it's rating, in the right-hand column?

4 A 13.6. It's rating is 13.6.

5 Q And it's average rating.

6 A 14.

7 Q Would you turn to USAM, which you will find very  
8 close to the bottom of the list, and tell me what that  
9 shows?

10 A First of all, I think it needs to be said that  
11 MASH is a program that airs once a week for 30 minutes on  
12 192 stations. So you're talking about two quarterhours  
13 that you are measuring.

14 Now, when you get into a daily program, that's  
15 30 minutes a day, you're suddenly talking about ten quarter-  
16 hours. Criteria for any daily show is much tougher, and  
17 the rating people will tell you that the ratings are not  
18 designed to measure daily programs because they don't give  
19 you net weekly CUMs. They give you an average quarterhour  
20 measurement for all 20 quarterhours.

21 Now, USAM --

22 Q What's it's rank, incidentally?

23 A 251.

24 Q Out of how many?

25 A Out of 266. It's a 60-minute program a day. It

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1 was in 17 markets, which is 13 percent of the U.S., and  
2 its rating was an average rating of half a rating point.  
3 But this will not establish whether it was trending upward.  
4 The only way you can establish that is to look at the  
5 metered markets and watch them week by week during the  
6 period the program was on. Then you can get some trend  
7 studies.

8 Q Are you suggesting that at this point it was --

9 A I'm suggesting that that establishes what the  
10 rating was in 16 markets, and it was measured for four --  
11 actually it was a 60-minute program, so we measured for  
12 four quarterhours. That's 20 quarterhours a week. I'm  
13 suggesting that MASH was measured for two quarterhours a  
14 week, unless it was stripped daily, and we don't know that.  
15 Nobody knows that without doing a lot more research.

16 Q You don't know whether MASH was stripped daily?

17 A It may have been, or it may not. It probably  
18 was, but it would not have to have been. Some stations  
19 could air it weekly.

20 Q But we are clear that this half a point rating  
21 was during the period when USAM was trending upwards?

22 A Was that for February?

23 Q '83.

24 A That was during the period when USAM was just  
25 getting started.

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39 1 Q You made reference --

2 A I think you'd have to look at the July book, and  
3 also, as I've said, monitor these metered markets where it  
4 was, so you could get a weekly perspective on what the  
5 rating trends were.

6 Q You made reference in your direct testimony to  
7 animated programs.

8 A Yes.

9 Q What program were you talking about?

10 A There are actually two series. One is called  
11 Superbook, which is 52 half-hours, 49 of which --

12 Q I'm sorry -- I missed that.

13 A 52 half-hours -- Superbook.

14 Q And who is the producer of that program?

15 A CBN produced that in conjunction with a Japanese  
16 animation company called Taksimoto.

17 Q And what stations was it sold to?

18 A That's part of an exhibit here, I believe. It's  
19 in 7. Well, that's the Superbook Christmas Special, but  
20 there's another list which I could make reference to here.  
21 Superbook has been sold --

22 Q I'm sorry. That's the one-time Christmas Special  
23 that we talked about earlier?

24 A Yes, but I'm talking about a 26-episode series  
25 now, that's been sold --

1 Q May I ask what you're reading from?

2 A I'm reading from an internal document I have here.  
3 It's been sold in Minneapolis, St. Louis, Indianapolis,  
4 Kansas City, Green Bay, Bloomington, Mt. Vernon, Nantucket,  
5 Lima, Ohio and Red Lion, Pennsylvania.

6 Q When was it sold?

7 A It was sold in 1982.

8 Q And broadcast by stations in those markets during  
9 that period?

10 A Yes.

11 Q And that was 26 episodes?

12 A 26 episodes. There are 26 more episodes in this  
13 series which have subsequently been sold, in these and  
14 other stations.

15 Q In 1982.

16 A No, subsequently.

17 Q And was that sold or bartered?

18 A These --

19 Q The 26 in '82 that we're talking about.

20 A This document, which I did not prepare, indicates  
21 that they were sold for cash, in each of these markets.

22 Q You made reference to a program in your direct  
23 testimony, a program called Teddy Bear. What is that  
24 program? It is unfamiliar to us.

25 A It is children's animated special about teddy

41 1 bears. That's about all I can tell you about it.

2 Q Was that a one-time show?

3 A Yes.

4 Q And where was that -- was that show sold?

5 A It was syndicated. I didn't understand --

6 Q Did it appear in syndication?

7 A Yes, it did.

8 Q In what year?

9 A I don't know that. '82 or '83.

10 Q But that's not one of your programs?

11 A No, that's not our program. I just was alluding  
12 to that as an example.

13 Q You made the point that UHF is underrepresented  
14 in Nielsen --

15 A Diary data.

16 Q -- diary data. What is the basis for that state-  
17 ment?

18 A The basis for that statement is the well estab-  
19 lished observation that when meters are installed in a  
20 market, the share of audience that are actually watching  
21 UHF stations proves to be greater than it was when there  
22 were only diaries being kept in those markets.

23 Q Is that also true of VHF stations? You get higher  
24 ratings for VHF stations in a metered market than you do  
25 in a diary market?



42

1 A It could be, but I'm not familiar with that  
2 possibility. Usually these are the stations that have  
3 been in the market a long time, people are used to tuning  
4 to them habitually. They are the net affiliates, and for  
5 that reason, their call letters are known, their numbers  
6 are known, their channel numbers are much more easily  
7 recalled by diary keepers.

8 Q This well known fact which you claim is well  
9 documented, what documentation are you relying on?

10 A The experience we've had with our --

11 Q Doctor, is there any documentation?

12 A Yes, there is documentation on this.

13 Q Will you refer me to it?

14 A I could refer you to it. Our own experience has  
15 been in markets where we have UHF stations, once the market  
16 is metered, the audiences for our stations, the daily CUMs  
17 the weekly CUMs have increased significantly. I can tell  
18 you specifically this has been the case in Boston.

19 Q Assuming that there is such an underrepresenta-  
20 tion, would not secular programs carried on UHF stations  
21 suffer a similar fate?

22 A Yes.

23 MR. SCHEINER: Could I have five minutes, Mr.  
24 Chairman?

25 CHAIRMAN BRENNAN: Off the record.

43 1 (Discussion off the record.)

2 CHAIRMAN BRENNAN: Back on the record.

3 MR. SCHEINER: That's all I have.

4 CHAIRMAN BRENNAN: Mr. Solomon?

5 CROSS-EXAMINATION

6 BY MR. SOLOMON:

7 Q Dr. Clark, I'm David Solomon. I represent  
8 National Association of Broadcasters. I have just a few  
9 questions for you.

10 I'd like to have marked for identification as  
11 1982 NAB Exhibit Number 1, a one-page excerpt from Cable-  
12 Vision magazine dated December, 1982.

13 (Whereupon, the document was  
14 marked NAB Exhibit No. 2 for  
identification.)

15 Could you take a few minutes and read the bottom  
16 half of the page there.

17 CHAIRMAN BRENNAN: Mr. Solomon, does CRT get a  
18 chance to respond to this ad?

19 (Laughter.)

20 BY MR. SOLOMON:

21 Q Dr. Clark, have you had a chance to review the  
22 part labeled Advertisement that's headlined CBN Cable On  
23 Target: Why pay for programming and benefits you can get  
24 free?

25 A Yes.

44

1 Q Do you know what this is?

2 A Are you asking me if I'm familiar with this ad?  
3 Have I seen it before?

4 Q Have you seen it before?

5 A No, I haven't.

6 Q It appears to be an advertisement placed by CBN  
7 network, is that correct?

8 A Yes, that's correct.

9 Q It's correct that it appears, or is it an ad  
10 placed by CBN?

11 A It appears to be, and I'm quite certain it is.

12 Q Could you tell me what the headline -- in your  
13 view, what the headline CBN Cable On Target: Why pay for  
14 programming and benefits you can get for free, means?

15 A The thrust of the headline is related to the  
16 copy, which seems to indicate that the program, the carriage  
17 of CBN cable will be less costly than the carriage of other  
18 signals.

19 Q By other signals, you mean distant signals?

20 A Yes.

21 Q Dr. Clark, has CBN, PTL or OTGH been explicitly  
22 authorized by any other copyright owners besides CBN, PTL  
23 and OTGH to represent them in this proceeding?

24 MS. FORD: Could you explain what you mean? I'm  
25 not quite sure I understand the question.

45

1 MR. SOLOMON: Let me repeat it. I'd like to  
2 know. Maybe it is properly addressed to counsel.

3 CHAIRMAN BRENNAN: I think it is.

4 MR. SOLOMON: Do the Devotional Claimants repre-  
5 sent any other -- have they been explicitly authorized to  
6 represent any other owners of devotional programs other  
7 than OTGH, PTL and CBN?

8 MS. FORD: I'm not quite sure I understand  
9 the question because we are representing all Devotional  
10 claimants.

11 MR. SOLOMON: Have any other besides those three  
12 explicitly authorized you to represent them?

13 MS. FORD: In Phase I?

14 MR. SOLOMON: In the proceeding. Start with  
15 Phase I if you like.

16 MS. FORD: Not to my knowledge.

17 MR. SOLOMON: In Phase II?

18 MS. FORD: Not to my knowledge.

19 MR. SOLOMON: I have no further questions. Thank  
20 you very much.

21 CHAIRMAN BRENNAN: Thank you, Mr. Solomon. Ms.  
22 Ford?

23 REDIRECT EXAMINATION

24 BY MS. FORD:

25 Q In cross-examination by Mr. Scheiner, you had

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1 mentioned that starting around 1981 and 1982, CBN, in  
2 particular, had begun to change its format, so to speak,  
3 of its 700 Club, and Mr. Scheiner had characterized it as  
4 secularizing, you characterized it -- I forget how you  
5 characterized it, but they brought in other kinds of pro-  
6 gramming other than just religious programming.

7           Would you consider this to be -- also, I believe  
8 I heard you say that it was intending to reach a broad  
9 base audience.

10           Do you believe that this would represent a changed  
11 circumstance or changed case for 1980 -- between 1980 and  
12 1982, for these religious broadcasters such as CBN?

13           A     Let me clarify your question. Are we talking  
14 about the devotional programs, namely, 700 Club?

15           Q     Specifically, right now, yes.

16           A     I think the change would be a broader appeal for  
17 the program.

18           Q     One thing I wasn't quite sure of and I'm not sure  
19 it came across, the 700 Club that's shown on the cable  
20 system, is that the same 700 Club that's syndicated to  
21 broadcast stations?

22           A     Yes. The only variation in that procedure is  
23 that in some broadcast stations, only 60 minutes of the  
24 program is shown; in others, the full 90-minute version is  
25 shown. Approximately 115 of those stations are live every

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47 1 day, so it would be identical with what was on cable.

2 Q You mentioned earlier that these I should say  
3 Devotional Claimants' Exhibit 2 and Devotional Claimants'  
4 Exhibit 3 were not specifically designed for this proceed-  
5 ing?

6 A That's correct.

7 Q Do you have any idea why there would be a motive  
8 to skew results in these proceedings?

9 A You mean related to this proceeding?

10 Q Related to this proceeding or any other one.

11 A No.

12 Q Let's look at Exhibit 2, Devotional Claimants'  
13 Exhibit 2. I believe that Mr. Scheiner had elicited a  
14 response from you that some of the questions were confusing  
15 or possibly biased.

16 A Let me just comment that every questionnaire  
17 has response bias built into it. It is impossible to write  
18 a questionnaire without -- that's totally free of response  
19 bias. By that I mean the more you disclose in a question-  
20 naire of what you are trying to find, the more you begin  
21 to lead the respondents. So the further you get into a  
22 questionnaire, the more of that you have...

23 Q What was particularly troubling to Mr. Scheiner  
24 in the cable television viewers survey was number 9, how  
25 familiar are you with CBN, Christian Broadcast Network, I

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48 1 believe, and you testified that some bias may come from  
2 question 9.

3 My question to you is --

4 A What I tried to say there is, in the general  
5 population, we only included in the additional questions,  
6 up through 16, those who said they were familiar. Those  
7 who were unfamiliar in the general population were not  
8 asked the remaining questions.

9 So to the extent that the people who were included  
10 in the following questions were familiar with CBN, you have  
11 the bias that they know who CBN is. But you couldn't ask  
12 the questions unless they did. The questions wouldn't  
13 make any sense.

14 Q According to this survey -- strike that.

15 In your testimony this morning, I believe that  
16 you -- and correct me if I'm wrong -- that two of the  
17 questions that you referred to as being salient to this  
18 particular proceeding were questions number 3 and 7. Do  
19 these questions appear before question number 9, the alleged  
20 bias producing question?

21 A Obviously they do, yes.

22 Q I believe also that you had testified that  
23 Devotional Claimants' Exhibit 3, you believe, demonstrated  
24 -- again, I don't want to put words in your mouth -- some  
25 benefit to cable, according to the managers themselves, some

1 benefit to these managers of religious programming, and  
2 you agreed it could be from cable satellite or from distant  
3 signal, it was not made clear. Is that fairly accurate?

4 A Yes, I think that's true, but I do think these  
5 managers would be much more likely to know the difference  
6 if that was called to their attention, unlike a viewer.

7 Q As far as PTL -- to your personal knowledge, if  
8 you had personal knowledge of PTL, PTL and 700 Club are  
9 those programs being on cable satellite or distant signal,  
10 the programs themselves? Are they different?

11 A No.

12 MS. FORD: I'd like to identify for the record  
13 Devotional Claimants' Exhibit 9, which is called Cablegram.  
14 It is a promotional piece from the Cablevision of Charlotte  
15 system.

16 (Whereupon, the document was  
17 marked Devotional Claimants'  
Exhibit No. 9 for identification.)

18 MR. SCHEINER: May I ask if this is -- what does  
19 this purport address that was raised in the cross-examination  
20 of Dr. Clark?

21 MS. FORD: It purports to address the allegations,  
22 the questioning of this particular study which dealt with  
23 benefit to cable operators. There were questions raised  
24 as to whether or not this indeed reflected benefit to  
25 cable operators.



50 1 MR. SCHEINER: Mr. Chairman, it may or may not  
2 be appropriate by way of rebuttal, but it is most certainly,  
3 in my view, not appropriate by way of redirect.

4 CHAIRMAN BRENNAN: I will poll the Commissioners.

5 (The Commissioners were polled.)

6 CHAIRMAN BRENNAN: The objection is overruled.

7 BY MS. FORD:

8 Q Could you review the exhibit which has been  
9 identified for the record as Devotional Exhibit 9.

10 A This is a Cablegram, as it is called, from the  
11 Cablevision of Charlotte, in which they are appealing to  
12 residents of Charlotte who do not have cable service, and  
13 they list eight advantages to having cable service in the  
14 home, beginning with classic films, comedy exclusives,  
15 shows on art, drama, music spectaculars, quality, out-  
16 standing educational documentaries, new, facts and figures,  
17 religious and inspirational programs.

18 These are the different appeals that they are  
19 making, program appeals for subscription in cable television,  
20 and I think this is a piece of evidence to substantiate  
21 again the fact that people in the cable industry, in promot-  
22 ing their service, see religious and inspirational programs,  
23 among others, as one of the advantages of their programming.

24 MS. FORD: I'd like to move Devotional Exhibit  
25 9 into evidence.

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CHAIRMAN BRENNAN: In accordance with the previous ruling, it will be received.

(Whereupon, Devotional Exhibit No. 9 was received in evidence.)

MS. FORD: I have no further questions.

CHAIRMAN BRENNAN: Mr. Solomon?

MR. SOLOMON: Mr. Chairman, I'd like to move NAB Exhibit Number 1 into evidence.

CHAIRMAN BRENNAN: It will be received.

(Whereupon, NAB Exhibit No. 1 was received in evidence.)

CHAIRMAN BRENNAN: Thank you, Dr. Clark, for your appearance and your testimony, which has proved to be a long day for everyone concerned.

(Whereupon, the witness was excused.)

I also wish to thank the Reporter for her customary endurance and fine work.

This concludes the Phase I direct case. We will have the SIN presentation tomorrow in the Commodity Futures Trading Commission room.

(Whereupon, at 6:20 p.m., the hearing in the matter of CRT Docket 83-1 was adjourned, to reconvene Wednesday, July 25, 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

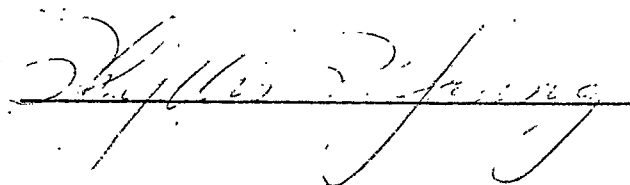
1982 - Phase I

Before: Thomas Brennan, Chairman, Copyright Royalty  
Tribunal

Date: July 24, 1984

Place: 2000 L Street  
Room 500  
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represents the full and complete proceedings of the  
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