

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COPYRIGHT ROYALTY TRIBUNAL

----- X

In the Matter of: :

CABLE ROYALTY DISTRIBUTION : CRT Docket 83-1

1982 - Phase II :

----- X

(This volume contains pages 559 through 695)

Room 450  
1111 20th Street, Northwest  
Washington, D. C.

Thursday, July 26, 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 Suite 300, The Thurman Arnold Building  
7 1200 New Hampshire Avenue, Northwest  
8 Washington, D. C. 20036

7 On behalf of MMPP:

8 ARNOLD P. LUTZKER, ESQ.  
9 Dow Lohnes & Albertson  
10 1225 Connecticut Avenue, Northwest  
11 Washington, D. C. 20036

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>TRIB.</u>
RICHARD C. THRALL	563	620	692	- -
By Comm. Ray	- -	- -	- -	614
By Comm. Hall	- -	- -	- -	614

EXHIBITS

IDENTIFIED

Multi-Media No. 1 - 8	Previously marked
Multi-Media No. 9	MPAA Study Om. 596
Multi-Media No. 10	MPAA Study Under- statement of Value 599
Multi-Media No. 11	Location of Station Broadcast MM Owned 692

P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN BRENNAN: The hearing will resume. The Tribunal continues today with the direct Phase II cases, we start with the direct case of Multi-Media.

Does counsel have an opening statement?

MR. LUTZKER: I have a brief opening statement.

Members of the Tribunal, my name is Arnold Lutzker, and I represent, along with Carolyn Wimbley, Multi-Media Entertainment, Inc.

As the Tribunal is aware, Multi-Media has actively participated in the Tribunal's Phase II proceedings since the commencement of the 1979 proceeding, and as a result of Tribunal deliberations in 1979, 1980 and 1981, Multi-Media has been awarded 1.6 percent of the program suppliers' share.

We come before you today in the 1982 proceeding, recognizing that the basic reasons why we arrived here initially still remain, Multi-Media has abiding problems in the MPAA-Nielsen Study which, as we will discuss in some detail this morning, remains critically deficient with respect to certain types of programming, of which Multi-Media has a significant portion. Further, the Tribunal has, in past decisions, acknowledged the failure of the MPAA study to address all of the Tribunal's criteria,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 and Multi-Media has chosen to present its case addressing  
2 all five criteria that the Tribunal has articulated on  
3 the basis of making awards.

4 As in the past, we will have as our witness  
5 Richard Thrall, who is an executive at Multi-Media, and  
6 we can begin our case.

7 CHAIRMAN BRENNAN: Yes, sir, would you stand and  
8 be sworn?

9 Whereupon,

10 RICHARD C. THRALL

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

13 (Whereupon, documents were marked for  
14 identification as Multi-Media Exhibits  
1 through 8.)

15 DIRECT EXAMINATION

16 BY MR. LUTZKER:

17 Q Would you state your name for the record?

18 A Richard C. Thrall.

19 Q And would you stated again for the record your  
20 position with Multi-Media?

21 A I am Senior Vice President, Program Production  
22 and General Manager of Multi-Media Entertainment of  
23 Nashville.

24 Q And have you appeared before the Tribunal in past  
25 proceedings?

1 A Yes.

2 Q As you know, we are now addressing the 1982 dis-  
3 tributing proceeding, and the Tribunal has a primary con-  
4 cern with respect to claimants, as to whether have been  
5 substantial changes between programming activities in 1981,  
6 versus 1982.

7 In your opinion, has Multi-Media's programming  
8 claim changed substantially between 1981 and 1982?

9 A Well, there have been some changes, an increase  
10 in some types of programming, and a decrease in others.  
11 But overall, it is a comparable situation.

12 Q Let me just kind of briefly summarize, particularly  
13 for new members of the Tribunal. In 1981, Multi-Media  
14 produced approximately 230 Donahue Programs, along with  
15 a total of 260 that were distributed throughout the year.  
16 Did that remain the same?

17 A That remained the same, yes.

18 Q And there were approximately 10 Young People's  
19 Specials?

20 A Right, 10 Young People's Specials, one a month  
21 September through June.

22 Q In addition, there were weekly country music  
23 programs?

24 A Yes.

25 Q And in addition, there were country specials?

1           A    Yes, there was an increase in the number of  
2 country specials, from five to 14.

3           Q    And these country specials are two-hours usually?

4           A    Usually, most of them are two hours, there were  
5 two that were 90-minutes, the others were two hours and  
6 they were all, primarily, prime time.

7           Q    In addition, it produces the Bob Rodd Program?

8           A    Correct.

9           Q    And is that a daily?

10          A    That is a daily program, it is 90-minutes in  
11 Cincinnati, and on a regional network of seven other  
12 stations that carry the first one hour of it; live 260  
13 days a year.

14          Q    And Multi-Media is also a broadcast licensee?

15          A    Yes, Multi-Media has television stations, well,  
16 currently we are in Cincinnati, St. Louis, Nashville,  
17 Knoxville, Macon. I think in 1982, we were still in  
18 Greenville and Winston-Salem, but we have exchanged the  
19 stations in Greenville and Winston-Salem for the station  
20 in St. Louis.

21          Q    And, as we will get into later, do the Multi-  
22 Media stations produce programs?

23          A    Yes, several of our stations did produce programs  
24 that were supplied to a limited number of outside stations.

25          Q    Let's turn first to Exhibit 1.

1           A    (Perusing documents)

2           Q    The record of the Tribunal -- the record before  
3 the Tribunal has been relatively strong with respect to  
4 the Multi-Media presentation on Young People's Specials.  
5 And prior awards have acknowledge, in particular, the  
6 quality of this program, which is oriented toward children.

7                   In that context, would you give a brief description  
8 of the contents of Exhibit 1, what we have here, perhaps  
9 what some of the shows were about, and also, drawing  
10 attention to the study guide which appears in the exhibit?

11          A    Well, what we have is a description and a study  
12 guide of the programs produced in 1982, the first one  
13 being The Skater, which was a story of a conflict of a  
14 girl who wanted to race in a roller skating event and the  
15 wishes of her parents, and how they worked that out.

16                   There is a study guide, each of the programs has  
17 a study guide and we have educators develop these study  
18 guides. We supply them to the station that carry the  
19 program, for distribution to their school systems, and  
20 basically, they tell them about the program, suggested  
21 questions which can be discussed in class ahead of viewing,  
22 and then questions which can be discussed after viewing,  
23 and bibliographies for students who would care to read  
24 more about any of the subject matter.

25                   Going Along is the second one, which was a program



1 how peer pressure affects high school children, as it  
2 relates to drugs, alcohol and getting involved in crime.  
3 It takes a child who has been a model and shows how the  
4 peer pressure brings him to the threshold of committing  
5 a crime, he doesn't do it at the last minute, but the  
6 pressure is to go along in each of these things.

7           The Championship is the story of four girls  
8 competing in soccer and how their involvement in the  
9 soccer program affects their inter-family relationships.

10           Winners, Winners was a program that dealt with  
11 the Special Olympics, it was narrated by Tom Seiver, and  
12 it won two national Emmy Awards, of which we are very  
13 proud; one for Tom Robertson, who produced it and one for  
14 Illie Agomian (phonetic) who was the cinematographer and  
15 editor of the program.

16           Atomic Legs was a comedy about a kid who wanted  
17 to race and had no confidence and his mother played a  
18 trick on him and made him think that this fluid he had  
19 was an atomic fluid, which would enable him to run faster.  
20 And he competed successfully, until he discovered that  
21 the fluid was nothing but colored water. And the whole  
22 idea is you success because of what you attempt to do,  
23 not because of something magical, and he finally learned  
24 that lesson.

25           All About Dogs, used Allison Smith who played

1 in Annie on Broadway, and it was a discussion of all of  
2 the things that we think a child would like to know about  
3 dogs, and how to take care of them and how to train them.

4 Grandma Didn't Wave Back, was the story based on  
5 a novel by Rose Blue of a grandmother who had had a stroke  
6 and was going through senility, and her relationship with  
7 her granddaughter. And because of her infirmity she en-  
8 dangered herself and the children -- the parents of the  
9 child, finally reached the decision that the grandmother  
10 had to be institutionalized and the daughter could not  
11 face this, because she felt they were putting grandmother  
12 away the same way they put her pet away.

13 As an aside, Molly McComb played the grandmother  
14 and had had a stroke three weeks before production and  
15 had another stroke the day before the last shooting. And  
16 the producer sent her to the hospital and rewrote the  
17 last day. She got an Emmy nomination for that performance  
18 in that show, and lost out to Cloris Leachman.

19 Joshua's Confusion is a story of an Amish boy  
20 who runs into conflict between the 20th Century world  
21 and the ways of his family, against his father's orders  
22 goes to a slumber party, watches television, gets into  
23 a pillow fight and ends up in a fight with his father,  
24 runs away. Finally, there is a very touching reunion.  
25 That was a Peabody Award winner.

1 Q I think you missed one.

2 A Did I miss one? PR, yes, I certainly did. PR  
3 was a story comparing the life in Puerto Rico with the  
4 life of Puerto Ricans in New York, showing in someways  
5 how Puerto Rico is an island paradise, but still the  
6 great unemployment and poverty, and problems were dealt  
7 with there, and the problems in New York of the Puerto  
8 Ricans there.

9 Prints of these programs are sold to school  
10 systems following their broadcast and are frequently used  
11 in educational programs by the schools.

12 Q In the past the Tribunal has given special  
13 recognition to the Young People's Specials as a quality  
14 program. Do you feel that that should be maintained in  
15 the consideration for the 1982 proceeding?

16 A Yes, we are very proud of the 1982 programs in  
17 that series.

18 Q Let's turn to Exhibit 2, the summary of the  
19 country music specials. And if you could describe this  
20 exhibit?

21 A First, is a list of the country specials for 1982,  
22 and then there are detail sheets on each of them following.  
23 Music City News, Top Country Hits of the Year was a two-  
24 hour program which awarded awards to the writers of the  
25 10 top country songs, as selected by the readers of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Music City News. This particular show was hosted by  
2 Kris Krisofferson and Tanya Tucker, and basically the  
3 format of that program is that the artists who have hit  
4 records sing the song and then calls the writer up and  
5 presents the writer with an award to show the appreciation  
6 of the artist for the writer.

7 Texas-Tennessee and Musical Affair was showing  
8 the link between Texas and Tennessee in country music --  
9 Willie Nelson went to Nashville, didn't quite make it;  
10 went to Texas formed the outlaw movement in country music  
11 and there has been a two-way street of performers between  
12 Texas and Tennessee. And probably the two most involved  
13 states in country music.

14 Around the World in '82, was a program we did  
15 for the World's Fair in Knoxville, Glen Campbell hosted  
16 and it lists the stars who appeared, and also, in addition,  
17 to being a performance of country music, also toured the  
18 World Fair and was used to inform viewers as to what  
19 they could expect when they go there.

20 16th Annual Music City News Country Awards is  
21 another awards program conducted through a fan poll of  
22 readers of the Music City News. It is our most popular  
23 single program that we do each year, there are awards  
24 given in 14 categories, top male vocalist, top female  
25 vocalist, top gospel group, top bluegrass group, top

1 record, top album, top TV show. Incidentally, Conway  
2 Twitty on the Mississippi, which is a little later on the  
3 list, was voted by the fans of 1982 as the top country  
4 special of the year, including all of the network specials  
5 and all other syndicated specials.

6 Jerry Reed and Special Friends, and Jerry Reed  
7 and Burt Reynolds got together on the bank of the late  
8 Percy Priest and did some crazy things.

9 The Great American Sing Along was a lighthearted  
10 attempt to bring Mitch Miller, with country music. Ernest  
11 Tubb, An American Original was a tribute to Ernest Tubb,  
12 Ernest is nearing the end of a long and distinguished  
13 career. This probably was one of Ernest's last public  
14 appearances, he no longer will appear in public because  
15 he thinks he no longer appears the way he thinks his fans  
16 should see him. But many stars came out and expressed  
17 their appreciation for the things Ernest had done.

18 Conway Twitty, Conway relived his live on the  
19 Mississippi Queen, coming up the Mississippi River from  
20 New Orleans to Baton Rouge, along with Loretta Lynn and  
21 Tammy Wynette, and a lot of other people who had played --  
22 Charlie Pride and Dick Clark, Jerry Lee Lewis, who had  
23 played an important role in his life. Conway started as  
24 a rock singer and then made the transition into country  
25 music, so it went through both of those.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           And the Chirstmas Legend of Nashville, was a  
2 Christmas special which was based on a song that suggested  
3 that all of the past stars of Nashville come back on  
4 Christmas Eve and give a concert, there were clips of  
5 Patsy Kline and Jim Reeves and some of the departed stars,  
6 and present stars doing music from those people, and just  
7 a lot of nice Christmas music.

8           And then following that are facts sheets that  
9 will provide some additional details as to who was on  
10 each of those shows, and what they were about.

11           COMMISSIONER RAY: Mr. Thrall, I saw you on this  
12 year's award show, you were excellent, and comparable to  
13 our friend on the other shows, from MPAA.

14           THE WITNESS: Thank you, thank you very much.

15           BY MR. LUTZKER:

16           Q   Recognizing why we are here with respect to the  
17 Tribunal's effort to determine awards for distant viewing  
18 of cable, would you comment or reflect upon the notion  
19 that country music has specialized audiences and whether  
20 the existence of specialized audiences may have -- the  
21 Multi-Media programming may serve a benefit to cable  
22 operators, so that -- bringing up words used before -- it  
23 may be a trigger for subscriptions?

24           A   With the acquisition of Show Biz, we became the  
25 largest producer of syndicated country music programming

1 in the United States, which I guess would include in the  
2 world. And country music definitely has a set of fans,  
3 there is not an abundance of country music programming  
4 available from a wide number of sources, not nearly as  
5 abundant as game shows and soap operas. And so the country  
6 programs on a cable line up would be attractive in helping  
7 to sell subscriptions to the cable service.

8 As a matter of fact, an entire cable has developed  
9 on country music, and so the value of having had country  
10 music prior to the development of the Nashville Network  
11 would have been even greater, but it simply shows that  
12 there is an audience for country, it is valuable in selling  
13 cable system. And so it can act as a trigger in influenc-  
14 ing a potential subscriber to take that cable service.

15 Q Somebody suggested because these shows -- as  
16 we will note in a few minutes -- are widely carried on  
17 television stations, that dilutes the impact of the  
18 programs for cable subscriptions. Does the method of  
19 station play have any bearing on that? In other words,  
20 are these shows broadcast on one set day by all of the  
21 stations?

22 A No, they are not. In syndication it would be  
23 nice if we could get all the stations who carry our  
24 programs to agree to run them at the same time. But some-  
25 body has a baseball game and somebody else has a junior

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 league ball, and somebody else is doing a political broad-  
2 cast, so our programs tend to play over a period of time,  
3 ranging anywhere from a few weeks to several months. So,  
4 having a distant import for the country program would pro-  
5 vide that service, in all likelihood, at a time other  
6 than where it would have been broadcast locally.

7 At least there would be a greater variety of  
8 broadcast available in the market, than through distant  
9 imports.

10 Q And were these specials carried regularly on  
11 super stations, such as WOR and WGN?

12 A Yes, several of them, quite a few of the specials  
13 were carried on WOR and a few of them on WGN; a lot of  
14 them were on WTTV, which I normally don't characterize  
15 as a super station, but it is an independent carried on  
16 a lot of cable systems.

17 Q We will come back to that again. Let's turn to  
18 Exhibit 3.

19 A (Perusing document)

20 Q Oh, one more question I wanted on the record at  
21 this point, in the air date of the country specials, do  
22 these usually air during Nielsen sweep weeks?

23 A Oh, very rarely. Stations sell their advertising  
24 based on the sweep weeks. A special is gone and so a  
25 station is very reluctant to pre-empt a regularly scheduled

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 series during a sweep week, because the regularly scheduled  
2 program is the advertising that they are going to be sell-  
3 ing for the months, until the next sweep week comes in.

4 And depending on which sweep you are talking about,  
5 it affects a greater time. May may be sold clear into  
6 December, you know, and even a year ago, sweep weeks have  
7 a bearing on advertising sold. So, to put a special in to  
8 pre-empt a regularly scheduled program that is in there  
9 every week, or everyday, you know, is very difficult to do.  
10 Normally, the only time that happens is when someone has  
11 a real dog and they want to put a special in to try to  
12 beef their rating up, and hide the fact, or hopefully, cut  
13 down the competition. But a relatively small percentage  
14 of specials ever get broadcast during sweep weeks, and  
15 that is not just true of our specials, that would be true  
16 of specials, in general.

17 Q As a result, if you have a Nielsen sweep week  
18 analysis would the country music specials be adequately  
19 represented, in your opinion, in that sweep week analysis?

20 A No. As a matter of fact, in the MPAA material,  
21 about 16 percent of the broadcasts of the specials aren't  
22 even included. And if you were to include the specials  
23 in there, it would dramatically change the figures that  
24 the MPAA study present.

25 Q We will get to that in more detail. Your comment

1 about popular programming being outside sweeps, did a  
2 program like Roots, how was that --

3 A Roots was run in January, this was Fred Silverman's  
4 great move at a time -- at the time Roots was the greatest  
5 mini-series in the history of broadcasting, it was run in  
6 January, just ahead of the February rating sweep. So, the  
7 philosophy that specials don't go in rating sweeps, I am  
8 sure there were a lot of stations after it happened that  
9 wished that Mr. Silverman had put Roots on in February,  
10 so that it would have inflated their ratings, and cut  
11 down the competition, but it didn't, it was programmed  
12 in January.

13 Q Let's turn to Exhibit 3, and if you could briefly  
14 describe what this exhibit is.

15 A This is a list of programs that are provided to  
16 additional stations by Multi-Media stations. The first  
17 station indicated is WMAZ-TV in Macon, Georgia, which  
18 broadcasts the Georgia Farm Monitor, a 30-minute agriculture  
19 report which is carried on six stations, in addition to  
20 WMAZ, a total of seven stations. It is a weekly program.

21 Next is WLWT in Cincinnati, which produces a  
22 program called Red Scene, there were seven programs done  
23 in 1982, 30-minutes each. These are backgrounds of the  
24 Cincinnati Reds, and provided again to six stations, in  
25 addition to WLWT.

1 Clubhouse, a pre-game program, these were five to  
2 10-minute programs, pre-game on a 10 station network.  
3 Scoreboard, which were post-game programs, five to 15-  
4 minutes and they went to 10 stations, in addition to WLWT.

5 The Bangle Station which ran on two additional  
6 stations, was a 10-minute special on the Bangles, Cin-  
7 cinnati's professional team.

8 On the next page, WFBC, Greenville, produces the  
9 Danny Ford Show, who was Clemson's football coach, which  
10 was a 30-minute weekly program that runs from September  
11 to November, there were 14 programs and that went to four  
12 stations, in addition to WFBC.

13 The Bill Foster Show which is Clemson's basketball  
14 coach, another 30-minute show, there were 12 Sunday  
15 programs, carried on four stations, in addition to WFBC.

16 The Miss South Carolina Pageant, a two-hour  
17 special, again show to four additional stations. Great  
18 Moments in Clemson Sports, which was a 30-second spot  
19 and there were 36 of them, carried on WCIV, in addition  
20 to WFBC.

21 WBIR, Knoxville, Tennessee did Welcome World  
22 which is a 30-minute magazine show about the World Fair  
23 which was done for 20 weeks during the Fair, and carried  
24 on nine stations, in addition to WFBC.

25 Q To your knowledge, have any of these programs

1 been accounted for in the MPAA-Nielsen Study?

2 A No, I don't believe any of them showed up; no,  
3 none of them.

4 COMMISSIONER RAY: I have a question, please.  
5 To your knowledge, were these additional TV stations, for  
6 instance on the Danny Ford Show, were any of these additional  
7 stations carried via cable system?

8 THE WITNESS: I would have to look at that, I am  
9 not sure. It is likely that that would happen. Most  
10 television stations are carried on some cable systems, it  
11 would be the exception that -- I think almost every station  
12 in the country probably has a distant import of some type.  
13 I have not specifically checked the cable.

14 MR. LUTZKER: For the record, I am familiar with  
15 a number of these stations, they are other clients of ours,  
16 and they have filed claims for 1982, and to the extent the  
17 television licensee has claims filed in 1982, in the  
18 Tribunal's records, that would reflect the existence of  
19 distant signal carriage.

20 COMMISSIONER HALL: Most of these shows look like  
21 they were pretty local interest. Can you give an indication  
22 of these additional stations that are carrying them? How  
23 far are they being carried, even on the first step? These  
24 are all -- for instance, the Georgia Show, was this all  
25 within the state of Georgia? I am not familiar with these

1 call letters. I can't begin to tell how far these things  
2 are being carried.

3 THE WITNESS: They go beyond states, they would  
4 be in a region, the Bob Robb Show goes into Ohio, Indiana,  
5 Kentucky, Tennessee, West Virginia, which is a little  
6 larger than a state. But certainly the people who are  
7 interested in Clemson sporting activities would be in a  
8 region of 150 mile radius, I would guess. They are not  
9 nationally syndicated, but they are regionally syndicated.

10 BY MR. LUTZKER:

11 Q If I could follow up on something. Take a look  
12 at the WLWT Red Scene, for example, are any of those call  
13 letters familiar to you?

14 A WDTM is in Dayton; WCMH is in Columbus; WTTV is  
15 in Indianapolis; WSAZ is in Huntington, West Virginia;  
16 WLTX is in Lexington; WDRV is in Louisville; WZTV is in  
17 Nashville; WXII is in Winston-Salem; WLIO, I believe is  
18 in Lima, Ohio, and WBIR is Knoxville, Tennessee.

19 So, that range would run from, say, Tennessee  
20 to Ohio, and from West Virginia, I guess Tennessee is  
21 going to be the western and southern corner of that  
22 region.

23 Q NAB has settled with MPAA with respect to station-  
24 produced programming that would be syndicated by other  
25 stations, which this would fit into. Is this programming

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 encompassed in the MPAA-NAB settlement, or is this a  
2 separate claim of Multi-Media?

3 A No, there is a footnote on page 3 of our pre-  
4 trial statement that indicates that this syndicated pro-  
5 gramming should be credited directly to Multi-Media, not  
6 treated as part of the NAB Phase II claim for broadcast  
7 syndicated programming.

8 Q If you would, would you turn to Exhibit 4?

9 A (Perusing documents) These are NTI ratings of  
10 specials produced by Multi-Media in 1982, and these are  
11 NTI ratings as opposed to NSI ratings. There are three  
12 types of rating services that Nielsen provides, one is  
13 a Nielsen Station Index, in which diaries are sent to  
14 a number of respondents in each television market at  
15 certain periods of the year; people keep the diaries for  
16 a week and send them back in. And then those are projected  
17 into ratings for individual markets.

18 They also have overnight ratings, which are  
19 meters in I think 1982, in three or four markets, now I  
20 think they are up to eight markets, where they meter  
21 sets and the meters tell you what sets were on, what they  
22 were watching the next day. That's why they call them  
23 overnight ratings.

24 They also do an NTI study, which is the National  
25 Television Index, which is based on approximately 1400

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 metered sets scattered throughout the United States, which  
2 are selected to be a mirror of the universe, so that these  
3 figures can be projected to the national figures. These  
4 are the figures that all advertisers rely on for their  
5 payments on all syndicated programs, and network programs.

6           So when a network program is cancelled because  
7 of low ratings, it is the NTI rating that is the key rating  
8 that influences that. And these are the NTI ratings for  
9 our programs, or a selection of our programs, showing the  
10 total audience that has watched even a part of these shows  
11 from 11 up to 14 million; 6 and 8 million. The World Fair  
12 programs, first run, 10.6 million; the second run 4.9  
13 million.

14           And one of the Young People's Specials is shown,  
15 the 15th program here, there were 10 of those, and one is  
16 shown, which on 128 stations had a total audience of 7.8  
17 or 6.3 million households nationally.

18           Q   And the next page after that?

19           A   These are NSI ratings, this is NSI rating informa-  
20 tion based on the individual market surveys which were  
21 then compiled four times a year into a survey of syndicated  
22 programming to give you totals. But this is adding up  
23 all of those individual markets where diaries were kept.

24           And the first thing on here is Donohue, showing  
25 that in 1982, in the three major sweep periods, February,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 May and November, Donohue had daytime ratings of 7, 6 and  
2 6 and daytime share of 31 in each case. And total persons  
3 reached ranging from 7.4 million to 6.8 million.

4 Then below is a listing of Show Biz programming,  
5 Show Biz being the company that was purchased by Multi-  
6 Media. It is now known as Multi-Media Entertainment -  
7 Nashville. And showing that Porter Wagoner had a 3 rating,  
8 10 share, with 456,000 households; Gospel Jubilee with  
9 a four rating, 32 share, 374,000 households; Backstage  
10 at the Grand Ole Opry, 3 rating, 11 share, 1,200,000  
11 households. Nashville on the Road, a four rating; 10  
12 share, 1,577,000 homes; Pop Goes The Country, a four  
13 rating, 12 share, 2,057,000 households.

14 And then finally the notation that the Bob Robb  
15 Shows average rating and share was 4.8 and 15.3 and his  
16 average household of 27, so if you multiply the 27 times  
17 eight you would get the average quarter-hour audience of  
18 the Bob Robb Show which would be somewhere above 200,000  
19 homes.

20 Q And this data produced now, is it similar to data  
21 produced in prior years; in comparing the ratings data  
22 for these Multi-Media programs, would you say that it  
23 tends to confirm that there was no substantial change in  
24 general popularity in --

25 A No, there is no great change at all. The Donahue



1 ratings are down slightly in February and May, and up  
2 slightly in November; overall it is around a 5 percent  
3 difference from a year ago. But when you are dealing with  
4 figures around 7 million five percent swing is not a major  
5 swing.

6 And there is some fluctuation in the number of  
7 Show Biz programs in the year and ratings, but again a  
8 great increase in the number of specials. So, taking  
9 the aggregate, there is no significant change.

10 Q Again, specifically addressing the country music  
11 specials and the Donahue programming, do these ratings  
12 information show widespread interest in those programs?

13 A I think so.

14 Q Do you have, incidentally, any information on  
15 the total households as opposed to total persons reached  
16 for those markets?

17 A Well, total households is probably the most  
18 accurate figure that the rating services provide because  
19 it is the biggest thing. A household is not as subject  
20 to error as if you get down to who was actually in the  
21 household, how many of them were children, how many of  
22 them were 18 to 34, and defining demographics.

23 So, basically, the household is somebody in that  
24 house on some TV set was watching that program; total  
25 persons reached attempts to project who was in that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 household at every television set. A very difficult figure  
2 to do, it is difficult to fill out a rating diary. One  
3 of our problems with the total reliance on the diary-based  
4 system of reports, such as the MPAA study, is that it is  
5 virtually impossible for even an intelligent person who  
6 is dedicated to accurately fill out a rating diary.

7 Rating diaries given to a family to keep for a  
8 week -- if they have more than one TV set, they have more  
9 than one diary, one for each TV set they have. And some-  
10 body is to write down every hour of the day -- afternoon,  
11 morning, night, who was watching each TV set; when some-  
12 body left the room; when the TV set got turned off; when  
13 the channel got changed.

14 I suggest that we all try to do it, to demonstrate  
15 the difficulty of it. But if you just stop and take in  
16 your own situation, how you would have reported what was  
17 watched on your home's TV set yesterday, and who would  
18 have filled out that diary. And the chances are if we  
19 all in this room did it, how accurate those diaries would  
20 be.

21 And then those are projected to a national sample.  
22 And that information produces the persons watching tele-  
23 vision. And that then is projected to the universe.  
24 Since more people over 50 return their diaries than people  
25 under 50, the people who do return their diaries under 50

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 count more than the people over 50.

2 So, if you surveyed all people over 50, you would  
3 assume that nobody watched MTV; if you surveyed everybody  
4 under 50 you might decide that nobody watched Lawrence  
5 Welk. And both assumptions would be incorrect.

6 You add all those erroneous figures up, and that  
7 produces the total figure watching television.

8 Q You indicated that on the change from 1981 to  
9 1982, the persons reached was about 5 percent, of the '82  
10 figures were approximately 94-95 percent of '81. Is that  
11 also consistent with respect to the total households?

12 A Yes, that would be consistent, about a 5 percent  
13 difference between '81 and '82 on Donahue.

14 Q Probably the most burning issue in this proceed-  
15 ing, to the extent there are burning issues, and maybe  
16 the question is is there life after WGN for Donahue. For  
17 the share we have tried to articulate a rationale for  
18 making an allocation with respect to the Donahue program-  
19 ming, based upon carriage of WGN, and in 1982, as we  
20 were warning in prior years, that relationship would  
21 terminate.

22 I would like you to address whether or not, in  
23 your opinion, the shift off of WGN for Donahue should  
24 have the devastating impact that MPAA has suggested, or  
25 will suggest that it should have, in terms of the

1 allocation share?

2 A Well, if we went with the drastic figures shown  
3 by MPAA we would expect to see a huge rating loss on the  
4 Donahue Show as a result of all of these marvelous viewers  
5 on WGN to a distant import. As we just pointed out, there  
6 was a change of about 5 percent swing, which considering  
7 the normal swing, up and down of ratings, year-to-year,  
8 is not a significant -- or certainly not as devastating  
9 as a .15 percent loss.

10 In addition, since the MPAA study only deals  
11 with 84 stations, we have no idea of knowing how many  
12 small stations who are not on the number of cables to  
13 even be measured by the MPAA study picked up Donahue  
14 viewers on distant imports. WGN had a particular benefit  
15 of carrying programs live, and so they could have them  
16 ahead of everybody.

17 Without WGN there that advantage is gone from  
18 WGN, but there are still other stations, WTTV in  
19 Indianapolis is imported into Columbus. And so, undoubtedly,  
20 some viewers who might have been watching on WGN in  
21 Columbus are now watching on WTTV and they are both  
22 distant imports.

23 So, we think that many of the people who were  
24 watching distant imports over WGN are now watching distant  
25 imports over other stations which are not measured by the

1 MPAA study. I am not suggesting that WTTV is not measured  
2 by the study, I am sure it is, but there are many other  
3 stations that are not because they were only measuring  
4 84 or 89 stations, I forget the exact number -- 89.

5 Q How many stations carried Donahue?

6 A I think in 1982 we were showing somewhere in  
7 the neighborhood of 183, 184, somewhere in that area.  
8 Of the rating reports, our records would show somewhere  
9 around 200. Sometimes the rating reports omit markets  
10 and sometimes we have different ways of classifying  
11 markets. But that would be the areas -- more stations  
12 than are measured by -- at least double the number of  
13 stations, or more than double the number of stations that  
14 are measured by the MPAA study.

15 Q Does the nature of the syndication of Donahue  
16 have any further impact, in terms of the way the program  
17 is bicycled?

18 A Programs in 1982 were bicycled over a five-week  
19 period, they were live in Chicago in 1982 on WBBM, a  
20 CBS affiliate, rather than WGN. And then the next day  
21 they were played in Cincinnati and Indianapolis and Columbus  
22 and Lexington; and two days later they were played in  
23 New York and Los Angeles; and then a week from their  
24 original date, they would have played in 40-some markets  
25 I think. And that would have gone on, not in an exact grid,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 because some bicycles were five weeks and some were four  
2 weeks. But over a five-week period these programs would  
3 play to the total number of stations.

4 So, you would have different Donahue programs  
5 playing on different stations at different times.

6 Q And as a result cable subscribers could view  
7 different programming even irrespective of WGN?

8 A If you were in a market that had a distant  
9 import that was carrying a program a week earlier, you  
10 would have a chance to see it a week earlier on the  
11 cable station.

12 Q Would you say that any benefit to cable operators  
13 endures?

14 A Oh, there is no question about it, Donahue was  
15 a very important program to the cable industry at the  
16 time that they were trying to sign up subscribers, get  
17 themselves established. It was a time when there was no  
18 Disney Channel, there was no MTV, there was no National  
19 Network; there was Wall Street Week -- there were just  
20 all sorts of things that weren't there. Ted Turner and  
21 Multi-Media were probably the two most important forces  
22 providing cables with material in that period through  
23 the '70s and the development of cable.

24 And whatever benefit that program had to establish-  
25 ing those cable systems is going to endure as long as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 those cable systems stay in business.

2 If somebody loaned me \$100,000 to start a business  
3 and I then had a successful business for 100 years, and  
4 made millions and millions of dollars, certainly that \$100,000  
5 that started me off would always have a great benefit. I  
6 am not saying that we started the cable industry, but we  
7 certainly were of benefit to the cable industry, and that  
8 benefit endures into the future of the cable industry.

9 Q In prior years we discussed the particular harm  
10 that Multi-Media and the Donahue Program experienced as  
11 a result of the 1978 FCC ruling determining that the live  
12 broadcast of WGN's Donahue Program was not entitled to  
13 syndicated exclusivity protection. That impact continued  
14 into 1981, but did it continue throughout the entire year?

15 A No. As a matter of fact, that ended in June of  
16 1981. So, the particular harm that Multi-Media suffered  
17 disappeared for the last six months of 1981.

18 Q What happened in June of 1981?

19 A The FCC did away with all non-duplication pro-  
20 tection, other than for networks. And so we were then  
21 in the same boat, we all had the same kind of harm,  
22 particular harm. So, whatever impact the particular harm  
23 had in 1981, it only had it for the first six months. So  
24 it can only have half as less as it had last year.

25 Q I would like to skip over two exhibits and turn

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 to Exhibit 7 for a minute.

2 A (Perusing documents)

3 Q It is unquestioned that WGN experienced meteoric  
4 rise in cable subscriptions during the period 1979 to 1981,  
5 when Multi-Media was making presentations to this Tribunal.  
6 Could you describe this exhibit for the Tribunal and I  
7 will have some questions with respect to that?

8 A Well, the first page shows the summary of cable  
9 systems carrying WGN in 1981, and you will notice down  
10 at the bottom it shows 4,664,853 subscribers.

11 The next page is 1979, and now we are showing  
12 1,259,963.

13 Q Roughly a four-fold --

14 A A four-fold increase from '79 to '81. And of  
15 course during that period the Copyright Tribunal did not  
16 see fit to increase our share, and so we don't feel --  
17 since the increase in cable carriage of WGN did not  
18 influence the Multi-Media award, the decrease should not  
19 either.

20 Q Do you have a copy of the MPAA material that  
21 was distributed --

22 A Yes.

23 MR. LANE: Mr. Chairman, I am going to object  
24 if we are going to have rebuttal evidence at this time.  
25 This is supposed to be the direct case.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIRMAN BRENNAN: Off the record.

(Discussion off the record.)

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

3 BY MR. LUTZKER:

4 Q Returning to the first page of the MPAA attach-  
5 ment dated July 17, '84 to the Tribunal, and it is entitled  
6 Effect of Switch from WGN to WBBM on Distant Signal Viewing  
7 of Donahue, how do you interpret what MPAA is trying to  
8 present here, and how can you, in your own way, measure  
9 the impact of what they are suggesting with this data?

10 A Well, it appears to me that they are trying to  
11 say that with the loss of WGN, 98 percent of the people  
12 who watched Donahue on distant import disappeared, which  
13 makes the distant import business pretty well limited to  
14 a couple of stations, and we might just disregard the  
15 rest of the country and just go to those two stations.

16 If the loss of WGN can have this much of an im-  
17 pact on the MPAA study, it demonstrates the inadequacy  
18 of the MPAA study. We believe that if all of the stations  
19 were measured, which is the way this should be done if we  
20 are going to rely on an inaccurate rating service to begin  
21 with, we at least ought to rely on the entire inaccurate  
22 rating service and not a selection which might be chosen  
23 to be preferable to producers of weekly off-net syndicated  
24 programs and motion pictures.

25 Q If you could translate into cable homes this

2  
1 figure, particularly this 6.5 million household viewing,  
2 how would you estimate the impact?

3 A Well, what is an hour of household viewing? If  
4 you consider that there are 260 Donahue broadcasts in an  
5 hour, and that one hour of viewing would be the average  
6 quarterhour viewing times the number of quarterhours  
7 turned into hours that there are in a year, you would say  
8 that that figure divided by 260 would produce the number  
9 of homes that we might be dealing with, and I think I  
10 noodled some math out on there somewhere, which I have now  
11 misplaced, but it is something like 34,000 -- 24,000 --  
12 34,000 homes.

13 Q So that in terms of -- if this were translatable  
14 into ratings type information, you would be talking about  
15 a possible decrease of approximately 24,000-34,000 homes?

16 A Yes, and we are dealing with a rating which is  
17 up in an area of 6 to 7 million. And so what this repre-  
18 sents, this may be 25,000 homes.

19 Q And if the cable penetration in 1982 was between  
20 -- was, say, approximately 30 percent, about how many cable  
21 households would you be talking about nationwide in 1982,  
22 approximately?

23 Approximately how many total households would  
24 there have been?

25 A In 1982? I'm not sure that I know that. I'd

1 have to double-check. That's one thing I did not check,  
2 but it was about 30 percent of the total universe.

3 Q If the loss of WGN programming was crucial in  
4 terms of viewing, would it have shown up in the NSI  
5 statistics that were discussed previously?

6 A Well, anything as dramatic as is shown here, had  
7 that occurred,, it would have shown, and nothing did show,  
8 but this is isolating WGN versus WBBM, and one is a network  
9 affiliate which is not supposed to be distant imported  
10 anywhere, but obviously is since it showed up in their  
11 study. As I said earlier, almost every station is. It  
12 was grandfathered into some cable system outside the 35-mile  
13 limit. So, it was moved off of a station. It was on  
14 satellite distributed to cable systems and onto one that  
15 is not on satellite and is not supposed to be distributed,  
16 and that result -- but that's what it shows is the differ-  
17 ence between WGN and WBBM, and it has a very limited impact  
18 on the total viewership of the Donahue Show, and we believe  
19 on the distant import picture.

20 Q As you said before, could it not be said that  
21 other cable carriage -- this is for Tribunal purposes --  
22 that other cable carriage by stations unrepresented in  
23 the MPAA study could have taken up the slack to kind of  
24 maintain a consistency in total viewing for Donahue?

25 A We believe so, yes.

4 1 Q May it not also be said that Multimedia ultimately realized harm in 1982 because it -- because 1982  
2 2 mately realized harm in 1982 because it -- because 1982  
3 3 was the year that it was forced to switch off of WGN,  
4 4 ending a decade or more of work with a television station?

5 5 A Yes. If it hadn't been for this issue, we would  
6 6 have stayed on WGN.

7 7 Q Do the ratings data that you've discussed previously suggest that the harm that Multimedia experienced  
8 8 might have been more psychological in terms of station  
9 9 affiliate managers' concern rather than lost audience?  
10 10

11 11 A I think everyone who has dealt with this issue  
12 12 from the time it first came up has recognized it has been  
13 13 a very difficult issue to prove harm. We anticipate harm.  
14 14 It's logical to assume that if this situation continued,  
15 15 there would have been harm, and general managers react  
16 16 to that anticipated harm. No one has been able yet to show  
17 17 that distant imports have reduced income to a television  
18 18 station, or to a syndicator, but you can certainly assume  
19 19 that that would happen if enough distant imports diluted  
20 20 the audience of the stations that you were selling the  
21 21 program to from cable systems that weren't paying for the  
22 22 privilege, so, yes, harm was an anticipated harm and a  
23 23 psychological harm in the minds of general managers, and  
24 24 I don't think any of us were ever successful in convincing  
25 25 anyone that we could show that we had lost money or viewers

5 1 because of distant imports.

2 Q If the Tribunal does ultimate conclude that there  
3 should be some reevaluation of Multimedia's share for the  
4 elimination of Donahue on WGN, do you feel that as far as  
5 Multimedia's share that the Tribunal will allocate should  
6 be decreased in light of the changes in the country specials?

7 A No, I don't think it should be decreased. I  
8 think the country specials demonstrate a significant amount  
9 of programming, primarily in prime time, with a large  
10 number of viewers that is not represented in the MPAA  
11 study. And adding that into what is represented in the  
12 study would present a figure which would not indicate any  
13 reduction in Multimedia's share.

14 Q Would you suggest then that the tripling of the  
15 Multimedia country specials would more than compensate  
16 for the loss of WGN?

17 A Yes. We went from five in 1980, to '81, to 14  
18 in 1982.

19 Q I'd like to pick up on that point with two addi-  
20 tional documents. I will mark this Multimedia Exhibit 9.

21 (Whereupon, the document was  
22 marked Multimedia Exhibit No.  
9 for identification.)

23 In referencing this Exhibit 9, if you will turn  
24 to MPAA, what I will assume will be their Exhibit 3, but  
25 it is after the list of material.

1 Is it Multimedia's position that the MPAA study  
2 omits a significant portion of the country specials produced  
3 by --

4 COMMISSIONER RAY: What's the title of the MPAA --

5 MR. LUTZKER: The title is the Viewship of Multi-  
6 media Programs --

7 COMMISSIONER HALL: Series Specials?

8 MR. LUTZKER: Yes.

9 COMMISSIONER HALL: Viewership of Multimedia  
10 Series Specials Via Distant Signals in Cable Households?

11 MR. LUTZKER: Right.

12 COMMISSIONER HALL: You're calling this Exhibit --

13 MR. LUTZKER: I don't know. I assume it's going  
14 to be 3 because it's the third document.

15 BY MR. LUTZKER:

16 Q This document of MPAA purports to identify all  
17 the programs that appeared in 1981 and 1982 MPAA studies --

18 MR. LANE: Mr. Chairman, that's an incorrect  
19 characterization of what that exhibit purports to show.

20 MR. LUTZKER: Well, I will say it purports to  
21 show some of the programs of Multimedia that appear in the  
22 MPAA studies, and taking the document at face value, I  
23 would like you to comment upon the Exhibit 9 which we have  
24 just distributed, reflecting the MPAA omissions of Multi-  
25 media specials.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

7 1 THE WITNESS: All right. Well, on our Exhibit 9,  
2 we show that Conway Twitty has a 176.1, and if you look at  
3 their exhibit which we are now looking at, that that number  
4 is taken from household viewing hours indicated for the  
5 Conway Twitty program. Opposite that on our Exhibit 9,  
6 we've shown that the NTI audience for the Conway Twitty  
7 special was 11,910,000.

8 The figure in their household viewing hours is  
9 in thousands, so that would -- I guess that would be  
10 176,100 for the Conway Twitty versus an audience of  
11 11.9 million.

12 The Top Country Hits under -- on our Exhibit 9  
13 shows 528.5, which again is taken from their exhibit, Top  
14 Country Hits for 1982, 528.5, or 528,500, and the NTI  
15 rating on that shows 11,250,000.

16 Now their exhibit also lists Country Comes Alive  
17 for 453,600, without identifying the programs that are  
18 represented. Country Comes Alive was an umbrella title  
19 which included all of the programs, and so we are not quite  
20 sure what programs may or may not be included in Country  
21 Comes Alive, but if we accept --

22 BY MR. LUTZKER:

23 Q Okay. Now would you describe what the numeral  
24 number 2.

25 A Numeral number 2 are the programs that do not



8  
1 appear in this MPAA exhibit. Jerry Reed with 12.4 million;  
2 Ernest Tubb with 8.4 million; Texas and Tennessee, 8.9  
3 million; the repeat of that program at 5.6 million; Music  
4 City News Awards at 14.4 million; Christmas Legend of  
5 Nashville 6.5; the Great American Sing-a-Long at 8.4;  
6 Top Country Hits 6.2; Mel Tillis repeat, which is a program  
7 actually titled Galaxy of Stars, Mel Tillis was the host  
8 of that, and in the listings it frequently appeared as Mel  
9 Tillis rather than Galaxy of Stars, 6.8 million; An Evening  
10 with the Statler Brothers repeat of 8.5 million; and  
11 Around the World in '82, first broadcast 10.6 and second  
12 at 4.9.

13 And there are asterisks with footnotes to indi-  
14 cate those programs which played on WOR and those programs  
15 which played on both WGN and WOR.

16 COMMISSIONER HALL: I'm having trouble following  
17 this in that this has not been introduced, but are you  
18 --- what are you trying to say? Are you saying that using  
19 these numbers --

20 MR. LUTZKER: The next exhibit, I think, will  
21 answer the question.

22 At this point I'd like to introduce Exhibit Num-  
23 ber 10.

24 (Whereupon, the document was  
25 marked Multimedia Exhibit No.  
10 for identification.)

9 1 BY MR. LUTZKER:

2 Q Now, picking up on Commissioner Hall's concern  
3 in terms of what we are trying to show here, you have  
4 previously indicated that Multimedia's specials run through-  
5 out the year, and they generally do not run during sweep  
6 periods.

7 During 1982, however, some programs did, in  
8 fact, air during the sweep periods, isn't that true?

9 A That's true, and as this Exhibit 10 shows, there  
10 were 275 out of 1,711 broadcasts that did take place during  
11 rating sweeps and are reflected within the MPAA study. I  
12 believe that is a figure of about 16 percent. The rest of  
13 the specials were broadcast outside of the rating periods,  
14 and are not reflected in the MPAA study.

15 Q Okay. Now, if one could project the missing  
16 specials into the MPAA formula, approximately how many  
17 viewing hours should Multimedia be accorded under the MPAA  
18 study?

19 A If all 1711 were broadcast, based on what was  
20 achieved with the 275 that were, it would have generated  
21 7,206,000 hours of household viewing.

22 Q And how would that compare with the -- according  
23 to the MPAA study, the household viewing hours that Multi-  
24 media achieved in 1981?

25 A Well, if you added those to the hours that they

10 1 represent, they would not have included 6,047,800 viewing  
2 hours applying that formula. If you added that to their  
3 figure, you would come up with a total of 13,544,600. In  
4 short, if the study didn't understate the country specials,  
5 it would show an increase in household viewing hours in  
6 1982.

7 Q In other words, what these exhibits establish  
8 is that MPAA's study substantially understates Multimedia's  
9 country specials, and if it were estimated -- and this is  
10 just an estimate -- if it were estimated to be reflected,  
11 it would substantially compensate for what they suggest  
12 to be a change between 1981 and 1982, is that not correct?

13 A Yes.

14 Q Do you feel that taking the MPAA figures as we  
15 have, and estimating that there is a -- Multimedia program-  
16 ming is even less adequately represented because of the  
17 number of programs that ran during the month of July?

18 A Yes. Of the 275 programs that were -- or broad-  
19 casts that were reflected in the MPAA study, the largest  
20 number of them occurred in July. The rebroadcast of the  
21 Top Country Hits was probably the largest single program.

22 Sets in use in July are much lower than sets in  
23 use in the period from September through May. And so since  
24 the largest number of programs that were carried in the  
25 MPAA study occurred in July, it is logical to assume that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

11 1 the audiences for those that occurred in January and March  
2 and April and September and October and December would have  
3 been larger because that is true of television in general  
4 and it is our specials that run in those other months, when  
5 you look at the ratings.

6 So the projection that we have made is just a  
7 straight projection based on the figures that they got, but  
8 those are primarily July, so they are conservative. The  
9 actual figure would probably be much larger.

10 MR. LUTZKER: Commissioner Hall, I don't know  
11 if that --

12 COMMISSIONER HALL: Yes.

13 BY MR. LUTZKER:

14 Q I would like to return now to the original docu-  
15 ment and Exhibit 5, which is an advertising study. In past  
16 years, Multimedia has presented an advertising study as  
17 one element of its case reflecting the marketplace value  
18 of the Donahue program. Is Exhibit 5 an update of the  
19 study previously submitted to reflect information for 1982?

20 A Yes.

21 Q Does the bottom line analysis suggest no substan-  
22 tial change from prior years?

23 A That's right. It's a little bit higher. There  
24 was a minute of additional advertising introduced into the  
25 program in 1982, and I think our figures before have been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 in the 1.3, 1.4, or 1.5 area and this comes out at 1.76,  
2 so it is a little larger.

3 Q In past years, this has been an element of Multi-  
4 media's case to establish the marketplace value of this  
5 particular program. Do you feel for 1982 it is equally  
6 useful to the Tribunal?

7 A Yes. I think it responds as best we can to trying  
8 to establish a value to the marketplace.

9 Q If we could turn to Exhibit 6, this similarly  
10 is -- well, I'll let you describe what Exhibit 6 is.

11 A This is a time study which lists the Multimedia  
12 entertainment programs on the left, their duration, hours  
13 and frequency, the hours per week, the number of stations  
14 which carried, and then over in the right-hand column,  
15 the total hours per week per program.

16 There is a footnote that indicates that we recog-  
17 nize that for some of the weekly programs, the number of  
18 affiliates during 1982 varied, therefor, the total hours  
19 per week per program might vary, depending on the number  
20 of stations subscribing during a given time period.

21 So these are not precise figures, there would  
22 be fluctuation, there would be pre-emptions and things  
23 involved in there, so with that qualification, it lists  
24 the programs and the times. They continue on the second  
25 page, and on the third page, and on page 4, it is summarized

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

13 1 that the total number of network stations in 1982 was 609,  
2 with the hours per day of non-network programming for  
3 network stations being 6, and that created 3,654 hours a  
4 day of non-network programming for all of the network  
5 stations. There were 168 independent stations who broad-  
6 cast 18 hours a day of non-network programming, which  
7 created 3,024, which created 6,678 hours a day of non-net-  
8 work programming for all stations.

9 Q Is the bottom line conclusion -- in past years,  
10 I believe, Multimedia's percentage of estimated hours of  
11 a composite week was in the range of about 3.5 percent.  
12 This year it shows about 3.18 percent. Is this, in your  
13 opinion, consistent with the conclusion by the Tribunal  
14 that Multimedia, from a time point of view, presents a  
15 substantial amount of programming, or non-network program-  
16 ming syndicated throughout the United States?

17 A Yes, this shows that Multimedia is involved in  
18 programming higher than the percentage of the award. For  
19 example, it's a significant amount --

20 Q Is Multimedia asking for 3.18 percent?

21 A No.

22 Q Turn now, if you will, to Exhibit 8. Would you  
23 describe this exhibit?

24 A This is a Memorandum of Opinion and Order from  
25 the Federal Communications Commission, and the bottom line

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 of that is it granted the Donahue Show exempt status from  
2 Section 315, a requirement to provide equal time to appear-  
3 ance of political candidates.

4 Q This opinion was issued in May of '84. Do you  
5 feel that this has relevance to 1982?

6 A I think it does. There was an attempt made to  
7 get similar pre-emption in 1980, and it was refused by  
8 the Federal Communications Commission, and another attempt  
9 was successful in 1984, and the programs that influenced  
10 that decision were the programs that took place between  
11 1980 and 1984, and that would have included 1982, so it  
12 does reflect that the decision that the Donahue Show quali-  
13 fied as a bonafide news-interview program as relates to  
14 political candidates is significant to the programming that  
15 was done in 1982.

16 Q Although the request at the Commission may not  
17 have specifically identified programs in 1982, is not one of  
18 the FCC's criteria for determining whether a program is  
19 a bonafide news-interview, whether the program has been  
20 regularly scheduled, and that would cover the 1982 period?

21 A Yes.

22 Q To your knowledge, has any other nationally  
23 syndicated program like Donahue been granted the bonafide  
24 news-interview status?

25 A No. To my knowledge, this is the only syndicated

1 program that has achieved that.

2 MR. LUTZKER: Mr. Chairman, I'd like to have  
3 Multimedia's Exhibits 1 through 10 received in the record.

4 CHAIRMAN BRENNAN: They will be received.

5 (Whereupon, Multimedia Exhibits  
6 Nos. 1-10 were received in  
evidence.)

7 MR. LUTZKER: I would like now to conclude our  
8 presentation with a brief summary discussion of concerns  
9 that we have expressed in the past, but primarily for the  
10 benefit of the new Commissioners, some of them you have  
11 already articulated, as to why Multimedia -- I won't say  
12 alone among the world, but certainly lonely in the world  
13 has not accepted the MPAA methodology and avoided a Phase  
14 II proceeding on the Tribunal.

15 BY MR. LUTZKER:

16 Q What, in your opinion, are the primary weaknesses  
17 with the diary methodology that is the foundation of the  
18 MPAA study?

19 A Well, the diary was never a perfect way to mea-  
20 sure television audiences, but with the introduction of  
21 cable, it has made it an impossible situation. Where you  
22 had three, four or maybe five choices, it was simpler for  
23 people to keep a diary, to know what they were watching  
24 at any given time.

25 Today, there may be 20, 30, 40, 50 or more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 choices on a set, and chances are they all come in on  
2 channel 3.

3 For the viewer to know what the viewer is watch-  
4 ing is a colossal job. Even a professional in television  
5 -- until recently I lived in Cincinnati, Ohio, and on our  
6 QUBE cable system, for reasons best known to QUBE, channel  
7 22 in Dayton, WKEF, the NBC affiliate there, and channel  
8 5 in Cincinnati were on the same QUBE button.

9 If you are familiar with the QUBE set, there are  
10 30 buttons, there are three rows of ten, but there are  
11 60 channels. So at the bottom of each row of buttons is  
12 another button that gives you either the top program or  
13 the bottom program on each of the above buttons. It gives  
14 you a yellow light or a green light. If you've got a yellow  
15 light, you are on the top station; if you're on the green  
16 light, on the bottom. It's very difficult to do.

17 My wife went over and -- we were watching some-  
18 thing else, and said, well, let's watch channel 5 because  
19 that's our station and we will be able to see the news  
20 when it comes on.

21 So she switches and we see the NBC program come  
22 up. We think we are on channel 5. We sat and enjoyed  
23 the last 15 or 20 minutes of the NBC program. At the end  
24 of the program, our newscaster, Jerry Springer, came on  
25 the air and did his news headlines.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           Everything is fine. We do a commercial, and we  
2 come back and suddenly I'm hearing about the Dayton Air  
3 Show, a commercial from Taytone Buick and people who I  
4 don't know who they are. And I said, "What has happened  
5 here? We had channel 5 a moment ago, and we don't have it  
6 now?"

7           We finally figured out that what happened is  
8 because network non-duplication is still in effect. When  
9 she punched up, she didn't punch channel 5, she punched  
10 channel 22, but because of non-duplication, the cable  
11 system had channel 5 plugged in, to comply with the non-  
12 duplication, they had programmed their change to take  
13 place at the stationbreak since the news headlines came  
14 up before the station break, they got the channel 5 news  
15 anchors doing the news headlines and then the channel 22  
16 news.

17           Now, if I'd been filling out a rating diary,  
18 I would have been hopelessly confused, and I work in the  
19 business. There is just no way, as this gets more and  
20 more complex, and more and more choices occur, and more and  
21 more TV sets in the home, that the diary system is going  
22 to work. It's going to have to be changed at some time  
23 if we are going to have any accurate measurement. And  
24 that's probably why the advertisers all use NTI, except  
25 for local spots, but in all national spots, they use NTI.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Q Besides the confusion in the recordkeeping  
2 aspects, the diary method measures sweep weeks, does it  
3 not?

4 A Well, the diary method varies market to market,  
5 but basically the entire television industry is only  
6 measured four times a year, for four-week periods, in  
7 February, May, July and November.

8 The two major rating services, Arbitron and  
9 Nielsen, rate some stations in January, I think they rate  
10 six stations in March, they rate maybe 30 or 35 stations  
11 in October, and maybe about the same number in January.

12 Q As we've previously indicated, this method of  
13 analysis often, and in Multimedia's case apparently very  
14 often, omits the specials that are run outside the sweep  
15 week period, isn't that correct?

16 A Consistently.

17 Q And that is another basis for Multimedia's --

18 A That's one of our primary objections, that we are  
19 a major producer of specials, and the study, because it  
20 limits itself to sweep weeks, ignores all but 16 weeks of  
21 a 52+week year, and we don't think that should be the only  
22 way that Copyright Tribunal funds are allocated.

23 Q Does the Nielsen study, in your opinion, ade-  
24 quately address the Tribunal's criteria of quality as  
25 reflected in the Donahue and Young People's Specials?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           A     It ignores quality, it ignores time, it ignores  
2 value to the cable operator, it ignores value in the  
3 marketplace. It ignores four of the five criteria that  
4 the Copyright Tribunal has set forth.

5           Q     Does the Nielsen study -- does the MPAA study  
6 employ all of the Nielsen data that's available through  
7 NSI, or is it very selective?

8           A     No. It only takes 84 stations. A sweep means  
9 a sweep, it's everybody. So the data is available to take  
10 the MPAA study and at an increased cost, expand it so that  
11 at least we would have all of the television stations in  
12 the United States represented in the study.

13                     And certainly if it is going to play the major  
14 role that it has played, it should do that.

15           Q     To your knowledge, when MPAA -- when the MPAA  
16 study awards a fractional representation to a particular  
17 program one year, and then changes that the next year, is  
18 there any kind of error factor or judgment as to whether  
19 or not there really is a change?

20           A     Well, yes, there is. A rating is an estimate,  
21 and it says in the front of every rating book, and if a  
22 representative from one of the rating services appears here  
23 and is asked the question, they will tell you, yes, these  
24 are estimates. These are not to be used as precise figures.  
25 These are estimates.

1           And what they indicate is that the truth is  
2 within a range, and that's because all of these are pro-  
3 jections. They do not go out and talk to everybody and  
4 find out what everybody was doing. They talk to a small  
5 group of people and assume that those group of people did  
6 what everybody did, and projected. So, it is an estimate  
7 and, as an estimate, it is a range.

8           And so if you've got a 3.5 here and a 4.2 here,  
9 and put the range in both, it could be that the 3.5 was  
10 actually higher than the 4.2 if we went out and talked to  
11 everybody. So there is really no difference when you've  
12 got these overlapping ranges. When you start spending  
13 dollars, they say, okay, you get 50 cents more because you  
14 went up half a rating point. You are using estimates in  
15 a way that they were never intended to be used. Unfor-  
16 tunately, the practice is rampant in the television  
17 industry.

18           Q     Let me ask you just to comment briefly on one  
19 or two other things in the MPAA material in terms reflecting  
20 the accuracy of the study. If you will turn to page 2 of  
21 the list entitled Syndicated TV Series and Movies Credited  
22 with At Least 1 Million Hours of Household Viewing, and  
23 looking at item number 55 on page 2, Nashville Alive, to  
24 your knowledge, was Nashville Alive a syndicated show?

25           A     To my knowledge, Nashville Alive was a program

1 that was commissioned to be produced by WTBS in Atlanta,  
2 hosted by Ralph Emery and produced each Sunday night from  
3 the Opryland Hotel exclusively for WTBS, and was not  
4 offered to or carried on any other stations. That's my  
5 belief. I'm not totally familiar with the marketing of  
6 it, but I believe that to be true, that this was a WTBS  
7 program.

8 Q What do you know about the success of that show?

9 A WTBS cancelled it. They indicated -- which in-  
10 dicated that it did not get enough viewers. If I under-  
11 stand what a household viewing hour is, it would achieve  
12 312,000 household viewing hours which, if that's 312,000  
13 households, that would be a pretty good rating for a show  
14 to get.

15 Q If I could interrupt, you are correlating this  
16 5 million, approximately 5,640,000 household viewing hours  
17 in this study to a --

18 A Yes. If there are 16 weeks in the rating periods,  
19 and if it was in all 16 rating periods, and if the show  
20 is an hour long, and we divide, and I qualify that that  
21 I do not -- I am not privvy to the MPAA study as to what  
22 a household viewing hour is, it's been suggested that it  
23 is something more sacred than the ratings and, thus, not  
24 susceptible to the standard errors that are involved in  
25 the ratings, but since it comes from the ratings, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 suspect that the errors that are involved in the ratings  
2 are also involved in the MPAA study.

3 At any rate, with that qualification, it appears  
4 that it would indicate 312,000 homes had to be watching  
5 that show, and they would all have been watching it on  
6 WTBS, the only station that would have been carrying it,  
7 and that would be a pretty fair rating, I would think,  
8 based on the fact that the national networks' top ratings  
9 are in the vicinity of 312,000 homes for every one that  
10 carries them, but the show was cancelled.

11 It just raises some question as to exactly what  
12 a household viewing hour is and how it was determined and  
13 what this means, and how the 55th program in this study  
14 could only be broadcast on one television station.

15 Q Following your review of all this material and  
16 noting that in Multimedia's prehearing statement we indi-  
17 cated an acceptance of the Tribunal's share last year of  
18 1.6, but particularly after reviewing the data that was  
19 submitted by MPAA, do you feel that Multimedia's share  
20 for 1982 should remain at 1.6, or should there be any  
21 change?

22 A Well, last year, we asked for 2. We didn't  
23 think that all of the things were considered in the past.  
24 There was no increase in the award when the Show Biz pro-  
25 gramming was added. There was no increase in the award

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 when GN went up. We have now added even more of the special  
2 programming, so we think that a fairer request would be  
3 in the range 1.8.

4 MR. LUTZKER: That concludes our direct case.

5 CHAIRMAN BRENNAN: Are there any questions at  
6 this time by Commissioners? Commissioner Ray?

7 EXAMINATION BY THE TRIBUNAL

8 BY COMMISSIONER RAY:

9 Q I have one question. Because stations normally  
10 do not use specials during sweep weeks, is that a reflection  
11 of the value of the show?

12 A No, I think it is a reflection of a pattern of  
13 advertising. The normal schedule is to strip a show five  
14 days a week, at least during the day, and then at night  
15 you would have once a week programs that will play pretty  
16 consistently through the year. And the stations are selling  
17 stationbreaks around those programs. And if those programs  
18 aren't on, then the ratings developed in the sweep weeks  
19 are affected.

20 And so the station's ability to sell breaks  
21 can be affected. So, they want the shows, the network  
22 programs that are on in prime time, to play during the  
23 sweep weeks so that they get the best possible ratings they  
24 can. And if they pre-empt those, then they get no rating  
25 that week. And if they run into some event in another

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 week, it can pull them down. So I think it is more reflection  
2 tion that the stations want their basic schedules to air  
3 during sweep weeks, and the only way they would put a  
4 special into a sweep week is a special that they thought  
5 would do better than their regularly scheduled programming  
6 to conceal a weak program. NBC--unfortunately, several of  
7 our stations who are affiliated with NBC have had a lot  
8 of those time periods where they would like to hide the  
9 ratings. But even then the networks -- also, in that  
10 situation, the networks will frequently pre-empt a very  
11 extremely weak program themselves.

12 So running a syndicated special during a sweep  
13 week is just related to the need for the stations to have  
14 a record for future advertising sales, and a special is  
15 always a gamble for them. They can be sure that a special  
16 is going to do well, but you are never sure of any program,  
17 and if it runs outside of the sweep week, the station  
18 is not affected.

19 We get an NTI rating because the NTI rating is  
20 taken throughout the year, but the sweep weeks are only  
21 16 weeks a year. So from that standpoint -- I hope I've  
22 answered your question.

23 COMMISSIONER RAY: Yes, you have.

24 BY COMMISSIONER HALL:

25 Q You use the NTI ratings to market your spots for

1 it did -- it was a single run program, and I think did  
2 just slightly under 9 million homes in 1982. That would  
3 be 9,000 thousand.

4 So if you were getting a \$4 CPM --

5 MR. LUTZKER: Music City did 14.

6 THE WITNESS: I'm using an average audience, and  
7 that's a total audience. The advertising sales would be  
8 based on average audience, and that's 9 million, and that  
9 would be 9,000 times 4, which would be \$36,000 is what the  
10 spot would cost.

11 Now if you got 8 million instead of 9 million,  
12 the same spot would cost \$32,000 instead of \$36. And if  
13 you got 10 million, the same spot would cost \$40,000.  
14 So the size of the audience determines -- and it's one  
15 of the cases where I mentioned where we take rating esti-  
16 mates and we make them very precise, and if we get --  
17 if it goes 50 cents one way or the other, it becomes  
18 gospel. The rating services never intended these to be  
19 used that way. They won't tell you that, but that's what  
20 determines the cost of the spot.

21 Now that's not true in every sale. There may  
22 be some sales where there are no guarantees given. It  
23 is typical that guarantees are given. There is another  
24 guarantee normally given which is percentage of the  
25 country. You will promise the advertiser that the program

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 will play to 80 percent of the country. If you only play  
2 in 79 percent of the country, you give the advertiser back  
3 1/80th of what he paid. So there are various types of  
4 guarantees.

5           There are some times when a sponsor wants to  
6 sponsor a program and there are no guarantees. He pays  
7 a fixed amount, that's whatever can be negotiated. The  
8 CPMs vary from maybe \$1.50 to \$6, depending again on the  
9 top of program, the time period, how bad the sponsor wants  
10 it. There are some people who want all people over 50 and  
11 there are some people who want everybody under 19, and  
12 they may pay more to get those particular audiences, but  
13 basically, in syndication, in barter syndication, it is  
14 the rating that determines the value of the product.

15           COMMISSIONER HALL: Thank you for your education.

16           THE WITNESS: I probably told you more than you,  
17 wanted to know.

18           BY COMMISSIONER HALL:

19           Q     Your CPM for your best special at about \$4, how  
20 does that compare with CPM for Phil Donahue live and  
21 Phil Donahue, the repeats. You produce 260 live shows  
22 a year, and I presume you show at certain periods of time  
23 repeat shows because you don't do fresh network, or does  
24 260 represent daily?

25           A     Well, actually it's simpler if you do it -- we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 do 47 weeks a year are live. Five weeks are repeats, but  
2 they are scattered throughout the year. There is no great  
3 difference in the ratings of the repeats and there is no  
4 difference in the advertising costs.

5 Q So what is your CPM for Phil Donahue as compared  
6 to your best special?

7 A Phil Donahue we sell for cash. So that would  
8 be 200 different CPMs for individual markets, and we sell  
9 Donahue to the stations for a cash sale, and that's based  
10 on what the traffic will bear, and there are a lot of  
11 people who try to relate that to a third or a half of what  
12 the advertising revenue of the station can achieve from it,  
13 but it's a very difficult figure on any show that's sold  
14 for cash.

15 If you had a show like Laverne and Shirley, they  
16 opened it for bids, or Happy Days, they opened those for  
17 bids, and stations bid far in excess of what the programs  
18 were worth, and most of them are now stuck with them in  
19 cash sales. So if you can get a mass hysteria going, you  
20 can sell anything for whatever you can get, which they did  
21 with Happy Days and Laverne and Shirley, and I think they  
22 are currently doing it with P.J. and Me.

23 MR. LUTZKER: If I could call the Commissioner's  
24 attention, the advertising study that we have in our  
25 material as an exhibit, which is updated from prior years,

1 is designed to -- it's Exhibit 5 --

2 THE WITNESS: That's an attempt to show you the  
3 percentage of what advertising the stations would receive  
4 from Donahue as related to all non-network, non-news pro-  
5 gramming.

6 MR. LUTZKER: This is explained in prior pro-  
7 ceedings. The first year we introduced this was in 1980  
8 -- 1979 proceeding. The background is summarized there,  
9 but briefly we attained actual selling prices for 30-second  
10 spots from stations in 1981, projecting to reach 13 percent  
11 of the United States, and based upon the actual selling  
12 price, made projections as to how much advertising value  
13 the Donahue Show has nationwide. And the bottom line  
14 figure of 1.76 percent reflects the percentage, an esti-  
15 mated percentage of the relationship of Donahue advertising  
16 to total spot sales, non-network programming, throughout  
17 all of the syndicated shows. The methodology, as I said,  
18 has been previously explained. And so for Donahue, this  
19 is the figures which we have indicated is reflective of  
20 the advertising value which is one indicia of marketplace  
21 value.

22 COMMISSIONER HALL: Thank you.

23 CHAIRMAN BRENNAN: Mr. Lane?

24 CROSS-EXAMINATION

25 BY MR. LANE:

NEAL R. GROSS  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 Q Mr. Thrall, what experience do you have with  
2 distant signal carriage of television stations?

3 A I'm not sure I understand the question.

4 Q What don't you understand, what a distant signal  
5 television station is?

6 A What you want to know. No, I know what a dis-  
7 tant television station is.

8 Q Do you know what your experience is?

9 A You want to know my experience?

10 Q Yes.

11 A I've seen them. I've visited several. I'm  
12 not sure --

13 Q Beyond that, have you had any experience besides  
14 seeing them and visiting them?

15 A I've read the various rules and regulations about  
16 distant imports, and I'm roughly familiar with them.

17 Q Have you ever studied the carriage of distant  
18 signals by cable systems?

19 A Is there some specific report that you're referring  
20 to that I would have studied?

21 Q Anything that you've studied, tell me about it.

22 A I've studied a lot of documents about distant  
23 carriage. I don't recall specific ones.

24 Q What did they discuss in those documents? What  
25 are you looking at?

1           A     I'm not sure that I follow you. We're talking  
2 about over a period of ten or twelve years.

3           Q     Whatever period your experience is, Mr. Thrall.  
4 I want to know what your experience is.

5           A     You want to know everything I've looked at over  
6 ten years?

7           Q     Yes. What have you looked at? What comes to  
8 mind?

9           A     Reports of the Copyright Tribunal, reports of  
10 the development of the copyright regulations that preceded  
11 it, the definitions of copyright dealing with non-duplica-  
12 tion and protecting our stations from non-duplication of  
13 distant imports, when we had that, and what was a distant  
14 import, and where we could apply that.

15                We've notified many cable systems, you know, in  
16 that issue, so, you know, that's generally in working in  
17 my position as Vice President of Multimedia Broadcasting,  
18 which is a title I still hold, though it's not my primary  
19 duties anymore. I advised all of our stations on pro-  
20 gramming matters, including their dealings with cable  
21 systems and distant imports.

22           Q     Beyond the regulatory aspects, have you had any  
23 experience with distant signal importation?

24           A     Well, again, I'm not exactly sure where you're  
25 leading. I think I'm basically familiar with what a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 distant import is, and the history of it.

2 Q Have you ever studied what stations are carried  
3 by cable systems as distant imports?

4 A I've made some casual, not detailed, studies,  
5 but I'm roughly familiar with who the distant imports are.

6 Q Beyond the superstations, how familiar are you  
7 with what the distant import carriage is?

8 A Well, of course, I've been filing reports with  
9 this Tribunal, and also been filling out reports for our  
10 stations as to where they are carried, and maintaining  
11 lists of the cable systems. So, in doing that, we dis-  
12 covered that there are many stations that are distant  
13 imports. Ironton, Ohio, for example, which is a distant  
14 import station for WLWT.

15 Q WLWT is one of the Multimedia licensed stations?

16 A Yes.

17 Q What do you know about stations that are not  
18 superstations or the Multimedia licensed stations, as to  
19 their distant signal importation by cable systems?

20 A Basically, they must be located 35 miles -- out-  
21 side 35 miles of the center as designated by the FCC, of  
22 the community of the originating station.

23 Q Do you know anything about how many systems carry  
24 those stations? What do you know beyond the regulatory  
25 definitions of the Copyright Office or the FCC?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1           A     I know there are probably 600 TV stations that  
2 are carried on a few cable systems, and that if we deal  
3 with '84 that are carried on a lot, we've probably got a  
4 comparable figure to another 100 -- or 400 -- or 500 and  
5 some that are carried on a few. '

6           Q     When you say they are carried, do you mean  
7 locally or distant?

8           A     Distant.

9           Q     Distant? So it is your testimony that 600 dif-  
10 ferent stations in some year, were carried as distant  
11 signals?

12          A     I've not made a detailed study of the entire  
13 United States on that. I said I've dealt with our stations  
14 and stations I've looked at, I find that they are distant  
15 imports, and I've been involved in stations in Avco and  
16 stations in Multimedia, and so this, in detail, we've  
17 dealt with a lot of different parts of the country, and  
18 I believe that that statement is true.

19          Q     How many license stations of Avco, or how many  
20 Avco stations did you deal with?

21          A     Avco?

22          Q     Uh-huh.

23          A     There were five.

24          Q     And how many Multimedia license stations did you  
25 deal with?

1           A     Including ones we didn't quite buy and ones that  
2 we did, I would guess about eight or nine.

3           Q     So, 13 stations, and you are projecting that to  
4 the universe. Do you have any other experience with any  
5 other stations?

6           A     Oh, yes, I look at all the stations in each of  
7 these markets, when I look at cable importation, and when  
8 I'm doing that, I'm looking at all the cable systems in  
9 the states in which they are in, and all of the stations  
10 that those cable systems are carrying. I'm not just look-  
11 ing at 13 markets.

12                   I don't know if you have looked in the cable  
13 publications, which I'm sure you have, as inaccurate as  
14 they are, because the subscriber list that is provided by  
15 the stations are so out-of-date by the time they are pro-  
16 vided, that nobody even as we sit here today, can tell you  
17 with any sense of accuracy, how many subscribers there are  
18 in cable. Nielsen and Arbitron disagree on it, and even  
19 disagree with their methodology, but I go through those  
20 books. I see all of the stations.

21                   So, if I'm looking at Coshocton cable, I am not  
22 merely looking at the 13 stations that I happen to have  
23 looked at, I'm looking at all the cable systems that that's  
24 carried. So I am looking at hundreds of cable systems.  
25 I'm not saying I have conducted a national survey on this,

1 but I have looked at more than 13 stations.

2 Q What station of Multimedia or Avco is carried  
3 by 100 cable systems?

4 A I don't think there's any.

5 Q What is carried by 50? Distant. As a distant.

6 A I doubt if any of them are carried by 50, and  
7 I'm not maintaining that any of them are carried by 50.  
8 That's my problem with the MPAA survey, is that you're  
9 only going with the biggies. You're ignoring 30-some  
10 weeks of the year, and most of the country.

11 Q But with what -- what experience can you point  
12 me to to tell me that you know, of your personal knowledge,  
13 that over 600 stations are carried as a distant signal,  
14 or were carried as a distant signal, by cable systems in  
15 1982?

16 A Well, it could be that if I studied the entire  
17 country that I might find that the pattern that I have  
18 seen in the random selection, to use California, and  
19 Missouri, and Tennessee, and Georgia, and Ohio, and Penn-  
20 sylvania, and Illinois, and Indiana, and Kentucky, that  
21 if we now continue that on to all 50 states, that the  
22 pattern I've seen might change.

23 Q But you don't think so?

24 A I don't think so, and I gave the data --

25 Q And what do you base that on?

1           A     I think the data is readily available. We could  
2 answer the question. We could also expand the survey to  
3 the full year. All of these questions could be answered  
4 very easily if we wanted to do the most accurate job we  
5 could at determining the distant imports.

6           Q     Have you ever looked at a statement of account  
7 filed by a cable system?

8           A     No.

9           Q     Have you ever seen a study of a statement of  
10 account filed by cable systems?

11          A     I don't believe so.

12          Q     Have you ever heard of the Larson Associates  
13 tabulation of the cable systems statements of account for  
14 each and every period since 1979?

15          A     No.

16          Q     And you've never looked at it, obviously?

17          A     No.

18          Q     And you don't know what information about distant  
19 signal carriage of stations would be contained in those  
20 data, would you?

21          A     No.

22          Q     Have you ever seen any other summary report of  
23 what's contained in the statement of accounts of cable  
24 systems?

25          A     Since I don't know what's in the cable accounts,

1 I'm not sure whether I have or not.

2 Q Mr. Thrall, in your testimony and in the pre-  
3 hearing statement, you have emphasized that there should  
4 be no change for the -- in the award to Multimedia; in  
5 fact, the award should increase even though Donahue was  
6 switched from WGN to WBBM, is that correct?

7 A You say that there should be no change? Actually,  
8 we ask for a little bit more.

9 Q I said, an increase, that you've asked for an  
10 increase, is that correct?

11 A Yes.

12 Q And it is indicated in the prehearing statement  
13 on page 3, in the bottom paragraph, that Multimedia cannot  
14 trace a defined benefit to the dramatic increase in cable  
15 carriage of WGN-TV. What do you mean by that?

16 A Well, between '79 and '81, there was a dramatic  
17 increase, and there was no change in the award to Multi-  
18 media.

19 Q How would you trace a defined benefit? Would  
20 you tell me what a defined benefit is in the context of  
21 these awards?

22 A Well, when we added Show Biz programming that  
23 had not been permitted to be considered in 1979, in 1980,  
24 there was no increase in the award, and I think the state-  
25 ment of the Tribunal at that time was that they were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 moderating the value of Donahue and offsetting it with  
2 the value of the other. And in 1981, with the dramatic  
3 increase, there was no change.

4 Had there been an increase in the allocation  
5 based on the increased number of viewers on cable over  
6 WGN in 1980, then it would be logical to move the other  
7 way, but there was none, so a defined benefit would have  
8 been an increase in the award.

9 Q Well, you just indicated in the 1980 proceeding  
10 that you said that there was some consideration of the  
11 increase in GN but it was offset by other considerations.

12 A Well, there was what we considered to be an  
13 erroneous relationship of the Donahue Show to Merv Griffin.

14 Q But there was -- in your mind, there was some  
15 value in the 1980 decision given for the increase in WGN  
16 carriage, is that correct?

17 A No.

18 Q No?

19 A No. In the increase of Show Biz programming.

20 Q Mr. Thrall, I'd like to refer you -- I'd be  
21 happy to show it to you -- to a statement made by your  
22 counsel last year, in the 1981 proceeding, on pages 45  
23 and 46 of the transcript, and I would like you just to  
24 read what Mr. Lutzker told the Tribunal how he interpreted  
25 the 1980 decision. Read it into the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 A Do you want the underlined portion?

2 Q You can read whatever part you want. I'm par-  
3 ticularly interested in the last --

4 A I don't really want to read any of it, so you  
5 tell me what you want.

6 Q I'd like you to read where Mr. Lutzker starts  
7 off, "As I interpreted it". Would you read that whole  
8 paragraph.

9 A "As I interpreted the decision, the Tribunal  
10 evaluated the record as a whole, which included the new  
11 evidence of MPAA, downgraded Donahue, threw in Show Biz,  
12 took into account additional GN syndication, and came up,  
13 with a figure.

14 "Now there was, I might add, in the record, some  
15 suggestion based upon communications among the Commissioners  
16 and particularly from Commissioner -- then Commissioner  
17 Brennan, to Chairman Ray, respecting the analysis of  
18 Show Biz, and that suggested, although the opinion as  
19 drafted did not reflect a lack of consideration of Show  
20 Biz programming, it appeared to be a post hoc analysis  
21 if that letter suggested what I interpret it to suggest.

22 "COMMISSIONER COULTER: Why would that be post  
23 hoc?

24 "MR. LUTZKER: That a decision was made to keep  
25 all the parties at the same percentage and with Multimedia

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 presenting the case it presented, it was necessary to come  
2 back to 1.6.

3 "COMMISSIONER COULTER: But just trying to under-  
4 stand your last answer, is it your view that the 1.6 in-  
5 cluded awards for what you considered your qualitative dif-  
6 ference and from what you had argued was the harm you  
7 received from WGN?

8 "MR. LUTZKER: I read the opinion and concluded  
9 that the legal point of view, the opinion addressed all of  
10 the issues that we presented in our case in shorthand  
11 fashion that the opinion has to compress an extensive  
12 record so that all of the issues were addressed."

13 Is that --

14 Q Unless you'd care to read something else. I  
15 don't want to stop you.

16 A If that satisfies you.

17 Q Now, was one of the considerations you addressed  
18 in that proceeding, the increased carriage of WGN?

19 A Yes.

20 Q In fact, hasn't that been a major issues that's  
21 been presented by Multimedia in all prior proceedings?

22 A Yes.

23 MR. LANE: Just for the new members of the  
24 Tribunal, I'd refer to page 122 of the 1981 proceeding  
25 where Mr. Thrall, indeed, did say it was a major issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 BY MR. LANE:

2 Q Isn't it true also that a major issue you pre-  
3 sented in all of the prior proceedings was to claim harm  
4 that Multimedia incurred because of the GN carriage?

5 A We had a lot of discussion of harm, and I think  
6 we indicated that it was difficult to prove harm, or  
7 impossible to prove harm, but commonsense indicated that  
8 there would be harm, and you reacted with the commonsense,  
9 but I don't believe we ever established a definition of  
10 harm.

11 Q But the indication was that you presented in  
12 prior years and, in fact, you carried it through, is that  
13 you were going to move off GN because of the distant  
14 signal carriage, isn't that correct?

15 A Because we felt it would eventually harm us, yes.

16 Q And that was part of the major issue you pre-  
17 sented as to the increased carriage, the harm to you from  
18 the GN increased carriage, is that correct?

19 A It was in '79 and '80, and it was a slightly  
20 different situation in half of '81, whether non-duplication  
21 disappeared.

22 Q And, again, for the benefit of the new Commis-  
23 sioners, would you just explain -- I think you don't really  
24 mean the non-duplication, it was called the syndicated  
25 exclusivity rule. Could you just explain briefly what

1 that was.

2 A What that was? The syndicated -- well, we  
3 called it the non-duplication rule at the stations.  
4 Basically, it meant that if you bought a syndicated program  
5 and a cable system in your area imported the same program  
6 from a distant signal, you could contact the cable system  
7 and tell them, we're broadcasting that program, and we  
8 demand non-duplication protection, and during that period  
9 when the cable system was carrying the distant import,  
10 they would block it out either by carrying your signal  
11 or plugging something else into that channel.

12 And so you had the right, within a 35-mile  
13 area of your center of your community as established by  
14 the FCC, to have protection against imported distant  
15 signals.

16 Donahue, because it was live on WGN, was not  
17 afforded that protection because it only applied to pro-  
18 grams that weren't live. So Donahue suffered a particular  
19 harm up until the exclusivity rules or the non-duplication  
20 rules were abandoned by the FCC in the middle of 1981.

21 Q Just for the new members, so I know you will have  
22 something to look forward to next year, we just completed  
23 the syndicated exclusivity rule last year, and we're  
24 looking forward to one in 1985.

25 So, in effect, Mr. Thrall, what happened in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 second half of 1981 was not that you lost something, but  
2 everybody else was in the same boat.

3 A That's right.

4 Q Did you offer evidence in the prior year's  
5 proceeding, of the value of Donahue on WGN as a trigger?

6 A Yes.

7 Q And was that value the value that I believe it  
8 was a live program on WGN could be offered to the cable  
9 systems, and that also there was the possibility that you  
10 could call in during the show? Were those the two triggers  
11 that you emphasized in prior years?

12 A They were both points. I may have had others,  
13 but those were two principal ones.

14 Q In fact, were those not what you called the key  
15 points?

16 A I think so, yes, the fact that it was live, an  
17 extremely popular program, available earlier than the  
18 local station could carry it.

19 Q Just again, as a little bit of education,  
20 Donahue is what is called the bicycle program, is it not?  
21 It's bicycled in syndication around the country?

22 A It's a combination. It's live in Chicago, and  
23 then it's bicycled.

24 Q So that means, for example, if there were a show  
25 on January 1 and it was a live show, the only place that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 you would see it would be in Chicago or, in earlier years,  
2 on those cable systems which picked up GN?

3 A That's correct.

4 Q And the January 1 show in other cities would  
5 be shown, for example, January 3, maybe January 5, maybe  
6 January 15, whatever the "bicycle" schedule was, is that  
7 fair characterization?

8 A Yes. The general bicycle on the Donahue pattern  
9 is that it plays the same day it played in Chicago on a  
10 one-week delay, over a five-week period, on most of the  
11 stations in four weeks, until January of 1985 when that  
12 will change.

13 Q So that to the extent there were certain programs  
14 that the Donahue, on WGN, that happened to be hot on a  
15 particular day -- and I mean hot in terms of very interest-  
16 ing -- where two or three weeks they might be terribly  
17 interesting, that was a value that you saw for cable  
18 systems, was it not?

19 A Not so much that it would not be interesting  
20 three weeks later because we have stations that prefer  
21 to have the programs later because they get more time to  
22 promote them, but in the informal circle of bowling alleys  
23 and coffee klatches, to have seen any Donahue program a  
24 week or two or three ahead of one's peers was a certain  
25 advantage.

1 Q And that was an advantage that you promoted as  
2 a benefit to cable systems, as one of the triggers, is it  
3 not?

4 A Yes.

5 Q And that was the key advantage that you promoted,  
6 the live program of WGN, is it not?

7 A It was one of the key advantages, yes.

8 Q Now that advantage has been lost, has it not,  
9 to the extent that you've gone from the high numbers of  
10 cable systems that have available the live Donahue on GN  
11 in 1981, to the relatively few stations -- systems that  
12 have it available on WBBM?

13 A Well, as far as WGN, it's lost. It still exists  
14 in some, to a lesser degree, in smaller situations the  
15 WGN, and, of course, there is an enduring benefit that  
16 the cable systems will always have for the value they  
17 receive from having the Donahue Show to sell in such a  
18 way during previous years.

19 Q You said the value was lost to WGN, but wasn't  
20 this a benefit to cable systems that you were talking about,  
21 a trigger for cable systems --

22 A The value to the cable systems, as far as WGN  
23 was lost, but the value both to cable systems to other  
24 stations is certainly changed, and certainly no one can  
25 have the Donahue Show live, legally, today, but there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 still stations that are carrying the Donahue Show 24  
2 hours later, and those are being imported into markets  
3 where the Donahue Show is going to be on a week later.

4 And so, to a lesser degree, the statement, there  
5 still is a value there to cable system operators; not as  
6 great a value as there was to cable operators for WGN  
7 where they could get it live. So, yes, it has diminished,  
8 but it hasn't disappeared.

9 Q Do you recall you introduced an advertisement  
10 that related from United Video who puts GN up on the  
11 satellite, relating to the value of Donahue?

12 A Yes. Selling the channel based on the fact that  
13 they carried Donahue.

14 Q Aside from the fact that you never found another  
15 ad for GN, did you ever find another ad like that for  
16 any systems, any transmission systems, any cable systems  
17 promoting WBBM?

18 A I've never looked.

19 Q Would something like that be brought to your  
20 attention?

21 A An ad selling --

22 Q Similarly to the way the other ad was brought to  
23 your attention, Mr. Thrall.

24 A If our clipping service picked it up, I would  
25 get it. If it were not published so that our clipping

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 service would get it, unless a friend happened to see it,  
2 I would have no way of getting it. So, it depends. If  
3 it were an ad in a newspaper, I'd probably see it. If it  
4 were a flier sent out to homes in the cable system's area,  
5 I probably would.

6 Q The move from WGN to WBBM, has it been success-  
7 ful, in your view, in lowering the harm that you suffered  
8 from distant signal carriage on WGN?

9 A Taking your full sentence, yes.

10 Q Now all the other programs or programs taking  
11 their place that were on WGN last year, I take it, are  
12 still carried? GN hasn't gone black since Donahue went  
13 off the air, has it?

14 A No, they are still carrying some of our programs.

15 Q And, in addition, the number of cable systems  
16 carrying WGN has not decreased since 1982, has it?

17 A I haven't had any reason to go check their number  
18 of subscribers since 1982, but I will suppose that unless  
19 the increased fees has caused a reduction, that they  
20 are still significant.

21 Q Do you have any idea, in 1982, how many sub-  
22 scribers there were to WGN?

23 A I don't think anybody knows that. Certainly  
24 Nielsen and Arbitron are disagreeing over it.

25 Q Just to WGN.

1 A In 1982?

2 Q Yes.

3 A Well, we have a report which we submitted which  
4 listed a number of subscribers, somewhere in excess of  
5 4 million.

6 Q That was for 1981.

7 A Oh, that's right. You're right. I stand  
8 corrected.

9 Q Do you think that information could be gleaned  
10 from the statements of account filed by the cable systems?

11 A How would I know since I haven't seen them?  
12 However, both Arbitron and Nielsen have indicated that they  
13 cannot rely upon the information provided by the cable  
14 system, to determine the number of subscribers, and neither  
15 one is depending on the reports filed by the cable systems.

16 CHAIRMAN BRENNAN: We will recess until 2:00 p.m.

17 (Whereupon, at 12:25 p.m., the luncheon recess  
18 was taken.)

19

20

21

22

23

24

25



AFTERNOON SESSION

(2:05 p.m.)

CHAIRMAN BRENNAN: The hearing will resume. Mr. Lane?

BY MR. LANE:

Q Mr. Thrall, on page 4 of the prehearing statement, there is an indication that the total persons reached by Donahue in the sweep months of 1982 was 95 percent of those reached in the sweep weeks of 1981, and then there is a sentence which follows it suggesting causation or a linkage, if you will, between 95 percent reached on cable. Is that what you meant to suggest there?

A That some of the homes that watched on GN would have watched on other cable systems.

Q That 95 percent of the homes.

A No, no, I don't think we said that. It says may have been compensated.

Q Does that mean it may have been compensated up to the level of 95 percent?

A Most of the -- the 95 percent refers to the total national rating of the show from one year to the next, in those three rating sweeps, according to NSI. And we are talking about a difference of 5 percent.

Q Is it your testimony, or are you suggesting in this passage, that 95 percent of cable viewers, distant

1 cable viewers, were able to watch Donahue in 1981 and 1982?

2 A No.

3 Q Are you suggesting --

4 MR. LUTZKER: Mr. Chairman, for the record, this  
5 is a prehearing statement of counsel, as is indicated.  
6 Mr. Thrall -- obviously, Dennis can ask the question he  
7 wants, but just so the record is clear, Mr. Thrall's testi-  
8 mony speaks for itself, and this document was prepared by  
9 counsel rather than by Mr. Thrall.

10 BY MR. LANE:

11 Q Mr. Thrall, the total persons reached daytime,  
12 is that based on local ratings?

13 A Yes.

14 Q And would you explain what local ratings are?

15 A I have several times, but diaries are sent out  
16 in these markets to a sampling of people in the markets,  
17 and they keep the diaries for a week. Normally a rating  
18 period is four weeks long. There is a different sample  
19 each week. Those rating diaries are then projected to the  
20 total sets using television in the market. That is published.

21 Q Let me just -- what I wanted to focus in was on  
22 the local part. Could you explain the DMA system and how  
23 that works?

24 A Well, the rating services provide ratings in --  
25 diaries go to some metropolitan area. And a DMA, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Nielsen uses which is a designated market area, and Arbitron  
2 uses a similar designation which they call the ADI, the  
3 area of dominant influence. And basically these are made  
4 up of counties, or parts of counties, which are assigned  
5 to a local market.

6 And the general rule, although there are some  
7 exceptions, is that if 50 percent, or more than 50 percent  
8 of the viewing in a country goes to stations in a given  
9 market, then that country is assigned to that ADI. And in  
10 some cases where there is almost an even split, they have  
11 divided counties, and the eastern half of a county.  
12 There is one that goes to San Francisco, half of it goes  
13 to San Francisco and half of it goes to Sacramento. It's  
14 in a mountainous area and people on one side of the mountain  
15 watch San Francisco and the people on the other side of  
16 the mountain watch Sacramento.

17 By doing this, they eliminate overlap in the ADI  
18 and the DMA. So you put all of the ADIs and the DMAs  
19 together, you will get the entire United States with no  
20 overlap, but they also rate total survey area, and total  
21 survey area is where the people reached figure comes from,  
22 and that would be people anywhere.

23 Q Are you suggesting that the total person reached  
24 includes distant carriage viewing?

25 A It should.

1 Q And is it your view that 95 percent, the fact  
2 that 95 percent is shown in 1980 -- 95 percent of the total  
3 persons reached in 1981 are also reached in 1982, is an  
4 indication of the distant cable carriage of Donahue, to  
5 that degree?

6 A Yes, I think so.

7 Q This is the only statement where you have -- this  
8 is the only place where you have made that statement, or  
9 have you done any separate studies that have been presented  
10 to the Tribunal, to show that 95 percent figure?

11 A That the ratings in the Nielsen Station Survey --  
12 Nielsen Station Index ratings in 1982 were 95 percent of  
13 what they were in 1981? Is that your question?

14 Q No. That 95 percent of the distant viewing of  
15 Donahue in 1982 was the amount of distant viewing of --  
16 excuse me -- 95 percent of the distant viewing in 1981 was  
17 the amount of distant viewing of Donahue in 1982?

18 A I don't think we said that, but that's -- I  
19 think we pointed that the 95 percent indicated that there  
20 was no major change in the audience of Donahue from '81 to  
21 '82, and with a significant reduction in distant viewing  
22 would have resulted in a loss larger than the 5 percent.

23 And so this suggests that there was not a dramatic  
24 loss of distant import viewing. At least there was not  
25 a dramatic loss of total viewing between '81 and '82. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 don't think we ever characterized this as establishing  
2 the 95 percent as the percent of the Donahue viewing that  
3 was done on distant cable from one year to another.

4 Q Do you have an idea of what that percentage is?  
5 Is it 90 percent?

6 A Of what? The percentage of cable viewing from  
7 year to year?

8 Q Just in cable viewing, from 1981 to 1982.

9 A No.

10 Q Is it true that in 1981 the listing in your time  
11 exhibit for 1981, which is comparable to Exhibit Number 6  
12 this year, showed 191 stations for Donahue compared to  
13 184 this year?

14 A I don't have that with me, but --

15 Q Does that sound --

16 A That sounds like that's about right.

17 Q Do you know whether these were largely the same  
18 stations? Were there any major switches?

19 A I haven't done a precise study of that, but it  
20 would be very similar.

21 Q Except for GN.

22 A There will be a certain number of changes, and  
23 we went on KNBC in Los Angeles, and we have been on an  
24 independent in Los Angeles, so there would be some signifi-  
25 cant changes, but I have not made a detailed study, but the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 number I believe that we have the nearest number that was  
2 published in the Nielsen study, again, which is not usually  
3 accurate. They normally omit a market or two, but we use  
4 that because we are using their data.

5 Q But, in general, they are pretty much the same?

6 A Similar, yes, but I could find out how many  
7 changes there were, but I would say it is similar.

8 Q Now assuming that, just taking your figure from  
9 Exhibit Number 7, which is the FCC authorization, this is  
10 a figure which we think is meaningless, but that's beside  
11 the point of my question.-- the subscriber figure of  
12 4,600,000 roughly as the number of subscribers that re-  
13 ceived WGN in 1981.

14 Do you know of any of the 184 stations that  
15 carried Donahue in 1981, that had an increase in the  
16 number of distant subscribers in the order of 4 million?  
17 2 million? Any number over a million?

18 A I don't have that information.

19 Q Have you heard of any station besides the three  
20 so-called superstations which have increased in that  
21 magnitude, from 1981 to 1982?

22 A No.

23 Q Continuing on page 4 of the prehearing statement,  
24 it is indicated, and you have indicated in your testimony,  
25 that Donahue added one minute of commercial time. And in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 the prehearing statement, it states that the marketplace  
2 value of Donahue was enhanced by this.

3 My question is, for whom was it enhanced?

4 A Everybody. You see, the Donahue Show originally  
5 had a two-minutes station break at the end of it, and the  
6 NAB still had a code. And the code prohibited the more  
7 than two consecutive commercials on a station break. And  
8 so code subscriber stations could not use the extra minute  
9 for commercials at the end of the show.

10 So we moved the minute inside the show which  
11 enabled the stations to use the minute, and did not detract  
12 any time from the length of the program itself.

13 Q Did it benefit cable systems?

14 A I would have to think about that. I can't say  
15 -- I don't think we presented it as a benefit to cable  
16 systems. We used that to establish a market value of the  
17 program.

18 Q Did it benefit distant signal viewers of the  
19 Donahue Show, to have an extra minute?

20 A I don't think so. We didn't present it in that  
21 context.

22 Q Did it increase the value to Multimedia, of the  
23 Donahue Show?

24 A Yes.

25 Q Could you have done this if the Donahue Show were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W..

WASHINGTON, D.C. 20005

1 on WGN in 1982?

2 A Yes.

3 Q Would it have had the same effect?

4 A Yes.

5 Q There is an indication in the next sentence there  
6 that it increased the value of advertising time on Donahue  
7 by 7 percent. Who judged this, and what is it 7 percent  
8 over? I don't understand anything about 7 percent, how  
9 it is arrived at, what it means.

10 A You went from 10 to 11. Since we used an 80  
11 percent sell-out in our figures, it creates about a 7  
12 percent.

13 Q Referring to your indications that there were  
14 increases in the number of country music specials. Were  
15 there also shows that were dropped, country music specials  
16 that were dropped between 1981 and 1982?

17 A How do you drop a special?

18 Q I didn't ask a special. Show.

19 A You said specials. Shows that were dropped?  
20 There were some series that were no longer in production.

21 Q Could you tell us what those series were?

22 A Marty Robbins' Spotlight, Porter Wagner Show,  
23 Dolly.

24 Q What about Tony Brown's Journal?

25 A Tony Brown's Journal moved to Educational Television.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 Q It dropped from your claim that year, did it not?

2 A Yes.

3 Q And those were all weekly shows?

4 A Those were weekly shows, primarily afternoon  
5 and fringe time period programs, did not deliver the  
6 types of audiences that prime time specials do, but, yes,  
7 they were weekly shows. Some of them were not broadcast  
8 every week. Some of them were limited.

9 Q Now you indicated that Porter Wagner was dropped  
10 and I recall that you included that in your time.

11 A There were still a few stations that still  
12 playing it. It was not in active production in 1982.

13 Q Were 32 stations carrying it?

14 A If that's what our record says. We supplied  
15 that data. Some of those programs are still in existence  
16 and may be offered again. I think Marty Robbins, since  
17 his death, is now of interest to stations and is going to  
18 be put out in syndication again.

19 Q But in 1982, they weren't offered, whatever  
20 happens in the future? You haven't presented them as  
21 part of your case, is that correct?

22 A If they are not listed, then we didn't. That's  
23 right, they were not. There were three programs -- Marty  
24 Robbins' Spotlight, Tony Brown's Journal and Dolly -- that  
25 were included in '81 that aren't included in '82.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Q Now, again, referring to your time showing,  
2 which is Exhibit 6, and the total amount of time is  
3 1217 hours for Multimedia, is that correct? It's on page  
4 4 of Exhibit 6.

5 A 1217.20, yes.

6 Q Do you remember what the comparable figure was  
7 last year? Let me refresh your recollection. Does 1344 --

8 A All right.

9 Q Is that largely due to the decrease in any number  
10 of weekly broadcasts of the shows that were dropped between  
11 '81 and '82?

12 A Well, they're part of it. It is not an even  
13 thing because there were things that were added and those  
14 in the Grand Old Opry had a reduction in hours.

15 Q But in any event, the amount of time is down  
16 by approximately about 130 hours, or 110 which you showed  
17 last year?

18 A Approximately, yes.

19 Q In Footnote 3 on page 4, you've listed several  
20 specials that were shown on WOR, and one special that was  
21 shown on WGN, and I believe that in your Exhibit 9 this  
22 morning, you placed the same evidence in the record.

23 Do you recall in the 1979 proceeding, in Exhibit  
24 22, placing into evidence similar type showing of programs  
25 that were on the Top 25 stations?

1           A     We may have done that. Of course, there were,  
2     in 1979, not nearly as many programs totally. Also,  
3     Galaxy of Country Stars should have been on that footnote.

4           Q     Do you recall that in that year WTBS carried  
5     some of your programs, or do you recall generally that  
6     WTBS ever carried some of your programs?

7           A     They did carry some of the half-hours, I believe,  
8     but I'm not sure exactly when. I think in the past before,  
9     we acquired --

10          Q     They didn't carry any, though, in 1982, did they?

11          A     No.

12          Q     And WOR, for example, carried the 15th Annual  
13     Music City Awards, did it not?

14          A     I believe so.

15          Q     And they carried specials similar to Conway  
16     Twitty and Texas and Tennessee --

17          A     In '79?

18          Q     No. Well, obviously, the 16th Annual was in  
19     '81, the 15th Annual, I assume -- I mean, was in '82,  
20     15th in '81 --

21          A     It was in '80. Are you talking about 1980?

22          Q     Yes. '80, '81.

23          A     In 1980, I believe there were four specials  
24     produced.

25          Q     But WOR carried -- they have a --

1           A     They may have. I don't have a schedule with me.  
2 Those programs were broadcast, there just weren't as many  
3 of them.

4           Q     And WGN -- was this the first time WGN --

5           A     I don't have the booking schedules with me, and  
6 I don't recall exactly where --

7           Q     Let me ask you this. Was the Statler Brothers  
8 program in 1982, a repeat of a program that was shown in  
9 1981?

10          A     Well, the Statler Brothers program bled over.  
11 It was a November-December syndicated show in 1981, and  
12 so some of the stations ran it in January and February,  
13 primarily January, of 1982, and then it had a rebroadcast  
14 in 1982, so some of that was first-run and some of it  
15 was second.

16          Q     But you don't know, for WGN, whether it was --

17          A     I don't recall the specifics. GN has carried  
18 some, WBBM has carried some, I think WFLD has carried  
19 some, but it has not been a single station pattern on  
20 specials. I'd have to look at the Factbook and schedules.

21          Q     Now let me see if I understand. Does this  
22 increase in the number of schedules carried per year, is  
23 that, in your view, the total reason for cancelling out  
24 any change from the loss of GN?

25          A     The specials, the fact that so much of the country

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 is not measured, that we don't get a true picture of  
2 whether that loss was offset, and to what degree, and not  
3 just these specials, but the ten Young People's Specials  
4 which also are in the same pattern of being primarily  
5 carried outside of the rating periods. So, it is the 14  
6 specials plus the 10 Young People's Specials, plus the  
7 basic problems we have with the MPAA survey, to begin  
8 with.

9 Q Now when we're talking about 14 specials, turning  
10 to Exhibit 4, several of those are repeats, are they not?  
11 I mean, you list them as repeats?

12 A Yes. There are 9 individual programs, and 5  
13 repeats.

14 Q And, in fact, some of those repeats were ones  
15 that were broadcast in 1981, and this is simply the repeat  
16 here?

17 A Some of the programs, I think -- let me see.

18 Q Mel Tillis and Statler Brothers?

19 A Yes, some of the Statler Brothers were first-run  
20 programs.

21 Q Is it true that some of the Young People's  
22 Specials, the individual programs, were ones that were  
23 shown in 1981?

24 A Yes. The programs are normally repeated -- five  
25 programs are produced a year, five were repeated the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 following year along with the five new productions, for the  
2 ten each year. Although that was a reduction at some point  
3 where we went from 12, but if you go back another year it  
4 was up from 9, so it has varied 9, 10, 12 programs in that  
5 series a year. Basically half and half, half of the new  
6 productions each year. During some years, we would have  
7 six new productions and six repeats; in other years, five  
8 new and five repeats. And one or two years, it was five  
9 programs and four repeats.

10 Q In the prehearing statement and in Exhibit 8,  
11 you've emphasized the news value of Donahue. Is it your  
12 testimony that Donahue is a news program, or a public  
13 affairs program?

14 A No. Well, it does a lot of public affairs issues  
15 on the program, but we don't classify it as a news program.

16 Q Well, what is the meaning on page 2 where it  
17 states that "reflects primarily three specialized areas --  
18 news and information", and then you refer specifically  
19 to Donahue?

20 A Well, I think we're talking about content at that  
21 point.

22 Q Is the content of Donahue a news program?

23 A No. It does contain news, bonafide news inter-  
24 views, and there is -- the show frequently makes news, so  
25 the show has a definite relationship to news, but it is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 not a news program. We don't report the news.

2 Q What is the purpose of Exhibit 8 for this pro-  
3 ceeding?

4 A The FCC ruling?

5 Q Yes.

6 A It illustrates the unique quality of the Donahue  
7 Show, and one of the five criteria of the Tribunal is  
8 quality, and we submit this to show that Donahue is a show  
9 of unique quality.

10 Q So if other programs were able to get a waiver,  
11 would that make them unique in quality?

12 A I suppose you become less unique the more there  
13 are, but at this point, it is unique.

14 Q Is it unique because it has this waiver, or --

15 A It is unique. The whole program is unique. The  
16 waiver merely demonstrates that the FCC has agreed, and  
17 that the program does provide a service that is significant  
18 enough to permit it to operate within the constraints of  
19 Section 315.

20 Q Is it your testimony that uniqueness and quality  
21 are the same thing?

22 A No.

23 Q So the fact that it has this unique waiver, how  
24 does that relate to the quality?

25 A Well, when you have a program of the quality of

1 the Donahue Show and it is unique, it makes a particular  
2 quality and of more importance.

3 Q When did the Nashville Network come on cable  
4 systems?

5 A I guess it was March of '81 or '82. I think '82.  
6 I can't swear to that. I read their releases that they  
7 were on 22 million sets on their opening broadcast, which  
8 the press picked up as gospel truth, because there were  
9 22 million subscribers to the cable systems that were  
10 carrying the thing.

11 Q I'd like to turn to your exhibits and, just in  
12 passing, would like to refer to the study guide for Going  
13 Along. It's Exhibit 1. On page 2, do you see, about the  
14 fourth or fifth line down, the word "Steeling", I guess  
15 it was spelled in the Pittsburgh sense of the Steelers?

16 A Yes, a TV critic noted that, as a matter of fact.

17 Q As a part of your study guide that the company  
18 provides with these?

19 A Yes, typed by a human being.

20 Q Let's turn to Exhibit 3, please. What time is  
21 the Georgia Farm Monitor on the air?

22 A I don't know the exact time. Most farm shows  
23 are on in the morning because that's when farmers can watch  
24 them. I would guess 6:00-6:30, somewhere in that time period.

25 Q And do you know what day of the week it's on?



1           A     Normally carried on Saturday or Sunday. I confess  
2 I don't have the exact time of that program.

3           Q     Now looking at the stations just for Georgia  
4 Farm Monitor, are those all Georgia stations?

5           A     No, one of those is in Alabama. I think I have  
6 that list. No, they all are in Georgia. Savannah,  
7 Columbus, Atlanta, Albany and Macon.

8           Q     What is the source of the listing of additional  
9 stations carrying the program?

10          A     The source is our station in Macon.

11          Q     You just called them up and said, please tell  
12 me what it is?

13          A     We ask all our stations, when the NAB asked us  
14 to represent these programs, to let us know any programs  
15 they were producing for other stations.

16          Q     And that was in 1981?

17          A     What's that?

18          Q     When the NAB asked you to do this?

19          A     I don't know the exact date of that, but what  
20 we have here was information that was developed when we  
21 asked them to provide that. Well, they would have provided  
22 that in July of '83.

23          Q     Would that have been information as of 1983?  
24 1981? What?

25          A     It would have been 1982.

1 Q 1982 information? Is there any way to determine  
2 from an outside source, whether these programs were carried  
3 on any additional stations?

4 A We could ask the stations to provide affidavits,  
5 but it is such an insignificant part of the overall claim --

6 Q Turning to page 2, are all the stations, addi-  
7 tional stations related to WFEC located in South Carolina?  
8 And perhaps while you're at it, you can tell us what the  
9 real call letters are for WLOL, which I do not believe is  
10 a station, or WRBW.

11 A It should be WRDW. And that's in Georgia.  
12 WFEC is in Greenville, South Carolina. WRDW is in North  
13 Augusta, Georgia. WCIV is in Charleston, South Carolina.  
14 WLOL is in South Carolina, and WPDE is in Florence, South  
15 Carolina. Is there a problem with WLOL's call letter?

16 Q I couldn't find one, but that's what it says.

17 A On both of my lists, it says WLOL, Columbia,  
18 South Carolina.

19 Q Would you turn to Exhibit 4, please. When you  
20 were answering a question from Commissioner Hall, you  
21 indicated that the total audience figure was not something  
22 that you could use for advertising the study.

23 A That's right, because the commercials run at  
24 various spots in the program, and so they are paid on the  
25 average audience, since it is impossible to know how many

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 people are watching at any given period.

2 Q Is it true, under the NTI study, that all one  
3 has to do is have one's television set on for five minutes  
4 of a show and it will be counted as part of the total  
5 audience?

6 A That's correct.

7 Q And is it also not true that the total audience  
8 figure will be higher than the total average figure?

9 A It normally is, although the percentage of  
10 difference varies from program to program.

11 Q And why would that be?

12 A If a program is broadcast over two hours, people  
13 may go to bed, or they may eat dinner. All kinds of  
14 reasons people would move in and out of a room watching  
15 a television show.

16 Q Now if they went in and they ate dinner, for  
17 example, but they left the television on, would that be  
18 included in the NTI survey?

19 A I would imagine, although I'm not that familiar.  
20 You'd have to get testimony from Nielsen on how they --

21 Q Well, is it your understanding that if the TV  
22 is on, the NTI rating is clicking away, the computer is  
23 clicking away.

24 A I would imagine.

25 Q How many homes are involved in the NTI rating

1 throughout the United States?

2 A I'm not sure in 1982. I think it's 1400 now.

3 Q And that's for the entire United States, is it  
4 not?

5 A That's correct.

6 Q And you used the phrase this morning that that  
7 was the mirror of the universe, do you recall that?

8 A Yes.

9 Q And would you explain what you mean by a mirror  
10 of the universe?

11 A Well, of course, you ought to get a statistician  
12 who can really deal with this, but when you are using  
13 a sample, the sample should reflect the whole. And if you  
14 have selected the sample so that the sample has the same  
15 percentages of age groups, and education, and income,  
16 and national origin and all of the other things, and then  
17 you project that totally to the universe, it should be  
18 accurate.

19 It is exactly the same thing that is dealt with  
20 in the Nielsen Station Index, with all those rating diaries.  
21 They are also supposed to be going out to a sample that is  
22 a mirror of the universe, although reduced in size.

23 Q Now is there an NTI mirror in each of, for  
24 example, the 122 stations where the Top Country Hits are  
25 recorded? 122 markets, excuse me.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           A     The location of the Nielsen meters is a closely  
2 guarded secret.

3           Q     Don't they measure the NTI ratings only in  
4 specified cities, since you testified to that this morning?

5           A     I don't believe so.

6           Q     Well, what was the eight cities that you specified,  
7 besides just the overnights?

8           A     That was overnight ratings, yes. Those are  
9 overnight meters that are individual market ratings, that  
10 are operated by both Arbitron and by Nielsen, and that is  
11 a different sample than the NTI. The NTI is not just those  
12 three or four, or even eight overnights.

13           I think in 1982, Nielsen only had three or four  
14 overnights -- New York, Chicago, L.A., now they've added  
15 Boston, Dallas and Washington, I think Detroit, Cleveland,  
16 San Francisco.

17           Q     How do you go about getting NTI ratings from  
18 Nielsen?

19           A     Call them up and order them.

20           Q     And do you have to tell them the date and the  
21 time that your program was on, and where it was broadcast?

22           A     Yes.

23           Q     And could you tell us what the dates were for  
24 these programs, and where you asked them to get these  
25 audience figures from?

1           A     Well, it would have been a lot of dates because  
2 the programs were not all carried on the same date, so a  
3 schedule of all the dates that the program was carried  
4 would be sent to Nielsen when the -- all of the stations  
5 had aired it.

6           Q     So total audience here refers to -- it theoretically  
7 could be 122 different dates, although that is very  
8 unlikely?

9           A     It could be, yes.

10          Q     And you had to repeat that for each of these  
11 programs that you list here, did you not?

12          A     Yes. That period of time during which the  
13 program plays we refer to as the window, which is a phrase  
14 we borrowed from cable.

15          Q     Now do you just ask that they survey all 14 NTI  
16 homes to do this on certain dates?

17          A     They would have to testify to how they do it,  
18 I don't know.

19          Q     Well, you have to give them the dates, don't  
20 you?

21          A     We give them the dates, and then they take their  
22 data from, I assume, the 1400 sets on each date, to see  
23 how many were watching.

24          Q     Did you ask them to survey all 365 days in 1982?

25          A     Only the dates we have programs.

1 Q And do you know how many dates that was? What  
2 percentage of the year that was?

3 A I have no idea.

4 Q Do you think it was within a three-month period  
5 for any one program, say, Top Country Hits, all the first  
6 time it was broadcast?

7 A Well, one of our programs gets the rating two  
8 weeks out of every year.

9 Q I don't understand what you're saying.

10 A Well, we have a weekly series that gets an NTI,  
11 and it gets it two weeks out of every month of the year.  
12 So that would be 14 days a month, and that would be times  
13 12 months, and so it would be roughly half a year, and since  
14 the specials are running on dates other than those, I'm  
15 guessing that we probably have MT ratings on some program  
16 for probably somewhere between 50 percent and 100 percent  
17 of the days, but I have no idea where in that span it would  
18 fall.

19 Q Which program listed here did you get half the  
20 year of the NTI ratings?

21 A Nashville on the Road, and Pop Goes the Country.

22 Q On page 3 of Exhibit 4, are Nashville on the Road  
23 and Pop Goes the Country, are those NTI or NSI ratings?

24 A Those are NTI.

25 Q Those are NTI?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           A     I'm sorry, I was thinking of what I use in my  
2 work. On page -- this is NSI.

3           Q     NSI. And the NSI, just to repeat it, is the sweep  
4 weeks, is that correct?

5           A     Yes, this is February sweep specifically, and as  
6 I said before, they assemble these individual market  
7 ratings into a large book which, although it generally  
8 omits a few programs, or a few stations on every program,  
9 it purports to be a summary of all of the rating, the  
10 individual rating markets in the country.

11          Q     Now let's take Top Country Hits and Top Country  
12 Hits, repeat. Is this a show that's sold to the same  
13 station, and they can simply feed it if they choose in that  
14 year, or is this 104 new stations?

15          A     It's sold for two runs on the same station. The  
16 first run in the January period, although there is some  
17 flexibility there, and I think that program called for a  
18 repeat broadcast in the -- in July.

19          Q     So one would presume that when you ask for the  
20 NTI ratings, you said, please focus in on January and July,  
21 and give us the ratings for Top Country Hits?

22          A     Well, we would give them the specific dates at  
23 the conclusion of the first run, and then we would give  
24 them the specific dates at the conclusion of the second  
25 run.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 Q Now by specific dates, do you mean you would  
2 say January 1, 5, 15, or would you say all of January?

3 A We would say, Sunday, January 26 at 8:00 p.m.,  
4 or 10:00 p.m., or whatever the time was.

5 Q And is that because of cost considerations that  
6 you try to focus in so --

7 A Well, that's what they are rating, they are rating  
8 where our show is, and they are only doing our show, so  
9 we tell them where our show was.

10 Q So in other words, they just have something on  
11 Sunday, January whatever it is, at 8:00 p.m. They don't  
12 know what it is called, they just give you the --

13 A They know the name of the program, and what it  
14 is called, and what time it is going to be aired, and on  
15 what station.

16 Q And, again, what is the total audience figure,  
17 is that comparable to a rating, or to a share, the  
18 percentage, the second column?

19 A On what page?

20 Q Exhibit 4, I guess it is page 1, the 13.8 at  
21 the top?

22 A The first says the total audience, the center  
23 column?

24 Q Yes.

25 A That is audience rating.

1 Q Is that comparable to the ratings, for example,  
2 Donahue in February of seven, that you have listed on  
3 page 3 of Exhibit 4? I mean comparable in the sense  
4 that there is the same definition of concept?

5 A Well, it is the same concept, but they are two  
6 different surveys. Both purport to be a percentage of  
7 all existing television homes.

8 Q Referring to the second page of Exhibit 4,  
9 particularly the Young People's Special, why did you  
10 limit that to April 1982?

11 A Just to show an example.

12 Q Was this the best Young People's Special?

13 A I don't have the full set of ratings there,  
14 Young People's have ranged in an area from 4 million to  
15 9 million, and this was probably a good one, not necessar-  
16 ily the best of all time, but it is a sample.

17 Q On page 3 of Exhibit 4, referring to the Donahue  
18 ratings, these are the NSI ratings, these are the diary  
19 ratings, are they not?

20 A Correct.

21 Q And you indicated that it was very difficult for  
22 them to pick up the total persons reached, did you not?

23 A I think I commented on the difficulty of getting  
24 accurate information on that through a diary rating system.

25 Q And why did you put that particular -- there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 other concepts in the NSI ratings, are there not, house-  
2 holds?

3 A There are several others.

4 Q Why did you pick that particular one?

5 A Because we had used that in prior years, so we  
6 were trying to be consistent.

7 Q It appears at the top of these that this is day-  
8 time rating, daytime share, daytime total persons, why  
9 did you just take measurements for daytime only?

10

11 A That is where the show ran.

12 Q Does it ever run outside daytime?

13 A It may have been, this is a listing from the  
14 Nielsen summary book that I referred to.

15 Q Does it ever run outside of daytime?

16 A The Donahue Show, I believe there are some  
17 stations that run it late at night, but not a great many.  
18 The Nielsen study is supposed to have everything in it,  
19 but I am not sure, I would have to look at it again, to  
20 see whether it lists the lates. But I believe the  
21 classification at the top of the page in the Nielsen  
22 publication, the heading is in that column.

23 Q Why didn't you list the July ratings for Donahue?

24 A July is not a very important rating of the four  
25 sweeps, and these are the more significant ones. And I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 believe we used these in the past, so we were trying to  
2 be consistent with what we have shown in the past.

3 Q And do you recall what the numbers were in the  
4 past for Donahue for the ratings?

5 A I am familiar with them roughly, these figures --  
6 we have already compared them to '82.

7 Q Now, these ratings here, these are broadcast  
8 ratings, are they not?

9 A Yes.

10 Q And they are broadcast shares?

11 A Well, the share is the share of the people who  
12 were watching television at the time, according to Nielsen.

13 Q Have the ratings gone down, in your mind?

14 A Well, we look at the ratings, comparing '81 to  
15 '82, we find that February and May, which were both during  
16 the first six months of the year in that particular tele-  
17 vision season which runs from September to August, the  
18 ratings were down slightly; in November the ratings were  
19 higher in 1982 than they were in 1981, which is the next  
20 television season. So, I would say they were maybe down  
21 slightly in one television season, up in the other tele-  
22 vision season. And in the year as a whole, no significant  
23 change, no trend there.

24 Q And, again, this is the broadcast ratings?

25 A I don't know any other kind there are.

1 Q Looking at the Show Biz programming, again, this  
2 is the NSI material, the diary material, is that correct?

3 A Yes.

4 Q And here you used total households, could you  
5 explain what the difference between total persons and  
6 total households is?

7 A Well, total households and total persons are both  
8 based on the full coverage area, not ADI or DMA figures,  
9 and total persons you would add up the total women, the  
10 total men, the total teens and the total children, and  
11 that would tell you the total persons. In total households  
12 it is just the number of households in which those people  
13 are.

14 Q Taking the Porter Wagoner Show, have the ratings  
15 gone down since 1980, when you first presented them to  
16 the Tribunal for the Porter Wagoner Show?

17 A They are down from '81, they went from a five  
18 rating to a three.

19 Q And this program, you indicated, you thought came  
20 off the air sometime during --

21 A It is not in active production in '82.

22 Q But it is not being sold to stations, or was not --

23 A Well, it could be sold to stations, I am just  
24 saying we were not producing new Porter Wagoner Shows in  
25 1982.

1           This rating reflects the number of stations,  
2 because it is adjusted for where you are not. So, if you  
3 have a program that is carried on all the country, with a  
4 three rating, it will get a three; but if you have a  
5 program that is carried in half of the country with a  
6 three rating, you get a one and a half. So, the rating  
7 is adjusted to be comparable to a national rating, whether  
8 the show is carried, or not, so since the program was not  
9 in first-run production there were probably fewer stations  
10 carrying it in 1982.

11           Q   Do you know whether the ratings went down in  
12 the May, July, and November of 1982 sweep --

13           A   I don't have those figures here.

14           Q   Gospel Singing Jubilee, are you aware that Nielsen  
15 now publishes two ROSPs, one is a devotional ROSP and one  
16 is the -- I will call it the regular ROSP?

17           A   No, I am not familiar with that.

18           Q   Would it surprise you that Nielsen classifies  
19 Gospel Singing Jubilee as a devotional program?

20           A   Nothing would surprise me.

21           Q   You have never looked in the Nielsen to determine  
22 whether that is how they do it?

23           A   No.

24           Q   Have you ever looked in the Broadcast Index Book,  
25 BIB, to determine how it is classified there?

1 A Yes.

2 Q How is it classified there?

3 A I don't know, I have looked at the book, but I  
4 have not been concerned about how Gospel Singing Jubilee  
5 was listed. It had a four rating in '81, and a four rating  
6 in '82, delivered to 389,000 homes in '81; and 374,000  
7 homes in '82.

8 Q What about Backstage at the Grand Ole Opry, what  
9 did that do from 1980 to --

10 A I don't have a '80 rating here; from '81 to '82  
11 it went from a four to a three.

12 Q In 1980, according to your exhibit, it was a  
13 six. Is from a six to a three a significant change?

14 A Yes. Again, that program moved to the national  
15 network in 1982.

16 Q So does that mean it was off broadcast syndication --

17 A I think the last four months of the year.

18 Q What about Nashville on the Road, do you know  
19 what its rating was in 1980?

20 A No, I don't have that here, I show it going from  
21 a five to a four, from '81 to '82.

22 Q And in 1980 your exhibit shows it was 7.3; is  
23 that a significant difference from 7.3 to four?

24 A Yes.

25 Q And Pop Goes the Country --

1           A    Well, you were talking about Nashville on the  
2 Road, total households show 1,152,000 in 1981, and 1,577,000  
3 in '82, so total households went up. So, the '82 was  
4 better than the '81, even though the rating went down. And  
5 that is because ratings are based on DMAs and total  
6 survey is based on total viewing area.

7           Q    And the households is simply an aggregate of all  
8 households that were watching that show at any given time  
9 during the month?

10          A    Yes.

11          Q    Referring to your next exhibit, Exhibit 5, the  
12 advertising study, I was unclear when you were talking  
13 about the one-minute, would you explain where you moved  
14 the one minute in Donahue, you moved it from in the show  
15 to outside the show?

16          A    We moved it from the station break where stations  
17 couldn't use it because of the limitation in the NAB code,  
18 to the number of consecutive announcements that were  
19 permitted in station breaks. We put it inside the show,  
20 we added 30 seconds to two breaks, so there were no  
21 additional interruptions. And we got dispensation from  
22 the NAB code to run the two and a half minute breaks within  
23 the show, in order to hold down the number of interruptions  
24 and benefit the viewer. So, it was the station break  
25 minute that was moved inside the show.



1 Q The total selling price for 30 seconds, is that  
2 the average price in the 17 markets, multiplied by 17?

3 A No, I think that is the total price in the 17  
4 markets against the percentage of the US represented by  
5 those markets, then projected to the universe and then  
6 reduced down to the coverage, the percentage of the Donahue  
7 Show.

8 Q No, I am talking about the 2,826 is that --

9 A That is the total of the selling price in those  
10 markets.

11 Q So that if one were to divide that by 17, you  
12 would get an average price in each of those markets?

13 A I believe that is right. It can get very confus-  
14 ing discussing that ad lib, but I think you can do that.

15 Q Could you just take your time and be sure that  
16 is correct?

17 CHAIRMAN BRENNAN: Let's take a recess at this  
18 point.

19 (Whereupon, a short recess was taken.)

20 CHAIRMAN BRENNAN: The hearing will resume.

21 BY MR. LANE:

22 Q Mr. Thrall, before the break I was asking you  
23 whether the number on Exhibit 5, 2,826 is divided by the  
24 number of markets would yield the average price in those  
25 markets, and you said you were going to examine that,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 have you examined that?

2 A Yes, I believe it would, those 14 markets.

3 Q I thought it was 17 markets.

4 A I don't know, how many are on that list there?

5 COMMISSIONER HALL: Are you saying that is the  
6 price per market, or the total price of the markets?

7 THE WITNESS: We are saying if you took the  
8 selling price in each of those markets and added it up,  
9 and divided it by the 17 markets, you would have the  
10 average to buy a spot. It doesn't relate to anything,  
11 because there is no place to provide a spot once you  
12 have done that.

13 BY MR. LANE:

14 Q Mr. Thrall, I have done that calculation, and  
15 does the number 166 average selling price for each of  
16 those markets look like what that average would be?

17 A I haven't done that, but that is probably close.

18 Q This total selling price is up above what the  
19 total selling price for these 17 markets that you pre-  
20 sented last year was, is it not?

21 A Yes, I believe it is adjusted.

22 Q And how was that adjusted?

23 A I think by the same percentage as the increase  
24 in the --

25 THE WITNESS: May I confer with counsel on that?

1 MR. LANE: If counsel is the one that did it, I  
2 would be happy to have Mr. Thrall confer with counsel.

3 THE WITNESS: I did it originally, and counsel  
4 worked on it with me.

5 (Whereupon, witness conferred with counsel off  
6 the record.)

7 THE WITNESS: Yes, it was increased the same per-  
8 centage that the net spot sales increased, for non-network  
9 programming.

10 BY MR. LANE:

11 Q Mr. Thrall, I compared those two numbers and I  
12 didn't get the same increase, the net spot sales, accord-  
13 ing to my calculations, increased by 14.7 percent, while  
14 this increased only by 11.7 percent. Can you explain  
15 what that difference is?

16 A Not without looking at the math. Do you think  
17 it ought to be higher?

18 Q I don't know whether it should be higher, or the  
19 other number should be lower. My question was why wasn't  
20 Donahue the same increase as the net spot sales?

21 A I don't know, without going back and looking at  
22 the math. It should have increased the same percentage  
23 as the non-network net spot sale.

24 Q So, you didn't go to these 17 markets and find  
25 out what the total selling price in 1982 was, you simply

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 increased it by some factor and we don't know what that  
2 factor is?

3 A Yes.

4 Q It is not the net spot sales.

5 A I would have to go back and look at the math  
6 again.

7 Q Fine, I am going to be very nice this year, I  
8 brought a calculator, in the past years I haven't.

9 A I have one here.

10 Q I can give you the figures from last year and  
11 I am going to ask you to do the calculations, so that  
12 there will be no doubt in the record. There is the  
13 last year's exhibit, you have this year's. You can explain  
14 what you are dividing.

15 A I have the data with me for next year, do you  
16 want me to do the next year.

17 Q If you would like to do that now, Mr. Thrall,  
18 and save us some time --

19 A I have the data on that from the stations --

20 Q This is your data, Mr. Thrall, not my data, and  
21 I would like you to explain it for the record, because  
22 I can't explain it.

23 A This may take a while, do you want to take another  
24 break -- the actual math was not done by any of us in this  
25 room. I did the original 1981 math, which I have here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 It is possible that there is an error in the exhibit for  
2 1981, we are having the person who did the math check it,  
3 and we can supply it for the record. But we can't answer  
4 you question totally, other than we believe the 2826  
5 figure is correct.

6 Q Now, there is an error in the 1981 figure, not  
7 this figure, is that what your testimony is?

8 A We believe so, we are trying to ascertain that.

9 Q Now, my understanding last year was that the  
10 1981 figures were the same as 1980, first of all, were  
11 they not? That you presented in 1980?

12 A Well --

13 MR. LUTZKER: Would you clarify what figures you  
14 are referring to?

15 MR. LANE: Total selling price for 30-seconds.  
16 I am only talking about one figure, total selling price  
17 for 30-seconds?

18 THE WITNESS: No, we are saying that there may be  
19 an error in the exhibit in the net spot sales, non-network  
20 programming, in the 1981 exhibit.

21 BY MR. LANE:

22 Q I want to talk about the number at the top of the  
23 page.

24 A Yes, we believe that is correct.

25 Q It is correct, when is it correct, and how is it

1           A    The increase related to the increase in net spot  
2 sales, non-network programming year-to-year.

3           Q    But in 1980 the number was 2530, was it not?

4           A    1981 it was 2530.

5           Q    I know that, but in 1980 was it not also 2530?

6           A    Well, on the exhibit it was, but that was adjusted  
7 downward to 1980 by .7716 factor, down lower on the page.  
8 So, yes, it was the same base figure that began the process  
9 but there was a reduction of .7716.

10          Q    Was there any actual figure related to the total  
11 selling price for 30-seconds that you got from real live  
12 people out in the 17 markets?

13          A    Yes.

14          Q    And what figure was that?

15          A    That was 2530, which was 1981.

16          Q    And where was that figure coming from?

17          A    That was obtained from stations that had the  
18 information.

19          Q    Now, let me see if I understand correctly, that  
20 number, the 1981 number, has been adjusted upwards by  
21 some percentage?

22          A    Yes.

23          Q    And that percentage, I think we can agree, is  
24 11.69 or 11.7 percent, is that correct?

25          A    Correct.

1 Q Now, where was that 11.69 or 11.7 percent?

2 A That should have come from the difference between  
3 the total spot sales for non-network programming and the  
4 net spot sales non-network programming for '81 and '82.  
5 But that doesn't correspond with the percentages on the  
6 two exhibits, that would make the percentage higher -- our  
7 percentage lower. There are three figures we checked to  
8 see if we could see where the error was.

9 If you would use total spot sales, the difference  
10 would have been --

11 Q 13.2 percent?

12 A 13.2 would have been using the net spot sales  
13 non-network programming; and if we had used total spot  
14 sales; non-network programming, the percentage would have  
15 been 16.8. So, in either case the percentage would have  
16 been larger, but we don't think the percentage is larger,  
17 we think there is possibly an error in one of the figures  
18 on the exhibit, from a previous year; not the 2530 figure  
19 or the spot sale figure, but an error in the typing of a  
20 net spot sale, non-network programming. We are not sure  
21 of that, we are checking and we can supply that for the  
22 record.

23 Q Now, what was the assumption that the net spot  
24 sales percentage increase would be the increase in the  
25 total selling price for 30-seconds in these 17 markets?

1           That they had approximately the same amount of  
2 programming to sell, and that the increase would have  
3 related to the increase in the selling price of the spots.

4           Q   We have gone over this before, but is it not true,  
5 Mr. Thrall, that all of the stations listed -- all of the  
6 stations carrying Donahue in the listed markets are all  
7 Vs, except for Scranton?

8           A   Are all what?

9           Q   All VHF stations?

10          A   I believe we have gone over that before and I  
11 believe that is probably true.

12          Q   And Scranton is all UHF market, is it not?

13          A   It may be.

14          Q   And do you know whether Donahue does better in  
15 these markets than it does on the average throughout the  
16 country?

17          A   I don't believe so. I think these markets are  
18 representative of Donahue generally.

19          Q   And is it not true that Donahue, in 1982, accord-  
20 ing to your exhibit, was on 184 stations and you indicated  
21 it might be on as many as 200 stations, and you have not  
22 shown us any price for a station lower than 61?

23          A   That's right. We have given you a spread that I  
24 think covers the top 50 markets, and the top 50 markets  
25 will cover the bulk of the United States. So, going in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 numbers is very confusing, because the bottom 100 stations  
2 may not represent 10 percent of the United States.

3 Q Just so there is no confusion, the number that  
4 appears in parenthesis after each of the markets refers  
5 to the, quote, market rank?

6 A It is the rank in '82.

7 Q And how many markets were there in the United  
8 States in 1982?

9 A I think 226.

10 Q Is this -- how would this selling price be related  
11 to CPM?

12 A Well, the CPM would have been used in the indivi-  
13 dual markets to establish it.

14 Q And are the CPMs in markets different if you are  
15 in the top 50 markets, from the CPMs in the bottom 50  
16 markets?

17 A No, there is really no relationship to the market  
18 size, it is determined, to a great deal, in supply and  
19 demand. We found some smaller markets had larger CPMs than  
20 larger markets. Generally speaking, the leading station  
21 in the market controls the CPMs of the markets, because  
22 they have the advertising reach and the high demand buys,  
23 and so whatever they set will set the tone of the other  
24 stations, in order to compete; and the larger audiences  
25 will usually come in with lower CPMs.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           So market factors in each of the markets will  
2 determine the CPM, there is more advertising demand in the  
3 top markets, but that doesn't necessarily affect the CPM  
4 it is more competition for the advertising.

5           Q    Do you know whether Donahue was the leading pro-  
6 gram in its time slot in each of these 17 markets, as it  
7 was in 1981?

8           A    No, I don't have that specific information with  
9 me, I would say probably it was.

10          Q    And are there other markets, either above or any-  
11 place between one and 200 that you have sold, where Donahue  
12 is not the leading program?

13          A    Oh, I am sure there are some markets -- what  
14 range did you say, the one to --

15          Q    200, or 184, however many markets you sold?

16          A    Oh, I am sure there are one or two markets that  
17 in the rating book here may not be number one.

18          Q    In its time slot?

19          A    In its time slot, it is not number one in Chicago,  
20 it was not number one in WGN, it is going better on BBN  
21 in Chicago.

22          Q    But you have not included any market where it was  
23 not the number one show in its time slot?

24          A    I don't know, it is just that it is number one in  
25 almost everyplace it is, so if I was to select one that

1 wasn't -- I didn't make any selection at all. I have the  
2 paper here where I wrote them down, I looked at what was  
3 available.

4 Q What is the effect of using 110 in the second  
5 calculation, average annual advertising revenue, as com-  
6 pared to 100 in the 1981 proceeding? Is that a 10 percent  
7 increase?

8 A Yes.

9 Q And was it not stated in the pre-hearing statement  
10 that the value of Donahue advertising had only increased  
11 7 percent?

12 A Yes, but if you come on down, the next line there  
13 is an 80 percent sell out.

14 Q I am talking about this line --

15 A It is assuming that 20 percent of those additional  
16 spots aren't sold, so it only increases it about 8 percent,  
17 and that may affect the totals. Yes, the 11 spot would  
18 be a 10 percent increase, if you took the whole thing and  
19 didn't discount it at all. You would say we could have  
20 put in a 10 percent increase there, but if you have 10  
21 spots a day times five days a week, you would have a  
22 figure of 100 spots a week, times 52 weeks which are in  
23 a year. If you have 11 spots a day, and multiply them  
24 times five, -- these are 30-second spots, so we have 11,  
25 and 11 times five is 55 and since there are two 30-seconds

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 in a minute, we multiply that times two and that is 110.  
2 So, that is 110 spots a week, times the price, times 52  
3 weeks, and then discounted 80 percent to produce the  
4 \$12.9 million figure.

5 Q But you discounted it last year by 80 percent,  
6 did you not?

7 A Yes.

8 Q And so that factor is equal in both years, is it  
9 not?

10 A That's right, even though we believe the percent  
11 of sellout of Donahue is higher than 80 percent, because  
12 of its great success. We use that -- we provide these  
13 figures only as estimates to give an illustration of the  
14 value of the show, and we believe we do that. We can adjust  
15 them by a percentage either way, I don't think it will  
16 change the overall effect because Donahue was a valuable  
17 product to the American television community.

18 Q Now, what was the basis for using the period  
19 1976 to 1980 for the production adjustment?

20 A Well, the FCC stopped issuing the figures, and so  
21 we went back and compared the TBB figures in the earlier  
22 years with the FCC figures; the TBB figures included  
23 production and the FCC figures did not. So, we established  
24 through those earlier years the percentage of the TBB  
25 figures that would have represented production. And in that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 case, for national spots it was 10.7 percent of the revenue  
2 was for production; and for local spots 8.5 percent, which  
3 is in the footnote at the bottom of the page.

4 So, taking the TBB figures for 1982, since the  
5 FCC figures were not available, we discounted them by  
6 10.7 for national spot and 14.5 for a local program, to  
7 eliminate the amount of revenue that would have illustrated  
8 production. So the figure we would end up with was an  
9 estimate of what the sale of the actual spots would be,  
10 with no part of it being production.

11 Q Well, there are no later figures on what the  
12 cost of productions and spot --

13 A I don't believe so.

14 Q Now, does the 2826 include production costs?

15 A No.

16 Q Are you certain that these are TBB figures, have  
17 you checked that yourself?

18 A No, I have not checked this year's TBB figures  
19 personally, but I have every reason to believe those are  
20 the TBB figures. I did check them in 1981, and they were  
21 the TBB figures in 1981.

22 Q Well, there were some figures in 1981 that may  
23 have been the wrong figures?

24 A There may be a typo on the exhibit, but the TBB  
25 figures -- yes, there are TBB figures.

1 Q And what causes you now to be so certain?

2 A In 1981 I did them myself.

3 Q Well, are these three figures the total spot  
4 sales, sales in local news and net spot sales, simply  
5 adjustments from the '81 TBB figures?

6 A No, these are the '82 TBB figures.

7 Q Well, the fact that you had the right figures in  
8 1981, or the figures for TBB in '81, what causes that to  
9 lead you to believe these are from TBB?

10 A Because that was the instructions given to the  
11 person who did it and they believe they did it correctly.  
12 We will provide it for the record, I just can't answer  
13 your question at this point. We will be happy to provide  
14 the TBB figures.

15 Q Where did you get the 98 percent of the United  
16 States figure that is used for Donahue's coverage?

17 A That would have been the percentage of coverage  
18 of Donahue.

19 Q I know that, where did you get it from?

20 A It could have come from several sources. February  
21 1982, Nielsen report on syndicated programs lists Donahue's  
22 percentage of US DMAs at 98 percent.

23 Q And how many stations is that?

24 A 184 reported.

25 Q I would like to turn to Exhibit 6, Mr. Thrall.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 This is simply an addition of the amount of time claimed  
2 for each of the programs which have identified in 1982,  
3 is it not?

4 A Correct.

5 Q And how did you determine the number of stations  
6 that are listed there in column four?

7 A In cases where there were a lot of stations it  
8 was determined using the Nielsen figures from the same  
9 publication which is quoted; others like the Brown Show,  
10 we just know that pretty well, because there aren't that  
11 many.

12 Q So, those are all from the February 1982 ROSP?

13 A I believe so.

14 Q And turning to page four of Exhibit 6, this is  
15 simply a mathematical calculation of how many hours each  
16 of non-network programming appear on different types of  
17 stations, and then dividing that into the number of hours  
18 you claim?

19 A That's right.

20 Q I would like to turn to Exhibit 10, do you have  
21 that?

22 A Yes.

23 Q Let me see if I understand what the exhibit says,  
24 it says that because the Nielsen special study shows 275  
25 stations with 1.1 million household viewing hours, 1700

1 stations would show 17.2 million household viewing hours,  
2 does that simplify it?

3 A Yes, although I would qualify that, this figure  
4 would be higher, because of most of the 275 were in the  
5 low rated period of July.

6 Q And that was because most of the shows were in  
7 July?

8 A No, most of the shows were in months the rest  
9 of the year, when we did no survey.

10 Q I mean most of the shows that were picked up  
11 were in July, were they not?

12 A Yes.

13 Q You ran those in July, did you not?

14 A Yes.

15 Q And if you had to do the NTI study that we  
16 talked about earlier, you would say to Nielsen, would you  
17 please pick out Sunday, July 3rd, at 8:00 p.m. and give  
18 me the ratings for your show at that time?

19 A On that one particular station, yes.

20 Q Now, is this, in essence, saying that if a whole  
21 year for Multi-Media was compared to four months for  
22 everybody else, Multi-Media would be at a much higher  
23 position, isn't that what this is saying?

24 A No, no, because --

25 Q Where have you projected, Mr. Thrall, the rest



1 of the universe being projected for the 12 months?

2 A Well, I haven't, you did that, you selected weekly  
3 shows and 16 weeks, and the weekly show happens every week.  
4 So, if you pick 16 weeks of a weekly show, that goes 52  
5 weeks of the year, it will be measured and if all shows  
6 run all 16 weeks, they will all be measured the same amount.  
7 But specials, which do not get produced in sweep weeks  
8 won't get measured, and that is what we have been saying  
9 since 1979.

10 So, we are not saying that we are comparing the  
11 whole year against a part of the year; we are saying that  
12 we are comparing our specials, adding our specials to  
13 what happened here. We have encouraged you to go as far  
14 as you can, but we are not saying that we are taking the  
15 whole year against your 16 weeks, we are saying you are  
16 taking 16 weeks, not us.

17 Q Let me ask you this, Mr. Thrall, is the household  
18 viewing hours based on 16 weeks, the total number of house-  
19 hold viewing hours in our study?

20 A You will have to explain that.

21 Q You don't know, you have never looked at our  
22 study, have you, Mr. Thrall?

23 A You haven't shown it to us.

24 Q You say you have never looked at it, is that  
25 correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 A We would like to know what it is.

2 Q Have you ever read the summary study that is  
3 presented with the Nielsen special study?

4 MR. LUTZKER: Can counsel identify the summary  
5 study he is referring to?

6 MR. LANE: Yes, in every single proceeding we have  
7 presented a summary study, and I am asking you --

8 MR. LUTZKER: In Phase II or Phase I?

9 MR. LANE: In Phase I and Phase II.

10 MR. LUTZKER: Phase I and Phase II?

11 MR. LANE: Yes. And all of that information is  
12 incorporated by reference in this proceeding.

13 MR. LUTZKER: You are referring to the listing of  
14 programs that were supplied in the last several years in  
15 Phase II and how those calculations are derived?

16 Is there a document? We would like to see it, if  
17 there is.

18 MR. LANE: There has been a document every year,  
19 Mr. Lutzker. The one I remember best was Exhibit H and  
20 Schedule 1 in the first proceeding, and I don't remember  
21 -- it is a summary that explains the whole thing, it has  
22 been cross-examined for weeks on end.

23 MR. LUTZKER: And from that study you can determine  
24 the household viewing hours of specific programs during  
25 calendar year 1982?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. LANE: You can determine how the household  
2 viewing hours were calculated.

3 MR. LUTZKER: For specific programs?

4 MR. LANE: You can determine it for specific pro-  
5 grams, for the entire study, you can use it to determine  
6 everything about the study, it explains the study. It  
7 has been presented in every single proceeding, it is a  
8 matter of public record.

9 BY MR. LANE:

10 Q Have you ever read that, Mr. Thrall?

11 A I have read a lot of information presented here  
12 on ratings, I am not sure that I read that. I read a  
13 good deal of the testimony by a gentleman from Nielsen  
14 discussing this subject, and at the end of reading it I  
15 did not know how this was determined. You didn't reveal  
16 that.

17 If there is a document, I would be happy to look  
18 at it, but nothing I have seen explains your survey, to  
19 the point that we could comment on its methodology or  
20 its accuracy, other than it was based on a diary system.  
21 And your testimony claimed that it was not a rating study  
22 and it was not subject to any of the errors that rating  
23 studies were subject to.

24 Q But you have presented this exhibit based on what  
25 your assumptions are about how a study --

1           A    All we have done is taken your home viewing tele-  
2 vision and drawn the direct ratio, and taken this figure,  
3 whatever it means and we know from where our programs  
4 played how many of them played during the rating sweeps.  
5 So, we have taken your figures, associated them with the  
6 number of times our programs played during rating weeks  
7 and then taken the number of times our programs played,  
8 and projected it.

9           So, I don't know what we have projected, we pro-  
10 jected your household viewing hours, whatever it is on a  
11 ratio, compared to where our programs ran.

12          Q    Mr. Thrall, let me ask you this, if one assumes  
13 that a household viewing hour relates to an hour, and that  
14 36 weeks not covered by the sweeps there are additional  
15 hours, beyond what is covered by the sweeps, do you think  
16 it would be a fair assumption that the total number of  
17 household viewing hours for all programs -- the total of  
18 all programs would be higher than what we have shown in  
19 the 16 weeks?

20          A    Well, I assume it would, I am not sure what you  
21 have shown.

22          Q    And I am not sure what you have shown here.

23          A    Your figures project against individual markets,  
24 or against a national audience, and are they limited to  
25 projections of 16 weeks, or are they -- do they go to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 a projection of 52 weeks?

2 Q If you could stay over until tomorrow, I am sure  
3 Mr. Cooper would be happy to explain all of that to you.

4 A I wish I could be here, I would really like to  
5 know that.

6 MR. LANE: I have no further questions.

7 CHAIRMAN BRENNAN: Mr. Lutzker, any redirect?

8 MR. LUTZKER: Yes, just one briefly.

9 In response to a question this morning from  
10 Commissioner Hall, we have prepared a list of the stations  
11 in specific areas for Exhibit No. 3. And I would just  
12 introduce this and have you identify it for the record,  
13 it is Multi-Media Exhibit No. 11.

14 (Whereupon, the document was marked  
15 for identification as Multi-Media  
16 Exhibit No. 11. )

16 REDIRECT EXAMINATION

17 BY MR. LUTZKER:

18 Q This is Multi-Media Exhibit No. 11. In response  
19 to Commissioner Hall's inquiry this morning, can you  
20 identify this exhibit?

21 A Yes, this is an identification of the stations  
22 and where they are located for programs originated by  
23 Multi-Media stations for regional distribution.

24 CHAIRMAN BRENNAN: Thank you, Mr. Thrall, for your  
25 appearance and testimony.

1 (Whereupon, the witness was excused.)

2 CHAIRMAN BRENNAN: This concludes the consolidated  
3 case of Multi-Media. We will recess until 10:00 a.m.  
4 tomorrow.

5 (Whereupon, the hearing was adjourned at 4:25 p.m.,  
6 to reconvene at 10:00 a.m., Friday, July 27, 1984.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 II

Before: Thomas Brennan, Chairman  
Copyright Royalty Tribunal

Date: July 26, 1984

Place: Room 450  
1111 20th Street, NW  
Washington, D.C.

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

---

NEAL R. GROSS  
1323 Rhode Island Ave.  
Washington, D.C. 20005