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REGULATION OF COMMUNITY ANTENNA TELEVISION

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 12914

A BILL TO AMEND THE COMMUNICATIONS ACT OF 1934 TO PROHIBIT THE FEDERAL COMMUNICATIONS COMMISSION FROM EXERCISING JURISDICTION OVER THE RECEPTION OF RADIO SIGNALS, COMMUNICATIONS, AND TRANSMISSIONS

H.R. 13286

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H.R. 14201

A BILL TO AMEND SECTION 3 OF THE COMMUNICATIONS ACT OF 1934 (47 U.S.C. 153)

MARCH 22, 23, 24; APRIL 5, 6, 7, 1966

Serial No. 89-34

Printed for the use of the Committee on Interstate and Foreign Commerce

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U.S. GOVERNMENT PRINTING OFFICE
62-610 O WASHINGTON : 1966

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REGULATION OF COMMUNITY ANTENNA TELEVISION

TUESDAY, MARCH 22, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Stagger (chairman) presiding.

The CHAIRMAN. The committee will come to order.

This morning the Committee on Interstate and Foreign Commerce is commencing hearings on two bills dealing with the authority of the Federal Communications Commission to regulate the operation of CATV systems.

One bill, H.R. 13286, which I introduced at the request of the Federal Communications Commission, would give broad authority to the Commission to undertake such regulation.

The other bill, introduced by our colleague, Representative Walter Rogers of Texas, H.R. 12914, would deny such authority to the Commission, at least with regard to those systems which do not use microwave links.

During the 1st session of the 89th Congress, the Subcommittee on Communications and Power held extensive hearings on a bill, H.R. 7715, introduced by the former chairman of this committee, Representative Oren Harris. This bill would have established a national television policy and provided a method by which rules of the Federal Communications Commission with regard to CATV systems may be reviewed by the Congress before they become effective.

There can be no doubt that the subject with which the committee will be dealing in these hearings is highly complex as well as highly controversial. It is important, therefore, that the hearing record will provide, insofar as possible, clear answers to vital questions with which the committee will be confronted later in executive session:

1. If either of these bills is enacted, what additional regulatory authority would the Congress grant to the FCC, or in what respect would the regulatory authority now claimed by the FCC be limited?

2. Do the CATV rules promulgated by the Commission in its second report constitute a reasonable and proper exercise of the Commission's regulatory authority?

3. How far should the Congress go in laying down specific guidelines for the Commission with regard to the exercise of the Commission's authority to regulate CATV systems?

At this point in the record, there will be inserted copies of the two bills, H.R. 13286 and H.R. 12194.

(The bills referred to follow:)

[H.R. 12914, 89th Cong., 2d sess.]

A BILL To amend the Communications Act of 1934 to prohibit the Federal Communications Commission from exercising jurisdiction over the reception of radio signals, communications, and transmissions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That se tion 326 of the Communications Act of 1934 (47 U.S.C. 326) is amended by adding a new paragraph to read as follows:

"Nothing in this Act shall be understood or construed to give the Commission the power to control or regulate the reception of radio communications or signals transmitted by any radio station."

[H.R. 13286, 89th Cong., 2d sess.]

A BILL To amend the Communications Act of 1934 to authorize the Federal Communications Commission to issue rules and regulations with respect to community antenna systems, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end thereof the following new subsection:

"(gg) 'Community antenna system' means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more broadcast stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service."

SEC. 2. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"COMMUNITY ANTENNA SYSTEMS

"SEC. 331. (a) The Commission shall, as the public interest, convenience or necessity requires, have authority—

"(1) to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the construction, technical characteristics, and operation of community antenna systems, to the extent necessary to carry out the purposes of this Act, with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services; and

"(2) to make general rules exempting from regulation, in whole or in part, community antenna systems where it is determined that such regulation is unnecessary because of the size or nature of the systems so exempted.

"(b) No community antenna system shall transmit over its system any program or other material other than that which it has received directly or indirectly over the air from a broadcast station, except that the Commission may, upon an express finding that it would serve the public interest, authorize by general rule limited exceptions to permit such transmissions without any additional charge to subscribers.

"(c) Nothing in this Act or any regulation promulgated hereunder shall preclude or supersede legislation relating to, or regulation of, community antenna systems by or under the authority of any State or territory, the District of Columbia, the Commonwealth of Puerto Rico or any possession of the United States except to the extent of direct conflict with the provisions of this Act or regulations promulgated hereunder."

(The following bill, H.R. 14201, was introduced by Mr. Mackay March 31, 1966, subsequent to the opening date of these hearings.)

[H.R. 14201, 89th Cong., 2d sess.]

A BILL To amend section 3 of the Communications Act of 1934 (47 U.S.C. 153)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by amending subsections (h) and (o) thereof and by adding a new subsection (gg) as follows:

"DEFINITIONS

"SEC. 3. For the purpose of this Act, unless the context otherwise requires—

"(h) 'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio, or in interstate or foreign transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting or in operating a community antenna television system shall not, insofar as the person is so engaged, be deemed a common carrier.

"(o) 'Broadcasting' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations; but a person engaged in operating a community antenna television system shall not, insofar as the person is so engaged, be deemed to be engaged in broadcasting.

"(gg) 'Community antenna television system' means a facility utilizing a receiving antenna or antennas, connecting wire, cable, or relay facilities and associated equipment to which members of the public may obtain an attachment or connection of their television receivers to facilitate or make possible reception by such members of the public of the signals of one or more television broadcast stations, but such term shall not include for the purposes of this Act any such facility which (i) only receives television signals from transmitters located no more than thirty miles from the main post office of the community in which such community antenna television system is located; or (ii) only originates its own television programs; or (iii) only carry audio programs; or (iv) a combination of (i), (ii), and (iii) or of any of them."

SEC. 2. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"COMMUNITY ANTENNA TELEVISION SYSTEMS

"SEC. 331. The Commission shall, as the public interest, convenience or necessity requires, have authority—

"(a) to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the technical characteristics and operation of community antenna television systems to the extent necessary to carry out the purposes of this Act with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services: *Provided, however*, That the Commission shall have no authority:

"(1) to require a community antenna television system to receive on its system the signals of a television broadcast station whose transmitter is located more than thirty miles from the main post office of the community in which the community antenna television system is located; or

"(2) to require a community antenna television system to receive on its system the signals of a television broadcast station which originates fewer than ten hours per week of its own programs; or

"(3) to require a community antenna television system to receive on its system the signals of a television broadcast station which duplicates in whole or in substantial part (that is, more than 75 per centum) the programs of another television broadcasting station received by such community antenna system; or

"(4) to require a community antenna television system to delete or refrain from receiving signals carrying any program of any television broadcast station unless (i) such program is broadcast by a television broadcast station whose transmitter is located more than thirty miles from the main post office of the community in which the community antenna television system is located, and (ii) in addition duplicates simultaneously a program broadcast by a television broadcast station whose transmitter is located within thirty miles of the main post office of the community in which the community antenna, television system is located, and (iii) whose signal the CATV is required to receive.

(b) to make general rules exempting from regulation, in whole or in part, community antenna television systems where it is determined that such regulation is unnecessary because of the size or nature of the systems so exempted."

The CHAIRMAN. There will also be inserted an explanation submitted by the FCC of H.R. 13286, and a letter from Chairman Henry, addressed to me, requesting introduction of this legislation.

In addition, I think it will be appropriate to insert at this point a glossary of terms and some other background material relating to community antenna television systems which has been prepared at my request jointly by representatives of the Federal Communications Commission, the National Association of Broadcasters, and the National Community Television Association.

(The documents referred to follow:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 3, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with your request that the Commission furnish your committee as soon as possible with our suggestions for legislation on CATV, I am enclosing proposed legislation which the Commission at its meeting yesterday agreed to recommend. The dissenting statement of Commissioner Bartley and the separate statement of Commissioner Loevinger are also attached.

Because of this urgent request, and the fact that the bill has just been drafted, it has not been presented to the Bureau of the Budget for advice as to its relationship to the program of the President. However, a copy is being sent to that Bureau forthwith.

Please call on me if I can be of any further assistance in this matter.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

EXPLANATION OF PROPOSED AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED, CONCERNING REGULATION OF COMMUNITY ANTENNA SYSTEMS

These proposals for amendments to the Communications Act are submitted pursuant to the Commission's determination, announced in its Public Notice of February 15, 1966, that it would make the following recommendations for legislation to the Congress:

"(*a*) Clarification and confirmation of FCC jurisdiction over CATV systems generally, along with such specific provisions as are deemed appropriate.

"(*b*) Prohibition of the origination of program or other material by a CATV system with such limitations or exceptions, if any, as are deemed appropriate.

"(*c*) Consideration of whether, to what extent, and under what circumstances CATV systems should be required to obtain the consent of the originating broadcast station for the retransmission of the signal by the CATV system.

"(*d*) Consideration of whether CATV systems should or should not be deemed public utilities. In this connection, Congress will be asked to consider the appropriate relationship of Federal to State-local jurisdiction in the CATV field, with particular reference to initial franchising, rate regulation, and extension of service."

The Commission has determined that it has jurisdiction over all CATV systems, and it has asserted that jurisdiction to the extent necessary to carry out the announced regulatory program. However, given the importance of CATV, we believe it highly desirable that Congress amend the Communications Act to confirm that jurisdiction and to establish such basic national policy as it deems appropriate.

The proposed new subsection 3(h) of the Communications Act broadly defines a "community antenna system" to include any facility which receives broadcast signals [1] over the air [2] and distributes them by means of wire or cable to subscribing

[1] Both radio and television signals are included. While we are aware of no community antenna system which now distributes only radio signals, some systems do distribute signals from both radio and television broadcast stations.

[2] This would include signals received directly off the air from a broadcast station, as well as those broadcast and then relayed by means of a microwave relay system.

members of the public. While the definition is all inclusive, we believe it is unnecessary to impose regulations on all systems. Therefore the proposed new section 331(a)(2) would empower the Commission to exempt from regulation, by general rule, systems, which, because of their size or nature, need not be encompassed within the regulatory scheme. For example, the Commission's present regulations exempt systems serving fewer than 50 subscribers or which serve only one or more apartment houses under common ownership, control or management. See, e.g., 47 CFR 21.710(a).

Of prime importance is the proposed new section 331(a)(1) of the act, which would expressly confer upon the Commission, in broad and comprehensive terms, authority to regulate community antenna systems in the public interest. This authority is to be exercised only to the extent necessary to carry out the purposes of the Communications Act, particularly the establishment and maintenance of broadcast services and the provision of multiple reception services. There is thus a congressional recognition of the public service rendered by the broadcast and CATV industries and a directive to promote the orderly growth of both industries.

We recommend the broad approach along the lines of proposed section 331(a)(1) because of the dynamic and relatively new nature of the CATV field. We believe that it would be difficult and indeed impracticable to attempt to delineate precisely in a statute all of the possible areas in which the public interest may in the future require Commission action. Had legislation been drawn to deal specifically with the problems posed by CATV in the fifties, it would have been inadequate as to such present problems as those raised by CATV entry into the major markets. Today, for example, because there is so little program origination or alternation or deletion of broadcast signals being carried, there would appear to be few, if any, problems concerning the carriage over CATV systems of political broadcasts or of appropriate identification announcements with respect to sponsored material, including programs involving controversial issues. But there could be future problems in these respects, requiring regulation along the lines of sections 315 or 317. The broad regulatory approach we urge is similar to that adopted by the Congress for regulation of radio, and the following quotation from the landmark Supreme Court case construing the Communications Act is equally pertinent to the dynamic and new field of CATV:

"Congress was acting in a field of regulation which was both new and dynamic. * * * While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purpose for which the Communications Act of 1934 was brought into being by attempting an itemized catalog of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency. That would have stereotyped the powers of the Commission to specific details in regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding. And so Congress did what experience had taught it in similar attempts at regulation, even in fields far less fluid and dynamic than radio. The essence of that experience was to define broad areas for regulation and to establish standards for judgment adequately related in their application to the problems to be solved." (*NBC* v. *U.S.*, 319 U.S. 190, 218–219.)

There is one area which we believe that Congress may wish to consider specifically at this time, rather than leaving to subsequent regulatory decision under the proposed section 331(a)(1)—namely, whether community antenna systems should be required to obtain the consent of the originating broadcast station before retransmitting the station's signal over the system. It has been urged that such a requirement would obviate the need for much, if not all, of the Commission's present regulations in this field. The Commission is not now in a position to state whether a so-called section 325(a) approach would be effective or fully consistent with the public interest. The matter is one of such a nature that we believe it should be more appropriately considered by the Congress. In this way, there could be congressional hearings on how such a retransmission consent provision would function as a practical matter, whether there should be special provisions for the CATV systems operating in a small community, and whether and to what extent there should be "grandfathering" of existing systems. The statute finally enacted could then reflect the congressional judgment on this important aspect.

The proposed new section 331(b) of the Communications Act deals with the question of possible program origination by community antenna systems. We believe it would be inequitable to allow unlimited program origination, since this

would permit community antenna systems to use the distribution of free television broadcast signals as a base for engaging in pay-TV operations.[3] Moreover, the Commission, and indeed the Congress, has had a continuing concern with the possible impact of subscription television service on the free television broadcast service. The Commission currently has before it a petition requesting the institution of rulemaking proceedings to provide for subscription television service on a permanent and carefully regulated basis throughout the country utilizing the facilities of television broadcast stations. Because of the foregoing considerations, the proposed section 331(b) would bar any general pay-TV operation by a community antenna system.

While convinced that community antenna systems should not be permitted unlimited program origination, we are not recommending that Congress impose a complete ban on program origination. There would appear to be various possible exceptions (e.g., the fairly common time and weathercasting channels on CATV systems; see also par. 57 of our "Notice of Inquiry" and "Notice of Proposed Rule Making," Doc. No. 15971, 1 FCC 2d 453, 474–75). The scope of such possible exceptions to the ban could only be determined after appropriate proceedings. Because of the importance of the matter, we would suggest that Congress, upon the basis of its hearings, resolve this question and enact specific statutory guidelines.

Absent such congressional guidelines, the Commission recommends that Congress follow the approach set out in the new section 331(b). The proposed section 331(b) in addition to barring program origination by community antenna systems, would permit the Commission to grant exceptions subject to several limitations. An express finding would have to be made, after appropriate proceedings, that an exception would serve the public interest; it could be granted only by general rule; and no additional charge to subscribers would be permitted under any exception granted.

Finally, the Commission believes that congressional consideration should also be given to the appropriate relationship of Federal to State-local jurisdiction over community antenna systems, particularly with regard to ini ial franchising, rate regulation, and related matters. The Commission generally has not proposed to exercise any jurisdiction with respect to these matters. (See par. 32, "Notice of Inquiry" and "Notice of Proposed Rule Making," Doc. No. 15971, 1 FCC 2d 453, 466.) Rather, it has recognized that many local governmental bodies usually in connection with the grant of franchises, have asserted some jurisdiction with respect to rates charged subscribers and similar matters. At least three States (Connecticut, New Jersey, and Rhode Island) have held that CATV systems are public utilities.

In our opinion, the public interest will best be protected by permitting State and local regulation to continue with regard to those matters not regulated by the Commission. We are therefore recommending legislation along the lines of the proposed section 331(c). That section provides that there would be no Federal preemption except to the extent of direct conflict with the provisions of the Communications Act or regulations enacted by the Commission. This would permit State and local action, but would not foreclose Federal action to carry out the purposes of the act and to promote the "public interest in the larger and more effective use of radio" (sec. 303(g)), where such action becomes necessary.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 8, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: In the Commission's explanatory statement accompanying our proposed amendments to the Communications Act of 1934, which you introduced as H.R. 13286, it was stated that the State of New Jersey has held CATV systems to be public utilities.

I have been advised by Mr. William F. Hyland, president of the New Jersey Department of Public Utilities, that the Board of Public Utility Commissioners,

[3] Specific charges to subscribers for programs originated by a community antenna system could, of course, be barred, but it might be difficult to insure that monthly rates charged to subscribers were not being set at a level which would take into account programs originated by the system, particularly in the case of a new system.

while it did hold that services provided to a CATV system by a telephone company constituted telephone service subject to public utility regulation, did not rule that the CATV system itself was a public utility.

I regret this error in the Commission's explanatory statement, and am anxious that the record be clarified on this point. If you believe it appropriate, I should like to have this letter made a part of the record in the current hearings on H.R. 13286.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I believe that telling the public it cannot receive broadcasts it wants and is willing to pay for via CATV is unsound public policy.

People willing to pay extra should be allowed to bring in broadcasts which they would not otherwise receive as well or not at all.

Conditions which the Commission would impose on CATV as to carriage, nonduplication and procedural impediments to development in the top 100 markets appear to be for the economic protection of television stations. Experience indicates that economic protection begets more regulation.

The heart of concern over CATV is its possible evolution into pay television. Fear has been expressed that the community antenna systems will be built and made viable by using free broadcasts from television stations; then, after the systems have acquired a sufficient number of subscribers, they could afford to originate their own programs, and pay television would result.

Consideration need be given to the existing types of systems, (1) community antenna systems which receive, and distribute to subscribers, transmissions of broadcast stations, and (2) closed-circuit systems which originate their own special programing and distribute it by wire or cable to theaters, business establishments or homes of subscribers.

I believe we should not discourage closed-circuit systems built and made viable by distributing their own programs.

It is the mixing of the two types of systems which would give rise to an unfair competitive advantage. It would be inequitable to allow program origination since this would permit community antenna systems to use the distribution of free television broadcast signals as a base for engaging in pay television operations.

Accordingly, at the present time, I would recommend the following legislation, limited to prohibiting program origination by community antenna systems:

Section 3(hh) (definition): "Community antenna system means a facility which receives any programs transmitted by a broadcast station and distributes such programs by wire or cable to customers paying for the service."

Section 331: "No community antenna system shall distribute programs other than those received from transmissions by broadcast stations."

SEPARATE STATEMENT OF COMMISSIONER LEE LOEVINGER REGARDING PROPOSED CATV LEGISLATION

I believe it is necessary for Congress to legislate on the subject of community antenna television and that the draft of proposed legislation submitted herewith by the FCC is the best compromise that can now be agreed upon. It is my opinion that under present statutes the Commission does not have the jurisdiction which it claims over CATV's. See my separate opinion at 4 RR 2d, 1679, 1712. If the Commission is to act in this field legislative authorization is therefore necessary.

In general I agree with the views expressed by Commissioner Bartley in his dissenting statement. However, those views are more relevant to consideration of the regulations that may be promulgated by the Commission under the proposed legislation than to the bill now proposed. The legislation proposed is basically a broad authorization to the FCC to act in this field, with a specific declaration that congressional action shall not be construed as Federal preemption. It would be desirable for Congress to establish more specific standards for administrative action than are contained in the proposed bill. But it is appropriate for Congress

to delegate broad authority for the Commission to act under whatever standards Congress may see fit to establish. Accordingly, I join in recommending that Congress consider the proposed bill submitted herewith and enact legislation in such form as may best express the congressional view of the proper way to deal with the problems involving FCC jurisdiction to regulate CATV systems, the operation of CATV systems, the relations of CATV systems to conventional broadcasting stations, and the relation between Federal and State jurisdiction in this field.

SEPARATE STATEMENT OF COMMISSIONER KENNETH A. COX

Mr. Chairman, I agree with Chairman Henry's view that community antenna television systems probably are public utilities and that the questions of initial franchising, the rates to be charged, and related matters are best left to local regulation.

However, the committee should be aware of a possible absence of local regulation where a CATV operator decides to lease channels from a telephone company rather than string his own cable. There may be many instances where the State authorization of the telephone company to use public rights-of-way to provide service includes authorization to supply channels and other facilities to CATV system customers without any further local authorization to the CATV system itself.

For example, the city of Jackson, Mich., last year issued a CATV franchise to Knorr Broadcasting Co. At about the same time, Time-Life Broadcast, Inc., signed a lease with Michigan Bell Telephone to supply CATV channels in Jackson. The city of Jackson passed an ordinance prohibiting the provision of CATV service without a franchise from the city, and sued to enjoin Time-Life and Michigan Bell from violating the ordinance. The Michigan court held that the ordinancemaking authority of the city of Jackson did not apply to Michigan Bell and its agreement to supply CATV facilities to Time-Life. About 10 days later the Michigan Public Utilities Commission ruled that the State-approved tariff for communications means that Michigan Bell Telephone does not require a franchise or permit from a Michigan municipality to supply CATV channels to a customer.

The Commission has ascertained from the Bell System that it has such State utility commission authorizations to provide service to CATV systems in some 22 States.

While the State authorization to the telephone company would regulate the rates, and so forth, under which service is provided to the CATV system, there would be no regulation of the CATV system's service to its subscribers (except in States like Connecticut and Rhode Island which regulate CATV systems as public utilities). Moreover, even if the community could properly require a franchise where facilities were not leased from the telephone company and undertook to select the best applicant among competing applicants for a franchise, its proceedings would be an exercise in futility if a losing applicant or an outsider then decided to request service from the telephone company.

The community would appear to have a legitimate interest in selecting the operator to be franchised to provide CATV service. First, it is interested in selecting the best applicant who will provide service on the best terms. There have been allegations that in one area gambling or criminal interests sought to engage in the CATV business. While the community might refuse to franchise such an applicant, the telephone company could not refuse to provide service to such a customer so long as the customer did not use the facilities to engage in gambling or criminal activities. Furthermore, persons objecting to the proposed CATV operation have no local forum in which to complain. Second, most communities require payment to the city of a percentage of the CATV operator's gross revenues as a condition of the franchise. This revenue would perhaps be lost to the city if the CATV system leased facilities from the telephone company. Third, the city may select the franchise applicant offering the lowest rates, impose a ceiling on rates, fix minimum technical standards of operation, and require that service be provided to specified areas. If the CATV system leases facilities from the telephone company, there may well be no local regulation of these matters, and no protection of the CATV viewing public.

Thus, while I believe that initial franchising and rate regulation are best left to local regulation, the committee should be aware there may be no regulation in many areas unless new legislation is adopted by the States.

Just one other item. I would like to amplify my statement on March 22 concerning the differences between myself and the majority with respect to the problem of distant city signals. I stated that I did not agree with the differing treatment accorded the top 100 markets and the markets below that level. I want to make it clear, however, that my first preference was for a rule barring new systems, for a period of 5 years, from extending any station's signal beyond its grade B contour, except in certain carefully defined situations. This would have meant that CATV systems would be confined to the role they claim for themselves when it comes to discussing copyright regulation and certain other matters—that is, it would make them true antenna services bringing to the public in their communities the signals available off the air in their general areas.

I would, of course, favor authorizing service around the fringes of the grade B where no other stronger signals were available, and I'm sure we would have permitted even further extension of signals to bring service to communities not enjoying full three-network service over the air. But for a period sufficient to allow UHF to gain a toehold—and perhaps bring resolution of the copyright question—I would have favored limiting further CATV development to its original, conventional role of correcting real deficiencies of reception.

I think the course adopted by the majority will involve many petitions and many hearings, all concerning matters that are difficult of proof and turning more on policy judgment than on the ascertainment of facts. I think this will be expensive for all parties concerned, and will impose serious burdens on the Commission itself. There are serious problems in trying to develop policy through a series of hearings, and I'm afraid that the results may not be consistent, that pressures will mount because of the different treatment of nearby communities, and that the floodgates may break, with serious damage to our basic television service.

I think the Commission's work in television allocations has produced a broadly based service, with choice of signals of adequate quality for the great majority of the people. Our allocations table provides room for still further development of this free service—if the opportunity for growth is preserved. And while this takes time, each new station that comes on the air is a local outlet serving all within range of its signal without direct charge. I think in the long run this is a better way to provide added choice for the American public, but I'm afraid this potential will be impaired if CATV development is not fitted into the overall structure in the supplemental role it was originally designed to fill.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 12, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 5, 1966, requesting the Commission's comments with respect to suggested amendments to H.R. 13286 which are contained in drafts submitted by the National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters (AMST). The Commission's views on these two drafts are as follows:

The National Association of Broadcasters would amend H.R. 13286 in four respects. First, it would amend the definition of "community antenna system" in the proposed section 3(gg) by deleting the language "directly or indirectly over the air." We believe that retention of the phrase is desirable. The language "directly or indirectly" is employed to remove any doubt as to the inclusion of the system which uses microwave to obtain its signals. The term "over the air" reflects the common practice of the community antenna system, and is used, we note, in the new proposed section 331(b) recommended by the NAB.

The second change proposed by the National Association of Broadcasters is in section 331(a)(1), where the standard for the exercise of the Commission's general authority over community antenna systems is narrowed by providing that the authority shall be exercised "with due regard to the establishment and maintenance of multiple broadcast services," in place of the broader language in H.R. 13286 to the effect that the authority shall be exercised "with due regard

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to both the establishment and maintenance of broadcast services and the provision of multiple reception services." The NAB standard would thus omit consideration of the provision of multiple reception services, and would limit Commission consideration to the establishment and maintenance of multiple broadcast services. The standard urged by the Commission in H.R. 13286 reflects the policy judgment made in the Second Report and Order and its accompanying rules (31 F.R. 4540) and also, specifically, the valuable contribution to the public interest which community antenna systems provide. The Commission believes that H.R. 13286 is therefore preferable to the NAB version of section 331(a)(1) in this respect.

Thirdly, the NAB would modify proposed section 331(b) by requiring a community antenna system to transmit simultaneously the programs it receives, and by deleting the clause in H.R. 13286 which authorizes the Commission to make limited exceptions to the general prohibition against program orgination. The Commission has no objection to a requirement for simultaneous reception and distribution of broadcast signals by the community antenna system. Such a requirement would reflect the present operating practice of community antenna systems. Further, the Commission would regard a delayed transmission by a system as a program origination, and we do not contemplate that such originations would be authorized under the proposed section 331(b) of H.R. 13286. However, the Commission does not believe it desirable to delete its authority to authorize limited classes of program origination by general rule. In addition to possible constitutional questions which might be raised by an absolute prohibition against any and all program origination, the Commission also believes that it may well be in the public interest for community antenna systems to originate certain types of program material. See page 4 of FCC 66–208, the legislative proposal submitted by the Commission. We therefore urge that the limited discretion accorded the Commission in H.R. 13286 should be retained.

Finally, the NAB amendment would add a new section 332 which would require a community antenna system to receive the express authority of the broadcast station whose signals it transmits. This provision is similar to the present requirement of section 325(a) of the Communications Act of 1934, as amended, 47 U.S.C. 325(a), which prohibits any broadcasting station from rebroadcasting the program of another broadcasting station without the express authority of the originating station. As the Commission stated in its statement on H.R. 13286 presented before the committee on March 22, 1966, we believe this is an area which should be specifically considered by Congress, although the Commission could impose such a requirement under the general authority of H.R. 13286. The Commission does not have a record which would indicate whether such an approach would be effective or what its precise effect on the public interest would be. As we noted in our statement, the adoption of such an approach would also require consideration of copyright questions, and Congress might wish to consider it in connection with pending copyright proposals. In this way, there could be Congressional consideration of how such a retransmission consent provision would function as a practical matter, and whether there should be special provisions for the community antenna systems operating in a small community.

The proposed redraft submitted by the Association of Maximum Service Telecasters would also amend section 331(a)(1) in the same manner as the proposal of the NAB, and the comments above on this change apply to this part of the AMST proposal. The AMST draft would also change section 331(a)(2). This section as proposed in H.R. 13286 would give the Commission authority to make rules exempting community antenna systems from regulation where regulation is unnecessary "because of the size or nature of the systems so exempted." The AMST proposal would change this language to read, "because of the number or nature of the subscribers of the systems so exempted." The Commission's purpose under H.R. 13286 was to exempt systems which are so small that no regulation is needed, and under the Commission's rules, systems are exempt which serve fewer than 50 subscribers or only apartment houses under common management. It would appear that under either version, the Commission's or AMST's, the same purpose could be achieved. Finally, the AMST proposal would amend proposed section 331(b) essentially as would the NAB proposal, and the comments set forth above on this change are also applicable to the AMST proposal. The AMST proposal would not otherwise change H.R. 13286.

The Commission appreciates this opportunity to comment on these two proposed revisions of the pending legislation.

This letter was adopted by the Commission on May 11, 1966. Commissioner Bartley has issued a separate statement which is attached.

By direction of the Commission:

ROSEL H. HYDE, *Acting Chairman.*

STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

In light of the testimony and conflicting views presented during the House committee hearings on H.R. 12914 and H.R. 13286, I am even more firmly convinced that CTAV legislation should be limited to the recommendation in my statement of March 22, 1966, to the committee. I would limit CATV legislation to a prohibition of program origination by antenna systems so that there would be no mixing of antenna systems and closed-circuit systems; and with this proscription, there would be no Commission rules promulgated or any jurisdiction conferred on the Commission for regulation of such systems.

SIXTH REPORT AND ORDER

The Sixth Report and Order (1 Pike & Fischer R.R. 91:601 (pt. 3)) released April 14, 1952, terminated proceedings instituted on May 6, 1948, for the purpose of developing a plan for the assignment of television channels throughout the United States. It also ended a "freeze" on applications for new television stations imposed September 30, 1948. This "freeze order" provided, among other things, that no new or pending applications for the construction of new television stations would be acted upon by the Commission.

The rationale for the use of a table of assignments for television service is set forth in paragraph 13:

"A table of assignments makes for the most efficient technical use of the relatively limited number of channels available for the television service. It protects the interests of the public residing in smaller cities and rural areas more adequately than any other system for distribution of service and affords the most effective mechanism for providing for noncommercial eductional television."

In proposing the use of a table for frequency assignments the Commission said that it had "* * * endeavored to meet the twofold objective set forth in sections 1 and 307(b) of the Communications Act of 1934, to provide television service, as far as possible to all people of the United States and to provide a fair, efficient and equitable distribution of television broadcast stations to the several States and communities."

In attempting to carry out these objectives, the Commission set forth certain principles, in terms of priorities:

"Priority No. 1: To provide at least one television service to all parts of the United States.

"Priority No. 2: To provide each community with at least one television broadcast station.

"Priority No. 3: To provide a choice of at least two television services to all parts of the United States.

"Priority No. 4: To provide each community with at least two television broadcast stations.

"Priority No. 5: Any channels which remain unassigned under the foregoing priorities will be assigned to the various communities depending on the size of the population of each community, the geographical location of such community, and the number of television services available to such community from television stations located in other communities." (1 Pike & Fischer R.R. 91:601 at 620.)

To carry out these principles the Commission, with few exceptions, made the following assignments based on population:

1950 population of cities—Center city:	*Number of channels*
1,000,000 and above	6 to 10.
250,000 to 1,000,000	4 to 6.
50,000 to 250,000	2 to 4.
Under 50,000	1 to 2.

Variations were made in instances where other factors entered into the determination. For instance in paragraph 77, the Commission concluded that larger cities should be assigned more VHF channels than communities comprising few people.

In order to make the assignment table feasible, certain engineering criteria were established. These were:

1. Establishment of two grades of service—grade A and grade B: Grade A service was defined as a "quility acceptable to the media observer is expected to be avaialble for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of this service." For grade B service, the figures are 90 percent of the time and 50 percent of the locations (paragraph 97 of the sixth report).

2. Elimination of interference between stations: In order to guard against interference between stations on the same channel, the Commission divided the country into three zones for the purpose of establishing minimum mileage separations between the locations of such stations. The three zones were based on density of population with the most populated zone allowed shorter distances than sparser areas. Zone I encompasses the Middle Atlantic, Northeast and parts of the Mid-West areas. Zone III covers the Southern States, and Zone II includes the parts of the United States not covered by the other zones.

The separations for each zone are:

Zone	Minimum mileage separation	
	VHF	UHF
I	170	155
II	190	175
III	220	205

Concerning interference between stations on adjacent as opposed to the same channels the sixth report set uniform standards for the United States as follows:

VHF—60 miles between adjacent channels.

UHF—55 miles between adjacent channels.

The Commission's authority to implement the provisions of the sixth report and order was upheld in *Logansport Broadcasting Corp.* v. *U.S.* 210 F. 2d 24 (1954); *People Broadcasting Co.*, v. *U.S.* 209 F. 2d 286 (1953); *Coastal Bend Television Co.* v. *FCC*, 234 F. 2d 686 (1956).

ALL CHANNEL RECEIVER LEGISLATION

In 1962 Congress passed the "all channel receiver" bill (Public Law 87–529, 76 Stat. 150, 1962). This legislation authorized the Commission to require that all television sets shipped in interstate commerce be equipped with both a VHF and a UHF tuner (47 U.S.C. 303(s)). Service in the UHF band was not developing rapidly enough and this bill was designed to foster the development of UHF television as a means for full implementation of the system of assignments established by the sixth report. Congress felt that effective use of UHF stations was the most orderly means of implementing the provisions of the Communications Act.

Glossary of Terms Concerning Community Antenna Television Systems

American Research Bureau: A television research organization using a diary technique covering both national and local areas. Data supplied includes one-fourth-hour ratings, sets in use, total audience, audience composition, viewers per set, etc. Measures television viewing market size rather than population of cities and metropolitan areas, as does Bureau of the Census.

Carriage: The carrying on the community antenna television system of a program being broadcast by a television broadcast station.

CATV and the use of microwave:

Microwave: A method whereby television signals may be transported from one place to another.

Microwave community antenna television system: A community antenna television system which receives broadcast signals from a distant antenna tower by means of point-to-point over-the-air hops.

Nonmicrowave, or off-the-air, community antenna television system: A community antenna system which receives broadcast signals directly off the air by means of a receiving antenna.

Contours:

Grade A contour: The calculated line surrounding an area in which a good picture is normally available at least 90 percent of the time at the best 70 percent of receiver locations. The grade A contour extends about 38 miles for UHF stations with average power and 36 to 44 miles for VHF stations at maximum power, assuming no interference.

Grade B contour: The calculated line surrounding an area in which a good picture is normally available at least 90 percent of the time at the best 50 percent of receiver locations. The grade B contour extends about 50 miles for UHF stations with average power, and 70 to 80 miles for VHF stations at maximum power, assuming no interference.

Principal city contour: The area within which the signal has the strength required by the Commission's rules to be afforded the principal city to which the station is assigned. The principal city contour extends about 31 miles for UHF stations with average power, and 28 to 36 miles for VHF stations at maximum power, assuming no interference.

Delayed network broadcast: A network program carried at a later time than the time it is scheduled by the network. The program may be recorded by the station on tape or film for later broadcast, or it may be shipped by the network to the station on tape or film.

Distant signal: The signal of a television broadcast station beyond the grade B contour of that station.

Exclusivity: The contractual right to be the sole exhibitor of a program in a particular area during a particular period of time.

Feature films: All motion picture theatricals intended originally for theater use, regardless of whether they are run full length or cut to prescribed time segments.

First report and order in docket Nos. 14895 and 15233: The decision of the Commission released on April 23, 1965, in the community antenna television proceeding.

Fragmentation of audience: The concept of the division of the viewing audience of local stations by the introduction of additional television signals.

Independent station: A television station which is not affiliated with any national television network organization.

"Leapfrogging": Generally used for carriage by a community antenna television system of a more distant network affiliate's signals in place of a closer station affiliated with the same network.

Local station: For purposes of the Commission's rules, a local television station is a television broadcast station which places a grade B or better signal over the area in which the community antenna television system operates.

Net programing: The programing supplied by a national television network organization to its affiliates. The affiliate is usually paid for its time.

Nonduplication: Not carrying on the community antenna television system from another television broadcast station the same program being broadcast by a local television broadcast station.

Same-day nonduplication: Not carrying on the community antenna television system from another television broadcast station the same program being broadcast that day by a local television broadcast station.

Fifteen-day before-and-after nonduplication: Not carrying on the community antenna television system from another television broadcast station, within 15 days before or after local broadcast, a program broadcast or to be broadcast by a local television broadcast station.

Substantially duplicated as defined by the FCC: The term "substantially duplicated" means regularly duplicated by the network programing of one or more stations, singly or collectively, in a normal week during the hours of 6 to 11 p.m., local time, for a total of 14 or more hours.

Prime time network program: The FCC defines a prime time network program as a program presented by a network between 6 and 11 p.m., eastern time. Prime time hours for local stations may differ because of the time zones.

Program origination: Presenting a program on the community antenna television system which has been originated by the system. For purposes of this definition, any program is an origination which has not been received from a broadcast station and simultaneously carried over the community antenna television system.

Second report and order in docket Nos. 14895 and 15233: The decision of the Commission released on March 8, 1966, in the community antenna television proceeding.

Seiden report: A report prepared for the Commission in 1965 by Dr. Martin H. Seiden, entitled "An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry."

Syndicated films: Films produced specially for television including travelogs, cartoons, musicals, varieties, comedies, serials, documentaries, etc.

Syndicated program: A program purchased by a number of television stations on a nonnetwork basis. It may be either a syndicated film or a feature film.

Television translator station: A station in the broadcasting service which retransmits the signals of a television broadcast station without altering any characteristic of the signal except its frequency or amplitude.

UHF channels: The ultra high frequency part of the spectrum allocated for television broadcasting, comprising channels 14 through 83.

VHF channels: The very high frequency portion of the spectrum allocated to television, comprising channels 2 through 13.

TV market rankings according to ARB total net weekly circulation, 1965

Rank	City	ARB total net weekly circulation
1	New York, N.Y.	5,375,400
2	Los Angeles, Calif.	2,987,700
3	Chicago, Ill.	2,348,300
4	Philadelphia, Pa.	2,091,500
5	Boston, Mass.	1,675,000
6	Detroit, Mich.	1,519,600
7	San Francisco, Calif.	1,297,000
8	Cleveland, Ohio	1,243,300
9	Pittsburgh, Pa.	1,167,600
10	Washington, D.C.	996,900
11	Baltimore, Md.	818,300
12	St. Louis, Mo.	811,100
13	Hartford-New Haven, Conn.	799,500
14	Providence, R.I.	775,600
15	Dallas-Fort Worth, Tex.	767,500
16	Cincinnati, Ohio	719,500
17	Minneapolis-St. Paul, Minn.	679,400
18	Indianapolis, Ind.	678,300
19	Atlanta, Ga.	615,200
20	Miami, Fla.	611,400
21	Seattle-Tacoma, Wash.	606,500
22	Buffalo, N.Y.	600,200
23	Milwaukee, Wis.	583,500
24	Kansas City, Mo.	583,300
25	Houston, Tex.	559,700
26	Toledo, Ohio	549,600
27	Sacramento-Stockton, Calif.	535,500
28	Dayton, Ohio	533,600
29	Charlotte, N.C.	505,400
30	Columbus, Ohio	501,100
31	Wheeling, W. Va.-Steubenville, Ohio	495,100
32	Tampa-St. Petersburg, Fla.	478,900
33	Harrisburg-Lancaster-Lebanon-York, Pa.	472,700
34	Memphis, Tenn.	469,400
35	Syracuse, N.Y.	466,800
36	Portland, Oreg.	462,200
37	Albany-Schenectady-Troy, N.Y.	460,900
38	Grand Rapids-Kalamazoo, Mich.	450,100
39	Birmingham, Ala.	447,100
40	Denver, Colo.	435,900
41	Johnstown-Altoona, Pa.	434,400
42	Nashville, Tenn.	431,100
43	New Orleans, La.	428,300
44	Greenville-Spartanburg, S.C.-Asheville, N.C.	427,400
45	Charleston-Huntington, W. Va.	410,000
46	Flint-Saginaw-Bay City, Mich.	408,100
47	Lansing, Mich.	403,700
48	Louisville, Ky.	395,700
49	Greensboro-Winston Salem-High Point, N.C.	392,300
50	Raleigh-Durham, N.C.	364,400
51	Oklahoma City, Okla.	360,400
52	Salinas-Monterey-Santa Cruz, Calif.	357,100
53	Manchester, N.H.	348,800
54	San Diego, Calif.	346,300
55	Norfolk-Portsmouth-Newport News-Hampton, Va.	338,400
56	Wichita, Kans.	332,100
57	San Antonio, Tex.	319,600
58	Tulsa, Okla.	316,300
59	Portland-Poland Spring, Maine	313,800
60	Omaha, Nebr.	313,500
61	Roanoke, Va.	306,800
62	Phoenix, Ariz.	306,500
63	Salt Lake City-Ogden-Provo, Utah	297,900
64	Green Bay, Wis.	296,600
65	Richmond, Va.	294,200
66	Quad City (Davenport, Iowa-Rock Island-Moline, Ill.)	294,100
67	Orlando-Daytona Beach, Fla.	291,200
68	Rochester, N.Y.	285,800
69	Shreveport, La.	280,600
70	Wilkes Barre-Scranton, Pa.	275,900
71	Little Rock, Ark.	267,700
72	Jacksonville, Fla.	265,500
73	Champaign-Decatur-Springfield, Ill.	262,400
74	Cedar Rapids, Iowa	261,900
75	Mobile, Ala.-Pensacola, Fla.	260,500
76	Des Moines, Iowa	251,100
77	Spokane, Wash.	248,100
78	Springfield-Holyoke, Mass.	243,300
79	Jackson, Miss.	241,900
80	Knoxville, Tenn.	239,200
81	Madison, Wis.	232,700
82	Binghamton, N.Y.	231,100
83	Columbia, S.C.	225,600
84	Columbus, Ga.	223,300
85	Baton Rouge, La.	222,200
85	W. Palm Beach, Fla.	222,200
87	Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.	220,700
88	Evansville, Ind.	219,000
89	Greenville-Washington-New Bern, N.C.	218,600
90	Sioux Falls, S. Dak.	217,900
91	Fresno, Calif.	216,300
92	Chattanooga, Tenn.	206,300
93	Lincoln-Hastings-Kearney, Nebr.	201,300
94	Rockford, Ill.	194,600
95	Youngstown, Ohio	193,800
96	Augusta, Ga.	191,600
97	South Bend-Elkhart, Ind.	188,300
98	Peoria, Ill.	184,700
99	Ft. Wayne, Ind.	181,600

TV market rankings according to ARB total net weekly circulation, 1965—Continued

Rank	City	ARB total net weekly circulation	Rank	City	ARB total net weekly circulation
100	Albuquerque, N. Mex	179,300	164	Ottumwa, Iowa	82,500
101	Bristol, Va., Johnson City Tenn	177,500	165	Biloxi, Miss	76,700
102	Beaumont-Port Arthur, Tex	172,300	166	Lake Charles, La	72,700
103	Erie, Pa	162,200	167	Ada, Okla	69,900
104	Burlington, Vt.-Plattsburgh, N.Y	158,300	168	Harrisonburg, Va	69,300
105	Lafayette, La	156,300	169	Ft. Smith, Ark	69,100
106	Springfield, Mo	154,700	169	Alexandria, La	69,100
107	Duluth, Minn.-Superior, Wis	153,800	171	Bowling Green, Ky	68,200
108	Austin-Rochester, Minn.-Mason City, Iowa	152,900	172	Columbus, Miss	67,600
109	Terre Haute, Ind	151,700	173	Watertown-Carthage, N.Y	66,000
110	Joplin, Mo.-Pittsburg, Kans	150,000	174	Hattiesburg-Laurel, Miss	65,300
111	Hawaii	149,500	175	Clarksburg-Fairmont, W. Va	65,100
112	Albany, Ga	148,500	176	Billings, Mont	62,900
113	Montgomery, Ala	148,400	177	Reno, Nev	60,800
114	Florence, S.C	147,400	178	Ardmore, Okla	60,700
115	Utica, N.Y	146,700	179	Bellingham, Wash	60,500
116	Waco-Temple, Tex	145,700	180	Idaho Falls-Pocatello, Idaho	60,200
117	Sioux City, Iowa	145,000	181	Marquette, Mich	58,400
118	Tallahassee, Fla.-Thomasville, Ga	145,000	182	Visalia, Calif	55,000
119	Charleston, S.C	144,500	183	Lima, Ohio	54,300
120	Cadillac-Traverse City, Mich	141,000	183	Roswell, N. Mex	54,300
121	Amarillo, Tex	140,100	185	Rapid City, S. Dak	53,900
122	Austin, Tex	139,600	186	Great Falls, Mont	52,200
123	Monroe, La.-El Dorado, Ark	139,000	187	Jackson, Tenn	51,600
124	Wichita Falls, Tex.-Lawton, Okla	138,500	188	Casper, Wyo	50,700
125	La Crosse, Wis	135,100	189	Eureka, Calif	50,100
126	Hannibal, Mo.-Quincy, Ill	134,000	190	Butte, Mont	48,300
127	St. Joseph, Mo	130,800	191	Medford, Oreg	43,800
128	Bluefield, W. Va	129,700	192	Hays, Kans	43,000
129	Chico-Redding, Calif	129,600	193	Aberdeen, S. Dak	42,700
130	Fargo, N. Dak	128,400	194	Greenwood, Miss	42,000
131	Topeka, Kans	126,400	195	Salisbury, Md	41,800
132	Dothan, Ala	124,900	196	Jonesboro, Ark	40,900
133	Columbia-Jefferson City, Mo	122,600	197	Tupelo, Miss	39,800
134	Tucson, Ariz	122,500	198	Minot, N. Dak	39,500
135	El Paso, Tex	121,800	199	Decatur, Ala	39,000
136	Wausau, Wis	121,400	200	Akron, Ohio	37,900
137	Santa Barbara, Calif	119,500	201	Ensign, Kans	35,700
138	Wilmington, N.C	119,200	202	Grand Junction-Montrose, Colo	34,500
138	Colorado Springs-Pueblo, Colo	119,200	203	Fort Dodge, Iowa	34,100
140	Lubbock, Tex	118,800	204	Lufkin, Tex	33,100
141	Corpus Christi, Tex	111,800	205	Ft Myers, Fla	32,500
142	Lexington, Ky	111,800	206	Missoula, Mont	32,200
143	Savannah, Ga	111,000	207	Twin Falls, Idaho	29,700
144	Yakima, Wash	109,300	208	San Angelo, Tex	28,400
145	Macon, Ga	109,200	209	Zanesville, Ohio	27,000
146	Bakersfield, Calif	108,100	210	Presque Isle, Maine	24,900
147	Odessa-Midland, Tex	107,700	211	Mitchell, S. Dak	24,700
148	Alexandria, Minn	103,500	212	Yuma, Ariz.-El Centro, Calif	24,100
149	Abilene-Sweetwater, Tex	101,200	213	Parkersburg, W. Va	24,000
150	Eugene, Oreg	100,700	214	Florence, Ala	23,900
151	Cheyenne, Wyo	99,000	215	North Platte, Nebr	21,200
152	Bismarck, N. Dak	95,800	216	Lafayette, Ind	20,900
153	Tyler, Tex	93,400	217	Klamath Falls, Oreg	20,600
154	Mankato, Minn	90,600	218	Dickinson, N. Dak	20,100
155	Panama City, Fla	88,800	219	Roseburg, Oreg	19,800
156	Oak Hill, W. Va	88,400	220	Coos Bay, Oreg	19,100
157	Bangor, Maine	87,800	221	Big Spring, Tex	18,800
158	Las Vegas, Nev	87,600	222	Pembina, N. Dak	18,400
159	Meridian, Miss	87,000	223	Marion, Ind	17,000
160	Huntsville, Ala	86,000	224	Muncie, Ind	16,100
161	Eau Claire, Wis	84,800	225	Laredo, Tex	14,300
162	Boise, Idaho	83,800	226	Riverton, Wyo	12,500
163	Lower Rio Grande Valley (Harlingen-Weslaco, Tex.)	83,300	227	Selma, Ala	11,200
			228	Carlsbad, N. Mex	10,400
			229	Helena, Mont	8,400
			230	Glendive, Mont	6,200

The CHAIRMAN. I believe that it would be appropriate to incorporate in the record by reference the hearing record on H.R. 7715 which was heard last year. This way we shall have a complete record

and there will be no need to repeat information presented at the earlier hearings.

CATV has brought America and the world vividly into the homes of millions of American people that would not have had an apportunity to watch the picture and the news and information which accompany it if it hadn't been for CATV.

The future of CATV depends on its responsiveness to the general good. It is important that it does conform to reasonable standards for the general good.

Our first witness this morning——

Mr. ROGERS of Texas. Mr. Chairman——

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Before we hear the witnesses, I want the record to be completely and absolutely clear on one point with regard to my bill.

My bill was not introduced for the purpose of affecting or not affecting any phase of the communications industry, as such. It was introduced to spell out in plain English that the Federal Communications Commission does not have jurisdiction of the reception by people in this country, regardless of what business they are engaged in, or what social activities they are engaged in, and that is the purpose of the bill.

Whatever effect it might have on any phase of the communications industry is something that comes about because of basic policy.

I just wanted the record clear on this, so that there won't be any misunderstanding about it. I do not believe that any Federal agency ought to have jurisdiction of what the people in this country receive, unless we are ready to open the door for a Radio Free Europe activity in this country, and I don't think the American people would stand for that.

The CHAIRMAN. I thank the gentleman for his statement. I will let him testify, too.

Mr. ROGERS of Texas. Yes, sir; I will be happy to.

The CHAIRMAN. Our first witness this morning will be E. William Henry, Chairman of the Federal Communications Commission.

Mr. Henry, would you state who you have with you for the record, please, and then you may proceed as you see fit.

STATEMENT OF HON. E. WILLIAM HENRY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY COMMISSIONERS ROSEL H. HYDE, ROBERT T. BARTLEY, ROBERT E. LEE, AND KENNETH A. COX

Mr. HENRY. Thank you, Mr. Chairman.

With me today are my colleagues, Commissioners Hyde, Bartley, Lee, and Cox.

Commissioner Loevinger is out of the country as a member of a U.S. delegation on a telecommunications matter, and Commissioner Wadsworth is not feeling well, but he hopes to be here later this morning.

If I may, Mr. Chairman, I have a prepared statement which I would like to read to the committee on behalf of the Commission. I do have a personal statement of my own which is an attempt to

clarify one particular matter, and then Commissioner Bartley has a separate statement.

If I may, I will proceed with the presentation of the Commission's statement.

The CHAIRMAN. You may proceed.

Mr. HENRY. I am here today to discuss with the committee the Commission's recent actions with respect to community antenna television systems which were taken by our second report and order in Docket No. 15971, released March 8, 1966, and to explain the legislative proposals which we have made on the same subject.

The relationship of community antenna television systems to traditional television broadcasting has been one of the most difficult problems facing the Commission in recent years. It is also one of the most important issues, since its resolution may affect the basic structure of television for many years to come. It is for these reasons—and particularly because the Commission believes that congressional guidance is most desirable on certain aspects of the problem—that I am pleased to review the entire subject with the committee at this time.

I will first discuss the action already taken by the Commission, and then take up our proposals on new legislation H.R. 13286, the bill which incorporates our own legislative proposals to the Congress, as well as our comments on H.R. 12914, introduced by Mr. Rogers.

It will probably be most helpful to the committee if I limit this discussion to fundamentals, and then take up in more detail any particular questions which the committee may have.

A community antenna television system, as we have defined it, and as it is commonly understood, is a facility which receives television signals off the air, either directly or by means of microwave from a more distant reception point, and distributes them by wire to subscribing members of the public who pay for the service. Our rules, for more efficient administration, exclude small systems which serve fewer than 50 subscribers, or which act merely as an apartment house antenna.

Mr. Chairman, I have some charts with me which I think might be of help in explaining CATV generally to the committee, and would perhaps serve as an introduction to the subject before we take up the more detailed consideration of it. If I may, I would like to show you those charts at this time.

Mr. Chairman, this is very basic material, and I apologize to those of you who have heard it all before, but I did think it helpful to talk about it in pretty basic terms first. It helps me, if nothing else.

Figure 1 is an attempt to depict a typical off-the-air system, in that it takes the signal from what we have labeled "Big city TV" transmitters here in the distance. It takes those signals which are in the air off the air and transmitts them or redistributes them by wire to homes in the CATV community.

It does this by means of a head end antenna, or a master antenna which is generally located on a higher point of ground and which is a tower which has individual receiving antennas on it. Each antenna picks up one particular television signal. It then takes those signals, runs them through what we have labeled a master control unit, amplifies them, and otherwise processes them.

It runs them down through wires or cable, through additional

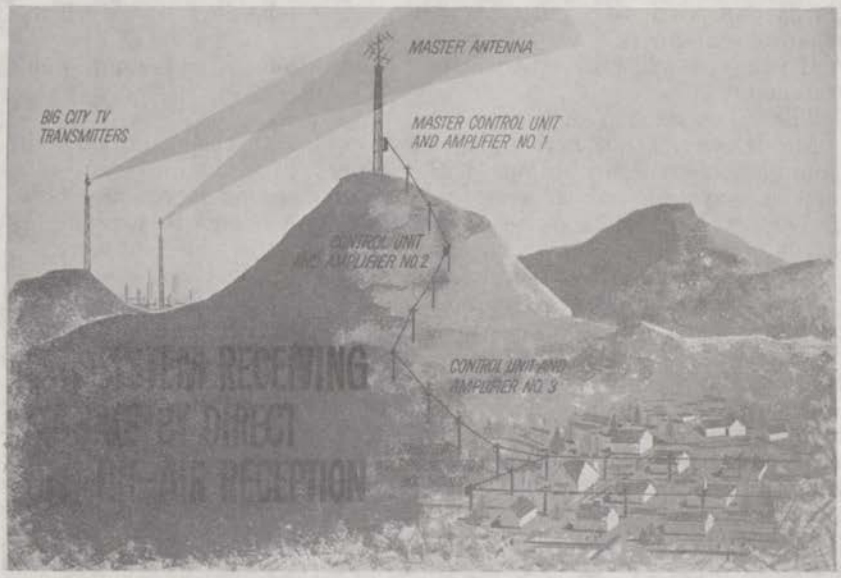

FIGURE 1

control units and amplifiers, into the town. These cables are generally strung on telephone poles, and permission to do so is either obtained from the telephone compnay, or under some form of franchise or contract with the local authorities.

Mr. YOUNGER. Mr. Chairman, just one question there, Mr. Henry. You say that the antenna picks up only one signal? Do they have to have a different antenna to pick up each signal?

Mr. HENRY. Usually, yes, sir. I will come to that in a minute.

Now, the first chart was an off-the-air system, where you simply, with a head end or master antenna, go from the master antenna into the town.

Now, figure 2 depicts a CATV system which receives its signals by microwave relay. Here is the big city again, broadcasting its television signals into the air. The CATV owner, or some independent company, common carrier, sometimes, will erect the head end or master antenna which, again, through the use of individual antennas on the top of a tower, picks the distant signals out of the air, and then instead of taking it directly from the first master antenna and leading it into the town by means of wire, as we showed in the first instance, it relays it by means of microwave from one microwave tower to another, and then on into the final tower or distribution point, and then into the town.

The difference between the two is simply that you need microwave to get the signals from the point where they are originally picked off the air to the point where they will be distributed, and this is simply a matter of distance from the originating city.

Now, next are some photographs blown up of actual receiving antennas in CATV systems. This first photograph, figure 3, shows a

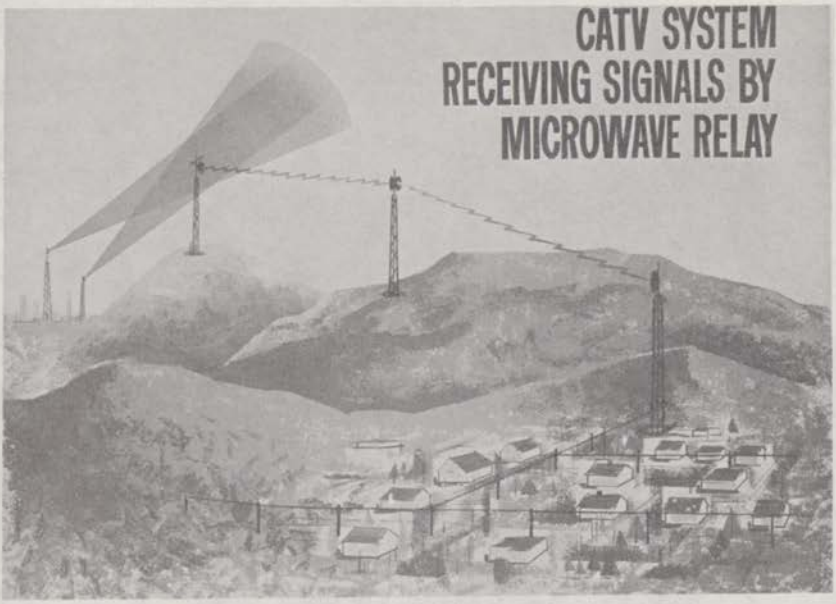

FIGURE 2

high master or head end antenna tower, with a group of individual antennas up here to receive the various signals that are in the air. Each of those generally is oriented directionally and otherwise turned to receive a particular signal off the air, so that it can receive it in the best possible form.

The next photograph, figure 4, is simply a closeup of one such master antenna tower, showing the actual antennas that are located on the top of the tower. I don't know how many are here—I suppose 15 or 20—but each of them is tuned to a particular channel to receive it off the air.

The next series of photographs show some of the operations of the CATV system once it picks the signals off the air.

This next photograph, figure 5, is what I would call the master control unit, and in particular it shows the amplifiers that are used to amplify and process each incoming signal.

The Commission and some of its staff visited a system in Harrisburg, Pa. Its master control unit was up on the hill right next to the master antenna and was enclosed in a stone or concrete house, and as it was explained to us, one signal was run through each of these separate amplifying units and otherwise processed so that when it came out, to be transmitted into the city, each signal was pretty much the same, or as similar as it could be made.

The purpose of this is to give it extra strength, if necessary. Sometimes, I understand, they tone it down somewhat, but at any rate, it is to give each signal uniformity and strength.

The next picture, figure 6, shows an employee of a CATV system stringing the cable on a telephone pole in the city to be served by the

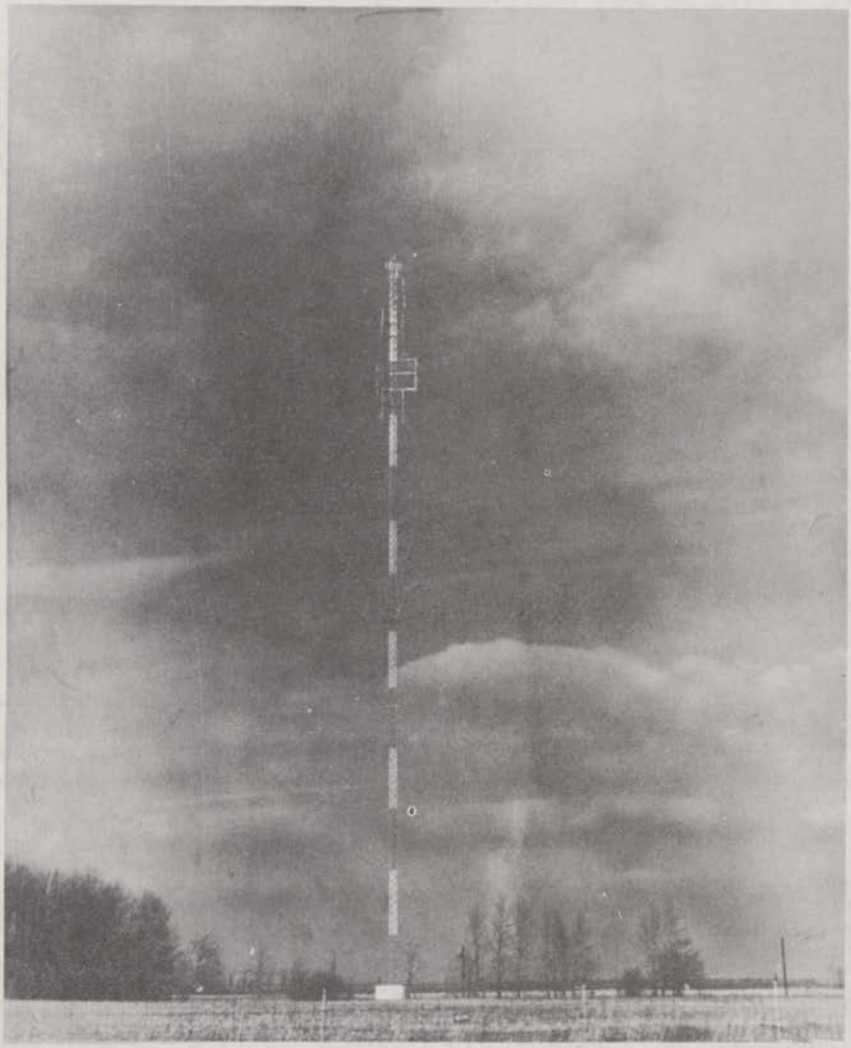

FIGURE 3

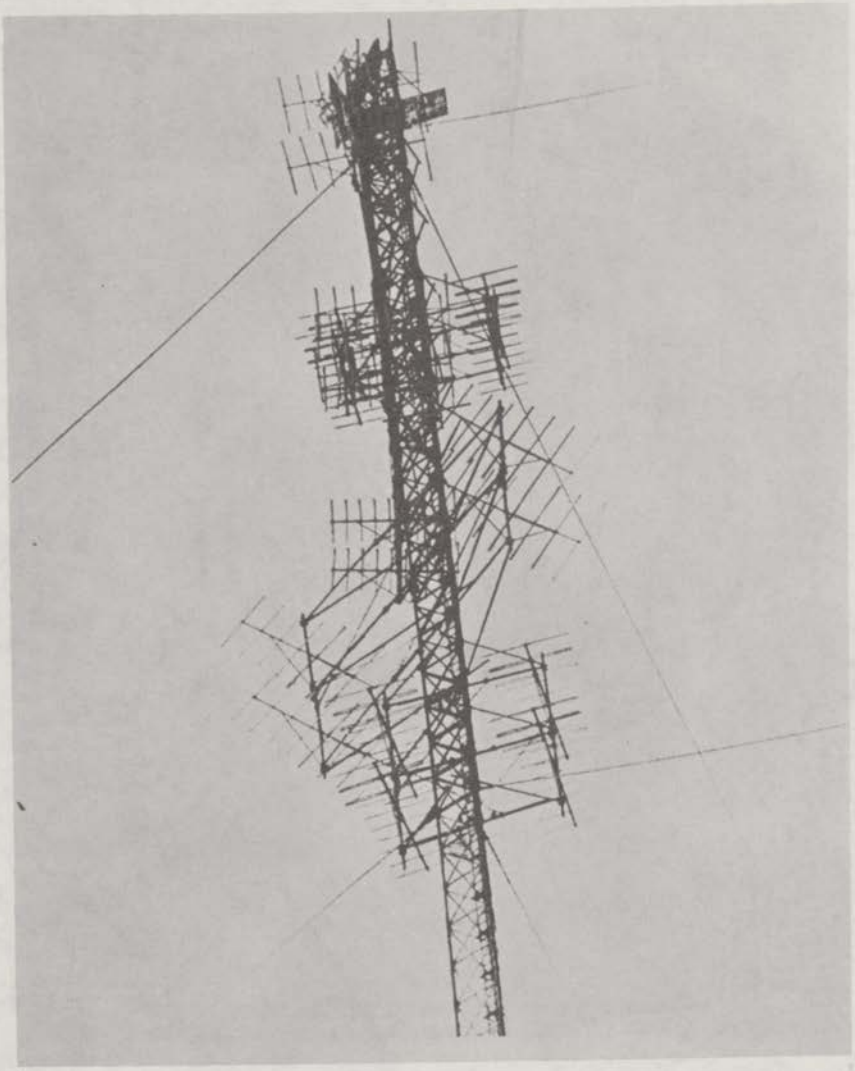

FIGURE 4

FIGURE 5

CATV. As I understand it—and all of this is subject to correction, because I will probably get some of the details wrong—but as I understand it, pole space is purchased from the telephone company. Permission is obtained from the city. The transmitting cable is then strung from pole to pole, by means of a supporting cable, which supports the transmitting cable that is wound around it.

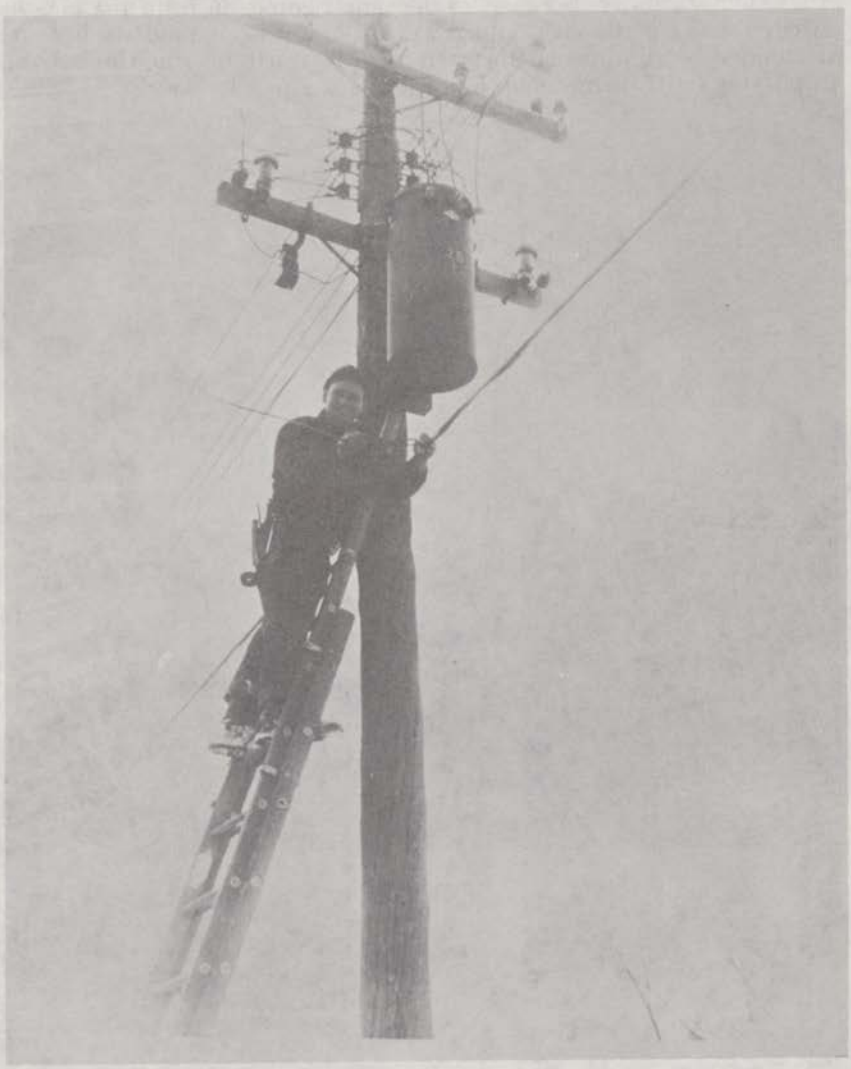

FIGURE 6

It is taken down the streets of the city served by CATV. This shows how the transmitting cable is attached to—or perhaps this is a lead going into a home. I am not sure. But at any rate, it shows you that the cable systems normally employ the telephone poles to transmit or to support their cable.

The next photograph, figure 7, is another picture of a workman, and here is pictured an amplifying unit that has to be spaced every so often along the way, because as the signal comes in from the master antenna, toward the city, and toward the homes, it tends to become attenuated or diminished in strength. It must be run through an amplifying unit, reamplified, and then sent along its way.

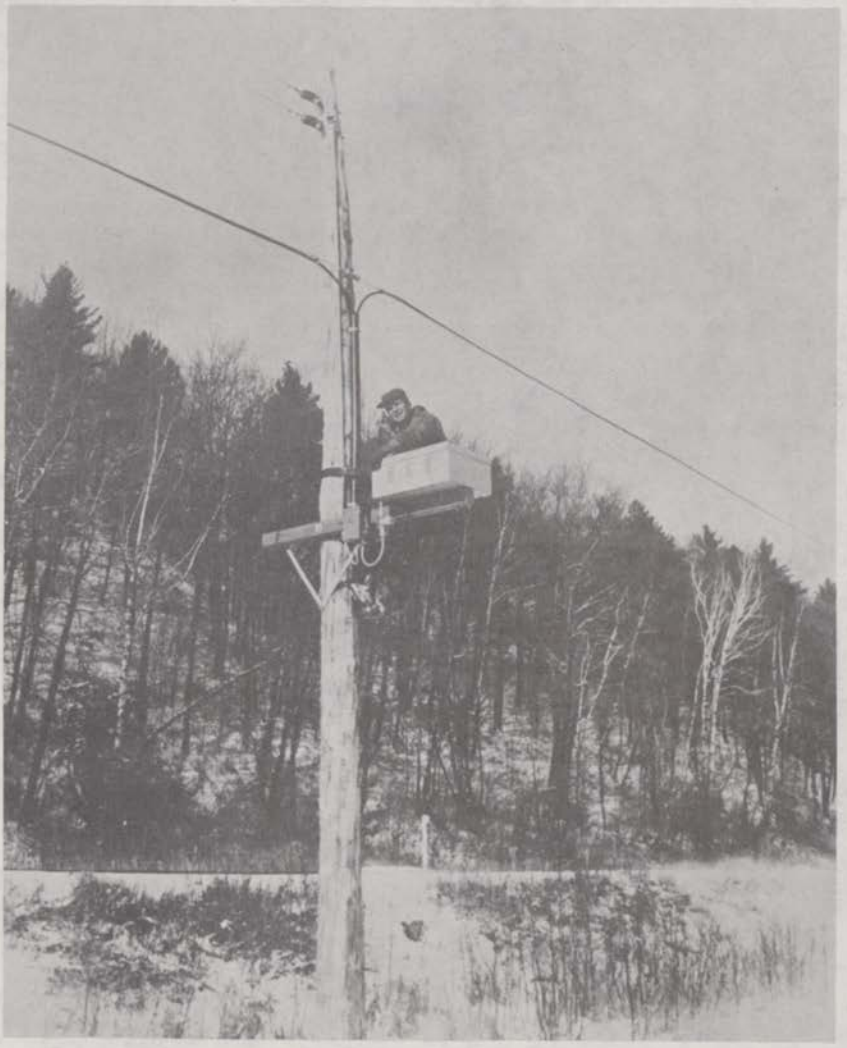

FIGURE 7

This shows an amplifying unit on a telephone pole, or on a utility pole, with a cable coming into it from one side, going into it, being reamplified, coming out the other side, and being sent on its way reamplified toward the city.

The next picture, figure 8, is of a workman attaching the lead here from the cable itself into the individual home. He makes a connection somewhat in the manner of a telephone company, so that the wire goes into the home and is then hooked up to the set.

FIGURE 8

62-610 O—66——3

The next picture, figure 9, shows the—I am not sure whether the CATV system or an independent contractor serviceman makes this attachment. We were told, but I have forgotten which it is. I am sure it can be clarified, but anyway, someone other than the homeowner is connecting the incoming wire from the CATV system to the set by means of a jack here, and other connections.

FIGURE 9

Now, as I understand it, once a receiving set is connected this way to a CATV system, you are either on the system or you are off. In other words, once you turn it on, and it is tuned to a CATV channel, then you are on the system, and in order to get back to receiving signals off the air, generally speaking, another switch has to be installed in the rear of the set so that the homeowner, if he wants to go from the receiving signals on a CATV system to receiving them off the air for any reason, has to go back behind the set and flip a switch to get back on it.

But when this is connected, he is then ready to receive the signals from the CATV system.

The next chart, figure 10, shows the CATV system, or a rough sketch of how it might look from the air, in Harrisburg, Pa. The list over here is the signals of the various television channels which that system carries, or at least at the time we got the information it was carrying these signals. There were three, or rather, four signals from Philadelphia, including the educational channel assigned to Philadelphia, whose transmitter is located down here in New Jersey. It

carried the four television stations assigned to the local Harrisburg-York-Lancaster area. It carried two stations from Baltimore, WMAR–TV and WJZ–TV, and it picked up off the air one television station from Washington, D.C., WTTG, and these are all listed over here with their channel numbers.

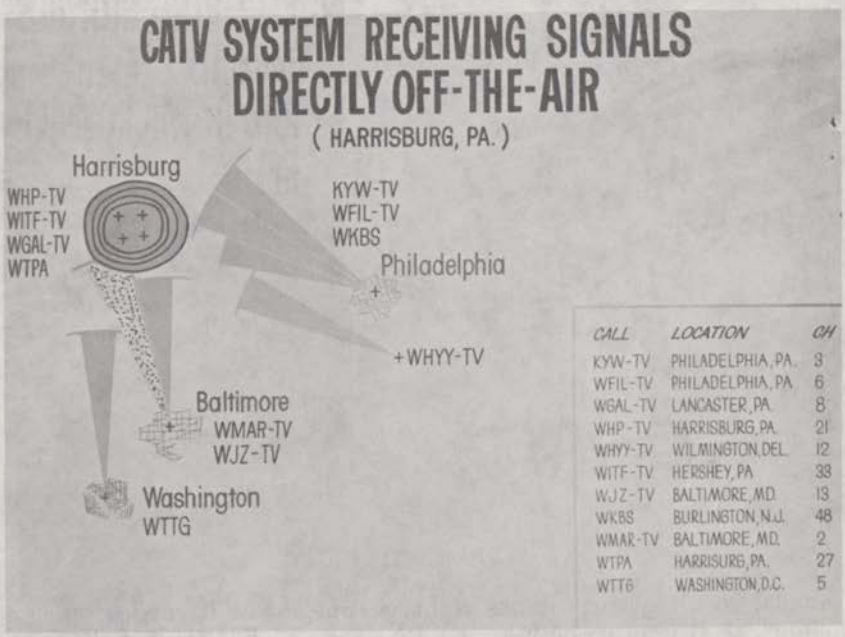

FIGURE 10

The dotted area terminated by a segment of a circle indicates roughly where the calculated grade B signal of these stations would fall. I don't know where the receiving antenna of the Harrisburg system is located. I believe it is up to the northeast of the town, if I recall correctly, but at any rate it is outside the grade B signals of many of these stations, and yet it still receives—being high up in the air, and correctly tuned, and so on—all of these signals off the air.

It uses no microwave even though it transmits to the CATV homeowners or subscribers in Harrisburg the signals from Philadelphia, Baltimore, and Washington, as well as the local signals.

We were told that it could receive at this vantage point, at its master antenna, some 15 signals off the air and its tower had 15 separate antennas to receive those.

The next chart, figure 11, shows another bird's-eye view of a system which uses microwave. This is the CATV system in Great Falls, Mont., and here again are listed the channels which this system carries.

It carries the two local stations in Great Falls, KFBB and KRTV. It carries three stations from Spokane, Wash. It carries three stations from Salt Lake City, Utah, and it carries one signal from

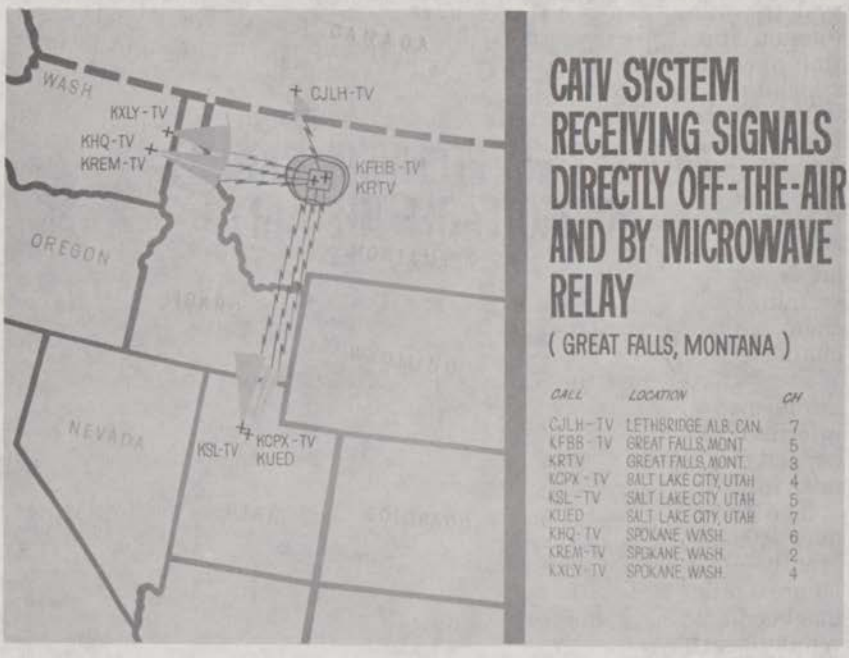

FIGURE 11

Canada, so altogether, it has eight channels, but it carries on one channel, it alternates between KCPX–TV and KUED in Salt Lake City.

Interestingly enough, here from Spokane to Great Falls it crosses a time zone, as well as both the borders of Idaho, and coming in from Utah, here, it, of course, goes across Utah, across Idaho, and well into Montana, and one from Canada crosses the international border.

I will come back to these others later, if I may.

The CHAIRMAN. I wondered if the CATV industry helped you draw up these diagrams?

Mr. HENRY. We got the photographs from Mr. Ford, at NCTA, and we had our own artist make the charts up, those that are not photographs. There is some later material in there from a CATV owner, and some from a television station. I will get to those in a minute, if I may.

As a technical matter, CATV may be divided into two types—those systems which use microwave facilities and those which do not. The Commission's CATV jurisdiction, for reasons I will detail, has been exercised in two steps on the basis of this division.

Our first report, issued last April, dealt with the microwave CATV operation, since the *Carter Mountain* case (*Carter Mountain Transmission Corp.* v. *FCC* (321 F. 2d 359 (C.A.D.C.), certiorari denied, 375 U.S. 951 (1963)) had earlier established the Commission's jurisdiction to act in this area.

The second report, just issued, was concerned with all CATV systems, whether or not they use microwaves, and reflected the Commission's determination that it had and should exercise legal jurisdiction over all CATV systems irrespective of the technical manner by which they obtained the broadcast signals which they distributed.

Prior to its decision, the Commission conducted public rulemaking proceedings permitting all interested parties to submit any views or data they thought pertinent. It is only upon the most careful consideration of the data and views submitted to us in these proceedings that we have adopted the new rules and proposed new legislation.

Community antennas first came into being to bring television to areas not reached by any television station because of remoteness or terrain, and to afford multiple services to areas not already having them. The first systems in the early 1950's commonly had only a few channels.

From this start, they have grown prodigiously in the respect of the number of channels of programing they can make available. Our information is that the newer systems generally have a 12-channel capacity. A 20-channel capacity is being projected for systems in the near future.

The latest estimates place the number of systems in existence at over 1,600. The distances which signals are taken has also increased greatly—from locations within a TV station's regular coverage area of 50 or so miles to as much as 600 miles. Along with this growth, there has been a gradual change in the focus of attention of community antenna operators.

I might at that point, Mr. Chairman, give you just a couple of examples of what I have just talked about, the distances they are being taken.

Great Falls, Mont., brings in television stations from Salt Lake City, which is 468 miles away, and Spokane, Wash., 288 miles away. Farmington, N. Mex., brings in television stations from Los Angeles, Calif., which is 607 miles away. Glendive, Mont., brings in television stations from Salt Lake City, which is 576 miles away.

Now I have four examples of systems that are proposed. These are proposed: CATV system in Danville, Ind., proposes to bring in WHYY–TV from Wilmington, Del., which is approximately 600 miles. CATV system in Toledo, Ohio, proposes to bring in the same station from Wilmington, which is approximately 468 miles, and WGN–TV, Chicago, 225 miles.

CATV in Williston, N. Dak., proposes to bring in Salt Lake City, which is 680 miles, and CATV–TV in Albuquerque, N. Mex., plans to bring in Los Angeles television signals, which is 679 miles.

Franchises were initially obtained only in the underserved communities of small or modest size. Today, CATV franchises have been sought or obtained in our largest cities, such as Philadelphia, Toledo, Cleveland, San Diego, et cetera, which already enjoy multiple local TV services.

We believe that this distinction is sufficient to divide CATV into two types: First, the traditional type which brings service to areas which are underserved because of remoteness or terrain factors; and second, the new and potentially revolutionary brand of CATV, as it is now proposed, for development in the major markets. The two

types raise different problems and call for different policies. I shall discuss first the traditional role of CATV and the policies which we have adopted relating to it.

Traditional CATV provides a most valuable service. Those of you familiar with small towns—too far away or too shielded by terrain to receive full network, independent and educational services from a major metropolitan area—know what a worthwhile contribution CATV and other auxiliary TV services, such as translators, can make to those communities.

CATV has thus performed a valuable supplementary role in such instances. I say "supplementary" because CATV is not a substitute for regular television broadcast service.

In the first place, CATV does not serve the rural areas where it is uneconomic to string wires.

Secondly, CATV is a form of pay TV, in the sense that the subscriber must pay directly to obtain television service. There are a great number of people who either cannot afford to or do not wish to pay for television.

Here, of course, I am speaking generally. In some instances, television viewers must "pay" for advertiser-supported "free" television by installing costly outside antennas. The original cost and upkeep of these antennas could, for such households as use them, make television just as much a paid service as CATV.

Thirdly, a community antenna, as such, does not serve as an outlet for local expression. Its basic function is to bring in distant signals not necessarily attuned to local needs. Thus, if CATV were to be substituted for local broadcast service—by forcing the local television station out of business—there would be a significant loss of service. In such instances, CATV subscribers would be getting considerable service while the nonsubscribers who could represent the bulk of the public would get nothing.

I think the supplementary nature of CATV can best be pointed up by the fact that the CATV is wholly dependent on the broadcast system for its product. Therefore, CATV should carry out its valuable supplementary role in a fashion that is fair to the broadcast industry, and consistent with that industry's healthy existence and growth, which clearly serve the public interest.

But CATV has not always done so. There are a considerable number of CATV systems that do not carry the local station on the system. This means that as a practical matter the station is largely cut off from access to the CATV subscribers—even those subscribers that may reside in its own local community.

This may deprive the local station of a substantial portion of its own home audience. This kind of CATV operation is patently destructive of the congressional and Commission goal of allocating TV channels to different areas and communities. The CATV industry, generally speaking, does not defend this practice. But it has occurred.

There is a second way that CATV has acted in an unfair and potentially destructive manner toward the broadcast industry. That industry competes and pays high prices for programing on the open market; it has developed a system of exclusive rights that are bargained and paid for.

For example, a station may pay for the right to show a feature film package in its area for several years on an exclusive basis. Or it may enter into an agreement whereby it gets the right of first call on network programs, and in turn, gives up to the network very considerable compensation in the form of the division of the proceeds from the sale of time on its facilities. These are the fundamental distribution practices of the broadcast industry's competitive program market, which have historically been sanctioned by the Congress and the FCC.

Mr. ROGERS of Texas. Mr. Chairman, may I interrupt with one question at this point which I think is quite appropriate?

The CHAIRMAN. Yes.

Mr. ROGERS of Texas. With reference to pay, Mr. Henry, by the CATV or the nonpay for the use of the signals that are broadcast, in our previous hearings it was brought out that the broadcast station was using CATV facilities as a part of their market makeup, and fixing their rates which they were charging advertisers based upon the number of people being served, including the customers of the CATV groups, for which they were paying the CATV people nothing.

Have you treated that in this statement?

Mr. HENRY. Well, we do get to that aspect of it later; yes, sir.

Mr. ROGERS of Texas. Thank you, Mr. Chairman.

Mr. HENRY. CATV does not compete in the marketplace for the programing which is the staple commodity it sells to its subscribers. CATV, therefore, is not bound by those fundamental practices of the broadcast industry just referred to. On its distant city signals, the CATV often brings into the local community the film package or the network program for which the local station has bargained and obtained exclusive local rights. The local station is thus deprived of the valuable rights for which it has paid, and for which it has competed in broadcasting's marketplace.

We have determined upon two fundamental rules to insure, we think, the orderly development of CATV and the broadcast industry:

1. That the CATV system carry the signal of the local station without material degradation; and

2. That the CATV system not bring in, or not duplicate the same program on a distant station on the same day that the program is broadcast by the local station.

I have already discussed one of the basic grounds for our action—to insure fair competition. Cutting off the local station's access to the CATV subscriber is patently unfair; it strikes at the very heart of the allocations scheme upon which the broadcast industry and the public interest is based.

Similarly, same-day duplication of programing by the CATV is inconsistent with the basic pattern of operation in the broadcast industry. No broadcast station could do this. There is all the more reason that the CATV, a supplementary service that lives on the product of the broadcast industry, should give some minimal recognition to the bedrock distribution practices of that industry.

There is another ground for our action—the possibility of adverse economic impact upon the broadcast service; that is, the broadcast service being rendered by the local station, if the CATV does not carry the local station, and duplicates its programs.

The Carter Mountain situation was an example of such economic impact on an existing broadcast station. We there found on an evidentiary record that the proposed CATV operation would raise a serious threat to the local station's very ability to survive and continue operations in the public interest.

For a number of reasons we have found that this factor of adverse economic impact was an appropriate ground for rulemaking action. Here I would stress one most important matter. Our actions are based not so much on the present situation but more upon the industry trends which we have observed and believe to be strikingly clear in their scope and direction. CATV is currently in a period of explosive growth; it is estimated that there are close to 2,000 franchise applications pending around the country. I think 2,250 is a more accurate figure.

If CATV continues to grow and to obtain greater and greater penetration of a station's service area, it follows that there will be correspondingly greater impact, in the event the local station is not carried and its programs are duplicated. To deal with this evolving situation, general rulemaking, taking into account the trends, is most appropriate, rather than holding hearings in case after case that may well prove to be obsolete shortly after our decisions are issued. Experience has shown the widsom of planning ahead—of taking sensibly preventive action at an early stage.

Our rule regarding required CATV carriage of local signals represents a sound and appropriate compromise of conflicting considerations. It is closely modeled on the approach favorably considered by the NCTA and NAB committees in negotiations last year. The Commission has now concluded that this approach is fair in generally imposing a system of priorities that favors stations in the home and nearby communities, which place the strongest signals over the community in question as against the more distant, weaker coverage stations.

In addition, we have made clear that in its application to particular situations, we shall take into account showings that a modification thereof would better serve the public interest. For example, we recognize that there may well be instances where programing of stations located within the home State would be of greater interest than those of nearer, but out-of-State stations—or where certain more distant stations have a greater community of interest with the town served by a CATV system than geographically nearer stations.

Our actions on requests for waiver of general rules will take such considerations into account. Our basic aim is to minimize, insofar as consistent with the public interest, any disruptions in established viewing habits.

Our new nonduplication requirement also reflects a compromise approach. In the first report, we decided that some station protection was required, and we adopted a 15-day before-and-after rule. We have now decided upon a general approach of same-day nonduplication. That is, a CATV cannot bring in distant signals that will duplicate the local stations programing on the same day that it is being presented by the local station.

This, in our opinion, provides a significant measure of protection for the local station while, at the same time, avoiding the substantial

disruption of the viewing habits of CATV subscribers that would otherwise result. This contributes to the viewing audience's opportunity to view programs on a particular day.

We believe that our revised approach is sound. First, same-day nonduplication will take care of a most serious problem—the time-zone differential problem—where a CATV system, which brings programs across either border of the mountain time zone, would otherwise duplicate most of the local stations' network programs an hour or two before or after they were presented locally. It will also afford the local station affiliated with more than one network some leeway in presenting the most attractive programs of each network, and at the same time do so with a minimum of disruption to the CATV subscribers, since the programs will be certain to be available that same day.

Finally, we have provided special procedures to facilitate prompt consideration of any requests of local stations and CATV systems for different treatment in this respect.

So, all in all, we think our action is one designed to achieve fair results, both generally and in specific situations brought before us.

This rule also contains exceptions to protect the public against unreasonable loss of benefits which are otherwise obtainable from the community antenna. Thus, the cable system need not delete reception of a network program where the result would be that the cable system would have available for reception by subscribers less than two network services.

In other words, our rules permit any CATV system, of any kind, to bring in at all times a minimum of two network programs as they are being shown on the network.

Nonduplication, additionally, is required only where the station carries a prime evening time network program entirely within such time period. That is to say, if a prime time program is delayed, any part of which is shown outside of prime time, then the station which shows it out of prime time gets no protection for that program.

Nor need the CATV delete any program where time is of the essence, unless the local station is carrying it simultaneously. Finally, the CATV need not delete any program in color which is carried only in black and white by the local station.

Mr. Chairman, if I may, now, I would like to get to my three remaining charts to illustrate a little bit of what I have just said.

The next chart, figure 12, represents the grade A and B contours here. This is grade B, this is grade A, of a UHF station, WNEP–TV in Scranton, Pa. The data we use was supplied to us by the station itself, and I thought it was a good example of this potential impact of CATV on a local station.

It is perhaps an extreme case. I would certainly say that this situation represents a potential impact greater than that that might normally be experienced by a station. But it does point up the problem.

WNEP–TV in Scranton is located and generally serves an area which is rather hilly and rough terrain, and I think that accounts primarily for the fact that there are so many CATV systems in its contours. There are some 140,804 subscriber homes represented by these dots. These are CATV systems, and taken all together, at the

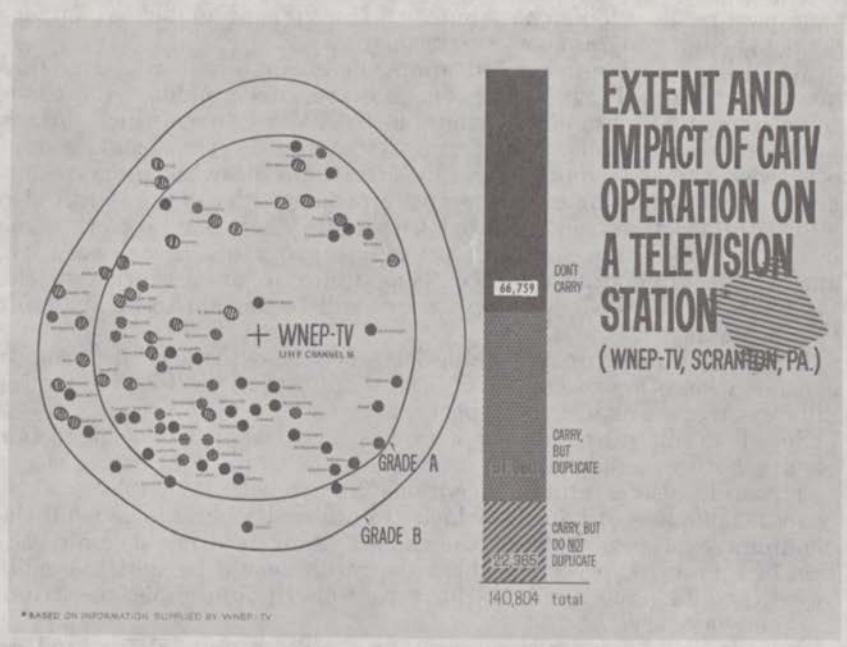

FIGURE 12

time this chart was made, they served 140,804 homes; 66,759 of those subscribers were subscribers to systems which did not carry on the CATV system the local station.

These are represented by black dots on the chart. So you can see, even within the grade A contour of WNEP–TV, there were a great many CATV systems which did not carry on their systems its signal. Now if we assume that CATV reception generally in these areas served by CATV systems was inadequate, it might well be that the CATV subscribers would therefore never see the local station, or if they did see it, they would have to make the effort to go back and switch back and forth from on-the-CATV to off-the-air, and there is also a question as to whether they can receive it at all.

The dotted spots represent CATV systems which carried the local station, WNEP–TV, but which gave it no nonduplication protection. In other words, they fully duplicated. Subscribers to these systems numbered 51,680, so that the dotted and black bars together representing, I guess, close to 85 to 90 percent of the CATV subscribers in this area, either did not carry the local station, or if they carried it, fully duplicated it, and therefore the local station had no exclusivity with respect to the CATV systems.

The other 23,365 carried the local station, WNEP, and did give it some form of nonduplication protection; that is, even without our rules. Our rules in this instance would require for all of these systems to carry the local system, and to afford it the same day, nonduplication protection.

Now this next chart, figure 13, is an attempt to give you some idea of how nonduplication works. It has to be studied in some detail, and this whole matter has to be studied in some detail to really get it quite clearly, but I just want to try to give you a broad outline of it.

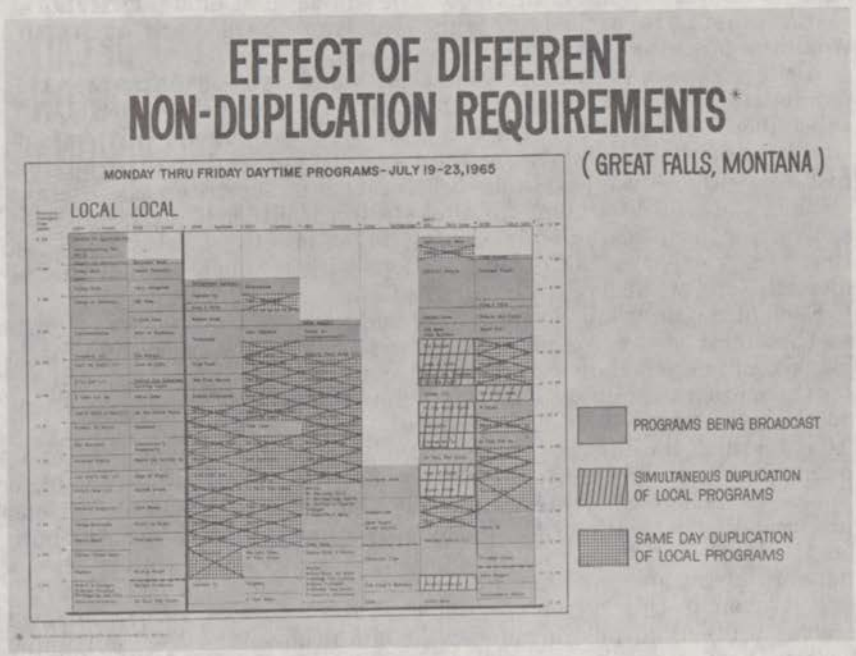

FIGURE 13

This chart represents the eight channels in the CATV system in Great Falls, Mont. Again, I show you this because it is one that we have at the Commission, and it was furnished to us by the system itself in Great Falls.

There, the Great Falls system carries the two local Great Falls stations, and they are represented in these first two columns, and their programs are shown, all programs being broadcast are shown in grey. This is the daytime, the schedule of daytime programs for the week of July 19–23, and it goes from 6 in the morning, down to 6 in the evening, so it represents 12 hours of what we might call daytime programing on the two local television stations.

The system in Great Falls carries these two local stations, and the six other stations that I referred to: one in Canada, three in Spokane, and two or three stations on two CATV channels from Salt Lake.

Now the vertical-lined area shows what programs on the distant signals would receive protection under simultaneous nonduplication. The blue area shows what would receive protection and which would not be shown on the distant station signal under same day nonduplication protection, which is the standard we adopted.

Needless to say, the latter includes the former; that is, any program receiving protection on the same day would also receive it under 15-day, because this is greater, but this gives you some idea of the amount of programing in this instance that would receive protection, that would at least have the right to be shown, first of all, on the local station; that is, its exclusivity or first call from the network, and so on, would be protected.

Although we have each of these programs crossed out, I want to emphasize that the crossing out does not mean that the CATV subscribers do not see them. They do see them. It means simply that they see them on the local station, rather than on this distant station. At the time these are being shown on the distant station, the CATV channel for that station is either blacked out or it shows the local station. It carries, in effect, the local station, so that in any event, it is the local station, with the local station's commercials, and what have you, that is seen.

Each of the programs in the dotted and vertical-line areas are shown on these first two columns. In other words, every program that is blacked out here is shown on these two columns, so the local subscribers see these programs, but at a slightly different time. They also see them on the same day.

Now I think the difference between the amount of dotted and vertical-lined area is probably due to the fact that this is a different time zone from Spokane. These Spokane stations are Pacific time, the local stations in Great Falls are mountain time, so that many of these stations here on the local stations are shown earlier than here, due to a quirk in network operation.

But even if this weren't a differential in time, these would still receive protection, possibly under the simultaneous. We don't know exactly how it would break down. But this is the situation as it exists on those stations. As a matter of fact, I guess they wouldn't receive protection under simultaneous, because they are shown at different times.

But I think this gives you some overall idea of the difference between same day and simultaneous. This next chart, figure 14, is the same system, the CATV system in Great Falls, only this is the nighttime programing. This is the 6 p.m. to 12 midnight, or actually to 1 a.m. programing. Six to eleven generally is considered to be prime time, and this also shows the rest of the evening's programs.

The gray, again, are the signals that are being broadcast. The first two columns are the local channels. The vertical lined square is again the program that would be blacked out if we had simultaneous nonduplication. The checked squares are what is blacked out if we have same-day nonduplication protection, and the crossed squares are what would be blacked out if we had 15-day before and after nonduplication programs.

The greater of all of these includes the lesser, again; all that would be protected under same day, would be protected under 15 day, 15 day being greatest.

And here I think we could see that the same-day nonduplication is considerably less than the 15 day would have afforded, but again, it is somewhat more than simultaneous.

Again, all of the programs that have crosses on them are shown over here on the same day. They are seen by the CATV subscriber, and they are seen on the same day.

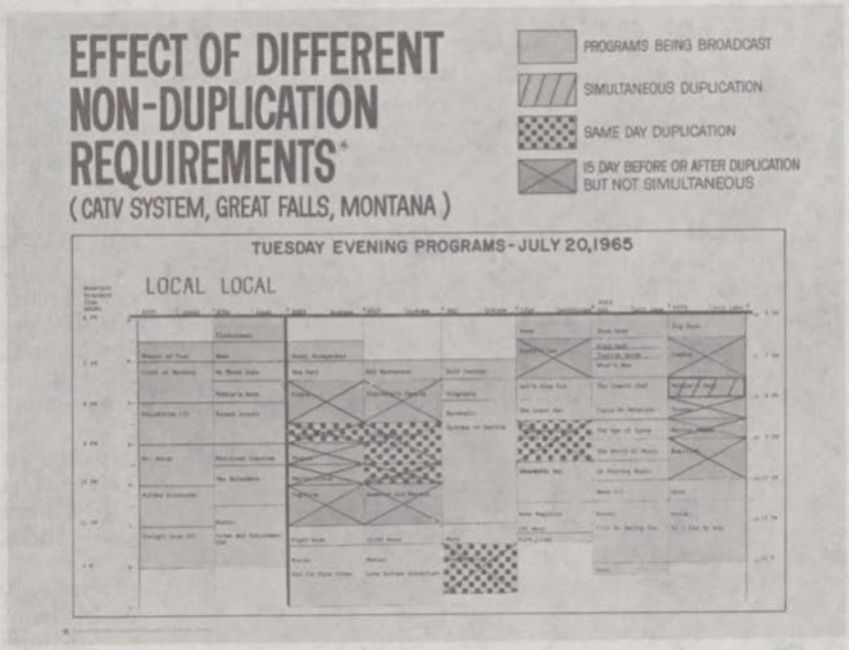

FIGURE 14

I think, Mr. Chairman, that regardless of how this might break down on any other station, the point simply is that simultaneous is somewhat less protection than same day. Same day is somewhat less than 15 days. We think that the broadcast industry will adapt, if our rules are not changed by legislation, will adapt to the same-day requirement, so as to obtain maximum benefits from it. We don't know exactly what the effect will be, because it is only coming into the rules now, but we think that they will adapt to obtain as much protection as possible under it.

Now the last chart I have, figure 15, is simply a photograph of an advertisement for a nonduplication switcher which is made by Telemation, Inc., West Temple Street, Salt Lake City, Utah. This shows the switcher here in the middle, which receives electronic inputs from the various signals that the CATV master antennas takes off the air, and you can see from the programs shown that there are 5 different programs from the 11 different signals.

On 11 different stations, there are only 5 programs that are different. And this automatically, once it is preprogramed, blacks out the ones that would be duplicated, and gives only the ones that are different. So from the 11 here, we get 5, and this could be programed in any way that is necessary to enable the CATV system to comply with the Commission's rules on nonduplication protection.

It says that it can make 480 program changes weekly. I don't know how often it would have to be programed, but of course, it takes an employee of that CATV system to program it and to get all the

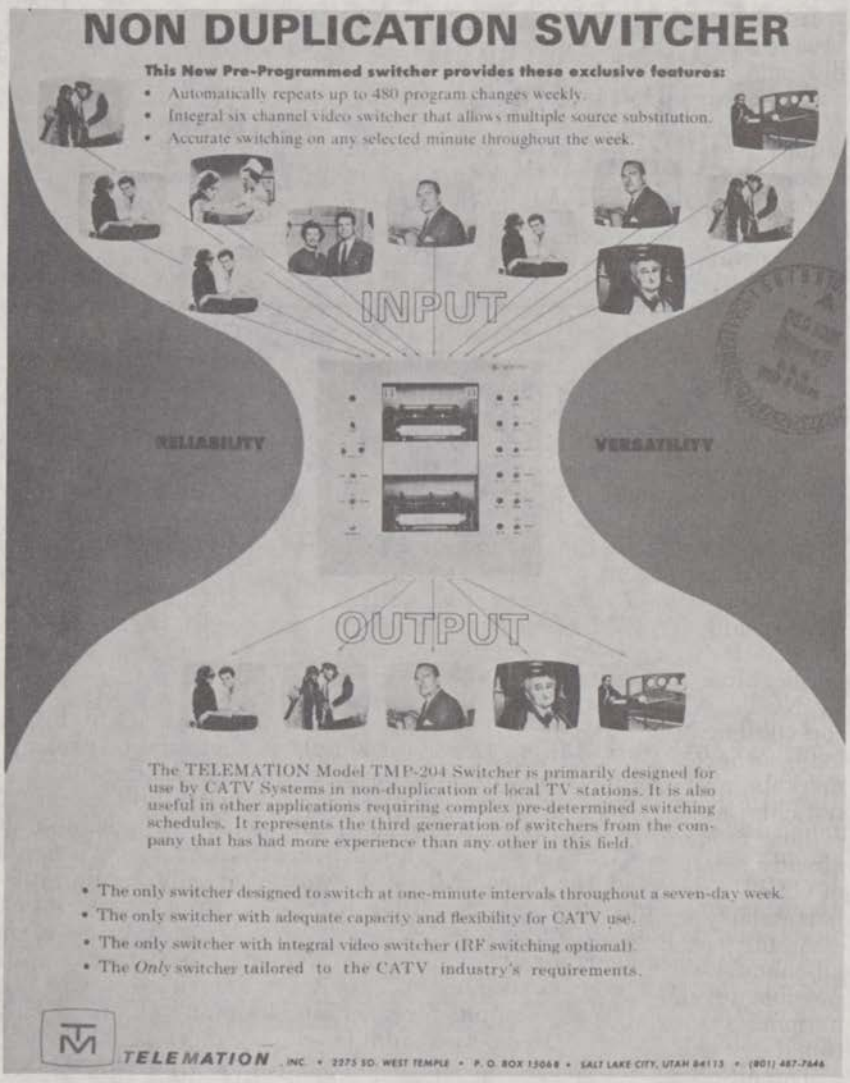

FIGURE 15

information necessary to do it. It is not automatic, in the sense that you can pre-set it, and then it will work forever. It is semiautomatic.

I have described the essence of our action as to traditional CATV. We think that we have proceeded cautiously and in a way that represents a fair accommodation of the needs of both the broadcast and CATV interests in bringing service to the public. And, we believe that on the grounds stated in our legal memorandum and discussed with this committee last session, we have the lawful authority to act.

In view of the heavy pressures of CATV growth and impact on our broadcast system, we believe we had the responsibility to act when we did, and in the manner we did.

Congress provided in section 2(a) of the act that its provisions "shall apply to all interstate and foreign communication by wire or radio." And "radio," whenever I use it in these terms, includes television. We believe it clear that community antenna systems are engaged in interstate communication by wire within the definitions of section 3 of the act. This being so, the Commission's duty under the act to establish the areas to be served by television stations, that is under section 303(h) of the act, and to distribute licenses so as to provide a fair, efficient, and equitable distribution of television service to each State and community, under section 307(b) of the act, required it to exercise its power to promulgate regulations applicable to CATV in order to carry out that duty.

The alternative was to sit passively while the entire congressional scheme of unified regulation and a fair distribution of service, was threatened. The problem presented to the Commission was whether it should, by failing to act, ignore that threat—and by so doing risk serious disruption or erosion of the system by which television service is now provided to the American people. We simply decided that we would be derelict to take that risk.

I turn now to our action dealing with CATV in the larger markets.

As I said, CATV has entered a new and potentially revolutionary phase. Its systems are now moving into the larger cities where the public already has multiple reception services. Thus, as reported by NCTA, there are CATV systems currently operating in 12 of the top 100 markets—that is, in 1 or more cities in each of those 12 markets—other CATV franchises have been granted in 19 of those markets, and there is further CATV activity, in the form of pending franchise applications, in 53 of such markets.

This movement, in addition to the question of fair competition already referred to, raises a serious question as to the possible impact of CATV on the further development of free, off-the-air broadcasting, particularly in the UHF spectrum.

As our second report and order points out, Congress, in the 1962 all-channel receiver legislation, made the judgment that the widest possible development of UHF is the best way of achieving an adequate national system of television, including both commercial and educational systems.

The all-channel receiver legislation has helped produce substantial progress toward that goal and, absent possible short circuiting by novel factors such as the new phase of CATV growth, will produce even greater progress, in the next several years before us.

For example, between 1962 and the end of 1965, the number of commercial UHF stations on the air increased from 85 to 100, and the number of UHF channels applied for at the Commission increased from 19 to 80. UHF set circulation on a nationwide basis is now up to 25 percent or more and should move close to 100 percent in the next 5 years or so.

CATV and UHF are both entering the larger markets, in an effort to bring in programing that is not now available in those markets. There are at least 163 communities or areas—most of which are located within the top 100 markets—which have UHF stations oper-

ating, authorized or applied for, which also have CATV activity. In 68 of such 163 communities or areas, there are already operating CATV systems; 29 have CATV systems franchised but not operating, and 66 have CATV applications pending.

If UHF development is halted or perhaps even turned back by the emergence of community antenna systems bringing outside services to the larger cities, we will lose local broadcast outlets of self-expression that might otherwise be established in those communities.

For example, independent station signals from New York or Los Angeles may be brought into scores of major cities such as Philadelphia which otherwise would well support new local UHF stations of their own. If CATV's impact on UHF on these markets is severe, we might well lose the possibility of a fourth national network based on these new outlets.

In addition, there is a substantial possibility that community antenna systems in larger cities, founded upon the use of broadcast signals, may be converted into pay television operations where the public will be required to pay for each program. The Commission believes that the development of pay television operations resulting from transformed CATV systems and based upon such use of broadcast signals would not be in the public interest.

We have reached no final determination on this question of the impact of CATV upon UHF in the major markets. We have concluded, however, that it raises most serious questions which call for full Commission exploration in evidentiary hearings before CATV growth may be permitted to develop unrestrained.

Let me illustrate the problem by considering Sacramento-Stockton, the 27th television market in the country, with three network affiliated VHF stations on the air, and a fourth UHF station authorized.

There are an estimated 300,400 TV homes in the metropolitan area in this market. Based on national viewing patterns, this means that a new independent UHF station in that city could look forward to a prime time audience of some 15,000 homes. This share of the market would be sufficient to support the operation of an independent UHF station, but significant diversion of the station's audience by CATV could be a serious matter.

Yet CATV systems could bring into Sacramento the VHF independents from San Francisco and, as we understand, from Los Angeles, as well, and thus fragment the audience for nonnetwork programing and so reduce the already limited available audience for Sacramento's own independent UHF station. This Sacramento situation is found and repeated in many score of cities across the country.

We recognize that in certain instances, CATV might be of some benefit to UHF in the shortrun, by giving it equal access to the subscribers' sets and by placing its signal on a technical parity with VHF on the CATV subscribers' sets. But there remains the serious longrun question of the effect of this increased competition upon the new, independent UHF station. Certainly, this serious question should be fully explored, and before the fact—that is to say, before the CATV system or systems have become established or entrenched.

In view of the serious question presented in circumstances such as in Sacramento, the Commission has decided that the signal of a television station should not be extended beyond its grade B contour

and brought into 1 of the top 100 television markets, except upon a showing in a hearing that the operation will be consistent with a fully developed broadcasting service, and that there is little likelihood that a pay-TV operation will result therefrom.

Here again we believe that we are acting most cautiously and reasonably. The essence of our present policy is simply to get the facts and to make judgments on the basis of these facts. The entire process of hearings in the 100 largest markets is to insure a situation where the Commission, or the Congress should it so choose, can make fundamental decisions upon the basis of adequate knowledge, and before it is too late.

The Commission selected the top 100 markets for special consideration because they include about 90 percent of the television homes in the country, and it is there that UHF stations or wire pay television based upon community antenna operations are most likely to develop.

In addition, delay in community antenna development in those cities because of the need for evidentiary hearings will be of less concern than would delay in the smaller markets in view of the extent of service already available.

As to the smaller markets, the Commission believes that independent UHF is generally less likely to develop in them, although we recognize that in some instances UHF has a real potential in a given smaller market.

We also believe that the nonduplication provision of our rules will be more effective in such areas, since network programing, rather than independent programing, will be more significantly involved. That is, in the smaller market.

Community antennas can also make their most significant contribution in these comparatively underserved areas. Accordingly, the Commission has adopted a somewhat different approach to CATV development in smaller markets—one that turns not on an automatic requirement of hearing, but one that permits the Commission to respond to any situations requiring remedial protection which are brought to its attention by local stations in those markets which might be adversely affected.

Our division between major and smaller markets, is, roughly speaking, a division between the traditional CATV service, and its new potential. Finally, we have devised flexible procedures to deal with petitions or requests involving these markets below 100.

I have attempted to set forth the essentials of our distant signals policy. There are many important facets, and I shall be glad to answer any questions going to any aspect of them.

Up to this point I have discussed the matters dealth with by the Commission on the basis of proposals made by it and comments received from interested persons. Our thinking must of course remain flexible, and we are prepared to change our rules or procedures if a change is warranted. Such changes amy result from legislative guidance, or from new facts developed by experience.

I should like to discuss now the legislative recommendations which the Commission has made. They are embodied in H.R. 13286.

We seek first a congressional confirmation and codification of our authority to regulate community antenna systems, and congressional approval of our definition of such systems. We do this, although we

are satisfied that our present assertion of jurisdiction is well founded, because we believe this area to be so important that specific congressional attention is warranted.

The proposed definition is all inclusive, but would empower the Commission to exempt by general rule those small or otherwise insignificant systems as to which no regulation is needed. We believe that this flexible approach is preferable to a more rigid statutory definition which would itself specify the systems to be exempted. We would, under this statute that we propose, expect to exempt the same systems now exempted by our rules.

The proposed jurisdictional section—a new section 331(a)(1)—would limit the Commission's power over community antenna systems to what is "necessary to carry out the purposes of this act, with due regard to both the establishment and maintenance of broadcast services and the provision of multiple-reception services."

A more specific delineation of powers here would seem to be undesirable, in light of the dynamic nature of the community antenna television field. New problems will certainly arise, and the Commission should be enabled to deal with them without requesting new legislation upon each of many successive occasions. This is the policy adopted by Congress in the Communications Act with regard to broadcasting, and I think this policy has been demonstrated to be a wise one.

For example, because CATV systems currently do relatively little program origination or deletion of broadcast matter being carried, there would not now appear to be any current problems concerning the carriage over CATV systems of political broadcasts. But suppose CATV systems begin originating transmissions where they present only the candidates of one party. In that event, the Commission should be in a position to promulgate CATV regulations closely paralleling section 315 now applicable to broadcast stations.

Similar considerations apply to section 317 requirements for sponsorship identification for any advertisements or commercial copy originated by CATV systems. Thus, the authority given the Commission should be sufficiently broad to permit appropriate action to deal with the many unforeseen problems that are bound to develop in such a dynamic field.

There is a specific area which we suggest you should consider at this time, rather than leave it to subsequent regulatory decision. Section 325(a) now prohibits any broadcasting station from rebroadcasting the programs of another broadcasting station without the express authority of the originating station. It has been suggested to the Commission that we should impose a similar requirement upon community antenna systems, and that this would solve many, if not all, of the problems with which we have been wrestling for so many months.

We are not now in a position to state whether such an approach would be fully effective or fully consistent with the public interest, but we do believe that it should be brought to your attention. Its consideration involves such questions as whether the requirement should be for the consent of the station whose signal is picked up or the consent of the holder of the program's copyright; whether it should be imposed upon all community antenna systems equally, or whether the size of

the community makes a difference; and whether there should be any "grandfathering" of existing systems.

Its consideration also involves questions as to precisely how the copyright laws would work in the CATV field, and therefore calls for full exploration of this vital aspect of the overall problem. We believe that legislation in this field should reflect direct congressional judgment on this score.

We have also presented a new proposed section 331(b) which would prohibit community antenna systems from originating programs, with authority in the Commission to make limited exceptions by general rule where there would be no additional charge to subscribers. This general bar is based upon the view that it is inequitable and not in the public interest to permit CATV systems to develop general pay TV operations in the most direct competition with broadcast stations without paying for the broadcast programs that would be at least initially the main staple of the CATV systems. For this would permit the distribution of free television signals to become the base for pay television using the same distribution facilities.

In addition to this consideration there is also our broader concern about the impact of pay, or subscription, television upon the ability of the public to continue receiving service they are now getting without a direct charge.

I might note here that the Commission is currently conducting proceedings to determine whether the public interest would be served by a direct system of over-the-air pay television, conducted over the facilities of television stations.

We believe that the relationship of possible CATV-based pay television to free television should be considered directly by Congress. Our proposed section dealing with the origination of programs by community antenna systems permits the Commission to make limited exceptions to the general prohibition.

We have in mind, in particular, such programing of a public service nature as the time and weathercasting services now provided by many community antenna systems. There is also the possibility of exempting programing designed to serve as an outlet for local expression; for example, the mayor's report or local discussion forums. We seek congressional guidance in this area, and would welcome more specific standards than those in the bill if Congress sees fit to prescribe them.

We are also recommending a new proposed section 331(c), which provides that nothing in the Communications Act supersedes or precludes State regulation of community antenna systems, except to the extent that such regulation is in direct conflict with the Communications Act or regulations adopted under it.

We have not attempted in our rulemaking to regulate in any way the initial franchising of community antenna systems, the rates to be charged, or related matters. We believe that such matters may best be left to local regulation and that the legislation should appropriately permit such continued local regulation as is consistent with Federal regulation.

The proposed legislation would not foreclose Federal action to carry out the purposes of the Communications Act and to promote "the public interest in the larger and more effective use of radio"

(Sec. 303(g)) where such action becomes necessary. But we stress that we have no present intention of taking action in the so-called public utility area, and believe that this is an area best left to effective local regulation.

In sum, our proposal would permit all regulation which State or local authorities believe desirable to protect matters of local concern, without infringement upon the necessary exercise of national authority.

Now, Mr. Chairman, if I may, I shall discuss now H.R. 12914. The bill provides that nothing in the Communications Act "shall be understood or construed to give the Commission the power to control or regulate the reception of radio communications or signals transmitted by any radio station." The bill was introduced because of the Commission's recent CATV action, and is aimed at reversing that action.

For all the reasons stated, we believe that Commission regulation of CATV is necessary to preserve and protect the public interest. Indeed, we believe that Commission inaction for any reason in the face of an explosive CATV growth would have meant an abandonment of the public interest in the continued maintenance of an effective broadcast system at the service of the American people. We therefore believe that enactment of H.R. 12914 would be undesirable.

H.R. 12914 regards CATV wholly as a reception service. We believe, however, that CATV is much more than a reception service or a master TV antenna. It is a new means of distributing TV signals—of drastically extending the service areas of regular television stations.

A CATV system which receives and amplifies for distribution the signals of a station well beyond its regular coverage area—not to speak of CATV use of microwave to bring in signals from 400 or 500 miles away—is not simply a superior reception service. CATV proposals to bring the New York independents to Dayton, Ohio, or the Los Angeles independents to Dallas-Fort Worth, Tex., in our judgment, represent something far more than master TV antenna arrangements.

Congress has empowered the Commission to make a fair and equitable distribution of broadcast frequencies among the several States and communities, and, as an integral part of such responsibility, to "establish areas or zones to be served by any station (sec. 303(h))."

Commission regulation of CATV operations, whether via microwave in Dallas or off-the-air in Philadelphia, comes squarely within the statutory concept of "establishing the zones and areas to be served by any station." Otherwise, our allocations plans, our licensing system, our regulation of station height and power, and so forth, may be little more than meaningless exercises in administrative futility.

Finally, we would note an additional problem with H.R. 12914 in its being couched far beyond the specific concern of CATV regulation. It is broadly applicable to reception of radio communications or signals of any radio station. Wholly apart from the particular CATV area, such a broad reception approach might also drastically affect many existing and long-established Commission regulations which have been designed to promote the public interest in such areas as the all-

channel receiver, part 15 receiver radiation limits, and efficient radio installation on ships for safety of life.

To give but one example, Commission regulations require most public coast radio stations to be able to receive communication on specified frequencies in order to provide efficient services to ships and to receive distress messages.

Thus, apart from the merits of any such CATV legislation, we would urge that it not in any event be keyed to the aspect of reception of radio signals.

This deficiency, of course, could be corrected, I suppose, by not just dealing with radio reception, but by the reception of broadcasts, which would mean radio and television.

So for all of these cited reasons, Mr. Chairman and members of the committee, the Commission recommends that your committee, after appropriate consideration, favorably report H.R. 13286 for adoption by the House.

Thank you.

The CHAIRMAN. Mr. Chairman, do you have any other member of your Commission who wishes to give a statement at this time?

Mr. HENRY. Mr. Chairman, I have a statement, a separate statement which I think will not be at odds with anything that I have just read, but which I hope will clarify one important matter, and that is, the question of whether CATV is a common carrier or whether it is a public utility, or whether it is none of these, or whether it is something else.

The CHAIRMAN. Do you want to give that at this time?

Mr. HENRY. Well, whatever you say, Mr. Chairman, it would take me 15 or 20 minutes, and I note that it is 11:30, and I hate to take up so much of your time. I could prepare it and submit it later, or I could give it this afternoon, whatever you say.

Commissioner Bartley does have a separate statement.

The CHAIRMAN. Would Mr. Bartley care to give his now?

Mr. BARTLEY. Thank you, Mr. Chairman.

Mr. Chairman, gentlemen of the committee, I appreciate very much this opportunity to present my thoughts, so that the Congress may consider them and judge their merits.

If the CATV problem is a national problem, and I doubt that it is a national problem, it is one not of the past, not of the present, but only a projection of fears of the unknown future.

There have been, and there still are, some local problems; but even the local problems have been diminished with time.

The fears expressed in the 1950's that the marginal, small market stations would meet disaster and demise were greatly exaggerated. Fears that loss of audience would reduce their revenues so much they would have to go dark have not materialized in spite of the growth of CATV in their areas.

So long as the large market stations were merely increasing their audience potential through the extension of CATV, one heard little complaint from them. But now that they are facing some program competition in their own local markets, they, too, are looking under the bed for ghosts. They seem to take the position that they do not oppose the entry of a new TV station in their market to compete

with them—oh, no—but do they fear the importation of competitive programs from another market—oh, yes.

Naturally, the manufacturers of rooftop antennas see grave dangers to the public interest on a national basis from CATV development.

Naturally, the manufacturers of CATV equipment see in the complete wiring up of all receivers a panacea to the solution of the program desires of all segments of the population.

Carefully watching developments, and split in their positions, are the networks.

Finding the truth from among these fears and contentions is like shoveling smoke.

There appears to be one cold, hard fact on which we can depend. Customers of CATV systems want better reception and more program choices than they can otherwise receive—and they are willing to pay for it. They may not want to pay so much, but they are still satisfied customers.

I believe it will not be sound public policy—certainly not on a national basis—to tell people they can't have broadcasts they want and are willing to pay for via CATV. People willing to pay extra should be allowed to bring in broadcasts which they would not otherwise receive, or would not receive as well.

The heart of concern over CATV is its possible evolution into pay television. Fear has been expressed that community antenna systems will be built and made viable by use of free programing from broadcast stations; then, after the systems have so acquired a sufficient number of subscribers, they could afford to originate their own programs, and pay television would result.

First, let us distinguish community antenna systems from closed-circuit systems. Community antenna systems, as the term "antenna" implies, receives and distribute to their subscribers the transmissions of broadcast stations. Closed-circuit systems originate their own special programing and distribute it by wire or cable to theaters, business establishments or business meetings or to the homes of subscribers.

While I believe we should not discourage closed-circuit type systems built and made viable by distributing their own programs, it is the mixing of the two types of systems which would give rise to an unfair competitive advantage in favor of community antenna systems.

It would be inequitable to allow program origination by community antenna systems since this would permit them to use their distribution of free television broadcasts as a base to engage in pay television operations.

Community antenna system operators oppose interference by the FCC, but I believe that relief from such regulation must depend upon their remaining antenna systems and their not originating programs—enabling them to be a hybrid pay TV operation.

The Commission's proposed amendment, section 331(b), would foreclose program orientation except for that which it may find in the public interest. However, exceptions would give rise to the very mixing of the two types of wired systems, closed-circuit and antenna, that leads to antenna systems being a hybrid pay TV.

A basic question for resolution by Congress in its formulation of national policy is the role community antenna systems are to play in the overall communications plan.

I respectfully urge that sound national policy would be for them to remain antenna systems. Therefore, I recommend legislation to effectuate that policy by proscribing program origination by antenna systems. With this national policy and legislative proscription, I would impose no barriers to development of CATV in the marketplace, and, accordingly, promulgate no Commission rules, or confer any jurisdiction on the Commission, for regulation of such systems.

I have submitted with the statement with the Commission, Mr. Chairman, the suggested language for two amendments, and they could be put into the record without my reading them here, I believe.

The CHAIRMAN. Very well.

(The amendments referred to follow:)

Section 3(hh) (definition): "Community antenna system means a facility which receives any programs transmitted by a broadcast station and distributes such programs by wire or cable to customers paying for the service."

Section 331: "No community antenna system shall distribute programs other than those received from transmissions by broadcast stations."

Mr. BARTLEY. I do not agree with the specific amendments to the Communications Act proposed by the Commission and incorporated in H.R. 13286.

The Commission has already asserted jurisdiction over all CATV systems to the extent necessary to carry out its announced regulatory program. I dissented. The Commission has further stated that, given the importance of CATV, "we believe it highly desirable that Congress amend the Communications Act to confirm that jurisdiction and to establish such basic policy as it deems appropriate."

To me, this is putting the cart before the horse. I believe that Congress should first determine national policy with respect to antenna systems and then decide whether or not jurisdiction should be conferred on the Commission and, if conferred, whether on a general basis or expressly limited to the matters specified in the pronouncement of national policy.

For Congress to confer general jurisdiction, as requested by the Commission, without first resolving basic questions of national policy would, I believe, result in a regulatory quagmire. There may well be a long period of uncertainty about the course CATV is to take.

For example, pursuant to rules recently adopted by the Commission, systems which would bring distant city signals to the top 100 markets must get prior approval, by waiver or evidentiary hearing; and, the Commission will entertain petitions from interested parties concerning the carriage of distant signals by systems in small markets. Our administrative processes could well become bogged down in a flood of such petitions. The administrative burden could be insurmountable. There may well be what amounts to an administrative "freeze." And a basic question is, What do we and the public get out of it?

In my opinion, the rules promulgated by the Commission look to the economic protection of television stations, rather than looking to the public's freedom to choose. I have raised the warning that economic protection of broadcasting begets greater regulation of broadcasting.

Also, the economic protection of our rules is based on the extremely thin ice of "ifs"—if CATV were to injure television; if CATV were to impede the growth of UHF; if CATV were to supplant television.

Such "ifs" have been used too long. Time and experience have not borne out the conjecture. Evidence to support the fear has not been forthcoming.

In one respect CATV has been a problem at the national level. It has been a problem to the Commission and to Congress. The controversy has consumed untold man-years in debate and deliberation. If the Commission's proposals concerning community antenna systems are adopted, I see these staggering expenditures multiplied manifold.

For these reasons, I do not favor the amendments proposed by the Commission and incorporated in H.R. 13286.

In conclusion, I thank you for this opportunity of presenting my views for your consideration.

The CHAIRMAN. Is there any other member of the Commission who wishes to be heard?

Mr. HENRY. Commissioner Cox would like to make a statement.

The CHAIRMAN. Commissioner Cox.

Mr. COX. Yes. Mr. Chairman, I don't have a prepared statement. I would simply like the record to show—as is indicated in the decision adopted by the Commission and in the transmission of our legislative proposals to the committee—that I concurred with the majority of the Commission in asserting its present authority over CATV operations, and I concurred in the action adopting the recent rules. I also concurred in the legislative proposals which are incorporated in H.R. 13286.

I dissented, for the reasons stated in that report, as to two actions of the Commission. I felt that it was unwise to cut back from the 15-day before and after nonduplication protection that the microwave rules adopted last April had provided. I did not believe that there was anything in the record before us which demonstrated that we should abandon the carefully reasoned decision which we had made there that 15 days was an appropriate measure of the nonduplication required to give minimal protection to local broadcast stations.

My second ground of disagreement, again set out at some length in my dissenting opinion, was that I disagree with the cutoff at the 100 market level. I think that the problems for the local broadcaster may, in some cases, be more acute in the small markets than in the top hundred, and I therefore felt that the situation involving the importation of distant signals should be treated the same in the smaller markets as in the major markets.

Thank you.

The CHAIRMAN. Anyone else?

Mr. HENRY. Mr. Chairman, at the risk of adding to those man-years that Commissioner Bartley talked about that we have all spent on this matter, I would like to take about 10 minutes to talk on the question of whether CATV's are a public utility, and the role of the Federal Government in this matter as opposed to the role of State and local authorities.

The CHAIRMAN. Ten minutes, you say?

Mr. HENRY. Yes, sir.

The CHAIRMAN. Do you have a prepared statement on that?

Mr. HENRY. No, sir; but I can speak from notes.

The CHAIRMAN. Go ahead. We want this record to be as complete as possible with regard to your agency, so you proceed.

Mr. HENRY. Thank you, Mr. Chairman.

I would like to give you my views on two questions. Is CATV a public utility; and, secondly, the relationship of the FCC-proposed bill to this question.

My basic premise is that CATV is an integral part of interstate commerce, and is therefore subject to regulation by Congress, under the commerce clause of the Constitution. Thus, it is within the power of Congress, and altogether appropriate for it, to determine as a matter of policy, one, whether CATV is a public utility; and two, if so, how it should be regulated as between interstate and intrastate jurisdictions.

First, the question is CATV a public utility? Well, it seems to me that you first have to determine whether or not it is a common carrier.

My position on that, and the Commission's position on that is that it is definitely not.

Section 3(h) of the Communications Act defines common carrier as follows: It says common carrier or carrier "means any person engaged as a common carrier for hire in interstate or foreign communication by wire or radio, or an interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter."

Now essentially, this says a common carrier is a common carrier, and doesn't give us much help, and the conference report on the Communications Act of 1934 said approximately the same thing. It stated, and I quote:

> It is to be noted that the definition does not include any person if not a common carrier in the ordinary sense of the term.

So the conclusion is that from the act, all we learn is that a common carrier is what is generally considered a common carrier, which is not very helpful.

However, the FCC has taken a position on this matter, at least four times, and our reasoning went as follows, and I am quoting now from the case of *Frontier Broadcasting Company* v. *J. E. Collier, et al.*, and I quote:

> Fundamental to the concept of the communications common carrier is that such a carrier holds itself out or makes a public offering to provide facilities by wire or radio whereby all members of the public who choose to employ such facilities and to compensate the carrier therefor may communicate or transmit intelligence of their own design and choosing between points on the system of that carrier and other carriers connecting with it.
>
> In other words, the carrier provides the means or ways of communications for the transmission of such intelligence as the subscriber may choose to have transmitted. The choice of the specific intelligence to be transmitted is, therefore, the sole responsibility or prerogative of the subscriber and not the carrier.

Now the signals received and distributed over a CATV system are wholly within the control of the owner—the owner of the system, not the subscriber. No individual subscriber has the option nor may he compel the CATV system to receive and deliver a particular signal at a given time, nor has he the option or right to compel the system to receive and deliver signals different from or in addition to those offered or selected by the CATV system.

So it seems clear to me that CATV systems are not common carriers, because they do not hold themselves out to convey over the systems the intelligence that anyone wants to bring to them. They simply pick out of the air the signals the CATV system wants to show, and transmit them for a price.

So I think when applied to CATV systems, common carrier is inappropriate, inapposite, and really should be disregarded.

Then the question becomes, is it a public utility, or does it have any of the aspects of a public utility or a business affected with a public interest, and you use the two words interchangeably.

That gets us to the question of what is a public utility? Well, I want to quote from an authority that I think is a good one, Mr. James C. Bonbright, who is a professor at Columbia, who wrote in his book, "Basic Principles of Public Utility Rates," in 1961. He said that most public utilities can be divided conveniently into two major classes: those enterprises which supply directly or indirectly continuous or repeated services through more or less permanent physical connections between the plant of the supplier and the premises of the consumer; and two, the public transportation agencies.

The most important members of the first class are the enterprises supplying electricity, gas, water, and telephone communication.

He also said, in the same book, that two attributes of a public utility business have received emphasis in the textbooks, and will be discussed in turn. The first is the special public importance or necessity of the types of service supplied by utility enterprises, and the second is the possession by utility plants of technical characteristics leading almost inevitably to monopoly, or at least to ineffective forms of competition.

The third attribute which is generally considered to be necessary if an operation is to be classified as a public utility, is that any rate regulation that may be necessary is generally for the protection of the customers rather than for the producers of the service, or for the taxpayers in general.

Now using those guides or standards, what are the public utility characteristics of CATV? Well, first of all, CATV supplies a repeated service through more or less permanent physical connections between the CATV plant and the customer's home. This, I think, is self-evident, and is the first usual attribute of any public utility.

Second, CATV does have a tendency toward a natural monopoly in a given market. I do not mean this in any invidious sense. I simply mean that for any given area, any given market or any given area of any market, CATV's generally operate as monopolies, in that given area.

Insofar as I know, even where concurrent nonexclusive franchises have been granted, CATV systems normally do not compete in serving the same area.

Third, I think CATV does provide what generally might be considered in this context as a necessary service. My only comment on whether television is a necessary element of modern American life is to refer to the mail that you gentlemen and we at the Commission received when the public thought that its television service might be lost.

Fourth, I think that any price regulation of CATV systems would be based on protection to the consumer, his lack of bargaining power with the CATV system in his area. So it seems to me that if you take the classic attributes of a business affected with the public interest, or a public utility, or any other name that you want to call it, indicating that it should receive this type of regulation, that CATV has most, if not all, of those characteristics.

So my conclusion is that for the above reasons, the CATV does have many of the attributes of a public utility; secondly, that with respect to those instances in which CATV systems act as public utilities, they are by and large primarily in matters, the regulation of which is best left to the local and State authorities.

Now, my reasons for that are such matters as rates, extensions of service, the choice of the entity to have it serve the public convenience and necessity, and so forth, which are, I think, matters which are traditionally and best regulated at the local level.

My second reason is that Federal regulation in these areas particularly in as complex a field as CATV, would not be as effective, at least with respect to these matters, and would be a tremendous administrative burden. This is because of the facts that there are so systems, that there are so many differing sets of circumstances, and so forth, and thirdly, the best analogy that I can think of is telephone regulation, where intrastate matters of telephone operations are regulated at the local level and interstate matters are regulated at the Federal level.

The last question. If Congress were to adopt the above rationale that I have just given, would it be consistent with the bill that we proposed, and specifically, would it be consistent with section 331(c) of the bill we proposed, and what would be the effect of this bill?

Section 331(c) of our bill reads as follows:

> Nothing in this Act or any regulation promulgated hereunder shall preclude or supersede legislation relating to or regulation of community antenna systems by or under the authority of any State or Territory, the District of Columbia, the Commonwealth of Puerto Rico, or any portion of the United States, except to the extent of direct conflict with the provisions of this Act or regulations promulgated thereunder.

Now, what does that mean? Well, to me that means that nothing in the act itself or in the rules or regulations that we might issue under it shall interfere with the regulation of CATV systems by local or State authorities, except insofar as the regulation at the local level or State level might interfere with our Commission responsibilities to regulate, to effectuate our regulatory tests.

I would want to make perfectly clear that the FCC, under this bill, if passed, has no intention to regulate these aspects of CATV systems that I have referred to. The only exceptions to this general principle might be those instances in which it is necessary to do so in order to carry out its basic regulatory task, that is, to promote the larger and more effective use of radio in the public interest.

One illustration: We have said that CATV systems in the top 100 markets should not be extended significantly to additional geographic areas without our permission. Well, that deals with the extension of service, but really, it is the prohibiting extension of service rather than ordering that it go serve this customer or that customer.

So even though it is perhaps analogous to one aspect of pubic utility regulation, it doesn't intend to be that, and I don't think it will be that. It is intended simply to effectuate our larger purpose, and that is to regulate the use of radio in the public interest. I would have some language for the committee, if you decide to enact this bill, which would clarify what I have just said.

The CHAIRMAN. Thank you very much.

We will start the questioning, and normally we are restricted to 5 minutes, but the gentleman on my right has a bill introduced on this subject, so he will be allowed 10 minutes.

Mr. Rogers?

Mr. ROGERS of Texas. Now, Mr. Chairman, I would like the record to show, Mr. Chairman, and I want to know this, whether or not the people of this committee are going to get at least equal time to question the Commission, and the very important matter of whether or not we are going to be confined to 5 or 10 minutes. Now, will the Commission be back here for further hearings?

The CHAIRMAN. I am sure the Commission will want to cooperate with the Congress.

Mr. ROGERS of Texas. I am not talking about what the Commission wants. I am talking about what the Members of the Congress want.

The CHAIRMAN. Well, if you will let me finish, we are going to adjourn here at 12 o'clock until 10 o'clock tomorrow morning. Will the Commission be back tomorrow morning?

Mr. HENRY. Yes, sir.

The CHAIRMAN. We will be here, and I want everybody to have an equal chance to question the Commission. We will divide up the time.

Mr. ROGERS of Texas. Now, Mr. Henry, you have made out a case in your own mind that CATV's are public utilities. Would you apply those same rules to the broadcasters?

Mr. HENRY. No, sir.

Mr. ROGERS of Texas. Why not?

Mr. HENRY. Well, because I say that there are certain aspects of CATV operation that are like public utility operation, but those——

Mr. ROGERS of Texas. What is the difference between broadcasting and CATV operations in your mind? Let's do it that way. You see, I don't have much time.

Mr. HENRY. Primarily that broadcasting, as it has grown up here, is not a monopoly service.

Mr. ROGERS of Texas. Well, now, that is your conclusion.

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. That is your conclusion. Now, by the same token, CATV would not be a monopoly service if there were more than one CATV operation in a city, would there?

Mr. HENRY. Well, if they were serving the same area, the same home.

Mr. ROGERS of Texas. Yes.

Mr. HENRY. Now, if they were serving the same homes, there would not be a monopoly, and there would not be competition and they would not have to be regulated.

Mr. ROGERS of Texas. And there is nothing to prevent that being done, is there?

Mr. HENRY. No, sir; but as a matter of fact, I don't think it is being done.

Mr. ROGERS of Texas. I understand, but I say there is nothing to prevent its being done.

Mr. HENRY. Well, I wouldn't think that it would be economic, because it would be terribly uneconomic and wasteful to string separate cables to the same home.

Mr. ROGERS of Texas. That is probably true, Mr. Henry, and by the same token, the operation of two powerplants, two light plants in a small town does not take away from either one their status as a public utility, but it would be much more economically feasible if there were only one there; and I know of a great number of towns where they have two.

I just don't see your thinking on this, except in keeping with the general statement in which the Commission assumed jurisdiction in which you said that all precedents that were for you were good law, and all that were against you were error being repeated, and that error being repeated is still error. I mean, I just don't follow this line of thinking.

If you are going to take the position that the broadcasting industry is to be completely protected from any form of competition, I would have some difficulty in reconciling the past actions of the Commission, especially with regard to the daylight stations on the radio.

Mr. HENRY. Well, of course, in my judgment, we don't take that position. We take the position that—and I am sure you will hear much testimony to the contrary—we take the position that we give some sort of minimal protection to the local station in order to enable that local station to provide the local service in an adequate fashion.

Mr. ROGERS of Texas. Well, now, isn't that a monopoly?

Mr. HENRY. No, sir; we do have situations in which there is only one local station. I might add, broadcasting can be distinguished, I believe, from CATV systems in a number of additional ways, two of which are that it does not charge a fee to the subscriber, or to the viewer, and there is no physical connection between the broadcaster's plant and the subscriber's premises.

Mr. ROGERS of Texas. Now, Mr. Henry, about this fee business, you told me a moment ago you were going to come back to the proposition that I raised during your statement about broadcasters using CATV customers as part of their market and making charges for them.

Now you know as well as I do that there isn't any such thing as free TV, as such—that every bit of it is paid for in one form or another, isn't it?

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. Either by the price of a pair of pants or a bar of soap or whatever is being advertised. Somebody is paying the bill. Now you say that there is no fee being charged of the people directly for what?

Mr. HENRY. For the reception of off-the-air broadcast service.

Mr. ROGERS of Texas. For the reception of off-the-air broadcast service. Now, is it your position that this is the sale of a service by a CATV operator, or is it the sale of a program?

Mr. HENRY. Well, it is the sale of a program, and that generally is the sale of a service. Program service is the way it is usually put.

Mr. ROGERS of Texas. A program——

Mr. HENRY. Well, service as distinguished from a program.

Mr. ROGERS of Texas. There is a great difference, Mr. Henry, between the sale of a program and the sale of a service, is there not?

Mr. HENRY. Well, I think in the sense you mean it, it is a program service and, therefore, it is a service as distinguished from a commodity, or something of that nature.

Mr. ROGERS of Texas. Well, now, don't you think it is important from the standpoint of the discussion with regard to pay TV as to whether or not it is a service or whether or not it is a program, because you have merged the two together in all of your arguments.

You have held up the specter of pay TV, pay TV, pay TV.

Now you have before you, as you pointed out, an application right now for what we call subscription TV, do you not?

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. You haven't acted on that, have you?

Mr. HENRY. No; we have issued instructions to the staff, and it will be out this week. We have acted on that.

Mr. ROGERS of Texas. As to whether or not you would approve this type of operation?

Mr. HENRY. No.

Mr. ROGERS of Texas. The use of one of the channels for this purpose?

Mr. HENRY. We haven't acted to approve or disapprove it. We have acted as to whether we should issue a proposal, looking toward approval.

Mr. ROGERS of Texas. As to whether you should——

Mr. HENRY. As to whether we should issue a notice of proposed rulemaking, which in turn looks toward some such operation.

Mr. ROGERS of Texas. And you say that will be done this week?

Mr. HENRY. Yes; it has been done, and will be issued this week.

Mr. ROGERS of Texas. Now as was brought out in the hearings back in the late 1950's, that would have to do with the sale of a program, would it not, and it is what we know as pay TV?

Mr. HENRY. That would have to do with the sale, yes, of a program, of a television service, I would call it, on a per program basis, over the air.

Mr. ROGERS of Texas. Yes. Now, of course, the CATV operation is not like that, is it?

Mr. HENRY. It is not that; no, sir.

Mr. ROGERS of Texas. Well, let me go back just 1 minute now, to the broadcasting situation. Haven't you taken the position on some occasions in the past that broadcasting ought to be subject to public utility-type regulations?

Mr. HENRY. No, sir; never.

Mr. ROGERS of Texas. Now you say in your statement the bill was introduced, talking about the bill I introduced, "because of the Commission's recent CATV action, and is aimed at reversing that action."

Now, I don't recall having discussed that bill with you, Mr. Henry, before I introduced it. Where did you find out why I introduced it?

Mr. HENRY. No, sir; that is our interpretation.

Mr. ROGERS of Texas. Yes, sir; that is what I thought. Now you say that it is aimed at reversing your CATV action. In your opinion, would it reverse it?

Mr. HENRY. Well, it would, as we interpret it now, prevent us from issuing regulations that pertain to CATV on the theory that CATV is purely a reception service.

Mr. ROGERS of Texas. Yes. Now, Mr. Henry, the point is this: that in order for you to get the power that you are asking for in the bill, that you got the chairman to introduce, you have got to have jurisdiction over reception, don't you?

Mr. HENRY. We don't have to. No. We consider CATV as part of the transmission——

Mr. ROGERS of Texas. Well, I know, Mr. Henry, but I am not talking about what you consider. You said a minute ago that you don't plan, your Commission does not plan, to apply certain rules. What you are asking the Congress to do is to give you jurisdiction, where you can enlarge those rules or you can minimize those rules, aren't you?

Mr. HENRY. Yes; we want you to clarify our jurisdiction to act as we already have, or to give it to us, if you will.

Mr. ROGERS of Texas. To clarify. All right. You are still arguing that you have got the jurisdiction.

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. Now, do you claim that you have jurisdiction over reception of signals?

Mr. HENRY. Well, in this way, if I may explain: We have jurisdiction over what appears on the television set, in the same way that if we revoke a station's license, for example, it would act to deprive the citizens in that community of a reception service.

Mr. ROGERS of Texas. Well, now, do I understand you to mean that you take the position that you have the right to revoke a station's license because of something they did or did not put on?

Mr. HENRY. No. I am saying that if the action of the Commission were to revoke a station's license for any valid reason, the effect would be to deprive the people in that area of a reception service, and by the same token, we would then have exercised that jurisdiction with respect to a reception service.

Mr. ROGERS of Texas. Well, yes, but now this is carrying it a little bit too far. If you did that, there would be a channel open for somebody else to apply for, and the chances are they would get it, wouldn't they?

Mr. HENRY. That is right.

Mr. ROGERS of Texas. Now, the point is, though, that you do not have under the law, as it is presently written, the right to censor anything that goes onto a broadcast station, do you?

Mr. HENRY. That is correct.

Mr. ROGERS of Texas. Now you are asking for the right to censor what goes on a CATV operation, aren't you?

Mr. HENRY. No, sir.

Mr. ROGERS of Texas. You are not?

Mr. HENRY. No.

Mr. ROGERS of Texas. Well, the law that you sent up here that you suggested says that they can't put anything on that station unless they get it off of a broadcast station.

Mr. HENRY. Well, I think it is different, Mr. Rogers. I mean, there are a number of instances in which the Commission can, in the appropriate exercise of its jurisdiction, affect what a station does or does not carry. It can affect it down to the specific program.

Mr. ROGERS of Texas. In what respect?

Mr. HENRY. Well, under section 315, it can say to the broadcaster that, "You must put on Mr. X, whoever he may be. You must go out, point your camera at him, and show him to the people."

Mr. ROGERS of Texas. That is a specific provision designed to prevent abuses and it is spelled out in the act, isn't it?

Mr. HENRY. Yes, sir, but that doesn't affect, I mean, if it is prohibited by the first amendment.

Mr. ROGERS of Texas. Well, now, in what other respects do you have?

Mr. HENRY. Well, in a number of instances, I think the fairness doctrine, itself, when you say to a station, "You have got to put on a spokesman," and it boils down to the fact that there is only one spokesman in the area, then he has to put that fellow on the air. We require that they make certain announcements under section 317 for sponsor identification. If the announcer says, "I am not going to do that," we say, "You are. You are going to speak the following words, or words along the following lines, identifying the product."

We have ruled in a number of instances, the case that is in court right now, and which took place down in Jackson, Miss., four Commissioners ordered that station, in effect, to go out and point their cameras. If they were going to program for white churches, we said they had to give some time to the Negro churches in that area.

It seems that direct order to go out and point your camera in a Negro church, if you are going to put on a white church——

Mr. ROGERS of Texas. Then you feel now that you do have the power to say what can be shown over a television set and what can't be shown.

Mr. HENRY. No, sir; I am just saying that there are——

Mr. ROGERS of Texas. That is what you said just now.

Mr. HENRY. There are instances in which we can, appropriately, direct stations to do something that has a direct relationship to which program they show and which program they don't. It is simply another way of saying I agree with what I have just said, but I also agree that we have not violated section 326 of the Communications Act.

Mr. ROGERS of Texas. Then, Mr. Henry, boiled down, you are saying that you do have the power, and you are spelling out specific examples or specific instances. How many of those do you have? Is it a broad power, for saying what can or what can't be put on, or do you have to justify each specific instance?

Mr. HENRY. Well, I think we have to give some justification to it, and it is a general proposition, rather than——

Mr. ROGERS of Texas. But you don't have to do that insofar as your rules are concerned with CATV.

Mr. HENRY. I think we do; yes. Unfortunately, that is——

Mr. ROGERS of Texas. Well, the law says, Mr. Henry, as you have sent it up here, that you can't put anything on there unless you get it off of the air from a broadcast station, unless the Commission, by limited exceptions, can authorize you to do it.

So what you mean is simply this, as I read it—and I may not be able to read English—that you can't even put a city commission program on the air unless the Federal Communications Commission says that this is one of the exceptions.

Mr. HENRY. Well, what our regulation applies to is the transmission of programs, basically.

Mr. ROGERS of Texas. Yes, sir. Now, that is the main point. The transmission of programs. You do not have, basically, jurisdiction over reception, do you?

Mr. HENRY. Well, I think—I don't know, Mr. Rogers. It depends on how you mean it. I could say "No," but then I would qualify it by saying that we do have jurisdiction, though, to directly affect the reception service.

Mr. ROGERS of Texas. Just listen. Let's look at what the language of the act says. You say transmission. It says transmission of radio signals, doesn't it?

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. Do you claim now that transmission of a signal over a wire communication that is wholly intrastate is within the confines of that definition?

Mr. HENRY. Well, no, sir. We say that with respect to the CATV operation as I have described it, that it is a transmission. It is part of the transmission of that broadcast signal in interstate commerce.

Mr. ROGERS of Texas. Because it came in interstate commerce.

Mr. HENRY. Takes the signal off interstate commerce.

Mr. ROGERS of Texas. As I understood, that was the position that you took before. Then that would put every retail grocer in the area of interstate commerce because the flour he buys comes from Oklahoma into Louisiana, wouldn't it?

Mr. HENRY. I am not familiar enough with the law on that subject, but I do know that any radio signal is considered interstate commerce, and again, the rule of reason must apply, and——

Mr. ROGERS of Texas. And that would extend our jurisdiction, if it is interstate commerce, to control over the person receiving that in their home, wouldn't it?

Mr. HENRY. It would affect what the person in the home sees. There is no question about that.

Mr. ROGERS of Texas. I am talking about the jurisdiction over the person in the home. I am not talking about the indirect situation.

Mr. HENRY. No, we don't claim that; we just claim that our——

Mr. ROGERS of Texas. Why wouldn't it do that?

Mr. HENRY. Well, because he is not in the business of transmitting signals, or being part of the transmission of the signal. He simply has the set and listens.

Mr. ROGERS of Texas. Suppose he turns the signal up real loud, so you can hear it for a block and a half?

Mr. HENRY. Well, I think the rule of reason would cut off before we got to that point, cut off our jurisdiction.

Mr. ROGERS of Texas. You mean the rule of your reason. In other words, what you are asking for is discretionary power to make these determinations by the Federal Communications Commission, aren't you?

Mr. HENRY. Well, I am saying we have that discretionary power, yes, sir, already.

Mr. ROGERS of Texas. You are saying you have it.

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. But you want us to write it again for you, to be sure that it stays there.

Mr. HENRY. Well, I think for all of the reasons we have given that it is part of a package that is certainly important enough for you (1) to consider; and (2) to act on.

Mr. ROGERS of Texas. But legally, Mr. Henry, if you have jurisdiction of the reception of radio signals, even though it is not stated so in the act, why wouldn't you have jurisdiction over the reception of all radio signals, because they are in interstate commerce?

Mr. HENRY. Because our jurisdiction relates to the transmission of those signals, and we consider CATV to be part of the transmission.

Mr. ROGERS of Texas. Well, the signal, after it reaches the set; isn't it transmitted to the eyes and ears of the viewer?

Mr. HENRY. Yes.

Mr. ROGERS of Texas. When does it begin and when does it stop?

Mr. HENRY. Well, I don't know exactly, but I think it is in line with a number of Supreme Court decisions which have talked about the reasonable connection between interstate commerce and the act involved. It just seems to us that that is so closely connected to the actual transmission of the signal in interstate commerce that it is part of it; that the interstate transmission has not ceased, at least at the point where the CATV operator gets into the act.

Mr. ROGERS of Texas. Now you said that it was your intention to exempt such things as city commission meetings, or other local things that had to be, that might be available so that these could go over CATV.

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. Whether this law is passed or not, because you claim you have got that power right now, to do this.

Now what has worried me about these things, Mr. Henry, is not what you are going to do but what the next fellow—well, that worries me a little, too. [Laughter.] Because I mean, you are not going to be here forever, you or Bob Bartley, or the other Commissioners, and what we are doing is writing a law and a rule of conduct to be applied that can't be changed unless the people through their representatives want to change it.

Mr. HENRY. Yes, sir. Let me ask a question. I think your question is well taken. We are not at the moment exercising our jurisdiction in that fashion.

In other words, we have not adopted such a rule at the moment that gets into program origination. We are looking at that area, though, in our further notice, and we hope that you will act in this area, because we do think—I think—particularly because it seems to have such a close relationship to pay television, and that, in turn, has an even more important potential, possibly, than CATV.

Mr. ROGERS of Texas. Let's take, for instance, now, we talk about rulemaking. You are talking about rulemaking power. You want the Congress to delegate to you the power to write rules and regulations that according to your discretion and your reasoning would best serve the people of the United States, and of course, as far as the television industry, or as far as the CATV industry is concerned, they would have the same effect as substantive law, wouldn't they?

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. Now let's take the 15-day rule, for instance, which was originally proposed, and you changed that. Now if this power is granted to you, or if you have the power which you contend, what is to keep you from changing that back to the 15-day rule, just as quick as you make up your mind to do so?

Mr. HENRY. Nothing. [Laughter.]

Mr. ROGERS of Texas. Because it has been held a lot of times that you did not have the jurisdiction over off-the-air CATV.

Mr. HENRY. The Commission did hold that, yes.

Mr. ROGERS of Texas. Yes sir; and that precedent was set aside on the philosophy that error repeated is still error. Isn't that correct?

Mr. HENRY. If I understand you correctly, it is, yes.

Mr. ROGERS of Texas. I mean, in your brief; this is what you have stated in your brief.

Mr. HENRY. Then we decided that was wrong, and therefore, we changed it.

Mr. ROGERS of Texas. But you didn't decide anything was wrong that had denied you jurisdiction over this operation, did you?

Mr. HENRY. Yes, we decided that that conclusion was erroneous.

Mr. ROGERS of Texas. It was erroneous. Now haven't you testified here, Mr. Henry, that you did not have jurisdiction over a wholly intrastate wire operation, under the Communications Act?

Mr. HENRY. Originating programs, you mean?

Mr. ROGERS of Texas. Yes, sir.

Mr. HENRY. Yes, I think that is true.

Mr. ROGERS of Texas. Well, now, how do you square the proposition that if a man has a television antenna, and he is picking up signals that are in the air, and putting them over a wired system, that you have jurisdiction to say that he can't originate a program that you claim heretofore you never did have any jurisdiction over?

Mr. HENRY. Well, we don't say that at the moment, Mr. Rogers, because we have not yet exercised our jurisdiction in this regard, as to the origination of programs by CATV systems. We are asking you for——

Mr. ROGERS of Texas. Well, but the act that you sent up here——

Mr. HENRY. Would give us that authority?

Mr. ROGERS of Texas. Says that you have that authority. I mean, the act, if it is adopted, this is the authority that you want.

Mr. HENRY. Yes; but it doesn't make a distinction between what we had before the act and after the act. It simply tells us that we may do this.

Mr. ROGERS of Texas. In other words, it gives you jurisdiction you didn't have before.

Mr. HENRY. Well, it gives us jurisdiction. We have not yet determined whether we have it or not.

Mr. ROGERS of Texas. Well, you mean if this act isn't passed, you are liable to determine you have got it anyway.

Mr. HENRY. We could; yes, sir. [Laughter.]

Mr. ROGERS of Texas. That is exactly the point, Mr. Chairman. The point with regard to this other point that was brought in. In the early stages of the television industry, where a market of CATV was being included in the sale of advertising, we will say, for instance, the case that occurred in Tyler, Tex., where a man that owned a TV station could not get any contracts, because that market was being included in the Dallas market when the product or the advertising was sold, when the program was sold. He couldn't get any.

Now at that time, the Commission took the position that they did not have jurisdiction, didn't they?

Mr. HENRY. I am not sure of the particular time that that was first brought to our attention.

Mr. ROGERS of Texas. Well, of course you weren't there when it was brought to your attention, but I presumed that you were familiar with it, because it was an important case.

Mr. HENRY. We found no basis in 1959 for asserting jurisdiction because of adverse impact and thus found it unnecessary to pass on the question of our legal authority on the ground of impact.

Mr. ROGERS of Texas. It is already running late, but there is one other thing I want to ask you about right now. There are a lot more questions to be asked in this, which I am sure you understand. With regard to the carriage situation, if you have the power to make a CATV operate, or if you are granted that power by the Congress, to carry a local station, you will have more power over the CATV operators than you have over broadcasters, won't you?

Mr. HENRY. Well, we can't—we have no rules at the moment which say to a broadcaster, "You must pick up and retransmit the programs of some other stations."

Mr. ROGERS of Texas. Do you think you have the jurisdiction to do that, if you wanted to do it?

Mr. HENRY. No, I don't. We have the rebroadcast parts of the law, and that says that rebroadcast permission shall not be unreasonably withheld, in substance, from one station to another.

Mr. ROGERS of Texas. But this is talking about withholding from a fellow something he wants to do. What I am doing is saying a man has got to do something, forcing him to do something, is what you are asking the authority to do in the CATV field that you don't have in the broadcast field.

Mr. HENRY. Well, we don't have the authority to tell him to pick up and carry complete the signals of another station. We do have authority to, under sections 315 and 317, and so on, the fairness doctrine, and so on, the authority to tell him to do something, to affirmatively broadcast in a particular fashion.

Mr. ROGERS of Texas. In isolated cases, where you have got a justification and you have an evidentiary hearing as to whether or or not there has been a violation. Isn't that right, Mr. Chairman?

Mr. HENRY. Well, it is a general proposition. It is affected in isolated instances.

Mr. ROGERS of Texas. Mr. Chairman, I will quit right now, but I do want the opportunity to go into this further, because there are a lot of other questions that need to be answered.

The CHAIRMAN. Well, I have refrained from cutting off the questioning, because I knew the gentleman was anxious to get into that material, and we will in the future adhere to the 5-minute rule.

The committee will now adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 12:20 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, March 23, 1966.)

REGULATION OF COMMUNITY ANTENNA TELEVISION

WEDNESDAY, MARCH 23, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Yesterday, when the committee adjourned, we had before us the Chairman of the Federal Communications Commission, and some of the members of the Commission.

This morning, we have with us a Member of the Congress who has another committee meeting. If the Chairman would bear with me, I would like at this time to hear from our colleague from Ohio, Congressman Wayne Hays, who would like to make a statement on this very important subject.

You may proceed right now in any way that you see fit.

STATEMENT OF HON. WAYNE L. HAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. HAYS. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate this opportunity, because there is an important meeting of the Foreign Affairs Committee that I would like to get to, and I am here this morning on behalf of Robert W. Ferguson who is executive vice president and general manager of television station WTRF–TV in Wheeling, W. Va. I guess you have heard of that State.

Mr. Ferguson is an executive in the National Association of Broadcasters, and their convention is coming up in Chicago, and because he is an official, he had to go to Chicago, and he asked me to read his statement, which I will do very briefly.

I have told you his title, and he is the vice chairman of the Television Board of Directors of the National Association of Broadcasters. Following is Mr. Ferguson's statement, from which I will now read.

WTRF–TV for 13 years has made a special effort to serve all of the people in our area with State, local, and national news, public service and entertainment, including color films and color tapes, in addition to the programs which we carry from the NBC network.

We employ 60 local residents and operate also a stereo FM radio station. We believe we have attained a high degree of success in satisfying the needs and wants of all of our people, both urban and rural, who, though they trade in the Wheeling marketing area, may reside in three States.

If I can interpolate, Mr. Chairman, that is one reason I am interested in this, because my district is exactly 1 mile from the studios of this station, and their broadcasting towers are in Ohio, in my district.

Our station in the northernmost part of West Virginia is 16 miles from Pennsylvania and 1 mile from Ohio, and a substantial number of our viewers are located in each of the three States.

At present there are a number of community antenna television systems serving our area and most of these render a useful service to people who live in valleys where the intervening mountains interfere with reception off the air. We have no quarrel with this kind of community antenna television service which improves reception of local television signals. But some of these systems bring in stations which duplicate the local stations, and some of them degrade our signal. In our area at least three CATV systems bring in three TV channels which substantially duplicate each other.

In our opinion this kind of duplication renders no varied fare—no additional service. In fact, it renders a disservice. It destroys principles of distribution rights. A station can grow in its capacity to serve only if it can offer the public something which they do not get from some other source. No station will long be able to stand the expense of acquiring valuable property rights in first-class color films, for example, if those property rights can be destroyed by previous showing by a station in another market whose signal is imported by CATV.

At our station we believe that the provision of high-quality color films in addition to many other kinds of programing is necessary to respond to the demands of the people who live in our area.

I have one other paragraph, that I would like to read, and then I will ask unanimous consent at this time to submit the rest for the record, Mr. Chairman.

Not only are there problems of duplication of our programing by stations whose signals are imported from other communities, there are also problems created by CATV systems that do not carry the local station. At least one system with several thousand subscribers in our grade B area does not carry our station at all, and another carries the programs, but cuts out the commercials.

Now as far as I am concerned, Mr. Chairman, I have no panacea to solve this problem, but I am inclined to agree with Mr. Ferguson that there are areas in which CATV is useful, desirable, and helpful, but it would seem a little odd to me that CATV would carry the programs of a station, but cut out the very thing by which they maintain their revenue. Not that I personally don't think there are too many commercials on the air in a given length of time, but I am also pragmatic enough to know what you have got to have some, if they are going to stay on the air, and if I may, Mr. Chairman, I would like to submit the rest of this.

The CHAIRMAN. It will be inserted in the record.

(The statement of Mr. Ferguson follows:)

STATEMENT OF ROBERT W. FERGUSON, EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, TELEVISION STATION WTRF–TV, WHEELING, W. VA.

Mr. Chairman, my name is Robert W. Ferguson and I am executive vice president and general manager of television station WTRF–TV, channel 7, in Wheeling, W. Va. I am also vice chairman of the Television Board of Directors of the National Association of Broadcasters.

WTRF–TV for 13 years has made a special effort to serve all of the people in our area with State, local and national news, public service and entertainment, including color films and color tapes, in addition to the programs which we carry from the NBC network. We employ 60 local residents and operate also a stereo FM radio station. We believe we have attained a high degree of success in satisfying the needs and wants of all of our people, both urban and rural, who, though they trade in the Wheeling marketing area, may reside in three States.

Our station in the northernmost part of West Virginia is 16 miles from Pennsylvania and 1 mile from Ohio, and a substantial number of our viewers are located in each of the three States.

At present there are a number of community antenna television systems serving our area and most of these render a useful service to people who live in valleys where the intervening mountains interfere with reception off the air. We have no quarrel with this kind of community antenna television service which improves reception of local television signals. But some of these systems bring in stations which duplicate the local stations, and some of them degrade our signal. In our area at least three CATV systems brings in three TV channels which substantially duplicate each other. In our opinion this kind of duplication renders no varied fare—no additional service. In fact, it renders a disservice. It destroys principles of distribution rights. A station can grow in its capacity to serve only if it can offer the public something which they do not get from some other source. No station will long be able to stand the expense of acquiring valuable property rights in first class color films, for example, if those property rights can be destroyed by previous showing by a station in another market whose signal is imported by CATV. At our station we believe that the provision of high-quality color films in addition to many other kinds of programing is necessary to respond to the demands of the people who live in our area.

Not only are there problems of duplication of our programing by stations whose signals are imported from other communities, there are also problems created by CATV systems that do not carry the local station. At least one system with several thousand subscribers in our grade B area does not carry our station at all, and another carries the programs but cuts out all commercials.

Our market, as you know, is one of the hundred largest to which the Federal Communications Commission referred in its second report and order. We urge the Congress to confirm the jurisdiction of the FCC and to guide the Commission in preserving our present system of free, on-the-air broadcasting which is serving our people better than any other system in the world. In the absence of such jurisdiction we believe that the cable systems can destroy local television broadcasting by importing from distant cities stations which duplicate the local station in all of its network, feature film and syndicated programing. Ultimately a nationwide wired system would have the economic power to preempt program sources and advertising revenues to such an extent that local stations, now serving the public with strong local programing, would be destroyed.

In its second report and order the Federal Communications Commission has taken a logical first step to prevent the destruction of our system of distribution of television programs in the hundred largest markets. Even this modest step is endangered by the overall weakness of the Commission's present plan. A cable system can bring distant signals into any television market "smaller" than the hundred largest unless those who object can prevail upon the FCC to prevent such importation. Thus it appears likely that television signals will be brought great distances into these smaller, but still very important, communities. And there will certainly be repercussions upon the larger markets from such an unequal system.

Farm families in our tristate area are a vital and important part of our population. Our signal can be received by an estimated 55,400 farm homes which do not have access to community antenna television and, because of the prohibitive cost of running the cable to widely separated homes, it is unlikely that they will be able to receive CATV service in the future.

Actlng to implement the national policy adopted by the Congress in the Communications Act of 1934, the FCC long ago established a plan to provide free television service on the air for all parts of the country. Under this plan broadcast licensees have been strictly regulated as to power, antenna heights, service areas, and in many other regards. The Congress ought not to permit this system of free television to be changed to one of wired pay television without a policy decision that this should be done. Whether the United States is to have free television on the air or wired television for a charge to the consumer is a question of major public interest.

The CHAIRMAN. Does anybody have any questions?

If not, we thank you for coming, and giving us the benefit of your views, and they will be incorporated in the record.

Mr. HAYS. Actually, Mr. Chairman, except what I just said there, they are the views of Mr. Ferguson, and I do appreciate your

courtesy in allowing me to appear and I want to thank the members of the Commission.

The CHAIRMAN. Thank you.

I am sorry, Mr. Henry.

Mr. HENRY. Quite all right.

The CHAIRMAN. But as a courtesy, as he has another committee meeting he must attend, I thought it was the proper thing to do.

STATEMENT OF HON. E. WILLIAM HENRY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY COMMISSIONERS ROSEL H. HYDE, ROBERT T. BARTLEY, ROBERT E. LEE, AND KENNETH A. COX (Resumed)

The CHAIRMAN. Yesterday, when the committee adjourned, the 5-minute rule had been invoked on questioning of Mr. Henry and had you finished, Mr. Rogers?

Mr. ROGERS of Texas. I had one more question, Mr. Staggers that I wanted to get and keep in context. I have a great deal more that I want to come back to, if I get the chance.

The CHAIRMAN. Go ahead.

Mr. ROGERS of Texas. Mr. Henry, you said, I believe in answer to my question about jurisdiction over reception, I believe you said that you did feel that you had jurisdiction over reception?

Mr. HENRY. Well, I said that we had jurisdiction over matters that affected reception.

Mr. ROGERS of Texas. Then let me put the question directly, so we do not have doubletalk. Do you take the position now that you have direct jurisdiction over the reception of radio and TV signals that are transmitted through the air?

Mr. HENRY. I think the way you mean the question, my answer would be no.

Mr. ROGERS of Texas. You do not.

Mr. HENRY. We do not.

Mr. ROGERS of Texas. Now under the bill that you have advocated, you ask for that, do you not?

Mr. HENRY. I don't believe so, Mr. Rogers.

Mr. ROGERS of Texas. The first section of that bill says to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the construction, technical characteristics, and operation of community antenna systems to the extent necessary to carry out the purposes of this act, with due regard to both the establishment and maintenance of broadcast services and the provision of multiple-reception services.

Now I ask you if it isn't a fact that there is no other place in the act, having to do with radio and television control, where "reception" is used, or any jurisdiction over reception?

Mr. HENRY. Well, no. What we are attempting to say there is to indicate the policy considerations involved, not the jurisdiction of the Commission of the reception of these signals.

In other words, we have traditionally considered a broadcast station as providing two different kinds of services, one, a transmission service, and this is now apart from the narrow legal jurisdictional question. I am just speaking generally.

One, a transmission service, in which it acts as an outlet for the community. In other words, it is in the community, and it is an outlet for local expression for programs that have to do with particular local needs, and so on, and then it also provides a reception service, which may or may not be locally oriented, in that it puts on programs. In that respect, it is the same as if it came in from outside, or from the network, or from some other source.

Mr. ROGERS of Texas. I understand, Mr. Henry, but what I am talking about is this: that the entire Communications Act was passed and directed at the transmission of radio signals, was it not?

Mr. HENRY. I think so; yes, sir.

Mr. ROGERS of Texas. And was not intended to have anything to do with the reception of them, was it?

Mr. HENRY. Well, Mr. Rogers, you ask the question in such a way that I have to qualify my answer. It has something to do with it. We don't regulate the reception directly.

Mr. ROGERS of Texas. Not directly.

Mr. HENRY. Right.

Mr. ROGERS of Texas. All right. Now then, if that is true, why would you have any objection to the passage of a bill spelling out in detail that you do not have jurisdiction of reception?

Mr. HENRY. Well, I think if we would not have any objection to any legislation that simply made clear what was already part of the act.

Mr. ROGERS of Texas. Well, now, in your brief, you stated, as I gather in your brief that you filed, this 86-page matter, that you are taking the position by virtue of the authorities you cite that you have got jurisdiction of everything concerning the communications industry, unless it was prohibited by law.

Mr. HENRY. No, we have broad jurisdiction over radio and wire communication interstate, and we think CATV is part of that.

Mr. ROGERS of Texas. Now I am not talking about CATV, Mr. Henry. You undertook, or your staff did—I don't think you did it—undertook to misquote me and to misstate my position with regard to CATV in regard to the bill that I introduced.

Now while we are on this, let me go back here for just the last page of your statement, in which you undertake to just say that you don't think that a bill like this ought to be passed, because it might have something to do to interfere with your duties, yet you say you do not have direct jurisdiction over reception.

Now you say in support of this, in just a general term, all-channel receiver. Now what do you have to do with the all-channel receiver? That has nothing to do with this bill that I introduced, does it, at all?

Mr. HENRY. Well, we have authority now to enforce the All-Channel Receiver Act, and that has to do with receiving.

Mr. ROGERS of Texas. Well, now, Mr. Henry, the All-Channel Receiver Act is an act that was passed to provide the necessary means by which people can receive this, and it was a bill having to do with the shipment of these products in interstate commerce, wasn't it?

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. It didn't have anything to do with denying the reception, did it?

Mr. HENRY. No, it didn't.

Mr. ROGERS of Texas. Now under the bill that you propose—well, let's go through one more of these. You say to give but one example, Commission regulations require most public coast radio stations to be able to receive communications.

Now I ask you, Mr. Henry, in all fairness, if it isn't a fact that every one of these references to reception which you have talked about are methods of seeing that reception is not interfered with?

Mr. HENRY. Well, I think that is the general point, yes.

Mr. ROGERS of Texas. Yes, sir. Now while we are on that, give me some more examples. You say "but to give just one example," like there are a great many.

Now suppose you give us that great many, or file them with the committee, if you have them.

Mr. HENRY. Well, I think we have given you most that we could think of, but let me point out, Mr. Rogers, that as I said—I added some language yesterday—I said that I think that could be quite clearly taken care of by just saying "broadcast reception", or "reception from broadcast stations, including radio and television," because I take it that is the import of your bill.

Mr. ROGERS of Texas. You mean, then, that if the word "broadcast" was put into my bill, it would be agreeable with you?

Mr. HENRY. Well, I think that would clarify it.

Mr. ROGERS of Texas. I didn't ask you that. I asked you if it would be agreeable with you.

Mr. HENRY. No, sir. It wouldn't be agreeable with us.

Mr. ROGERS of Texas. It would not be agreeable with you, Mr. Henry, because you came in here in the first instance seeking jurisdiction over reception, didn't you?

Mr. HENRY. No, sir. We simply state that we think we have jurisdiction over CATV, because it is part of transmission.

Mr. ROGERS of Texas. Let's get back on that. This thing has been driven into this corner too much. The underlying principles involved here have to do with the rights of the American people to receive what goes over the air.

Now you have come in here and given a display up here of two types of CATV. One is the microwave, and the other is straight off the air.

Now there is another type, isn't there? That it can be conveyed by coaxial cable.

Mr. HENRY. Well, it can be conveyed by coaxial cable.

Mr. ROGERS of Texas. Across State lines.

Mr. HENRY. But CATV, as I am talking about it, means it has to first take the signal off the air.

Mr. ROGERS of Texas. Yes, sir; it has to do with the signal off the air. Now what you are asking for is Congress to give you the absolute right to write rules and regulations to say what can or what can't be received by a station that is using the air.

Mr. HENRY. No, sir; let me make that perfectly clear, Mr. Rogers. We do not seek any authority or power that we do not now have——

Mr. ROGERS of Texas. Oh, now, Mr. Henry.

Mr. HENRY (continuing). Except as specified in our proposed legislation, and that power that we do seek relates only to CATV. There is no hidden purpose here. There is no attempt to get power to

censor, to get any additional power over the reception of programs or what-have-you. It is simply an effort to regulate community antenna television.

Mr. ROGERS of Texas. Well, I appreciate your expression of that, Mr. Henry, but the fact is that when you get what you have asked, you do get these powers, and you get the power to change these powers from time to time.

Now, in the orders that you have already put in, you came up here and said that you grandfathered all these people, that are already in business, didn't you?

Mr. HENRY. Yes, we have grandfathered them in certain respects.

Mr. ROGERS of Texas. And you did that by using language that all new CATV's would have to meet these requirements. Now, suppose you got the power that you are asking for here now—and I want the record to show that I contend you do not have this jurisdiction, and you never have had—if you get this power, you could strike out that word "new," and do away with that grandfather business, could you not?

Mr. HENRY. Well, I assume we could do it in any event. We don't intend to.

Mr. ROGERS of Texas. Yes, sir. I am saying that if you get the power, then you could strike out the word "new," and the grandfather clause would go down the drain, just like the 15-day rule.

Mr. HENRY. I am sorry, I don't follow you. It seems to me that if we have got power now—and that is disputable—if we have power now to grandfather them or not grandfather them, we could change our rule tomorrow, even without the legislation.

Mr. ROGERS of Texas. Yes, sir. Well, of course this is the question that the courts are going to have to settle, because you have moved into an area where I contend you never had jurisdiction, because you are tampering with reception, and you treated my bill in your last statements in which you said you put words in my mouth, and I appreciate that, that this was not a superreception service.

Now, you have jurisdiction of microwave right now, do you not?

Mr. HENRY. Yes, we believe we do.

Mr. ROGERS of Texas. And you are assuming that in your exercises, are you not?

Mr. HENRY. Right.

Mr. ROGERS of Texas. So the only thing involved here actually is the off-the-air reception, isn't it?

Mr. HENRY. Well, no; it is a broad grant of authority. It would clarify both situations.

Mr. ROGERS of Texas. Now, Mr. Henry, please. I have listened to this word "clarify," and all these things, but when we get all the chaff out of the way and get down to the grain, your powers that you have assumed under the *Carter Mountain* case, and you claimed it, and you have exercised it, to put limitations on any license that you grant, with regard to the operation of a microwave apparatus, and you can control that actually much more than you can control broadcasting under the act itself, and under your licensing powers; can't you?

Mr. HENRY. I don't think so. I think they are coequal.

Mr. ROGERS of Texas. Well, it is pretty wide power that you are assuming.

Mr. HENRY. Pretty broad in both cases.

Mr. ROGERS of Texas. Whether we agree on this or not, it is a wide power you say you have. Now, then, the only thing that you do not have jurisdiction of—and that the question has arisen on—is straight off-the-air CATV operations; is it not?

Mr. HENRY. Well, I don't know. I am willing to—if that is your position, then it is your position. I am not trying to characterize it. I thought you had trouble with our jurisdiction over microwaves, also.

Mr. ROGERS of Texas. No; that matter hasn't come up yet. The courts have got to make these decisions.

Mr. HENRY. I think——

Mr. ROGERS of Texas. But you have moved, you have the power, on microwave—by your jurisdiction over microwave right—today to control that operation; do you not?

Mr. HENRY. Well, we think we do, and I think I would agree with you, the largest part of the dispute now is about the off-the-air systems.

Mr. ROGERS of Texas. And the reason you have it over microwave is because it is part of a broadcasting, or making radio signals—carrying them through the ether.

Mr. HENRY. That is right.

Mr. ROGERS of Texas. Not by wire, isn't it?

Mr. HENRY. That is right.

Mr. ROGERS of Texas. And that is your basic jurisdiction.

Mr. HENRY. That is right.

Mr. ROGERS of Texas. And that is the reason that there is a question in your mind, and there has been a question in the minds of the Commission all the time as to whether or not when these were changed into a wire communication that you lost jurisdiction of them, and that is the reason you are up here with this bill.

Mr. HENRY. Well, we think we have got jurisdiction. We think it is important enough for the Congress to act on it. We hope you agree with us. I also want to make perfectly clear that we recognize that if your bill, for example, were enacted, and that CATV were thus to be construed as a reception service, over which we had no jurisdiction, then that is it. I mean, that is——

Mr. ROGERS of Texas. Well, it wouldn't affect your microwave jurisdiction.

Mr. HENRY. Well, if the air CATV were to be construed, as a result of your bill, as a reception service, well, then, Congress has spoken, and that is it.

Mr. ROGERS of Texas. You don't think the FCC ought to have jurisdiction over reception, do you, Mr. Henry?

Mr. HENRY. Not directly; no, sir.

Mr. ROGERS of Texas. Thank you, sir.

Mr. HENRY. As a matter of fact, Mr. Rogers, the reception, the word "reception" as used in our bill was used because that is the way we have distinguished a signal that comes in from some place other than the local community.

We could, I am sure, use some other word to mean the same thing.

Mr. ROGERS of Texas. I don't think it would mean the same thing, because I think what is being driven at here is the same thing that

was being driven at by the staff back when the staff disagreed with the Commission on this jurisdictional question in the first place, and want the record to show that the staff of the FCC did disagree, back in 1958 or 1959, wasn't it, Mr. Cox? Were you there at that time?

Mr. COX. I was not, Mr. Rogers. I was a part-time member of the staff of the Senate Commerce Committee.

Mr. ROGERS of Texas. But the records reflect at that time that the staff was trying to claim jurisdiction, and that the Commission would not do it?

Mr. HENRY. I think some of the staff was, and some of the staff wasn't; yes, sir.

Mr. ROGERS of Texas. That is all, at the present time.

The CHAIRMAN. The gentleman has consumed 15 minutes, and I say again, the reason for this is that Mr. Rogers is the author of a bill. I have allowed him to have at least 40 minutes now, taking yesterday 28 minutes, and 15 today, and from now on, we will try to keep this as much as we can within bounds.

Mr. Springer, will you take your time?

Mr. SPRINGER. Mr. Chairman, I want to be sure that we have no misunderstanding in this room as to the exact position of your Commission with reference to jurisdiction.

Now it is my understanding that this has been discussed among all the members of the Commission, that you have had legal counsel advise you with reference to this matter, and that the Commission does believe, based on legal advice, that you do have jurisdiction over CATV. Is that correct?

Mr. HENRY. That is correct, Mr. Springer.

Mr. SPRINGER. Is the Commission agreed on this?

Mr. HENRY. The Commission is agreed, the majority of the Commission is agreed. I think five of us agree to that effect. Mr. Loevinger expresses doubts about it, and Commissioner Bartley disagrees with it.

Mr. SPRINGER. All right, now let's ask your legal counsel, what is his opinion. Could we put that on the record, please?

Mr. HENRY. Mr. Springer, if you will permit me, I would like to introduce at this point what is a two-page double-spaced summary outline of our jurisdictional decision.

Mr. SPRINGER. All right. Now is that the finding of the Commission?

Mr. HENRY. Well, this is the analysis. No, this is my analysis of it, but I think it is prepared by the general counsel, and will reflect his views also.

Mr. SPRINGER. All right.

(The document referred to follows:)

SUMMARY OUTLINE OF THE FEDERAL COMMUNICATIONS COMMISSION'S JURISDICTION OVER COMMUNITY ANTENNA SYSTEMS

(1) As the Commission has held, community antenna systems clearly constitute wire communication under section 3(a) of the act, which includes "the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, * * * including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."

(2) Community antenna systems also utilize interstate transmissions under section 3(e) by intercepting and transmitting broadcast signals. The transmission by a television station is in interstate commerce, *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.*, 289 U.S. 266; *Fisher's Blend Station* v. *Tax Commission*, 297 U.S. 650, and the extension of such an interstate communication is a part of the interstate transmission although the extension itself be entirely within one State. *Idaho Microwave, Inc.* v. *Federal Communications Commission*, 352 F. 2d 729 (C.A.D.C., 1965). The community antenna system is a part of the interstate transmission even if it be deemed merely a reception apparatus. *Fisher's Blend Station* v. *Tax Commission, supra*; *Western Union Tel. Co.* v. *Foster*, 247 U.S. 105.

(3) Section 1 of the Communications Act states that it is the purpose of Congress to regulate interstate communication by wire and radio through the authority granted the Federal Communications Commission.

(4) The Commission has authority under section 303(h) to "establish areas or zones to be served by any station," and it is commanded by section 307(b) to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." The Commission also has broad authority to perform all acts as may be necessary to the execution of its functions.

(5) It would be unrealistic to ignore the fact that a community antenna system is a part of the transmission of the television signal to the public. *Clarksburg Publishing Co.* v. *Federal Communications Commission*, 225 F. 2d 511, 517 (C.A.D.C., 1955). This being so, and in recognition of the Commission's "comprehensive powers to promote and realize the vast potentialities of radio," *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 217, the Commission has authority to prescribe by rule the conditions under which a television signal may be extended through the medium of a community antenna system, in order to prevent frustration of the mandate of section 307(b).

Mr. SPRINGER. Now what in effect does that say?

Mr. HENRY. All right, it says this: It says that community antenna systems are clearly wire communication, in interstate commerce, under section 3(a). Section 3(a) says that wire communication includes the transmission of writing, signs, pictures, signals, sounds, and so forth, of all kinds, by aids of wire.

Secondly, we think that community antenna systems utilize interstate transmissions under section 3(e) of the act by intercepting and transmitting broadcast signals, and there are some cases which we cite to sustain that point of view.

Then we rely in turn on sections 303(h), which says that we have authority to establish areas or zones to be served by any station, and section 307(b) of the act, which says we have authority to make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

We then conclude that since CATV is part of the transmission of a television signal to the public, the preceding parts of the act give us authority.

Mr. SPRINGER. Now as to the order which you have put into effect—and there is an order in effect, am I correct? From the Commission, with reference to CATV?

Mr. HENRY. Yes, we have taken and asserted jurisdiction.

Mr. SPRINGER. All right. Now is the Commission unanimous insofar as that order is concerned?

Mr. HENRY. No, except as to the jurisdictional part with the reservations that I have mentioned earlier.

Mr. SPRINGER. Then all seven are in agreement?

Mr. HENRY. No, Commissioner Bartley disagrees, and feels that we do not have jurisdiction. Commissioner Loevinger expresses serious doubts about it, but he feels that in the interest of getting some reasonable accommodation of the various interests here, he is willing to go along with it, and did vote for the order.

Mr. SPRINGER. The order is 6 to 1?

Mr. HENRY. Yes, sir; in that respect.

Mr. SPRINGER. What additional jurisdiction do you seek in the legislation which you have recommended to this committee, in addition to what you believe you already have?

Mr. HENRY. Well, we have decided only that we have jurisdiction over CATV systems acting as such, whether they use microwaves or whether they simply take the signal off the air. The other matters referred to in the act would give us authority over the programing that is originated by CATV systems.

As to that, it would be in addition to what we have yet expressed ourselves on.

Mr. SPRINGER. That is one. Is there a second?

Mr. HENRY. I think that is it. Let me check with our general counsel.

That is the only other area that would give us jurisdiction over something that we have not now exercised jurisdiction. We do, in addition, attempt to clarify the preemption question, and to indicate the relationships between Federal and State jurisdiction.

Mr. SPRINGER. As to programing, is this correct? What you are seeking in this legislation is that CATV may not originate programing.

Mr. HENRY. With whatever limited exceptions the Commission might permit, or that you might spell out. In other words, we are saying, our bill would say, that no community antenna system shall originate programing except as the Commission may by rule permit, and we indicate that we feel that there are several kinds of programing which would be in the public interest, and for the most part, it would be that which is now being done, with certain exceptions.

Mr. SPRINGER. Now a third area. In seeking this legislation to put it in statutory form, so that this matter could not be raised, we will say, in the courts. Is that it?

Mr. HENRY. That is right. This would be a clear expression of congressional intent.

Mr. SPRINGER. So there would be no doubt about your jurisdiction.

Mr. HENRY. No, I think I would imagine someone would want that tested in the court on the grounds, I suppose constitutional grounds, that neither the Congress nor the Commission had the power to put any limitations on the origination of programing in this respect.

Mr. SPRINGER. Now may I come to one or two small matters. Is it my understanding that those CATV systems already in existence have been grandfathered in?

Mr. HENRY. Yes, generally, that is true.

Mr. SPRINGER. In other words, as a broad statement, that is approximately correct. Is that right?

Mr. HENRY. That is right. We are requiring that even those that have existed prior to our exercise of jurisdiction come into compliance

with the new rules with respect to carriage of the local station, and avoidance of nonduplication.

Mr. SPRINGER. Wouldn't this mean that that station located in the Grade A area could increase the number of stations that it wants to bring in on that CATV system?

Mr. HENRY. No. It does not.

Mr. SPRINGER. It does not.

Mr. HENRY. They can't, without getting permission in the top hundred markets.

Mr. SPRINGER. The top hundred markets. Could it be necessary for them to petition or to have or for them to originate the petition for hearing, or is it necessary for the V or the U to object to them?

Mr. HENRY. In the top hundred markets, it would be incumbent on the CATV system operator, or prospective CATV system operator, to initiate the petition to the Commission.

Mr. SPRINGER. Now let's take the Grade B for just a moment. What was the rationale behind the Commission's feeling that they should be able to operate in Grade B areas in the top hundred markets?

Mr. HENRY. Well, Mr. Springer, the grade B signal is generally considered putting a satisfactory signal over the area encompassed by the grade B. It is a measurement that is commonly accepted now in the industry as providing a satisfactory signal, various measurements were taken, using it as a yardstick, we felt, and so we in the rules that pertained to carriage of the local station, for example, we decided that grade B would be the measurement.

When it came, though, to the top hundred markets, and this is what you have asked about, we felt two things. One is that if we used the grade B there, that it would get considerably far removed from the real centers of population, and we were more concerned about the effect of CATV in those centers of population than we were in the fringes.

There was some sentiment, though, that we should have used the grade B, because of the feeling it would be very difficult to permit CATV unlimited to come to the grade B and then halt it at the grade A.

There was some feeling that we shouldn't put any limitations on it, so the grade A was in essence a compromise of those two conflicting views, we think a sound one, that will protect all the principal things that we are interested in.

Mr. SPRINGER. This will tend to fragmentize those stations which are covering grade B areas now, though, the V's and the U's. Isn't that true? Fragmentize the audience?

Mr. HENRY. In the grade B area, yes.

Mr. SPRINGER. It will do that.

Mr. HENRY. Yes.

Mr. SPRINGER. Your rationale is that they are entitled to that service in grade B. Am I getting this correct?

Mr. HENRY. Well, our conclusion was that generally, where CATV brings in additional services, this is a good thing, and we want to encourage it. The only problem is the fragmentation problem, and then the question becomes where do you draw the line, and as I say, we drew it at the grade A, feeling that this was a good compromise for a number of reasons.

Mr. SPRINGER. All right, now let me ask you: In the grade B areas, does this mean that CATV can bring in any number of stations in the grade B areas?

Mr. HENRY. Yes.

Mr. SPRINGER. Is everybody agreed on that?

Mr. HENRY. Yes, we are agreed on that. I am reminded that the broadcaster, however, can then file a petition alleging that for some sound reason, this should not be permitted, and we will consider that.

Mr. COX. We are agreed that that is what the policy is, Mr. Springer. I don't agree that that is what it should be.

Mr. SPRINGER. But you are all agreed that that is the policy.

Mr. COX. Yes, sir.

Mr. HENRY. I might add, Mr. Springer——

Mr. SPRINGER. Let me just stay on this for just a moment, and then you can comment. I don't mean to interrupt you.

In the grade A area, the moving force in order for him to add to it, for the CATV to add to his number of stations in the grade A area must come from the CATV station itself.

Mr. HENRY. That is correct.

Mr. SPRINGER. When you move out to the B area, the moving force must be the TV station itself, if it wants to prevent additional stations from coming in. Is that true?

Mr. HENRY. Yes, sir.

Mr. SPRINGER. Now suppose that in the grade B area, there is a community which has no CATV. Now, can he set up there all by himself? And there would have to then be an objection by the V or the U itself?

Mr. HENRY. Yes. In other words, the moving force, again, would have to be the broadcaster, in whose grade B area the CATV would operate.

Mr. SPRINGER. Mr. Chairman, on this satellite proposition, and we have some in our areas, what has been the general rule with reference to the promulgation of satellites by a V or a U in another area?

Mr. HENRY. Well, you mean insofar as——

Mr. SPRINGER. As allowing it.

Mr. HENRY. You want to talk about whether the CATV relationship will be the same to a satellite as to a regular broadcast station.

Mr. SPRINGER. That is part of it. You can give the answer to that first.

Mr. HENRY. Generally speaking, we have said that the protection should be the same.

Mr. SPRINGER. If they put a satellite in an area, we will say, 75 miles away, the protection would be the same as an A area. Is that correct?

Mr. HENRY. Well, the rules with respect to the satellite's signals would be the same as if that satellite were a broadcast station, a full-fledged broadcast station.

Mr. SPRINGER. Have you ever considered, on the basis of what you have found here with reference to CATV, allowing a U or a V to go ahead with a satellite station without appropriate—it is my understanding at the present time you prohibit that, unless you get consent. Is that correct?

Mr. HENRY. They have to have, of course, the rebroadcast permission of the station whose satellite they are, but that's it. I mean, I am not sure I understand your question.

Mr. SPRINGER. What I am trying to get, if you wish to put a satellite in another area, from a V or a U, they have to get consent from you. Is that correct?

Mr. HENRY. Yes. From the Commission.

Mr. SPRINGER. Now you do have a general rule prohibiting this?

Mr. HENRY. No. Maybe you are talking about translators. And we have had a general rule that limits the placement of translators outside one's grade B, and some other restrictions.

Mr. SPRINGER. Outside of the grade B.

Mr. HENRY. Yes. In other words, we have had a general prohibition against installing a translator owned by the same station outside that station's grade B. Unless it were a UHF translator.

Mr. SPRINGER. All right. Now what about within the grade B?

Mr. HENRY. No, that is permitted.

Mr. COX. There is one exception to that, Mr. Springer. If they were going to invade the area served by another station with a grade A signal, which was carrying the same programing, then there would be some restrictions, but in general, the policies do permit them to fill in their own grade B's through the use of translators.

Mr. SPRINGER. There has never been any general prohibition against that?

Mr. HENRY. No; the prohibition has generally been against extending one's own grade B by means of a wholly owned translator outside one's grade B, theoretically, into the market area of another station. That has been the reason for the rule.

Mr. SPRINGER. But even if we will say A puts a translator in another V area, even though that might be in the whole market, if it is in the B grade area, there is no prohibition.

Mr. HENRY. Well, yes; that is the one exception that we have had. That is, if it gets in too close to another station's principal market, we have not permitted it, and are not now permitting it, although we have relaxed our translator rules somewhat to meet the needs of broadcasters.

Mr. SPRINGER. Well, now, if it is not the same program, would that community be entitled to a translator for a grade A signal, if it was within the B area, and it did not broadcast the same station?

Mr. HENRY. Yes, we are now letting them go in to fill in their own service area, generally. We are saying that you can still put up a translator within your own service area, even though it is in, let us say, within the principal city grade of another station; when it does that, then we put a similar condition on it that we do on CATV, and say, "Don't duplicate the programs of that other station." Right?

Mr. SPRINGER. And the only condition is that has to be within the grade B area. Is that true?

Mr. HENRY. It has to be—maybe we ought to draw it there, Mr. Springer. If it is within one's own grade B, the general rule is, you can put it in. The only qualification on that is that if within one's own grade B, there is also a principal city contour, or grade A contour of another station——

Mr. SPRINGER. With the same signal. But if you are not broadcasting another signal, and it is in the B area.

Mr. HENRY. That is right, with another signal.

Mr. SPRINGER. And it is in the area of another station, that is satisfactory.

Mr. HENRY. The prohibition is that you can't put a translator in there unless you avoid duplication.

Mr. SPRINGER. Within the grade B area. That is the only condition against this, is that correct, that it must be within the grade B area?

Mr. HENRY. That is right.

Mr. SPRINGER. You do not now allow a translator outside of a grade B area?

Mr. HENRY. Well, now we do. We have expanded that somewhat, and we are granting waivers of that rule much more freely, in order to promote off-the-air television service.

Mr. SPRINGER. Well, even if that happens to be within some other city's grade A area?

Mr. HENRY. No, in that, we will permit it, then, but we will put on a nonduplication condition.

Mr. SPRINGER. I understand it is a nonduplication. I understand perfectly.

Mr. HENRY. Yes; we were permitting it.

Mr. SPRINGER. In the grade B, there is no provision, if you go beyond grade B, you have to get permission. Is this correct?

Mr. HENRY. Yes. You have to get a waiver.

Mr. SPRINGER. In effect, I am stating this about right.

Mr. HENRY. Yes, sir.

Mr. SPRINGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, I will direct my question to Mr. Henry. I am not a lawyer, and so my questions are going to be in layman's language I think we can all understand.

First, I would like to know if I have the right interpretation of how CATV originated. It is my understanding that CATV was originated in small towns where they did not have good reception from the networks. Is that correct?

Mr. HENRY. That is right.

Mr. FREIDEL. That was to give them good reception. They put up special antennas for serving the people that did not have clear reception.

Mr. HENRY. That is right.

Mr. FRIEDEL. That is a brief overall picture. Now I am going to try to be a little more specific, and speak of my local area, but I am also keeping in mind that CATV is nationwide.

In Baltimore, we have three networks, three stations. Will they be affected under your bill in any way, shape, or form?

Mr. HENRY. The Baltimore stations?

Mr. FRIEDEL. Yes, sir.

Mr. HENRY. Yes. If they are brought into a CATV system——

Mr. FRIEDEL. No, I am taling about the major networks in Baltimore City. As far as I know, there is no CATV in Baltimore City.

Mr. HENRY. Well, Baltimore itself would be affected if someone sought to bring CATV to Baltimore. They would have to come to the FCC, and get permission to initiate service in Baltimore.

In other words, to begin a CATV system in Baltimore.

Mr. FRIEDEL. And they would have the right to protest?

Mr. HENRY. The stations in Baltimore would have a right to protest and be fully heard.

Mr. FRIEDEL. All right. Now I know of two CATV stations in Maryland, one in Cumberland, where they do not get clear reception. They have anywhere from 15,000 to 18,000 subscribers.

Mr. HENRY. Yes, that is a large system there.

Mr. FRIEDEL. Would they be affected under your bill?

Mr. HENRY. Yes, they will be affected. They, I believe, are an off-the-air system, and for the first time, as a result of our action, will be subject to our rules. Now our rules will apply to the system in Cumberland; however, part of our rules provide that any system that is affected for the first time can come to us and petition us for a waiver, alleging whatever facts that they have as to why the rules should not be applied to them.

Whether the rules would apply any change in Cumberland, I am not sure. I believe, however, that they are within the grade B of some stations other than the ones they are carrying; so, in order to avoid carrying those stations, they would have to come to us and petition us for a waiver.

Mr. FRIEDEL. Did I understand you to say that the ones that have the CATV now will come under the grandfather clause? That they will be OK?

Mr. HENRY. No, they didn't—I think there is probably a misunderstanding about the grandfather clause as to all of the existing stations. They don't really have any grandfather rights that enable them to not comply with the rules. They will have to comply with the rules.

Mr. FRIEDEL. I am not stressing about complying with the rules. I am wondering about whether they will be put out of business.

Mr. HENRY. Oh, no.

Mr. FRIEDEL. That is what I am worried about. I know there should be some rules and regulations. I am aware of that. But when that comes, will they be affected as far as having to close down or come in and get a new permit?

Mr. HENRY. No, sir. They will not. What I think the system in Cumberland will be concerned about is that the new rules, if put into effect, would require them to carry some different stations. They would require them to carry, let's say, I think they might have to carry Johnstown-Altoona, Pa., instead of the stations that they now carry.

Now they may claim that this is very disruptive to their system, that the viewers won't like that, and that the viewers will all get mad and cease their subscriptions. But this is what we are looking at: at their petition for waiver.

Mr. FRIEDEL. All right. Now there is one other station in Maryland—Salisbury, down on the Eastern Shore—and you sent me a letter, and you said:

It doesn't appear to me that the new rules will have any impact on the Salisbury system. The Salisbury system has five-channel capacity. It carries the signals of the three Baltimore stations, a Washington, D.C., independent station, and station WPOC–TV, Salisbury. WPOC–TV is the only existing television station that carries a nonduplicating protection at Salisbury under the rules.

Will they have to apply for a new permit? Will they come under the grandfather clause? Will they have to do anything besides abide by the new rules and regulations?

Mr. HENRY. No; they will be encompassed by the rules, but our analysis of it indicates that no change whatsoever will be required in their operation.

Mr. FRIEDEL. Thank you.

Mr. Chairman, I will be brief, I have one more question.

The CHAIRMAN. All right.

Mr. FRIEDEL. If we were to adopt the Rogers bill, and there would be no regulations, what effect would that have on the regular broadcasters?

Mr. HENRY. Well, we think that the rules are that we have got to apply the same rules to all CATV systems, whether they use microwave or whether they don't; that is really an accident of geographical location, and we think it would be unwise and unfair to apply some rules to part of an industry and not to the other part.

We think that we have to regulate CATV in general in order to provide some sort of orderly growth here, and so that they can be integrated into the broadcast system. We are afraid that without rules, without regulation, there may be come very serious adverse effects to existing broadcast stations and, therefore, to the public that relies on them for their television services.

Mr. FRIEDEL. Would you require CATV systems to devote certain time for public service, news broadcasts, weather, and things of that sort? Is that one of your regulations?

Mr. HENRY. No, not specifically. We do expect it of them, though; and they do it as a matter of good business.

Mr. FRIEDEL. And if they don't, when they come up for license renewal, then you mention it to them, is that it?

Mr. HENRY. Well, that is a complicated question. [Laughter.]

Mr. FRIEDEL. Well, one more thing, and I am through.

The phrase "received directly"—I am quoting now, "received directly or indirectly over the air" might be construed to permit a system to pick up a signal, tape it, and transmit it on a delayed basis. This would be tantamount to program origination by the system.

Now, would you object to an amendment of this type? Community antenna transmissions shall be confined to such programs or other material as are received and simultaneously transmitted by the system?

Mr. HENRY. Well, we think the way we have proposed it is better than that. That kind of an amendment would be essentially what Commissioner Bartley suggested, which would prohibit any program origination whatsoever, and would limit them to the re-transmission of what they receive off the air.

We think it is better to permit them to originate the kind of programing that is generally being done now, that is locally oriented, and that does fill a gap.

Mr. FRIEDEL. Wouldn't there be a question of doubt if it was taped, and then they bought it? Wouldn't that be considered as orlginal broadcast?

Mr. HENRY. It would, yes.

Mr. FRIEDEL. It would. Would this amendment be stronger?

Mr. HENRY. It would be stronger. The only thing—we would agree with that amendment generally, except that we would put a proviso in lt that would say "except CATV's may originate such programing as the Commission might by rule permit."

Mr. FRIEDEL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. I will try and observe the 5-minute rule. I notice that three have consumed almost an hour.

Mr. Chairman, I am a llttle disturbed about your answers. Perhaps I didn't understand them. Mr. Springer asked you if the rules were in effect, and as I understood you to say, they are.

Mr. HENRY. The rules are in effect.

Mr. YOUNGER. You just said to Mr. Friedel that "if put in effect." Now, what are they?

Mr. HENRY. They are in effect. I am sorry if I said "if put into effect," I didn't mean to.

Mr. YOUNGER. You made a statement, "if they are put into effect," so I couldn't tell whether you meant the future, or at present, but they are in effect?

Mr. HENRY. They are in effect; yes, sir.

Mr. YOUNGER. Yesterday, you made some qualifications about certain fields that the Commission was not going into, about rates, various other features which you thought were properly in the field of utility.

Mr. HENRY. Yes, and properly subject to local regulation rather than Federal.

Mr. YOUNGER. Is there anything in your recommended bill, H.R. 13286, that would limit you or limit the Commission in any way?

Mr. HENRY. No, sir. We are stating to you, however, what our judgment is as to how we would limit it. And we are suggesting some language to you to indicate that our judgment is that we should so limit. There would be nothing in the act, though, to specifically limit it.

Mr. YOUNGER. Well, that is the disturbing feature about it. This act is open. Is there anything at all that you couldn't do to a CATV under this act?

Mr. HENRY. Well, the things that we could do are to regulate it, so as to——

Mr. YOUNGER. Now wait a minute. Is there anything that you can't do to a CATV under this act?

Mr. HENRY. Well, there is no limit on the way we may exercise our jurisdiction in an appropriate fashion.

Mr. YOUNGER. That is right. You have no limitation whatsoever.

Mr. HENRY. None other than we have now, under the Communications Act, to regulate them. It would give us the same broad powers over CATV that we have over broadcasting under the Communications Act. It would give us——

Mr. YOUNGER. You mean to have the record straight that the Communications Act today does not place any limitation at all in regard to your regulations of broadcasting?

Mr. HENRY. I would say that whatever limitations there are would be carried over into the regulation of CATV. In other words, it must be reasonable, it must be subject to court review, and so forth.

Mr. YOUNGER. You have a court case pending now, do you not, in the eighth circuit?

Mr. HENRY. Yes.

Mr. YOUNGER. When do you expect the decision on that?

Mr. HENRY. Well, very soon. It was—excuse me. Mr. Geller.

Mr. GELLER. There has been a request by the appellate in that case for further briefing and argument, and we don't know whether it will be granted or not, so we are not sure when there will be a decision in the circuit case, Mr. Younger.

Mr. HENRY. Mr. Younger, the additional authority that this bill would give us, I want to make clear, is that if we were to decide that CATV or if the Congress were to decide, and we are suggesting that you make that decision now, that CATV has certain public utility aspects, their bill would give us the authority to—or let's put it this way: It wouldn't prohibit us from regulating them as public utilities.

We are suggesting to you, though, that you, in the expressing of the legislative intent of this bill, indicate that we should not regulate them as public utilities, but that whatever the States want to do about these local matters, they should do.

Mr. ROGERS of Texas. Would the gentlemen yield at that point?

Mr. YOUNGER. Just one statement. I just want to say that from my 14 years' experience, this legislative intent idea is not very enforcible.

Mr. HENRY. Well——

Mr. YOUNGER. If we are going to have any limitation, then it ought to be a limitation expressed by the Congress.

Yes, I will yield.

Mr. ROGERS of Texas. Mr. Henry, do I understand you to say that you would have a power now under the Communications Act to regulate the broadcasters as public utilities?

Mr. HENRY. No, sir; that is why I wanted to clarify my answer to Mr. Younger. I said it would give us that authority, and that is different from what we now have over the broadcasters.

Mr. ROGERS of Texas. And that is what you want?

Mr. HENRY. I beg your pardon?

Mr. ROGERS of Texas. And that is what you want?

Mr. HENRY. I have suggested that they are public utilities, and have certain public utility aspects, and as such should be regulated locally, not by the FCC.

Mr. FRIEDEL (presiding). That you personally want, or the Commission wants?

Mr. HENRY. This is my personal judgment on the matter, Mr. Friedel, at this point. We have not had time to sign off as a Commission on a number of these matters.

Mr. YOUNGER. It seems to me as though this bill is what you would call a complete open end bill so far as your authority is concerned, and if you wanted to, and were going to respect those limitations, why you didn't put them into the bill when you sent it up here.

Now, the Commission can change its mind quickly, as you know. Another Commission comes along, and it is not bound in the slightest by what this Commission may have in mind.

As a matter of fact, only recently I was told that after two conferences up here, and I didn't sit in on them, but I was told that the Commission was not going to do anything in this field until after they had made up their mind what they wanted to do, and then you were going to confer with the committee.

I wrote that out to all of my constituents and people who wrote in—then out of the clear blue, I have learned that you have issued your regulation, so I think if we are going to do anything in this field, it must be from the standpoint of legislation and direct limitation. I am somewhat surprised at the broad powers, unlimited powers, in this bill.

There is just one other question: You were mentioning, and making quite a point out of the fact, that a CATV could cut out the local station, and that if the viewer wanted to get the local station, he would have to go over and throw a switch.

Is there any more energy required to go over to the receiver and throw a switch than there is to turn the knob and get a different station, if you want to hear a different station?

Mr. HENRY. No; I don't think there is much more energy required. The switch is normally placed on the rear of the set and we have had a number of people tell us that this sometimes discourages switching back and forth a little bit more than simply switching channels on the CATV system.

Mr. YOUNGER. I imagine you would get the same answer, probably, from NBC, the fact that one has to turn to channel 4 to get NBC, and if one does not like to do that, they continue some other station.

Mr. HENRY. Also, I am sure it is not a common practice, but we have heard of instances in which the CATV person who installs the wire to the set would disconnect the outside antenna and then the person will not be able to receive the outside signals.

Mr. YOUNGER. I have some other questions, but I have no more time.

Mr. HENRY. Mr. Chairman, may I just comment to clarify one of Mr. Younger's previous questions, because I think you may think there is an area of disagreement here where there isn't.

The National Association of Railroad and Utility Commissions, NARUC, has some specific language to suggest to you as a substitute for the section in our bill of which you were complaining as too open ended. We are working with NARUC, and I believe that some acceptable specific language can be found to limit our powers in this regard.

Mr. YOUNGER. I have heard about that, and I am quite sure that before we get through with this bill there will be other amendments offered also.

Mr. HENRY. Yes, sir. I just wanted to indicate to you that when you listen to NARUC this afternoon or tomorrow, I don't think we will be too far apart.

Mr. YOUNGER. That is all.

Mr. FRIEDEL. Mr. Jarman.

Mr. JARMAN. Mr. Henry, like some of the others, I have been tremendously impressed with the growth of CATV systems. Approximately how many systems are in operation today?

Mr. HENRY. There are approximately 1,600 CATV systems in operation today.

Mr. JARMAN. Well, I had some information furnished to me that the current annual rate of franchises issued will run around 900 per year. Is that an exaggeration?

Mr. HENRY. New franchises? Let me just give you the statistics that I have in answer to your question.

There are 1,600 CATV systems now operating, 400 of which are microwave-fed, 1,200 of which are off the air. There are approximately 1,200 CATV franchises granted, but which are not yet in operation, and there are approximately 2,250 CATV applications pending in about 1,300 cities.

The rate of growth at the last time we looked at it was approximately one new operating CATV system per day.

Mr. JARMAN. Let me ask you about programing, another question.

Am I correct in understanding that approximately a third of the CATV systems do not carry local and area stations?

Mr. HENRY. We don't have those figures, I don't believe, Mr. Jarman. We do know that quite a few of the systems that have not had to come to us for microwaves do not carry the local channel. We could find out, though, and give you that information.

Mr. JARMAN. Mr. Henry, if H.R. 13286 is passed into law, would you, speaking for the Commission, take the position that these rules that are under consideration would simply restrain the harmful practices while permitting CATV to grow in its traditional and proper role?

Mr. HENRY. I think that is a good summary of it; yes, sir.

Mr. JARMAN. I am quoting the statement furnished me by proponents of the position the majority of the Commission takes, but I wanted to comment on one or two of the conclusions reached.

Another is that reasonable rules for CATV are essential. Quoting again:

> CATV is moving without any restraint to import distant metropolitan stations into cities and towns already served by their own local and area stations.

And then the conclusion:

> Unless checked, these and other rapidly growing practices in CATV will undermine the goals set by Congress of more free local broadcasting stations to meet local needs.

Will that statement stand up, in your judgment?

Mr. HENRY. I think it will. I think those are the reasons that we have acted, because, as a matter of fact, inaction on our part is not simply to preserve the status quo, but to permit what conceivably could be radical changes in congressional policy as we understand it.

In other words, if CATV and the importation of distant signals were substantially to replace existing stations, this would be contrary to the policy of Congress as we understand it that was expressed in the Communications Act.

Mr. JARMAN. Mr. Chairman, I have one question for Commissioner Bartley, if I may.

Will you refer to your proposed amendments, and you mentioned section 331:

> No community antenna system shall distribute programs other than those received from transmissions by broadcast stations.

That would be section 331. You refer to section 331.

Mr. BARTLEY. This would be a new section to the Communications Act.

Mr. JARMAN. A new section to the bill?

Mr. BARTLEY. To the Communications Act.

Mr. JARMAN. To the act itself.

Mr. BARTLEY. This would be the entire bill.

Mr. JARMAN. I understand. Thank you very much.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. Henry, I refer to your statement on page 20, and compliment you for it, because in that statement, you state that you seek congressional confirmation and codification of authority.

While you may feel that you do have the authority, you still come to the Congress and also indicate in your statement that you are willing to make changes, if changes are warranted. I thank you for that statement and compliment you for it.

I have a few questions that I would like to ask. One may not be too relevant; but, for example, we will say in this area—here in Washington—the Senators suddenly get to be a winning ball team, and they are televising their games, and in order to protect gate receipts, they forbid the televising of the game in this viewing area. Yet the signal may be carried outside of this viewing area, and could be brought back by cable, into the Washington area unless there is some authority granted to the Federal Communications Commission to regulate CATV.

Is that not true?

Mr. HENRY. Yes, sir; it is.

Mr. NELSEN. But under the regulation that this bill would provide, you then would be in a position to protect the local interest, would you not, to deny the carrying of this thing back into this area?

Mr. HENRY. Yes, we would. It would depend, of course. We don't know whether we would grant permission to a CATV system to operate in the District, and we don't know what conditions, if any, we would put on them if we were to grant them permission, but this would be one of the things that we could take into consideration in making those decisions.

Mr. NELSEN. Another question: In Mankato, Minn., we have a small TV station, and they are doing very well. They are licensed to operate, are they not, by the FCC?

Mr. HENRY. Yes, sir; by the FCC.

Mr. NELSEN. The cable companies are not licensed.

Mr. HENRY. That is correct.

Mr. NELSEN. Now, if another TV station should make application for license of the Federal Communications Commission, would the Federal Communications Commission take into account the fact that the resources of this particular viewing area might be saturated beyond economic possibilities if another station came in?

Would that be a basis for your decision, or how do you regulate the number of licenses that you——

Mr. HENRY. Yes, it would be. There are a number of things we take into consideration, one of which is the thing you referred to: that is, whether that community can support two stations, so that each can render a service in the public interest. That matter has been litigated in the courts, and the courts have concluded that that is one of the matters we must consider.

Mr. NELSEN. In other words, according to the present authority under which you operate, if there is no possibility of regulation of a cable TV, a community antenna system, in effect, could become another station as far as the competition is concerned within this area.

Mr. HENRY. Well, they could become 12 other stations, in effect.

Mr. NELSEN. Yes. It is my understanding that, for example, if "Bonanza" is being shown on KEYC–TV, and if the local cable carriers want to show "Bonanza," they must take it off KEYC–TV and not some other distant station which would not be carrying the signal of a local station. Is that not true?

Mr. HENRY. They would, under the FCC rules. But for the rules, they would not have to.

Mr. NELSEN. At the present time, do you feel that you do not have the authority to set up rules that would provide this?

Mr. HENRY. No, we do; and have enacted rules which require that they carry the local station.

Mr. NELSEN. Yes, I understand. Now, didn't I read some time back of a very famous case where a cable company was getting its signal by microwave and they were then forbidden to use a program taken from other areas into a certain area? By what authority were they regulated? They took their signal from microwave.

Mr. HENRY. I imagine you are talking about the *Carter Mountain* case, in which the court said that we had authority to condition the grant of the microwave license which was going to be utilized by the CATV to bring in programs. We had authority to condition that license so as to prohibit the duplication of programs in that market, and this is essentially what we have done in our new rules that are applicable to all CATV systems.

Mr. NELSEN. In other words, the regulation that you seek would in no way deny any community a cable television system, and your intent is to protect a licensed station from the competition that could arise if the signal is taken from a competitive TV station in another area. No one will be denied any program under this particular regulation. Is that not correct?

Mr. HENRY. No one will be denied any program, nor will any CATV subscriber have to see a program at a date later than the day on which it was originally telecast.

With respect to the protection aspect of the rules, we have a very strong presumption in favor of competition, and we want to promote competition. Where CATV brings in additional signals to those who are willing to pay for them and want them, we think this is fine, and this is a good service.

Mr. NELSEN. I agree.

Mr. HENRY. We simply want to impose some reasonable conditions on that, so that the rest of the public and the public in general will

not be unduly deprived of the services that the local broadcast station gives. We are trying to work the two together; in other words, not to favor one or the other.

Mr. NELSEN. In other words, if "Bonanza," as I mentioned, were being shown on KEYC–TV, and the cable carriers wanted to show another program, they could. They would not have to—they could show any other program, but if they want to show "Bonanza," they must take "Bonanza" from the local station.

Mr. HENRY. That is right, and believe me, we are not just mouthing words when we tell you we are in favor of competition. This is a tremendous burden, administrative burden, that the FCC has taken on; and normally, if the matters of this kind can be decided by the marketplace, we would be much more in favor of that than trying to do it ourselves.

We feel that, one, it would not be fair; and, two, that the public itself might well suffer, and that is why we are doing this.

Mr. NELSEN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you very much, Mr. Chairman.

I have heard your statement, read it, and I think my comment expressed in current TV jargon might be "Holy FCC, Batman. A fairly reasonable and equitable position on CATV."

It seems to me that what you are trying to tell us is that the actions of the FCC are trying to protect free TV, at the same time allowing CATV to perform community service. I share this concern.

What are the main restrictions on present CATV systems? As I understand it—and if you will correct me, and add to this—you have a 1-day rule, so that they would not duplicate on the same day, or they could carry the local station. In fact, I believe you would require them to carry the local station, so they could have the same program. Is that correct?

Mr. HENRY. That is correct. They are required, first of all, to carry the local station; that is, if they are in the local station's service area, the grade B, then they have got to put the local station on the system.

Mr. ROGERS of Florida. And that is not presently required in any manner.

Mr. HENRY. It was not required until our rules came along.

Mr. ROGERS of Florida. Yes; I understand.

Mr. HENRY. I believe that most everyone in both industries, and the public, feel that this is a fair accommodation. The other basic rule is that the CATV system shall not duplicate the programs of the local station, as long as they are shown by the local station on the same day that they are originally telecast.

Mr. ROGERS of Florida. What about color or black and white?

Mr. HENRY. If the local station shows the program only in black and white, but the CATV system would show it in color, then the CATV system is free to do so.

Mr. ROGERS of Florida. There is no limitation there.

Mr. HENRY. That is right. This is to promote—well, it is first of all to give the public that choice; and secondly, to promote the use of color by as many stations as possible.

Mr. ROGERS of Florida. All right. Then your second requirement is that if they originate broadcasts, then they should have the permission of the FCC accordingly.

Mr. HENRY. Yes, sir. Now we have no such requirement at this time. We are asking Congress to consider this question and to give us that authority.

Mr. ROGERS of Florida. Well, the main question I would have in there, too, is jurisdiction. I think this is one for the Congress to determine. But I would agree with you that you can soon have CATV systems integrated so that you could almost run your free television stations off the air, if they just picked out certain originating stations, and didn't carry other stations at all. So you get, then, into the basic question of free and pay-TV. This is about what it boils down to, in basic terms, is it not?

Mr. HENRY. Yes. It boils down to the potential impact of CATV on the regular broadcast stations as additional competition, and it also raises the question of what the impact will be if CATV develops into full-fledged pay television.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Chairman, under the proposed rules, or the rules that you have promulgated, what difference is there between the licensing of direct broadcasting stations, television stations, and a CATV installation?

Mr. HENRY. What is the difference in the manner in which we regulate them?

Mr. KORNEGAY. That is right.

Mr. HENRY. Well, we do not contemplate a system of licensing for CATV. We require that the CATV obtain a franchise, first of all, or permission to operate——

Mr. KORNEGAY. From the local authority?

Mr. HENRY. From the local authority. So the choice of the CATV system operator is with the local authorities. We do not regulate and do not intend to regulate any of the arrangements that he makes locally with respect to the rates that the subscribers will be charged, the areas generally that he is going to serve, the telephone pole rates, and so on; nor do we have any requirements as to the kind of material or equipment that he uses.

Mr. KORNEGAY. Well, let's approach it from a little different direction. Once a group organized for the purpose of going into a CATV business obtains a franchise from the city council of the community in which they are going to operate, they present that franchise to you. What other requirements do you have, other than the rules and regulations pertaining to the carrying of certain stations and the nonduplication rule, and that sort of thing?

Mr. HENRY. Then the CATV system has to comply with our rules. If he wants a microwave license to bring in the system, or the signal, then he has to come to us and obtain the microwave license. In order to obtain the license, he takes the microwave license condi-

tioned on the condition set up under the rules; that is, he must carry the local station, and avoid the duplication of the local station.

If he is not a microwave user, and he simply is going to go into business without a microwave, he does not have to come to us at all. All he does is simply abide by the rules that we have imposed.

Now, this is if the CATV operator is in a small market. If he is in the top 100 markets, we are going to require him to come in and spell out to us the details of his operation, so that we can determine (1) its potential impact on UHF, and the question of how his operation may or may not relate to pay television.

Mr. KORNEGAY. When you talk about the market, you hold full hearings on them.

Mr. HENRY. Yes.

Mr. ROGERS of Texas. Would the gentleman yield there for just one point?

Mr. KORNEGAY. I will be happy to yield.

Mr. ROGERS of Texas. Mr. Henry, didn't you testify now that insofar as these CATV operators were concerned, although they would not be licensed under your proposal, that you would require them to get a certificate of convenience and necessity or something of that order?

Mr. HENRY. No, sir; not from the FCC. They might have to get some sort of certificate from——

Mr. ROGERS of Texas. No, I am talking about from the FCC.

Mr. HENRY. No, sir.

Mr. ROGERS of Texas. I want to be sure, because I think you said that in the other hearing.

Mr. HENRY. If I did, I didn't mean to, not from us.

Mr. Rogers of Texas. Thank you.

Mr. KORNEGAY. Well, with reference to the top 100 markets, doesn't it really mean that your rules require, in effect, that a CATV be licensed by the FCC?

Mr. HENRY. No, we don't have to find that his entire operation, including who he is, his principals, his rates, et cetera, are, overall, in the public interest. All we have to find out is that we have to make a determination that his operation will not be contrary to the public interest insofar as the wider and more effective use of radio is concerned. It is appraching a——

Mr. KORNEGAY. Do you take into consideration the economic factors?

Mr. HENRY. Well, not as such. We would take into consideration the economic factors as they might relate to UHF operation in the market that he proposes.

Mr. KORNEGAY. What about VHF?

Mr. HENRY. VHF, also, could come into it.

Mr. KORNEGAY. In other words, the economic effect that the installation of CATV will have on the existing local broadcasters, VHF–UHF, is to be taken into consideration.

Mr. HENRY. Yes, it will be taken into consideration.

Mr. KORNEGAY. In the top 100 markets.

Mr. HENRY. Yes, it will be taken into consideration.

Mr. KORNEGAY. All right. Now, sir, of course, if they have 50 subscribers or less, then they are exempt from your rules, as I understand it.

Mr. HENRY. Correct.

Mr. KORNEGAY. Well, here is an outfit just going into business that doesn't have any subscribers. When do they become subject to the rule? When they cross that 50 mark, or how does that work?

Mr. HENRY. Well, technically, they would not have to abide by our rules, I suppose, until they got the 51st subscriber, but I feel sure that no reasonable CATV operator would proceed——

Mr. KORNEGAY. Would stay in business long without more than that, would he?

Mr. HENRY. Yes.

Mr. KORNEGAY. Well, I just wanted to get that in the record, because the question did arise in my own mind. So now in order to sort of clearly categorize, from my point of view, the various categories, (1) 50 or less subscribers, they can write their own rules; you don't have anything at all to do with them.

Mr. HENRY. That is right.

Mr. KORNEGAY. All those systems, CATV systems, operating in markets under the 100 top markets, all they do is abide by the rules and regulations promulgated by the Commission.

Mr. HENRY. Yes, although they are subject to petitions that might be filed by broadcasters in that area, saying that some additional conditions should be imposed, but we are not going to impose those as a matter of general rule.

Mr. KORNEGAY. All right. In the 100 top markets, from New York City, N.Y., to Albuquerque, N. Mex.—which I believe is the 100th one—it takes a positive showing on the part of the promoters of the CATV.

Mr. HENRY. That is right.

Mr. KORNEGAY. Who are trying to come before the Commission and go through the regular hearing routines.

Mr. HENRY. That is right.

Mr. KORNEGAY. Now, in the group under the 100 top markets, what sanctions do you have to enforce your rules and regulations on those CATV's?

Mr. HENRY. Well, they would be subject to our jurisdiction, and subject to the same sanctions that we have over the ones in the top 100.

Mr. KORNEGAY. You mean you go into court?

Mr. HENRY. Yes.

Mr. KORNEGAY. In other words, if a CATV says, "Well, I am not going to abide by the nonduplication rule."

Mr. HENRY. We would go into a court, if necessary, and seek what amounted to an injunction against them.

Mr. KORNEGAY. That is what I wanted to find out.

Now, insofar as the priority of carriage is concerned on the CATV, No. 1 is the stations in principal communities; No. 2, your grade A contour; the grade B contour is three; and then the 100-watt translators, I believe, are the No. 4 priority. Is that right? Have you added that in the new rules?

Mr. HENRY. Yes, I am not sure I understood your question, Mr. Kornegay.

Mr. KORNEGAY. I was outlining the priorities.

Mr. HENRY. Oh, yes.

Mr. KORNEGAY. Which is necessary, you have laid down the rule, that the CATV will carry all of the stations in the principal community in which it operates, the stations which are in the grade A contour area, and then third, the grade B contour area, and then fourth, any station that has a translator of 100-watt power or above.

Mr. HENRY. That is right.

Mr. KORNEGAY. Now, let me ask you this—and I know my time is up, Mr. Chairman—but is there a requirement in your rules that would require the CATV to carry a local station on the same channel which the FCC has assigned to that local station?

Mr. HENRY. No, I think we are saying that they should do it, if it is technically feasible. Sometimes there are problems of a technical kind, when they try to do that, because of ghosting and other interference on that channel.

Mr. KORNEGAY. Well, there is some evidence, some experience to the effect that the station closest to the CATV antenna, that signal will be degraded or downgraded more than maybe a more distant signal, isn't it?

Mr. HENRY. Yes; due to these ghosting problems, and so on.

Mr. KORNEGAY. Well, isn't it a source of some concern to the Commission, the fact that—well, take my own area, for example, Winston-Salem, Greensboro, and High Point. We have three stations there, all of them within 30 miles of each other, and some of them are closer than that—CBS, NBC, ABC. I assume any CATV operator in any of that area would have to carry all three of those stations. Those channel 2 and channel 8 would take channel 12, which is an NBC affiliate, in Winston-Salem. That signal, if they carried that on channel 10 or channel 7 or channel 1, or any other channel, it looks to me like it would be an unfavorable reaction to the station, because people through the years have gotten used to looking at channel 12.

Mr. HENRY. I think that is right. They lose their identity.

Mr. KORNEGAY. They lose their identity. That is right.

Mr. HENRY. We have provided in our order that the requirement for on-channel carriage, which is what you are talking about is operative only upon request of the station licensee or permittee, but we do imply that if the station wants it, the CTAV should make every effort to carry it on that channel.

Mr. KORNEGAY. Is there anything in your rules and regulations that would encourage, we will say, the CATV to see that the signal is as good as it can possibly be made, technically?

Mr. HENRY. Yes, it says "without material degradation in quality."

Mr. KORNEGAY. Yes.

Mr. HENRY. In other words, that is the general rule; that it be carried on-channel.

Mr. KORNEGAY. Well, I just thought that was an important matter, and I wanted to discuss it with you.

I see my time is up, Mr. Chairman. I thank you very much.

Thank you, Mr. Henry.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Commissioner, you have told us before the number of systems that were microwave and the number that were off-the-air systems, but I didn't catch it. Would you repeat that, please?

Mr. HENRY. Yes; of the approximately 1,600 CATV systems now in existence, 400 are microwave-fed and 1,200 are off the air. In other words, there is a 3-to-1 ratio.

Mr. CURTIN. Do any of the systems use both of microwave and off the air?

Mr. HENRY. Yes, I believe so.

Mr. CURTIN. Did I also understand you to say in answer to a question of Mr. Younger that the regulations for off-the-air systems are now in force?

Mr. HENRY. Yes.

Mr. CURTIN. Prior to the time that the regulations for off-the-air systems were in force, what was your ruling in reference to these CATV systems that used both microwave and off the air? Were they under your regulation, or were they not?

Mr. HENRY. The off-the-air systems were not.

Mr. CURTIN. Yes; but in these cases where you say there were a few CATV systems that use both. Were they under your regulation, or were they not?

Mr. HENRY. If they were mixed, in that they used both microwave and took some of their signals off the air, and asked for additional privileges, additional microwave privileges, then we would condition those, so as to apply to their off-the-air operation, also.

Mr. CURTIN. Incidentally, do the CATV systems pay anything to the broadcasting systems for using their programs?

Mr. HENRY. They are not required to; no, sir.

Mr. CURTIN. Do you know whether——

Mr. HENRY. And I think as a matter of general practice, they do not.

Mr. CURTIN. They do not. And incidentally, do CATV systems have any source of revenue other than from their subscribers?

Mr. HENRY. CATV systems? Not as CATV systems; no, sir.

Mr. CURTIN. Do they sell time to local advertisers?

Mr. HENRY. We know of some instances in which they have originated some commercials, or at least, we have been told about them. I am not sure we have any documented proof to that effect or not, but it is very rare.

Mr. CURTIN. And would that come under your regulation?

Mr. HENRY. Well, this would come under the origination of program or other material, and as yet, we have no rule on that subject.

Mr. CURTIN. Because of the fact it is not very prevalent?

Mr. HENRY. Because of the fact that it is not very prevalent, and we have had to pay attention to these other matters instead of that, so far.

Mr. CURTIN. Would your regulations in the event this law that you are advocating, or if this bill you are advocating should be enacted into law, would your regulations provide for payment by the CATV systems for broadcasting companies for the use of their programs?

Mr. HENRY. No, it would not. We have, in the comments on our bill, and accompanying it, and in my statement yesterday, we have suggested that you consider this point along with your general deliberations of CATV. Some people in the industry have urged that the fairness and the necessary protection that we are concerned about

would be accomplished by simply requiring that the CATV system obtain the consent of the originating station.

This is something that we have not yet explored fully, and have taken no position on. It may be that as this matter develops, that will turn out to be the way that it should be done, and we would modify our rules accordingly, but we have no present intention to do that.

There are a number of complications involved in that, which I will be happy to go into, if you want me to.

Mr. CURTIN. Well, I see my time is about up, so if you would supply them for the record, I think it would be interesting.

Mr. HENRY. All right, we will give you some comments on that. I will give you some at least, in addition to what we have already supplied.

Mr. CURTIN. Thank you.

Mr. HENRY. Mainly, it puts the Commission in the middle of determining the reasonableness of prices and matters of that kind, which is bad, we think, and secondly, we are not sure how it would work.

Thirdly, we have little or no experience in the field of the protection of copyright matters, or we are not sure how that ought to work out. We are not sure what exceptions, if any, should be made. It is a very complicated area that we have no experience in. We think it is better handled by legislation, and probably better handled in copyright legislation.

Mr. CURTIN. But if, however, this legislation that you are interested in should be enacted into law, you would have the right, in addition to the other things you have mentioned, to regulate, for example, the sale of time to local advertisers, the question of requiring compensation to the originating station and things of that character, is that correct?

Mr. HENRY. Well, yes. We would have that authority. We couldn't adopt that approach, though, without another notice of rulemaking.

Mr. CURTIN. Do you feel you have that authority now?

Mr. HENRY. Yes, we have the—well, you have mentioned a number of things, but just on the rebroadcast approach, I think we do have that authority.

Mr. CURTIN. And how about the sale of time? And how about for CATV system that sells time to local advertisers?

Mr. HENRY. Well, that is something we haven't decided on now, Mr. Curtin. We are asking that Congress give it to us, in any event.

Mr. CURTIN. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I imagine we all tend to become a little parochial on issues like this, but it happens that the area that I represent, San Diego, Calif., has become one of the most important crucibles in the test of the effect of CATV and the effects of the rules that the Commission has decided upon. About 8 percent of the homes in San Diego County are now wired. It is already possible to determine through viewer surveys, for example, what the effect of outside signals is on viewing habits.

There is pending before the Commission a legal effort by one of the San Diego stations to stop CATV right where it is. I know that you can't prejudge an action like this, that is awaiting determination by the Commission, but it does raise serious questions, first of all, regarding the grandfather policy that has been adopted, or is contemplated by the Commission.

The industry was put on notice in April of last year that new rules were being considered, and there was, as you know, a feverish rush to get more systems in operation after that time, and before the rules came down. Is it your view of grandfathering established CATV systems, where they have been chartered by local government, that the entire area that has been certified for installations is open to new installations? Or would you consider present lines that are laid out on a neighborhood basis as the limit of grandfathering? Or might we reach a position where in the same block, six homes that have been wired will be permitted to continue, and six homes that have not been wired may not now be wired?

What would be the Commission's view?

Mr. HENRY. Well, Mr. Van Deerlin, I think, if I may, I will discuss this matter generally rather than just San Diego. We do have some conflicting positions on that, and I don't want to get into the merits of it, but our general proposition was that where systems were already constructed and in operation, we would permit grandfather rights to accrue.

Mr. VAN DEERLIN. On a communitywide basis.

Mr. HENRY. Well, generally, for the geographical area in which the system had been authorized to operate. We did say, though, that for new systems that were not in operation, and for the geographic extension of existing systems in the top 100 markets, we would require them to come to the FCC for permission. We recognize the undesirability of having one side of a block wired up and receiving signals, for example, and not permitting the other side to do so, and we were in hopes that our approach would eliminate most of those situations.

Mr. VAN DEERLIN. Well, the new rules that are proposed offer a waiver to stations, to bar CATV systems from importing outside signals into areas like San Diego. Now obviously, the concern in this community as stated, is that San Diego might become an economic suburb of Los Angeles, losing its identity as an independent market area.

Under what circumstances might such waivers be extended in grade A contour areas?

Mr. HENRY. Well, you are asking under what circumstances, I suppose, would we prohibit the operation of CATV's signals in the big cities, or under what circumstances would we permit distant city signals to be brought in.

Mr. VAN DEERLIN. Yes.

Mr. HENRY. Well, there again, we don't know at this point exactly what those circumstances will be, and that is why we have decided to order evidentiary hearings on those precise questions.

Generally, the main questions will be what will be the effect of CATV on the broadcast service in a community, and what is the potential of CATV for pay television. We will take into account all of the relevant factors that the parties advance to us.

Mr. VAN DEERLIN. Including the economic impact?

Mr. HENRY. Yes. Yes.

Mr. VAN DEERLIN. In the matter of nonduplication, Mr. Henry, whereas you started out with a 15-day nonduplication, which may have seemed like quite a long time to many people, you have now reduced it to same-day nonduplication. You referred in your statement yesterday to the special costs and proprietary interest where package purchases by stations are concerned—film packages, and others, movies, and so forth, where they lay out considerable investment. I wondered if maybe there might be any different consideration for this kind of programing as compared with, say, straight network programing, in the matter of nonduplication?

Mr. HENRY. Well, they are different, but to try to avoid any duplication in the feature film, or even in the syndicated film area, for that matter, is very difficult, because it is fortuitous as to when a movie is going to be shown on a distant station which will have been shown on the local station, and even our 15-day rule would not have taken that into consideration, so the change from 15 day to 1 day was related primarily to network programing.

We cite the impact of feature film and syndicated film, just to show the general impact of CATV.

Mr. VAN DEERLIN. Was the reduction from 15 days to 1 day a part of a master compromise in trying to be fair to both sides?

Mr. HENRY. Yes, it was. We think it is well justified, however. And I think it is important to note that most of the factual information that we had, with respect to the amount of delayed programing came from the networks, and as I recall it, we found that the median amount of delayed programing per station was something like 5 or 5½ hours a week.

In other words, 50 percent of the stations delayed less than 5 hours a week, and 50 percent of the stations delayed more than 5 hours a week. This was the practice of the industry generally, prior to our rules.

Now same-day nonduplication will permit at least this median protection. That is, by generally permitting delayed programing of at least 1 hour per day, even in prime night time. So we think that, generally speaking, the same-day nonduplication protection does provide some reasonable amount of protection to the station in the rendering of its service, and at the same time, generally permitting the CATV subscribers to see programs when they like to see them.

Also, we took into account the fact that three-quarters of the CATV systems that we were then taking jurisdiction over, didn't give any nonduplication protection, and 1 day is much less disruptive to those systems than the 15 day would have been.

Mr. VAN DEERLIN. Of course, we shall probably be getting some additional evidence on this from the industry witnesses that will follow.

Mr. HENRY. Yes, and I imagine we will get some petitions saying that in certain circumstances, we ought to give more protection than our general rules provide, and we will, of course, consider those.

Mr. WATSON. Will the gentleman from California yield at that point?

Mr. VAN DEERLIN. Yes.

Mr. WATSON. Really, you don't anticipate a 15-day nonduplication delay or a 1-day nonduplication delay to make any material difference in seeing a 1936 movie run? [Laughter.]

Mr. HENRY. That is right. Excuse me, except insofar as those movies are shown on the networks. If they are shown on networks, then the nonduplication protection might well have some bearing.

Mr. VAN DEERLIN. A technical question that has been touched on only tangentially: the matter of inferior signals. Now quite apart from going and turning a switch on the back of the set to get on or off your antenna, isn't it true that CATV's can't deliver as good a local picture yet as it can on recorded signals, because of the impact of strong local signals coming in over the wire, and creating distortion?

Mr. HENRY. Well, that is if they carry them on the same channel, there is some difficulty in there. I am not sure of the extent to which they have been able to work out this problem. I believe I am right in saying that many of the local stations are carried on channel.

Mr. VAN DEERLIN. Yes, but if there is a choice between network on a local station that has an inferior picture on the wire, or on the imported signal which is pure, would this point be an added factor in discouraging local viewing?

Mr. HENRY. Well, there is an inherent problem here, yes. That is, that the local station's signal on the CATV may not be as good as some of the others.

Mr. VAN DEERLIN. In some cases, as a convenience to the local stations, their wire systems have been transferring the channels with outside channels, so that in San Diego, Los Angeles, channel 4 could come in on channel 10 in San Diego, and channel 10 would be switched to channel 4, or channel 10 would be carried on both 10 and 4. This would create havoc, would it not, if it became a substantial practice, great havoc in a program audience rating system which at best is spotty?

Mr. HENRY. Well, it would be an added difficulty, there is no question about that.

Mr. VAN DEERLIN. And therefore, perhaps of——

Mr. HENRY. An adverse effect on the local station.

Mr. VAN DEERLIN. Well, and also on programing policy, and advertising policy, because these sales are made on the basis of share of audience.

Mr. HENRY. Yes, it could. That is, as I say, an inherent difficulty, and I am not sure there is any rule or any policy that we can adopt to take care of it. It is just one of the factors that is there. We expect the industry to do the best they can to eliminate, but that is about all we can do.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Chairman, you indicated in answer to a question of Mr. Kornegay that the Commission does not presently have any authority to regulate the construction of a CATV system.

Now as I interpret the bill which is before us, H.R. 13286, you would have this authority if this is passed. Is that correct? To prescribe regulations as to how the wires would be strung from the antenna to the homes?

Mr. HENRY. Well, we don't know. We haven't decided every jurisdictional question down to the last detail. We think we have jurisdiction to regulate CATV systems, so as to promote our main tasks under the Communications Act. We don't know how far down this goes. We won't know until facts develop, and circumstances develop, but we do know that we do not intend to regulate that aspect of it, and we do know, though, that one of the effects of our regulation might be to halt construction in the top hundred markets.

Mr. BROYHILL. Well, how would you interpret the word "operation" in lines 11 and 12 on page 2 of the bill, "To issue orders to make rules and regulations to prescribe conditions and how to operate the systems"?

I mean, is this what you would actually be also telling the CATV systems how much they could charge for their service?

Mr. HENRY. No, the "operation" there generally is to distinguish operation from construction and technical characteristics, and it would include the areas that we have been discussing so far, that is, the nonduplication protection, the carriage of the local station, and matters of that kind.

Mr. BROYHILL. Mr. Younger indicated there would be a number of amendments. Would you object, then, to an amendment to clear up this language to conform with what you have just stated?

Mr. HENRY. No. We have no objection to that. We think it can be clarified in the legislative history, but any clarifying language in the bill iteself would not be objectionable to us.

Mr. BROYHILL. One other question on another subject. I think I asked you this before, but just for the record, if a CATV system is presently operating in a small town, let's say, outside of Charlotte, N.C., and this small town was considered in the Charlotte market area that is in the 100 top markets, let's say, now does this CATV system have to come to the FCC in order to get that one more customer in that town, or is it only when they expand to another city, or to another location?

Mr. HENRY. Generally, it is when they expand to another geographic area that the franchise doesn't cover.

Mr. BROYHILL. In other words, if they want to continue their expansion in that one town in which they have the franchise.

Mr. HENRY. They may do so.

Mr. BROYHILL. They may do so without coming to the FCC?

Mr. HENRY. Yes, I don't know the facts in the particular area you are talking about, but I can say as a general proposition, they can.

Mr. BROYHILL. I don't know of any one particular one. I was just asking.

Mr. HENRY. Yes, as a general proposition, they can.

Mr. BROYHILL. Thank you very much.

The CHAIRMAN. Mr. Rooney?

Mr. ROONEY. Mr. Chairman, I would like to compliment you yesterday for your excellent presentation of the charts and graphs over there. I think it gave the members of this committee a better understanding of microwave and off-the-air television. It certainly has given me better understanding.

I come from Pennsylvania, a State that has been well served by the CATV industry for many years, and the CATV industry in the

Commonwealth of Pennsylvania has thousands of employees that rely on the CATV industry for the support of their families.

I am also very much concerned as the FCC should be about local stations, because we have to preserve local stations. But the CATV industry has seemed to be put on the side of the villian with respect to its problem with the FCC.

I would like to ask you whether or not the CATV industry nationally was not trying to come up with a bill that would have been in accordance with the rules, your thinking, and also a bill that would also would not have any adverse effect on the CATV industry.

Mr. HENRY. Well, I think they were trying to come up with something along these lines, yes.

Mr. ROONEY. Right. And last year, I believe, in this same committee, we were discussing the Federal Trade Commission's bill about labeling cigarettes, and the cigarette industry made a valiant effort to come up with legislation that would satisfy them and also satisfy the FTC and at that time, the FTC saw that the cigarette industry was trying to do something about the problem, and gave them a stay before they promulgated any rule.

Now why can't the FCC do the same thing in this respect? Why did it have to come about so quickly?

Mr. HENRY. Well, this matter has been pending at the FCC now for, I think, at least 3 years. We have been studying it.

Mr. ROONEY. And that is how long the Federal Trade Commission was studying the cigarette labeling, also?

Mr. HENRY. Well, I am not as familiar with that as I am with CATV, but I think we have given the CATV industry and the broadcasting industry and everybody else concerned full opportunity to present all of their views to us, and the problem, Mr. Rooney, is that inaction here is really, as we see it, a rather fast-moving and potentially radical change in the situation. It isn't just preserving the status quo. If it were simply preserving the status quo, I believe your approach may well have been the one we would have taken, but we just didn't see it that way.

Mr. ROONEY. How can your staff—you claim that there are 1,200 off-the-air CATV companies in effect now, there are 400 microwave, 1,200 franchises have been granted at the local level, and there are 2,250 applications pending.

Do you have the staff to hear all of these applications, and don't you think it will be years, 5 years or 6 years before you have the opportunity to hear all of these companies?

Mr. HENRY. Well, I don't think that we will get that many petitions at the FCC. I hope not. We will get a great many of them, though, and I do recognize that we are liable to incur some delays in handling those petitions. We are trying to gear up for it as best we can, and we now have under study the question of just what staff adjustments we have to make.

I am hopeful that when we hear or when we have handled a number of these matters, we will be able to proceed more expeditiously, either through the changing of the procedure to do away with hearings and to develop general rules, or in eliminating some of the fact issues that would be involved in separate hearings, and thus handle them more expeditiously.

I would agree with you that we are going to experience some delay. I am confident that it is not going to be 5 or 6 years, however.

Mr. ROONEY. Yes, sir; you talked about station WNEP–TV in Scranton.

Mr. HENRY. Yes.

Mr. ROONEY. And incidentally, I arranged for the owner of that station and the owner of the Wilkes-Barre station to come here and visit the members of the Pennsylvania delegation. You showed the A and B contour, and said that there were x number of sets that were not served, not carrying the local television station, and I think that is wrong, and I believe that the CATV industry thinks that it is wrong, and they have already corrected their wrongful doings, are now carrying the local stations, but is it not possible that despite the fact that somebody can live in the contour A, or contour of B, he still will not be able to get the reception of the local station unless he has a CATV hookup, because of the terrain?

Mr. HENRY. Yes, that is perfectly true, either the CATV or a highly expensive outside antenna.

Mr. ROONEY. So in effect, the CATV is protecting the local UHF station in that respect, is it not?

Mr. HENRY. Certainly they are, if they carry the local station, yes.

Mr. ROONEY. Now you are very much concerned about protecting UHF stations. How many UHF stations in the past year have gone out of business because of being adversely affected by CATV?

Mr. HENRY. None, to my knowledge.

Mr. ROONEY. None, to your knowledge. Well, why is all the concern, then? Why this crash program? You promulgate the proposal, and then you come before the Congress and ask us to approve it. Don't you think you are putting the cart before the horse?

Mr. HENRY. Well, again, Mr. Rooney, we have been at it for a good many years. We have continuously taken the position that it was an important matter, and that we welcomed congressional guidance on it, but that we felt in the absence of congressional guidance, we should act.

I don't believe that we should wait for a number of UHF stations to go off the air before taking action.

Mr. ROONEY. But you said none went off the air.

Mr. HENRY. That is right.

Mr. ROONEY. Are you anticipating that this might happen?

Mr. HENRY. Well, we don't know. But we think that they might. And again, we don't believe that our action prevents the growth of CATV. Now if we had made a choice, and said, "no CATV," I think the point would be well taken; but we feel that CATV can grow and prosper under our rules.

Mr. ROONEY. I believe that CATV has grown and prospered, and it has helped the local UHF stations to grow and prosper, and I believe that the FCC should have some regulatory power over the CATV; but the manner in which you are doing it, I think, is wrong.

How can you justify the immediate imposition of general rules by the means of a press release?

Mr. HENRY. Well, we did not make those rules effective; and as a matter of fact, I should clarify the record. Some are not yet effective.

These will become effective, I think, April the 18th. But they have been promulgated.

The one thing that we made, that we said in the public notice was that CATV systems commencing operation after February 15 would not have grandfather rights. But the rules themselves were then not made effective, and some are not yet effective.

Mr. ROONEY. I have one other question, Mr. Chairman, if I may.

If you protect the broadcasting companies against competition in specific areas, don't you think by doing this you will be removing the broadcasters' incentive to give the people better local programs?

Mr. HENRY. Well, I think we would, if our rules acted too effectively to prohibit the growth of CATV, but my feeling is, under our rules, CATV will come in and compete, and give them some very tough competition, and this will be an incentive for them to produce better programs.

Mr. ROONEY. Well, Mr. Chairman, you are concerned very much about the growth of CATV, and you want to see it grow, but in my opinion, you have stymied the growth of the CATV industry by five years, and you have deprived the American people of multiple choice in selections of television programs.

Mr. HENRY. Well, we have delayed it some, Mr. Rooney. I hope it is not 5 years.

The CHAIRMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Chairman Henry, I, for one, would like to congratulate you. I think you have done a very fine job, not only in your presentation here the last 2 days, but I think that the FCC has done very well in resolving an extremely difficult problem. I don't mean my remarks to be construed that I am entirely in accord with your regulations, whatsoever; because I am not. There are some things I disagree with, too. But I can tell from the amount of mail that I have received on this problem both from CATV people and from broadcasters as well, that these are not easy questions to resolve, and I think that the FCC, though perhaps a little late, has stepped into this thing and done a very admirable job today, and I would be remiss if I didn't say that to you, and think you have done a very fine job.

Mr. HENRY. Thank you.

Mr. HARVEY. I would just for a moment like to explore what the logic of the Commission was in establishing the grandfather clause, because that very definitely hits right at the pocketbook of people involved in the CATV end of this thing.

Now I notice in your rules that, and I am referring to section 148 there, where you say "we, therefore, shall grandfather all systems which were in operation upon February 15, 1966."

Now my question is, What of the CATV operator who wasn't yet in operation, but who has spent thousands of dollars, perhaps, upon equipment, who had gone out and entered into contract with Bell systems, and who had gotten very deeply involved in this thing?

I am interested in why the Commission used the words "in operation," for example, in contrast to or rather than words such as "substantially constructed," for example, or something along that line?

Mr. HENRY. Well, again, you have to take into account a number of things, and this was the way we came out. The industry, both

industries, broadcast and CATV, have been on notice for a good while that we were going to do something in this area, and from at least April 1965, they knew that we might just freeze all further CATV development, particularly in the large markets.

We therefore think that they acted pretty much at their own risk.

Mr. HARVEY. Well, didn't——

Mr. HENRY. But we did want—may I just go on, because I really haven't answered your question yet—we did think that not only had the operators obtained some equities by getting into operation, but the public had already begun to receive some service. And it is very difficult to deprive people of service once they have received it, and in some instances, quite unreasonable.

In addition to that, we felt that some operation in the big cities would be helpful, because it would give us experience, give us facts, that we didn't now have, and so we thought that the appropriate place to draw the line, taking into account those considerations, was those that were already in operation.

Mr. HARVEY. Well, it seems to me that both the FCC and the Congress, because they were both highly inaccurate, when you get down to it, the Congress has to assume its share of responsibility, too, here, certainly, but both of them must bear the responsibilities for these companies who have got into these things, and while they may have been on notice, nevertheless, they do have some rights in this matter, and I am concerned about what happens to them now.

What of the company who was prepared to start, for example, on April 1, or on May 1, something like that? How long a delay will they face?

Mr. HENRY. Well, we don't know, and they may well have equities that override the things I have just said. We will consider petitions for waiver in this regard.

Mr. HARVEY. I have no further questions, Mr. Chairman. Thank you very much.

The CHAIRMAN. Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Henry, you set out the 100 market area, I assume, just as an arbitrary administrative delineation. Is that correct?

Mr. HENRY. No, sir; it wasn't arbitrary. If I may take a moment, I would like to explain a little bit as to why we did choose that, to draw the line there.

Mr. PICKLE. I want to hear the explanation; I don't want you to use all my time. It sounds to me like your explanation is going to be bigger than the question.

Mr. HENRY. No; I would say it was not arbitrary, Mr. Pickle. It was an attempt to draw the line where we thought the effectiveness of our regulation was most needed. In the top hundred markets is the place where there is the greatest UHF activity and potential. It is the place were 90 percent of the Nation's television homes are located. It is where pay television has the greatest potential. It is in these markets where stations may develop to provide the facilities that are needed for a fourth network, and it is in these areas where multiple service already exists, and delay will be less of a factor.

Mr. PICKLE. Then it represents 90 percent of your CATV operations.

Mr. HENRY. No; television homes. Television homes.

Mr. PICKLE. All right, television homes. Then if it does represent 90 percent, why didn't you just go ahead and make it all the markets, instead of 100?

Mr. HENRY. Well, because many of the lesser markets do have only limited television service. They don't have a full complement of network stations, they don't have independent stations, some don't have educational stations, and it is in these areas, the smaller markets, that CATV can offer the greatest improvement, we think, at least as matters now stand.

Mr. PICKLE. Well, now, wouldn't it follow, when you set the 100 markets area, that those communities not covered by the 100 market area really have very little protection, either CATV–wise, or particularly in UHF field?

What protection do they have?

Mr. HENRY. Well, they have less protection. There is no question about that. But in many of these areas, the potential for UHF is not as great. And my feeling was that we could say well, all right, no more CATV in these areas, and we will study the matter for 5 years, but at the end of 5 years, we know no more than we know now.

Mr. PICKLE. Well, take the community, Mr. Henry, where there is an application made for a CATV license. They do not fall in the 100. They have got to protest it, and fight it, and hire attorneys. They have got to go through what you automatically would assume would have to be done up here on this level, the FCC levels, and they really were put to greater expense, and I am not so sure but what if you set up a limitation, you set up 100, you ought to make it all, and we would have no assurance here in the Congress that if you said a hundred now, next week, you could set a 150, or any number you want to. This must be corrected.

Mr. HENRY. Yes; that is right, and/or we could reduce it. And a hundred, I can't distinguish between the 100th and the 99th or the 101st. It is arbitrary in that sense.

Mr. PICKLE. OK. When you said earlier to Mr. Kornegay's question that you still believed in licensing locally, and yet your rule clearly says that in the 100 market area, they must receive prior approval of the FCC, now that is tantamount to licensing, and you can't split that hair any other way, can you?

Mr. HENRY. Well, it is tantamount to having permission to go into business. It is not licensing in the sense that we don't choose the licensee. Local people choose him. I am not trying to split hairs with you, though. It is just as important to the operator. No question about that. If he can't go into business, he can't go into business.

Mr. PICKLE. It is just like saying to a football player, "There are 50 men out there. Anybody can play, but you have got to have the coach's approval first." In effect, you are assuming that is licensing; and that is the point I am trying to establish. I assume that you, would agree generally with that principle, wouldn't you?

Mr. HENRY. Well, I don't know. There again it is a question of what you mean by licensing. I wouldn't disagree with your conclusion, though, that it is just as important.

Mr. PICKLE. Well, let me go to one or two other points here quite quickly. I can't understand your reducing from the 15-day to the

1-day. I personally don't think that gives the local units enough protection, but if you do, when you bring it down to 1-day delay, aren't you in effect saying to any local station, "You have got to carry the network program," and you are going to reduce his local broadcasting desires, initiative, by a great deal?

Mr. HENRY. No; I don't think so. If you take a one-station market, most of the programing that he shows on a delayed basis is network programs.

Mr. PICKLE. But he has either got to run that network program, or else someone else is going to run it; then the chances are that he is going to run that network program, and where does he have a chance to do local broadcasting, local programing?

Mr. HENRY. Well, it is true that the incentive to him to carry the network's programs or have it duplicated is there, but I don't believe it is any greater under the same day, and most of the schedules that I have looked at showed that these local stations showed popular network programs rather than local originations, by and large.

Mr. PICKLE. I assume that you agree that the CATV operation should not originate broadcasts, and this is in effect that, as I understand, Mr. Staggers' bill is trying to establish, but you use a phrase, if I can get my copy here in the bill, on the second page, it says:

> It has received directly or indirectly over the air from a broadcast station.

Now it would seem to me that that is perhaps loose enough language that you could allow a CATV operation to tape that program and feed it back at some other time. Now my first question: Is any CATV operation doing any originating program now by taping it and sending it back?

Mr. HENRY. Oh, yes. That is one of the principal ways.

Mr. PICKLE. All right. Well, if they don't tape it, what do they do?

Mr. HENRY. Well, they tape it and play it back later.

Mr. PICKLE. They do play it back later, either by tape or film, or some means.

Mr. HENRY. Yes; that is right, but—and I think what Commissioner Cox may want to have a point on this—that is not considered to be locally originated. Is that what you say?

Mr. Cox. No; my understanding, Mr. Pickle, is that the station, the CATV systems which do originate other than time and weather, which is rather common, are either presenting strictly local programing—they go out and cover some local event, or they bring people in and film them in a discussion of some local issue—or in some instances, they have gone out and bought filmed programing, and present that by the same kind of equipment that a broadcast station would use. But I don't think that they tape a network program that comes in from a distant station and then replay it at a later time.

Mr. PICKLE. I am saying to you, Mr. Cox, in my opinion, the language of this bill is such that they sure can do it, or it could lead to that very easily.

Mr. Cox. Well, if so, I think it should be clarified to make it clear that what we have in mind, really—and I think this was suggested—what we have in mind here is the simultaneous retransmission. I think the word "indirectly" was put in there simply to include microwave acquisition of signals as well as direct off the air.

Mr. ADAMS. Would the gentleman yield at that moment, Mr. Pickle, for just one short question?

Mr. PICKLE. Yes; I yield.

Mr. ADAMS. I just wanted to inquire of the Chairman, would this allow, then, a CATV station, for example, to tape movies all day from the various places that they are submitted, store them, and then put on one of their 12 available channels movies all day at no expense other than the equipment to tape it?

Mr. HENRY. It is not intended to do that.

Mr. ADAMS. Well, could they under the provision that you have here under 331(b)?

Mr. HENRY. Yes; I think that perhaps, if it were not made clear, they could.

Mr. ADAMS. Thank you, Mr. Pickle.

Mr. PICKLE. Well, then, following through with that, when it is possible that a local broadcasting unit would be technically speaking, preempted only even in the field of movies, he would be running third and fourth and fifth grade movies behind the normal operations if they could do that.

Mr. HENRY. Yes; they can do that now, though. I mean, there is only one channel, though, and if you have got 10 channels coming in from the outside, you can duplicate, you can take programs off the air and show them only to the extent that your channel has the capacity.

Mr. PICKLE. But if there are less channels, then that station will be at a disadvantage, then.

Mr. HENRY. Yes. Again, you are saying that when you talk about program origination, if there is to be a ban, it should include that which it may take off the air and transmit at a later time as well.

Mr. PICKLE. I think what I am trying to say is that if we get into the field where there should be no original broadcasting, then we ought to make that plain, period, and make it clear. Secondly, I don't subscribe to the proposition, I don't think, that you should get into this language which says "an expressed finding that it would serve the public interest, authorized by general rule limited exceptions to permit such transmission," because if you get into the field, then, what would you allow? News? Weather? Sports? Political broadcasting?

I believe some of us might be interested in that, and we might run into problems where the local station is not going to want to give up "Bonanza," if we ask for that time for an important event, so I am just saying that my general feeling is that if they shouldn't originate it, we ought to stop right here, right there.

Let me ask one more question, even if I do no more than just throw it out, because I want to talk to some of you later.

Are you familiar with the possibility, I am sure you are, with what would be simultaneous duplication, a process by which the local station could be protected on the advertising aspects of it; that is, if there are as many as two or three stations, still that advertisement would have to be run over all three stations, and no matter what channel that person were tuned to, he would pick up that same message, the program and the advertisement attached to it?

What is your view on what they call simultaneous duplication?

Mr. HENRY. Well, simultaneous duplication is just another and lesser form of nonduplication, but all nonduplication, be it 15 day, same day, or simultaneous, applies to all of the programing, and everything that is carried on the signal, including the commercials. In other words, the nonduplication protection applies to the entire program.

Mr. PICKLE. It seems to me, as little as I understand it, it might be fair to the local advertisers, because in any one given radius, A or B, he tunes in locally, he is going to get that advertising message, and he won't be getting the message of an advertisement from another town. It just blacks that out, and that would give protection to the local advertisers.

Would the Commission generally favor simultaneous duplication, or do you know what the Commission's views would be on that?

Mr. HENRY. Well, no; we decided on same day, instead of simultaneous.

Mr. PICKLE. Same day. So you prefer that instead of the other?

Mr. HENRY. Yes, we think it is a little bit more protection to the local station than simultaneous, but not as much as 15 day.

Mr. PICKLE. I would think that 15-day is better, but if we had any, I would think simultaneous.

Mr. HENRY. The rule does say that the local station has the option as to whether, when his program is being protected, the others, the distant city channel, will be blacked out, or whether his program will be shown over that, with the clear signal, so that he can be seen on two or three channels, or only on the one.

It is the broadcaster who has the option. But I think maybe what you are getting at is if the broadcaster elects to have his program shown on another channel, at the time when that channel is blacked out, we would think that his total programing, including his commercials, should be shown.

Mr. PICKLE. I don't know how to answer you. Maybe we are trying to feel out each other on what we mean. What I specifically had reference to, take my city, in Austin, if one station were running "Bonanza," and if a person cut onto a Waco or a San Antonio station, and they were all three running "Bonanza," still no matter what channel he got, he would, through this process, this instrument they have, still get the same commercial message locally, wherever he clicked, and people in San Antonio get the same protection, and people in Waco likewise get the same protection.

Mr. HENRY. Well, our rules, whether it is same-day, simultaneous, or 15-day, they have that same effect, because what would actually happen is that the two distant city signals that were bringing in Bonanza would be blacked out; then the people would not look at the channel, because it would be blacked out, or at the local broadcaster's option, he could ask that his station be carried on those two channels that normally carry the San Antonio stations, so that if somebody did happen to look at Bonanza on one of those, they would see his program entire, including his commercials.

Mr. PICKLE. Well, Mr. Chairman, I think we would need to do that, and I would like to talk further on this point later, and I would like to pursue this more. I yield back.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. Thank you very much, Mr. Chairman.

Mr. Henry, I want to commend you for the way that you have handled the questions that have been propounded, and when it gets down to the lower level, apparently all of the meaningful questions have been asked, but at least we try again to localize, in my opinion, the situation.

Mr. HENRY. Well, I will take issue with you there, Mr. Watson.

Mr. WATSON. I reckon you do expect litigation both as to jurisdiction and probably procedure, unless this Congress takes action, do you not?

Mr. HENRY. Yes, sir.

Mr. WATSON. You do. Now, the question I would ask, assuming that such will be forthcoming—and that is a reasonable assumption—is it your plan to hold in abeyance the petitions for waiver on the part of CATV stations until such time as that litigation has been finally resolved?

Mr. HENRY. No. No, we plan to go ahead.

Mr. WATSON. You plan to go ahead as expeditiously as possible?

Mr. HENRY. Yes.

Mr. WATSON. Now, another question: I believe you said that there were some 1,200 CATV franchises presently granted but not in operation.

Mr. HENRY. That is correct.

Mr. WATSON. I see. Do you know the number that are presently in construction, of those 1,200 franchises?

Mr. HENRY. No, I don't, and I am not sure that I know the location of those franchises.

Mr. WATSON. I see. In response to a question by Mr. Harvey, I believe it was, you said that those that had been granted franchises, and actual construction begun, that you would consider the petition for waiver, I believe.

Mr. HENRY. That is right.

Mr. WATSON. Could you be a little more definitive in that? I am sure you would consider any petition for waiver, but in view of the equities involved of the CATV franchise already having moved forward and expended large sums of money, could you be a little more definitive as to the consideration which would be given that?

Mr. HENRY. Yes, I will try to be. When we drew the line, we drew it at those already in operation, for the reasons that I explained to Mr. Harvey. We did this without having any particular community in mind, and without trying to consider any of the particular facts that might obtain in a given situation.

But we would look at all the matters that a CATV operator would think relevant, and I am sure he could think of many more than I can at this moment, but some of them might be the timing of the matter, and the fact that they proceeded deliberately instead of in an all-out effort to get on the air to meet our rules, and the number of people involved, and so on and so forth, and the sevice that is there, and the likelihood of impact, and what have you.

I am sure that is really not all-inclusive by any means. I don't know what we are going to do because we have yet to consider our first one.

Mr. WATSON. I see. But in the absence of rather extenuating circumstances, do you feel that if a station has proceeded deliberately, has been awarded a franchise, has expended large sums in construction of the actual CATV facility, you would believe that that would be a rather compelling reason to go ahead and act forthrightly and approve the application?

Mr. HENRY. Well, I am not sure that it would, because, as I say, the industry has been on notice that anything could happen in this area.

Mr. WATSON. Well, it is always on notice, but I believe the point was made earlier, and I noticed that you nodded in assent, that both the Congress and the Commission have been rather derelict in not at least promulgating some regulations earlier than we did.

I believe I noticed you nod in assent when that statement was made by a committee member.

Mr. HENRY. I will certainly agree there has been a regulatory lag here in most areas.

Mr. WATSON. That is correct. I am sure that you would not believe that a dereliction on our part should mitigate to the disadvantage of a franchisee in CATV.

Mr. HENRY. That is right.

Mr. WATSON. One further question: I notice on page 10 of your prepared testimony that you recognize a problem which is of direct concern to us in my congressional district, and that is where you have stations located within the home State, but the service area is from a station just across into another State. I am referring directly to north and south Augusta, which is just across the river from Augusta, where you recognize the fact that these out-of-State stations, although in proximity, near the out-of-State location, that they would not be locally oriented on news and other factors as would the out-of-State station.

The question that I am asking you now is: Would that be a prime consideration, or a prime reason to favorably consider the application for waiver on the part of the CATV installation?

Mr. HENRY. I am not familiar with the particular one that you refer to, but as a general proposition, we did recognize that some more distant stations might be of more interest locally in a CATV system than some closer one, and that the opposite could be true, and I think this is the one you referred to, this situation that you referred to, that a more distant, yet in-State station, might well be more closely oriented to the CATV system.

Yes, this is one factor which I think is relevant.

Mr. WATSON. Of course. Is that just a factor, or would that be a prime factor in your consideration?

Mr. HENRY. A prime factor?

Mr. WATSON. Yes, sir.

Mr. HENRY. Yes, it would be a very important factor.

Mr. WATSON. It would be a prime factor?

Mr. HENRY. Yes.

Mr. WATSON. One other question: I noticed yesterday that you expressed concern, and I believe this was your quote, that "CATV

generally operates as a monopoly." Do you not believe that were we to restrict or at least require, as we did earlier in making the manufacturer provide reception for our UHF and VHF, would you think it would be helpful in breaking down this monopolistic aspect if we were to require that all of these installations in the home require this switch in order that they could switch from CATV to free TV?

Mr. HENRY. Well, that might be a reasonable requirement, but I don't think it would have any effect on the CATV being a monopoly. As a matter of fact, I think the monopoly is probably a good thing in this instance. Otherwise, the cost to the consumer would be considerably higher, in all probability.

Mr. WATSON. Well, of course, to have the switch so that he could get free, direct, off-the-air TV service certainly would not be an additional expense to him, would it?

Mr. HENRY. Oh, no. I say that would be a fine thing, but I don't believe it would get to the monopoly question.

Mr. WATSON. Well, of course, I take exception to the matter of requiring the manufacturer to give UHF as well as VHF reception, as it involves the health and the safety of the people, and I believe the American people can decide as to whether they want to buy TV or what have you.

One final question here. You said that you have not fully explored, as I recall your words, the matter of advertising on CATV systems. It seems to me if you are interested in protecting, as one of your responsibilities, the local stations, that that would be a prime consideration, because these people are not in the business for their health; they are in there for the economic or profit aspect of it.

But if you are requiring the CATV team to carry the local station, and then the CATV system later can have advertising, and technologically I assume that they could send the same advertising out for all 12 channels——

Mr. HENRY. Yes.

Mr. WATSON (continuing). There is nothing beyond this realm of technology as we have it; then certainly you are forcing the local station into the situation where virtually they could be forced out of existence.

Why would an advertiser be buying time on a local station when he can buy it on a CATV and channel it into so many more sets? So I think this is a very serious matter, and it rather surprises me that the full Commission hasn't given full consideration to this matter.

Mr. HENRY. The reason that we have not explored it fully is because we are assured and understand that it is done only in very rare instances, so far, but we agree with you that it could become quite serious.

Mr. WATSON. Of course, we are concerned about the rare instances, because all the time when one finds it profitable, then it has a way of spreading.

Mr. HENRY. Right.

The CHAIRMAN. The committee stands adjourned until 2 p.m. this afternoon.

(Whereupon, at 12:32 p.m. the committee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

One of our colleagues, Mr. Sweeney, from Ohio, is here and has a guest with him who has a short statement which he would like to insert in the record.

Congressman Sweeney, would you introduce your guest, and he may proceed with his testimony. I understand he will insert his statement in the record and summarize it briefly.

STATEMENT OF HON. ROBERT E. SWEENEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. SWEENEY. Thank you very much.

I want to express my appreciation to you for your courtesy in receiving the testimony of the vice president of the Akron City Council, the chairman of the finance committee of the Akron City government, the distinguished Councilman Davis.

I would like also with your leave to have the privilege of extending my own remarks with regard to the unique situation as it concerns Akron, Ohio, and the disability that accrues to them under the current regulations of the FCC which Mr. Davis will comment upon in summary this afternoon.

We would like at this time to offer Mr. Davis' complete statement and have it received and printed in the record.

The CHAIRMAN. Without objection that will be done and the request for your remarks will be included with Mr. Davis' statement.

You may proceed, Mr. Davis.

STATEMENT OF EDWARD DAVIS, VICE PRESIDENT OF THE CITY COUNCIL OF AKRON, OHIO

Mr. DAVIS. Mr. Chairman and members of the committee, my name is Edward Davis, and I appear here this morning as an individual citizen of Akron, Ohio, and vice president of the city council of Akron. It appears to me that the city of Akron has long been considered a stepchild not fully deserving of its fair share of the television services normally made available by the Federal Communications Commission to other comparable cities.

The city of Akron is a substantial population center. It had a 1960 population of nearly 300,000 people and the urbanized area consisted of nearly half a million people. Nevertheless, our community has been totally dependent upon stations located in the Cleveland metropolitan area for multiple and diverse television reception. The three commercial Cleveland VHF television stations are each affiliated with a national television network and their primary interest is with serving the Greater Cleveland area.

It is only through the local service provided by WAKR–TV operating on channel 49 in Akron that we have had any local television service. The scarcity of local service which we have experienced has been fully matched by the absence of clear strong signals from multiple stations that are usually available to most major population centers in this country.

Against this background, last year the Akron City Council decided that a CATV system providing multiple television service from other communities could provide a significant contribution to the public in the Akron area. As early as February 2, 1965, an application for a CATV franchise, together with a public ordinance, were submitted to the mayor and members of the council of the city of Akron by Akron Telerama, Inc.

In this application, Telerama stated that it was an Ohio corporation organized by a group of Cleveland businessmen and that it planned to go into partnership with a group of interested residents in order to provide this new television service.

This application reflected that television signals would be brought into the Akron area from Detroit, Mich.; Windsor and London, Ontario; Toledo, Ohio; and Pittsburgh, Pa. In addition, UHF channel 49 in Akron, and all the operating Cleveland stations would be carried on the system. The application of Akron Telerama, Inc., was unanimously approved by a 5-to-0 vote by the utilities committee of the council on July 9, 1965, and a final ordinance granting a franchise to Akron Telerama, Inc., was passed on July 13, 1965, by a unanimous vote of the Akron Council.

Let me add that on Tuesday, March 22, 1966, the Akron City Council passed a further resolution calling upon the Commission to take steps to see that the city of Akron may not be deprived of the benefits from the proposed Akron Telerama, Inc., CATV system. This action was taken in full cognizance of the Commission's "Report and Order," and I believe it represents an expression of the views of the entire community with respect to their desire to receive their full and fair measure of television service.

Akron Telerama, Inc., is contractually obligated to the city to complete construction of its CATV system and has had to put up a performance bond of $50,000 toward that end. In addition, I am told that the company, as of February 15, 1966, had expended $202,850 in direct cash out-of-pocket expenses toward the completion of the CATV system in Akron. It also has firm contractual commitments of $698,250, of which $585,000 consists of obligations to the Ohio Bell Telephone Co. for laying cable. The details of these expenditures are contained in an appendix (app. A) to this statement.

If the regulations which have been recently enacted by the Federal Communications Commission are permitted to stand as law or if the Commission does not relax their enforcement, then a significant portion of the investment of Akron Telerama will have been irrevocably destroyed with no ultimate gain to the public nor achievement of the purposes which apparently have motivated the Commission.

As I understand the action of the Commission, they are concerned that the establishment of CATV systems in the major cities of the country may have a potential inhibiting effect upon the success of independent UHF stations in those cities. In our case, the Commission is apparently concerned that UHF stations in Cleveland will have their development stunted or totally inhibited by the establishment of a CATV system in Akron, some 35 miles to the south, and in a completely distinct metropolitan area. There are essentially three aspects of the Commission's policy which I believe are not related to their goals, and which I would like to comment upon today.

First and foremost, the Commission has decreed that all CATV systems which are operating and providing service to the public on or before February 15, 1966, may continue on the same basis after that date. This grandfathering of existing systems is to be permitted without findings that the existing CATV services would not inhibit UHF development and without findings that the establishment of additional CATV services after that date would have an obviously adverse effect upon the Commission's goals.

The Commission merely stated "A line must be drawn as to 'grandfathering' and we believe it appropriate to do so upon the basis of operation on the date of the public notice." I think it is fair to say that the Commission had no idea of what CATV systems were in operation prior to that date or how many more systems could possibly have been inagurated after that date in the large markets and where there had been a significant start toward the establishment of such systems.

It is perfectly clear from reading the Commission's "Report and Order" that it did not rely upon specific facts concerning the extent of CATV development on February 15, 1966. It seems inconceivable to me that a responsible Government agency could base decisions regarding the future of a significant industry on less than a detailed and wide-ranging inquiry into the facts. The failure to conduct this kind of governmental sanction totally ignores the interest of the public as well as the equities of private parties.

The Commission appears to have legislated with a heavy hand. It has arbitrarily decreed that systems in operation on or before February 15 shall receive the benefits of having completed their systems before the Commission asserted its jurisdiction, while those which may have been incomplete but with substantial construction started on February 15, shall not be permitted to provide the full service that it needed. In practical effect, this decision may mean for many systems, such as the system of Akron Telerama, Inc., that their investment has been substantially impaired and that they will not be able to fulfill their obligations to the local community as outlined in the proposal made to local franchising authorities more than a year ago.

We urge upon the members of the committee their consideration of an amendment to the pending Commission bill that would require the Commission to give decisional effect to the expenditure of substantial sums of money by CATV systems prior to February 15, 1966, and where there has been, by any test or standard, substantial construction.

In this connection, we would also certainly urge that an expenditure of over $200,000, such as in the case of Akron, would clearly qualify the system for Commission approval to carry distant signals. We do not think it is necessary for the Congress to legislate specifically what level of expenditure or degree of construction should qualify a system for Commission approval. This should depend upon a number of factors, including the size of the community to be served and the effect which the possible completion of the system may have upon the achievement of the Commission's goals.

In any event, we would urge upon the committee that in a situation such as Akron's where, I have been informed, there has been a total

commitment of some $800,000, a cash outlay of $200,000, and a substantial start towards completion of cnstruction prior to Febraury 15, 1966, that the system and our city should be given the same equitable grandfathering rights as the cities where early construction has occurred.

Secondly, I would urge upon the committee consideration of amendments to the Commission's legislation which would do away with the concept that distant signals may not be transmitted over a CATV system which is located within the grade A contour of television stations assigned to the top 100 markets.

Instead, where the CATV system is to be located in a community outside the top 100 markets and the main post office of the community in which it is to be located is at least 25 miles from the main post office of the community that is within the top 100 markets, then there should be absolutely no prohibition upon the number or type of signals carried on the CATV system. I believe that this type of an amendment would provide a more realistic measuring stick for achievement of the Commission's goals than the use of the grade A contour concept.

It is clear from the varying antenna heights and power of stations throughout the country that the grade A contour of a television station may extend as little as 15 miles or as much as 45 miles. Where there is a substantial difference between a contour of two television stations, each located in different markets, there would appear to be no reasonable relationship between use of the contour and the goal of protecting potential new UHF stations.

Should a CATV system 35 miles from Cleveland not be permitted to carry distant signals because it is located within the grade A contour of the Cleveland stations, while another CATV system also 35 miles from a major market should be totally free to carry whatever signals it chooses because it is not within the grade A contour of lower powered television stations assigned to a major market?

To achieve its goals of protecting UHF stations in Cleveland, for instance, the Commission should relate its distant signal rule to the geographical distance between the CATV system and the major city. This will permit an equitable administration of the rule and preclude discrimination between different systems based solely on the fortuitous circumstances that the grade A contour of a major market station is less or more due to its particular antenna height and power.

The adoption of a mileage concept can be clearly related to the effective range of UHF stations and therefore to the area within which UHF stations should be given protection from the competition of CATV systems. Let me illustrate by going again to the Akron-Cleveland situation. The effective area within which a UHF station will find viewers and economic support is not nearly as large as the area served by VHF stations.

A UHF station in Cleveland cannot expect and will not find much economic support of off-the-air viewing in the Akron area, 35 miles from Cleveland. Such a station necessarily must depend solely upon the Cleveland metropolitan area.

The presence or absence of an Akron CATV system will have no possible adverse effect upon the prospects of successful UHF opera-

tion in Cleveland. On the contrary, the presence of a CATV system in Akron which will extend the range of the Cleveland UHF stations will be hindered or helped by CATV systems.

Instead, in defense of UHF at all costs, the Commission has apparently stumbled into a situation where UHF will be hurt by its procedures in certain cases and where investments made in good faith will be impaired or totally destroyed. This rule, as I have stated, although well intended to aid UHF development in Cleveland, will actually hinder such development.

Let me add parenthetically at this point that Akron is not one of the top 100 markets in the country. It is rather the 196th television market and the Commission has stated that it does not believe there is significant chance for local television service to be developed in such small markets.

It is for this reason that it has not proposed rules for the smaller markets similar to those proposed for the larger. Let me state that although there are unused UHF channels assigned to Akron, I do not believe that at the present time there are great prospects for the implementation of such channels and that unless CATV service is permitted in Akron on a meaningful basis, there will be little real opportunity for our citizens to obtain the diversified television service which is available to other areas.

My third and final criticism of the Commission's action relates to the unfair and inadequate notice which they have given to prospective CATV operators and investors. It is this notice which was issued on April 23, 1965, which the Commission uses to justify cutting off all CATV service that has not been commenced prior to February 15, 1966, even where there has been a substantial investment of time, money, and effort.

I would emphasize in this regard that the Commission's notice of April 23, 1965, consisted merely of a statement that the Commission might assert jurisdiction over all CATV systems and might, after it had considered the comments filed in response to the notice of inquiry of that date, propose further rules which would be applicable to nonmicrowave served CATV systems.

The Commission did, however, in its latest action, not propose rules and ask comment thereupon. In effect, its recent action has amounted to an unannounced freeze upon the completion of construction of new CATV systems without notice, without an opportunity for interested persons to comment, without congressional guidance or approval, and without consideration of the public interest.

It arbitrarily confers upon people who have been fortunate enough to complete their systems and commence service with a lifesaving grandfathering provision and asserts a heavy penalty upon those systems which are not so fortunate as to have completed construction.

Between these two groups, the Commission makes no distinction based upon the need of the public or the effect of the system upon the achievement of the Commission's goals. I feel this very closely resembles ex post facto legislation. We believe that the manner in which the Commission has proceeded is an appropriate subject of congressional concern.

I believe the Commission should be instructed that the notice that it now relies upon to prohibit the construction of new CATV systems is inadequate and that where substantial investments have been made in good faith and upon the approval, if not encouragement of local groups, that such investments in CATV systems should be permitted to go forward until the systems are completed, with the carriage of all television signals.

I wish to add one final note concerning the procedures which the Commission has established. You may well ask why is congressional concern necessary in these circumstances where the Commission has set up a procedure for hearings and requests for waiver of the rules. Let me state that I take no comfort in these procedures and we have no assurance that the Commission will not adhere strictly in these ad hoc proceedings to the substantive provisions of the rule as they now exist. Certainly, it is clear that the Commission has acted totally without congressional guidance or congressional standards.

We have no assurance that unless Congress makes manifest its interest in such a situation that regulatory approval for the proposed Telerama System in Akron, for example, will not be forthcoming. I have spoken principally of the particular situation in Akron and I apologize if it has appeared that my appeal has been too narrow and too related to our own concerns.

I feel strongly, however, that the Akron situation is typical of the lack of consideration generally which the Commission has given to the hard details of this problem. We have dramatically illustrated in the case of Akron the inequity of the Commission's decision to cut off further CATV systems whose construction was not completed before February 15, 1966. We have dramatically illustrated the inapplicability of the Commission's grade A contour concept to its goals of protection of potential UHF stations in cities located many miles away and, of course, we have the point which is common to all systems that have commenced construction of the inadequate notice which the Commission appears to rely upon at this time.

For those of us in Akron who have been without any real choice of television service since development of the medium, this latest action of the Commission concerns me lest the citizens of Akron will again suffer as a result of some well intentioned, but misguided act.

When the VHF channels were allocated, our interest in such service was denied in favor of providing the Cleveland area with VHF television channels.

Now that UHF development has become important, we are told again that Akron's interest in a truly diversified source of television service must be sacrificed in favor of Cleveland UHF stations. I cannot believe that fairness requires us to assume a disadvantaged position once again.

More importantly, as I have explained, I cannot conceive of how the public interest can possibly be hurt by permitting us to receive, at long last, what has always been available to the great majority of our citizens.

I thank the committee for its attention.

(Data accompanying statement follows:)

APPENDIX A

Financial expenditures and commitments made by Akron Telerama, Inc., between September of 1964 and February of 1966

I. Summary of actual cash expenditures prior to Feb. 16, 1966:	
Cash and Cognovit Notes actually paid over to Ohio Bell	$180,000.00
Cash deposited in escrow with the city of Akron to guarantee franchise taxes	10,000.00
Cash paid in connection with purchase of tower equipment	5,350.00
Miscellaneous cash expenditures for engineering, legal services and the like	7,500.00
Total	202,850.00
II. Summary of financial commitments which Akron Telerama, Inc., is obligated to fullfill:	
10-year contract Ohio Bell Telephone to lease 125 miles at $468 per year per mile	585,000.00
Bond posted to guarantee performance to the city of Akron (in addition to the $10,000 noted above)	50,000.00
Balance due on tower	13,250.00
Balance due on 10 acres of industrial land	50,000.00
Total	698,250.00
Grand total expended and committed	901,100.00

Mr. SWEENY. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. I have just one or two questions.

I want to compliment Mr. Davis on coming here as a representative of one of the smaller governmental facilities or agencies in our overall government. How did you get your office, Mr. Davis?

Mr. DAVIS. I ran for election and I got the most votes.

Mr. ROGERS of Texas. Who cast those votes, Mr. Davis?

Mr. DAVIS. The registered voters in my district.

Mr. ROGERS of Texas. The people in Akron?

Mr. DAVIS. That is right.

Mr. ROGERS of Texas. Don't you think they elected you because they believed you would do what was right for them and you would serve their best interests?

Mr. DAVIS. I would think so.

Mr. ROGERS of Texas. Do you not think that you folks there at that level know more about your problems as you pointed out in your statement here, than a Bureau or a Board in Washington, D.C.?

Mr. DAVIS. Yes, not only me but the entire council of the city of Akron.

Mr. ROGERS of Texas. I want to compliment you on several of the statements. I think you have hit the problem right squarely but where you said on page 4, talking about the Federal Communications Commission, "The Commission appears to have legislated with a heavy hand."

The Constitution vests the legislative powers in their hands but I think you are exactly right in what you said.

Thank you very much.

The CHAIRMAN. Are there any further questions?

If not, we thank you very much.

A this time, we will hear from Mr. Frederick W. Ford, of the National Community Television Association, Inc.

Mr. Ford, you may come to the table and bring anyone to the table with you. You may insert your prepared statement in the record or read from it as you see fit.

STATEMENT OF FREDERICK W. FORD, PRESIDENT, NATIONAL COMMUNITY TELEVISION ASSOCIATION, INC.; ACCOMPANIED BY ROBERT D. L'HEUREUX, GENERAL COUNSEL; AND E. STRATFORD SMITH, SPECIAL COUNSEL, NATIONAL COMMUNITY TELEVISION ASSOCIATION, INC.

Mr. FORD. Thank you, Mr. Chairman.

The CHAIRMAN. Would you identify the gentlemen who are with you for the purpose of the record, please.

Mr. FORD. Mr. Chairman and members of the committee, accompanying me at the witness table is Mr. Robert D. L'Heureux, general counsel of the National Community Television Association, on my left. On my right is Mr. E. Stratford Smith, who is special counsel to the National Community Television Association.

I had anticipated at this time to request the indulgence of the committee to ask Mr. Archer Taylor to show a series of slides, which takes about 15 minutes. It is the finest presentation that I have seen with respect to what a community antenna television is. With the chairman's permission, I will delay that until after I complete my presentation in the interest of time.

My name is Frederick W. Ford. I am president of the National Community Television Association, Inc. (NCTA), with offices at 535 Transportation Building, Washington, D.C. The association is composed of about 650 operating CATV member systems serving roughly 60 percent of the total subscribers to community antenna television (CATV) systems in the Nation, and 74 associate members who are engaged in manufacturing or a related activity. In addition there are approximately 160 member systems under construction.

I am grateful to your committee for affording the association an opportunity to express its views with respect to proposed legislation and regulation by the Federal Communications Commission.

It is my understanding that the printed record of the hearings before the Subcommittee on Communications and Power on H.R. 7715 will be fully considered. I also understand that this committee desires that the witnesses address themselves to the pending legislation and to the changes which have taken place since those hearings.

In my testimony on H.R. 7715, I reviewed the history of Commission consideration of CATV, congressional consideration of CATV, and the efforts of our association beginning in 1962, nearly 4 years ago, to secure Federal regulation of CATV. We challenged the Commission's assertion of jurisdiction and reviewed very critically the Commission's First Report and Order.

We were particularly critical with respect to the Commission's failure to hold en banc evidentiary hearings on this subject, as it had done in its consideration of all major industry problems. We desired these hearings for the purpose of assisting the Commission in educating itself and its staff on CATV and of recommending legislation to the Congress.

We were also critical of the substantive provisions of the Commission rules. These criticisms were addressed to the requirement that CATV systems located in the grade B contour of a station be required to receive its signal and protect the programs carried on its signal 15 days before and after broadcast, from duplication by a signal of less strength.

We recommended interim legislation granting the Commission authority to (1) require automatic reception by CATV systems of all grade A signals with protection from simultaneous duplication of programs carried on such signals; (2) authority on a case-by-case basis to extend such nonduplication to 15 days before the broadcast or the area of protection to the grade B contour after an evidentiary hearing and a finding based on substantial evidence of record that such requirements are reasonably necessary for the continuation of local broadcast services; (3) a prohibition against the Commission adopting rules which would prevent the reception of any signal subject only to the above qualifications; and (4) direction of the Commission to hold a factfinding hearing for the purpose of formulating legislative recommendations. We specifically stated that this legislation should not be the final word and did not commit ourselves to it permanently.

The more the Commission has been exposed to the facts surrounding CATV operations, the more it has tailored its proposals to a more practical approach to their regulation. I am confident that if a full-scale evidentiary hearing had been held on these proposed rules, and an en banc hearing had been conducted by the Commission, instead of a mere paper hearing, there might have been little for this association to do but endorse the legislation submitted by the Commission which probably would have been somewhat different than H.R. 13286.

However, evidentiary proceedings and an en banc hearing were not held, so I shall attempt to suggest to this committee constructive criticisms of the Commission's second report and order in docket No. 15971, and others. I shall then discuss the four subjects recommended for congressional consideration by the Commission, the legislation it proposed and finally recommend amendments to H.R. 13286 which will protect the public's paramount right to select television channels of its choice, without unduly endangering the broadcast or CATV industries, or their orderly growth and development.

I. COMMISSION'S SECOND REPORT AND ORDER

A. Jurisdiction.—The question of the jurisdiction and the authority of the Commission to adopt either the first report and order or the second report and order as well as the procedure followed in both instances is pending before the courts. Undoubtedly, the Commission's assertion of authority will be challenged in the courts at each step in the absence of clear congressional authority.

In the past, and currently, some of the States have attempted to assert jurisdication over CATV, but whenever this has occurred and been challenged in the courts, jurisdiction has been denied. Without congressional action the prospects are for endless litigation. This will result in judge-made communications policy instead of congressional communications policy. We recommend, therefore, that the Commission be given limited jurisdiction over CATV by the Congress.

B. Assertion of jurisdiction.—The two most important grounds for the Commission's decision to assert jurisdiction are economic impact and fair competition. The Commission stated in the first report and order and still asserts that:

> Every station affected is entitled to appropriate carriage and nonduplication benefit—irrespective of the specific damage which any individual CATV system may do to the financial health of the individual station.

In other words, the Commission still assumes economic impact as one of the grounds for jurisdiction. Many comments and reply comments were filed in the Commission's proceedings. In addition, the Commission employed Dr. Martin H. Seiden, who filed a very interesting report with the Commission, which then was largely disregarded.

Dr. Franklin M. Fisher, of the Massachusetts Institute of Technology, was employed by the National Association of Broadcasters to demonstrate the impact of CATV on television stations. Dr. Fisher indicated that, to answer ideally the questions which he posed, would require a controlled experiment in a sort of competitive vacuum. Into this vacuum would be introduced controlled amounts of CATV competition, and the resulting impact on station audience could be observed. He stated that this was impossible, so he relied on other methods.

Dr. Herbert Arkin, of the City College of New York, employed by the National Community Television Association, roundly criticized those methods and expressed his opinion that—

> The conclusions in the report, about the effect of CATV subscriptions on the financial positions of local television stations, are at best of dubious validity and at worst a possible complete misstatement.

There is only one source that has information on the financial health over the years of all the licensed television stations and that is the Commission. In spite of the efforts of NCTA to furnish as much factual data as possible to the Commission, it, of necessity, was incomplete. Yet, the Commission, with full financial information on television stations in its files and with its assertion of authority to regulate CATV, never once, as far as I can ascertain, undertook to require CATV operators to furnish it adequate information.

Nor did the Commission undertake to verify from information in its files that there had or had not been any economic impact over a period of time, upon the income of television stations because of the existence of CATV.

The Commission was not forced to speculate as to impact or competition. With its Data Processing Unit, the Commission could have made an industrywide determination of impact or lack of impact, even though it stated that it did not have the tools to measure precisely the degree of such impact.

Instead, the Commission chose to rely on the speculations of Dr. Seiden and Dr. Fisher based on incomplete information and upon the partisan claims of the parties. The Commission knows how to determine economic impact. One need only read the several Commission decisions on economic injury to observe it.

Between 1957 and 1963, the total television broadcast income had risen steadily from $160 million to $343.2 million before taxes. This occurred despite the small increase of only 15 in the number of author-

ized television stations in that period. During this same period the number of CATV systems had almost tripled in number.

These facts, as published by the Commission, convinces me that if an analysis of the financial reports of television stations for the period since 1957 are compared with the existence and growth of CATV systems within the service areas of the affected stations, the results will not sustain the Commission's assumption of adverse economic impact.

Based on these overall figures, I believe that the proper inquiry that I urged almost a year ago will show that CATV, even with very little restraint on the duplication of programs, has stimulated television viewing, improved television service and the financial health of television stations.

The Commission maintains that CATV systems should be required to receive local stations on the systems and refrain from receiving signals duplicating their programs as a fair competitive practice. We agree that we should receive the local station but we do not believe that a station 75 or 80 miles away is a local station.

We agree that we should refrain from receiving a signal that simultaneously duplicates program on the local station. We do not regard this as a competitive practice, fair or unfair, because a CATV system does not compete with television stations. CATV is not a subsidiary of the transmission part of broadcasting; we are a part of the reception facilities of the public. To the extent that CATV receives signals, those signals compete.

It is difficult for me to understand how the Commission can maintain that we compete and then relegate us to a subsidiary position to our so-called competitor. This can only result in restraining competition between television signals and the improved programing with fewer commercial interruptions that the public has a right to expect.

If we are a competitor how can the Commission justify "protecting" one competitor from another in our free-enterprise system. The truth is we do not compete with television stations. CATV facilitates the competition between television stations. The only justification for reception and nonduplication requirements is the public's interest in a diversity of signals and clarity of pictures. The public interest in this respect is the ground for these requirements and not the economic protection of television stations.

C. Carriage.—The Commission's CATV rules, in effect, transforms all television stations which place a grade B signal over a community into a "local" station, and all 100-watt translators in the same community. If you look at the glossary of terms which was submitted to the committee, you will find that this can mean that a "local" VHF station can be as far as 80 miles away and a "local" UHF station as distant as 50 miles from the CATV system.

Under the Commission's rules, a CATV system, with some exceptions and provision for waiver, is required to receive all television stations in whose grade B contour it is located, as well as all those in whose grade A contour the CATV system operates.

The Commission's own findings establish that the great majority of grade A and grade B signals are being received by CATV systems now even without the Commission's reception requirement ("FCC's Second Report and Order," pp. 54–56, pars. 103–107).

There was an exhibit produced here yesterday of a station in Scranton, Pa., but the Commission's own "Second Report and Order" contradict the percentages that that exhibit undertook to show on a local basis.

NCTA has often pointed out to the Commission that it is very seldom that a truly local station is not received by a CATV system and that there is generally a good reason for such failure to receive. There may be cochannel interference or some other technical reason which makes reception impossible. It may be that another grade B signal with the same program content is already available to subscribers. The CATV system tries to please its subscribers primarily and not the TV broadcaster.

The Commission has made evident that it wants to regulate CATV systems as much as possible by general rules in order to reduce the number of evidentiary hearings which it might otherwise have to conduct. Accordingly, we suggest that a mileage figure should be substituted for grade A or B contours, because the latter are always subject to controversies with respect to whether the signal is actually received at a particular location. This can lead to many evidentiary hearings and costly engineering and legal fees for both the small television station and the small CATV system.

Accordingly, this association recommends that a television station be regarded as a "local" station only if it is within 30 air-miles from the television antenna. This should encompass what is truly a "local" station in the sense that there is some likelihood that the television station can at least occasionally address local programing to that particular community. The reception and nonduplication rules would then apply within this mileage limitation. An amendment which would accomplish this is contained in the draft of a bill which I will discuss at the conclusion of my statement.

D. Nonduplication.—It is difficult to say without further study how many CATV systems, or the public, will be adversely affected to a serious degree by the Commission's proposed same day nonduplication rule. This is a matter which should have been explored through a thorough factfinding study by the Commission. As the present rule is proposed, it will very likely affect a lesser number of CATV systems and fewer members of the public, but those affected may be as seriously injured through a 30-day or a 15-day nonduplication rule. Also their subscribers may be seriously inconvenienced.

In view of that fact, it is not accurate for the Commission to state that—

> Our resolution of this matter affords NCTA substantially the relief it has requested. (FCC "Second Report and Order," p. 13, par. 13.)

NCTA had requested simultaneous nonduplication.

The Commission has frankly recognized that simultaneous nonduplication would take care of the bulk of the problems which might arise. The Commission has stated:

> Simultaneous nonduplication protects the bulk of the popular network programing of most network affiliates and does not affect the time that such programing is available to the CATV subscriber. (FCC "Second Report and Order," p. 30, par. 51.)

The Commission has recognized that its former 15-day nonduplication rule would have inconvenienced the CATV subscriber. If the

subscriber's favorite program was blacked out on his set because of delayed nonduplication—

> The CATV viewer might not be able to view it on the later date or presentation by the local station for any number of personal reasons. (FCC "Second Report and Order," p. 30, par. 52.)

The Commission does not explain why this is not still true if the CATV subscriber misses a program because of delayed nonduplication during the same day, instead of during the 15-day period. A housewife may not be able to view her favorite network news program which is usually received on the cable, for instance, at 9 o'clock in the evening, instead of at 6 o'clock in the evening.

One of the reasons she subscribes to CATV is to be able to have another chance to see the same network programs at a later time. The "same-day nonduplication rule" probably will make it impossible for the CATV system ever to receive the signal providing that program for her. It can only receive it at the time the local TV station shows it.

Television broadcasters who also own AM and FM stations have urged very vigorously that the Commission should continue to permit the simultaneous duplication of programs over both facilities. They urge that the public is entitled to the opportunity to hear the same program over both stations. They show no such solicitude for the CATV subscriber who may desire to look at one of two pictures on his set.

It would seem to me that if the public interest is served by duplication of AM by FM it would be equally viewed by simultaneously making the signals of two stations carrying the same program also available.

We do not urge this privilege for the listener claimed by radio broadcasters when the programs are on at the same time. We only seek the viewers' freedom to watch when the program is not being simultaneously duplicated.

We previously recommended that the Commission be given discretion after an evidentiary hearing to order greater protection than simultaneous nonduplication if it found on substantial evidence of record that such requirements are reasonably necessary for the continuation of local broadcast services.

We now have serious questions as to the constitutionality of our recommendation. We regard it as prior censorship of the public's reception of television signals, in the light of the recent decision—March 2, 1966—of the supreme court of California in the case of *S. L. Weaver et al.* v. *Frank M. Jordan, Secretary of State of California.*

In view of the fact that the Commission is of the opinion that "same-day nonduplication" is substantially the same as simultaneous nonduplication and in the light of this case we will recommend an amendment to H.R. 13286. This amendment will provide, by law, for simultaneous nonduplication as a reasonable restriction on CATV systems because the public is not restrained in any way from access to the program when it is available on the air.

E. The top 100 markets.—The top 100 markets contain 90 percent of the television sets in the hands of the public. No geographical extension of service in those markets is permitted if complaint is made and interim delay is ordered by the Commission. The only

relief for members of the public subscribing to CATV who live within the grade A area of any station within such a market is by way of an evidentiary hearing or waiver by the Commission which would permit the signal to be received.

The Commission has announced no staffing plans to handle this additional workload. The press indicates it will have fewer employees this year than last to handle its present workload. In effect, therefore, the growth of CATV in meeting the demands of the public for antenna service is frozen except through the hearing which the Commission is not presently staffed to process.

The reason for this semifreeze is the Commission's requirement for an evidentiary hearing with a showing that receiving a signal of less than grade B strength would be consistent with the public interest, and particularly the establishment and healthy maintenance of UHF television broadcast service. Neither ground is valid.

In effect, the CATV operator must show the state of mind of someone unknown to him who may sometime be interested in establishing a UHF station in that market—an impossible burden of proof.

The Commission has stated:

> Further, it is difficult, if not impossible, to attempt to delineate with any precision a factor such as discouragement of entry of potential broadcasters because of CATV competition. (FCC "Second Report and Order," p. 27, par. 45.)

It is difficult or impossible to delineate this factor with any precision, it is much more difficult or impossible to disprove it. The CATV applicant is asked to disprove a phantom, undelineated factor.

The Commission, through the years, has successfully urged on Congress that it should be permitted to grant applications without a hearing where the public interest would be served thereby. In the case of the top 100 markets the Commission proposes to tie its own hands so as to require a hearing, although all the parties may agree that no hearing is necessary and the public interest would be served by a grant without a hearing. This change in position appears to be indefensible.

The other issue of pay TV appears to be moot under the legislation proposed by the Commission, which I will deal with later.

We must, therefore, conclude that the sole basis for this semifreeze is the UHF question. It should be noted that the effect of this rule is again to discriminate against UHF because its grade B only extends for 50 miles whereas VHF extends 70 to 80 miles.

As a result VHF stations have a 20- to 30-mile advantage over UHF stations in being received in the grade A of the top 100 markets. These markets are arbitrary in character and are established by a private firm. Many of them are on a hyphenated basis consisting of several cities. The largest such market, Champaign-Decatur-Springfield, Ill., I am told extends for more than 150 miles.

In fact, one station in this market does not place a grade B signal within the grade A of another station in the same market. This situation will require a hearing or a waiver for it to be received in its own ARB market. There are perhaps many more situations such as this among the 145 principal cities in the top 100 markets. It is my view that either no action will be taken on waivers or hearings in the top 100 markets or the procedure will fall under its own highly complicated weight.

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The Commission is not relying on what has happened in the past in the growth of UHF but upon trends in the growth of CATV. Had the Commission conducted an evidentiary en banc hearing before issuing its rules it is probable that the results of the study conducted by NCTA, which I have attached as exhibit A, could have convinced the Commission that CATV, instead of hampering UHF, has and will contribute to its growth.

This study shows:

(1) That the concern that CATV will have an adverse impact on UHF television development is unfounded; that historical, current, and proposed UHF development in communities with operating CATV systems entirely disproves the allegation that CATV is a deterent to UHF growth; that, on the contrary, CATV may be a stimulus for UHF development.

(2) That the experience of network-affiliated UHF television stations in intermixed (UHF/VHF) markets among the top 100 television markets points to the major obstacle to UHF growth; the limitating factor of the narrower distance covered by a UHF signal as compared by a VHF signal. In the intermixed markets NCTA's study found that the average audience penetration for all commercial UHF stations is only 40 percent of the ARB circulation of the largest VHF in the market. The UHF station, without CATV assistance, just can't reach out for enough audience to compete with VHF stations. Independent stations, should they come into being in those markets, could be expected to achieve a much less percentage of the market's circulation without CATV's help.

(3) That more than 1,200 requests for approval to provide CATV service in communities not now served by CATV can be expected to come before the Commission for hearing this year.

(4) That the 100 top markets' rule will have a disturbing effect on the public in the 41 cities of the 145 principal cities in these markets where CATV systems are already in operation, under construction, or which have been authorized by local government authorities.

Appended to my remarks as part of exhibit A are maps of six States showing the vast extent of the geographical coverage of grade A contours of the top 100 market stations which serve the States in whole or in part.

It is thus clear that the principal basis for the Commission's stringent semifreeze in the top 100 markets is without foundation.

F. Carriage and nonduplication of translators and satellites.—One-hundred-watt translators and satellite stations are auxiliary services just as CATV systems are. In some areas, they will operate well, in others they will give poor service because of topographical conditions, the quality of the signals and for other reasons. Both simply carry the signals of more distant stations, as does a CATV system.

The Commission has ordered CATV systems to treat these as full-fledged broadcast television stations, to receive them and to delete signals which duplicate their programs during the same day.

Only those 100-watt translators which are carried outside the stations' grade B contour need be received or protected. There would seem to be little reason to require either the reception or protection here afforded to such extended service areas in preference to the signals of more distant small television stations.

This policy will undoubtedly cause the large station to become still more powerful and the smaller station less so. This discriminatory advantage awarded to powerful VHF stations will probably be a greater deterrent to the establishment of new UHF stations than any activity of CATV. This advantage is because the parent of the 100-watt translator and satellite will probably siphon off the advertiser support for the struggling new station; whereas, CATV does not compete for the same dollars.

It is, therefore, my opinion that those requirements are more damaging to the Commission's objectives than the minor advantage to the larger broadcaster who can afford these translators and satellites. In short, it will discourage the proliferation of UHF stations to the injury of the public interest.

In the case of satellites the situation is even worse. Here, if the CATV is in the grade B contour of both the parent and the satellite, the Commission's rules require both stations to be received even though there is 100-percent simultaneous duplication of programing. This is a great waste of our valuable communications channels. It also would seem to indicate that the duplication rules are tied to the interest of the broadcaster and not the public.

G. The fair competition grounds and copyright.—The Commission's remarks about the unfair methods of competition allegedly engaged in by CATV systems are perhaps the least appropriate of all its comments about CATV.

Opponents of CATV have made charges in the past of unfair competition against CATV systems without success. Broadcasters who owned originating stations have attempted to obtain court declarations that CATV systems were guilty of unfair competition and of illegal conduct by receiving their television signals without obtaining permission from them.

The courts have uniformly turned them down, stating correctly that a broadcaster does not have a property right in the television signal under the express language of the Communications Act of 1934, as amended. (See, for example, *Intermountain Broadcasting & Television Corp.* v. *Idaho Microwave, Inc.*, 196 F. Supp. 315 (D. Idaho 161).)

In the case of *Cable Vision, Inc.* v. *KUTV, Inc.*, the KLIX Corp. (211 F. Supp. 47 (D. Idaho 1962)), the local TV station alleged unfair competition by the CATV system, the lower court decided that CATV in receiving TV signals which contained programs which duplicated those of the local TV station was engaged in unfair competition, but the CATV system appealed to the Circuit Court of the United States for the Ninth Circuit and this court reversed the decision and ruled that the CATV system was not engaged in unfair competition against the local TV station in so doing. (142 U.S.P.Q. 249 (1964).)

On certiorari to the Supreme Court of the United States by the local broadcaster, that Court on January 25, 1965, upheld the reversal by the circuit court. Other courts have decided similarly that CATV systems are not engaged in unfair competition with television broadcasters simply as a result of providing antenna service.

Still, the Commission bases its rules upon the grounds of "fair competition," which it calls one of its two most important grounds.

(FCC 2d Report and Order, p. 13, par. 23.) Again, the Commission restates, as it had stated in its First Report and Order on CATV (par. 57):

> In light of the unequal footing on which broadcasters and CATV systems now stand with respect to the market for program product, we cannot regard a CATV system's duplication of local programing via the signals of distant stations as a fair method of competition. (FCC's 2d Report and Order, p. 15, par. 27. See also, p. 27, footnote 31.)

The Commission was fully aware of the decision of the U.S. Circuit Court of Appeals for the Ninth Circuit and of the refusal of the Supreme Court of the United States to upset that decision, but the Commission attempts now administratively to overrule these courts with respect to what constitutes unfair competition.

Thus, there is no valid support for either ground upon which the Commission relies in exercising jurisdiction—economic impact or unfair competition.

In the *Cable Vision* case which I referred to above, the U.S. Circuit Court stated that if there were a remedy it existed under the copyright laws. Two cases seeking to test the applicability of copyright laws to CATV are pending against community antenna systems in the U.S. District Court for the Southern District of New York. One was brought by United Artists Corp. against Fortnightly Corp., the owner of a CATV system in Clarksburg and Fairmont, W. Va. The other was brought by the CBS network against Tele-PrompTer Corp., an owner of several CATV systems.

The Commission contends that its rules are "without the slightest intent of affecting the determinations to be made in the pending suits."

It also states:

> We have stated that our decision is not intended to affect in any way the pending copyright suits, involving as they do matters entirely beyond our jurisdiction. (FCC 2d Report and Order, p. 57, par. 108).

Nevertheless, the Commission goes on to say what can only be viewed by our industry as an attempt to influence those suits, when it states:

> Thus, the fact that we have given the local station the right to have its signal carried over the CATV system (and not duplicated for a reasonable period), affords no defense to that system in a copyright suit. (Ibid.)

The Commission's best protection against charges of this kind that it is trying to influence those suits in favor of the producer or of the CBS network, would have been not to mention the copyright issue at all in view of the fact that it has no jurisdiction over copyright and particularly not to attempt to rule that its action "affords no defense to that (CATV) system in a copyright suit."

The Commission's conclusion is in fact bad law. It is to be remembered that section 315 of the Communications Act requires that equal time be granted to an opposing political candidate, if the station's facilities are made available to another candidate for the same office. The courts have ruled in such a case that if the television station were required to broadcast a political program, the television station could not be held responsible for libel because of the contents of the political talk.

How can the Federal Government, through the Commission, compel by rule a CATV system to receive a particular station's signal carrying

programs and then compel it through the Federal courts to pay copyright fees for those programs?

The Commission has pointed up basic conflict between the regulatory jurisdiction it seeks to assert and any interpretation of the Copyright Code which would give to copyright owners a right to prohibit public reception of television signals by means of community antenna systems.

It is inconceivable that the Commission has or would be given the legislative authority to require any community antenna system to receive the signals of any particular station if the copyright owner has the unrestricted right to prohibit a community antenna system from receiving on behalf of its subscribers broadcast signals which are carrying his copyrighted programs.

If the Commission has or is given the authority which it asserts the community antenna operator must have copyright clearance. The community antenna operator seems to be presented with the choice of paying whatever license fee the copyright owner demands, if indeed he is able to get a license at any cost, or go out of business. Clearly, if the Commission has the jurisdiction it asserts, that fact is one properly to be considered by the courts in construing statutes in possible conflict.

The Commission recognized the anomaly of its position by stating, "* * * if the copyright suits are decided adversely to the CATV industry we may, as stated in the first report, have to revise our rules." However, if the Commission cannot compel reception of a local station's signals in order to equate its "competitive" position with other stations whose signals are received because of copyright considerations, it would have lost what it apparently considers to be a highly important tool with which to minimize the alleged impact of CATV on local stations.

It is difficult to understand why the Commission seems to prefer to abandon its asserted authority to regulate reception by CATV in the public interest (to private copyright restrictions) rather than take a positive position that once the publicly owned airwaves are used to exploit copyrighted works, control over public reception should be exclusively in the Commission rather than in the hands of unrestricted private interests.

Any imposition of copyright liability on community antenna systems can have no effect except to impair the ability of the Commission to regulate community antennas. Thus, if the Commission believes that it can implement the public policy of the Communications Act by requiring a community antenna system to receive the signals of certain stations it should not be inhibited in its ability to do so by copyright owners whose only objective in granting or withholding reception rights will be their own private interests, not those of the public.

There is now pending before the Congress proposals to revise the Copyright Act of 1909, in a manner so, as construed by the Register of Copyrights, to place control of reception by community antennas of copyrighted programs in the hands of the copyright owner. These proposals should be of no concern to this committee because of the conflict which I have described and which the Commission seems to recognize but has not met in terms of its own ability to regulate CATV systems in the public interest.

For a complete discussion of the reasons why CATV systems do not pay copyright and do not believe that the law requires them to do so, I invite your attention to my testimony on Copyright Law Revision, on June 24, 1965, before Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives.

H. "Grandfathering" of existing systems.—In its Public Notice G, of February 15, 1966, after speaking of its rule with respect to "distant city signals" in the top 100 markets, the Commission stated: "Service presently being rendered to CATV subscribers will be unaffected." (Public Notice G, p. 2, par. (4.))

This led many people to believe that some kind of "grandfathering" of all existing CATV system practices and operations was part and parcel of the Commission's rules.

It now turns out that this is not true. All existing systems must comply on carriage and nonduplication by May 18, 1966, unless a waiver is granted.

The Commission has not indicated that it will grant such requests for waiver by the presently existing CATV system (ibid.) only "in appropriate circumstances," whatever that means. The Commission simply states:

> In this connection, we emphasize that we intend to make every effort, consistent with the public interest, to avoid disrupting existing service to the public in applying the carriage provisions of the rules to the systems now in operation. (Ibid.)

In view of the complete failure of broadcasters and of the Commission to establish that the existing 1,650 CATV systems have injured TV stations in the past 16 years of CATV existence, this committee and the Congress, if these rules are to stand, should flatly grandfather in all CATV systems which are in existence or where CATV applicants have obtained local franchises and expended money to launch CATV systems at the time of the enactment of this act.

This would be consistent with what this committee and the Congress have done traditionally when they have regulated a new enterprise, such as railroads, trucks, airplanes, et cetera. This avoids serious constitutional problems, such as those concerning the due process clause of the fifth amendment to the Constitution of the United States. It is eminently fair to small businessmen who have risked considerable sums of their money in projecting a successful business along certain practices particularly where there are no overriding public interest considerations to the contrary involved.

II. THE FCC'S LEGISLATIVE PROPOSALS

A. Consent of originating station.—The Commission has stated:

> We believe that Congress should consider whether there should be a provision similar to section 325(a) applicable to CATV systems (i.e., whether, to what extent, and under what circumstances, CATV systems should be required to obtain the consent of the originating broadcast station for the retransmission of the signal by the CATV system. ("FCC Second Report and Order," p. 83, par. 153(iii).)

This is not a new suggestion. It was advanced by the National Association of Broadcasters in the hearings in 1959 before the Senate Committee on Interstate and Foreign Commerce in connection with legislation to regulate CATV systems. At that time, the FCC

thought, also, that this would be a good idea. However, the Senate committee after thorough consideration recognized the proposal for what it was, namely an outright bid by broadcasters to control completely the growth and operations of CATV systems as they saw fit, and the committee refused to adopt this provision.

When the bill (S. 2653), in 1960, as reported to the Senate, was being presented and explained for passage on the floor of the Senate, Senator John O. Pastore, the chairman of the Communications Subcommittee, which had held the hearings on the bill, a strong advocate of the bill and the Senator who was designated by the chairman of the Senate Interstate and Foreign Commerce Committee as the official spokesman for that committee in steering its passage on the floor, stated:

> When the bill was originally introduced there was a provision in the bill, as there is a provision in the Communications Act, to the effect that once these systems were licensed they would have to get the permission of the people who are originating the signal. Now, that would have been quite unfair. That would actually be saying to these people, "Go back and pay for something you have not been paying for up to now." Naturally, the broadcaster who would say, "If you are obliged to come to me to get my permission, then I have a right to charge a fee." The broadcaster could charge $1,000 or could charge $1 million if he wanted to, depending upon whether to put the CATV system out of business or to keep the system in business.
>
> I will tell Senators how fair the subcommittee was. We thought that was an unreasonable provision at the time we considered it, so we made an exception. We eliminated it from the bill. We have said that insofar as CATV is concerned, we will not disturb the present practice. (Congressional Record (daily), Senate, May 17, 1960, p. 9676.)

To the same effect was the following exchange in the debate on S. 2653:

> Mr. SCHOEPPEL. Question No. 2: Some of the communications to my office indicate a belief that S. 2653 would require a community antenna company to obtain permission from the television broadcaster before he could distribute the television signals. It is my understanding that no such provision appears in the bill. Will the Senator comment on this point?
>
> Mr. PASTORE. Positively. That is one of the things I have emphasized. I will say to the Senator, that even I would not vote for passage of the bill if that were required, because I think it would be an invitation to destroy the CATV industry. I am not bent on destroying the industry. (Ibid., pp. 9682 and 9683.)

Members of this committee apparently recognized this fact when the same proposal was advanced by broadcasters in the hearings on H.R. 7715. When it was suggested in the course of the hearings on H.R. 7715 that section 325(a) should be made applicable to CATV systems, Representative Springer asked:

> You could not operate CATV at all under those circumstances, could you? (Printed hearings on H.R. 7715, p. 351.)

The fact that section 325(a) of the Communications Act requires a broadcaster to obtain the permission of the emitting station before its signal can be used and rebroadcast does not mean that the same provision should apply to a CATV operator. Broadcast stations are supported by advertising. Obviously, the broadcaster who is armed with the veto power over the rebroadcast of his own signal can protect his signal against his competitor, whereas CATV does not compete and does not use such signals to attract veiwers to other advertising. CATV does not advertise or substitute other advertising for that of

the station whose signal is received. In fact, the Commission has ordered explicitly:

> Where a signal is required to be carried [by the CATV system] it shall be carried without material degradation in quality, and shall be carried in full except to the extent that nonduplication of higher priority signals may be required under the rules.

This would expressly forbid a CATV system from cutting off advertising and inserting other advertising in its stead, because this would not be a signal which is "carried in full." It is this association's understanding that this comports with the present and traditional practices of CATV operators. NCTA and the whole CATV industry would strongly support this principle in the Commission rules.

This requirement would make totally unnecessary requiring the CATV operator to obtain the consent of the emitting station. Instead of allowing the broadcaster to protect his advertising, the requirement would place the broadcaster in the position of being able to control completely the CATV operations in the form of conditions precedent to the grant of his consent.

Under the circumstances, it is understandable that the Commission considers this proposal as possibly a more effective control of CATV than nonduplication and other rules. The Commission stated:

> As a general approach encompassing all stations, we are proposing to the Congress that it consider the question of extending the rebroadcast concept of section 325(a) to CATV. It may be that regulation of this nature would prove a preferable and more effective means of achieving fair recognition of the exclusivity contracts of the program marketplace. (FCC Second Report and Order, p. 31, par. 55.)

I do not believe that this would constitute a "preferable" approach but it would certainly "constitute a more effective means" of controlling completely CATV growth and future operations. It would place the CATV operator at the complete mercy of the broadcaster whose primary interest is to curb what he considers to be a method of placing his audience in a position by means of a more efficient antenna to receive competing television signals. We urge you to reject this approach to the regulation of CATV in order to avoid giving the networks this power over all CATV systems in the country receiving signals carrying their programs. According to the trade press, the Columbia Broadcasting System has presently revised its contracts to reserve this power.

B. The relationship of Federal to State-local jurisdiction over CATV.—The Commission has asked the Congress "to consider the appropriate relationship of Federal to State-local jurisdiction in the CATV field, with particular reference to initial franchising, rate regulation, and extension of service." (FCC Second Report and Order, p. 85, par. 153 (iv).)

It would seem that the relationship between the Federal and State-local jurisdiction with respect to CATV is well settled because of CATV's integral part in the reception of interstate signals. The courts have held CATV to be engaged in interstate commerce. If the Commission is even partially right that the Communications Act preempts the field of CATV, there is no area for regulation of the industry by the States except to the limited degree that broadcasting

is regulated, such as zoning laws or other exercise of police power or taxes which are not an undue burden on interstate commerce. This should be affirmed. We can only have one system of television transmission and reception in this country composed of radio frequencies and wire. The necessary regulation of it should be lodged in one agency.

We concur in the Commission raising the question concerning Federal relationship to State-local jurisdiction. We do not concur, however, in the statutory provisions they have submitted. We believe that the Congress should spell out very clearly or explain in committee reports that communities or State agencies, according to the varying State laws, may continue to grant permits to operate CATV systems (sometimes popularly referred to as franchises).

The various municipalities, towns, and counties have done an excellent job of granting these permits in the past 16 years of CATV existence. In all States except Connecticut, the local governing bodies grant these permits. CATV systems almost always serve a particular community, although some spill over into the suburbs and obtain the additional permission of the local governing bodies there when this is required.

Under the Communications Act, a CATV system is not a common carrier, subjest to its jurisdiction under title II of the act. The Commission has so ruled on four different occasions where some broadcasters or members of TAME attempted to have their rates and practices regulated closely.

The Commission has argued that a CATV system is not a common carrier, that it has not dedicated its property to the public use, in a current case pending in the U.S. District Court for the District of Columbia.

Under the Communications Act a broadcast station is expressly declared not to be a common carrier. CATV has been held by the Commission to have this same status. However, something more is needed in the act to protect both the broadcaster and the CATV industry. At a meeting of New England PUC Commissioners at Chatham, Mass., last year, the chairman of the Connecticut PUC urged them to pass a law like that of Connecticut making CATV systems public utilities. He added that television broadcast stations make such high profits that they should be brought under such laws at some time thereafter.

In the past, the FCC has urged that a specific amendment be adopted to make it clear that a CATV system is not a common carrier. In view of the developments mentioned above, NCTA urges this committee to adopt this amendment. CATV systems are not protected in any way and the State cannot and should not try to insulate the public against other means of receiving signals from translators, boosters, higher television towers, higher rooftop antennas, et cetera.

While a community was fortunate to have even one CATV system in the past, because people hesitated to risk their money in constructing one that might soon be replaced by a new local TV station, the trend is no longer running toward a single CATV system per town. Telephone companies now offer CATV service to a CATV system and to all comers. Several municipalities now have two or more

CATV systems either in different parts of a town or running parallel along the city streets.

It is interesting to note that a study recently conducted by NCTA indicates that CATV rates have increased by only about 4 percent in the 16 years of CATV existence, while the rates of intrastate telephone companies regulated by State PUC's have increased from 35 to 45 percent in the same period. This does not mean that State PUC's have not done a good job of holding down telephone rate increases, but it does prove that other means of receiving television signals which surround CATV systems has done a still better job of keeping CATV subscriber rates down and that rate supervision exercised by the cities has been effective.

This enterprise is not the type of interstate business which is generally committed to State regulation. We urge this committee to write this clearly in its report, so that both broadcasting and CATV may continue to be the same free enterprise-type of business as in the past.

C. CATV and pay TV.—Pay TV generally is a per program charge made to subscribers. CATV charges to subscribers are generally made on a monthly rate basis for the whole antenna reception service.

The Commission has announced that in part II of its proceeding:

> We intend to explore thoroughly the relationship, if any, of proposed CATV operating in the larger markets and the development of pay television in that market. (FCC second report and order, p. 69, par. 129.)

In the Commission's proposed legislation it is proposed that pay TV be prohibited on CATV, which would knock out any reason for having a hearing on that subject.

Some of the witnesses before the subcommittee have tried to confuse the issue of pay TV with that of CATV. However, the National Association of Broadcasters and the Chairman of the Federal Communications Commission have pointed out in the past that there is a great difference between them. To me this difference is that in CATV a small monthly charge is made for a superior antenna service, whereas in pay TV a charge is made on a program-by-program basis.

In one case you may receive all programs broadcast over the air with your own antenna or rent the antenna service. In the case of pay TV, you must pay on a program-by-program basis for everything you watch whether it is originated by a television station or by a cable system. Some broadcasters have quoted from enthusiastic corporate directors in annual reports of private corporations to their stockholders in an effort to give the impression that CATV operators were looking forward to the advent of pay TV by cable. Actually, it is the broadcaster primarily who is experimenting with pay TV by radio frequency. Very little CATV money, if any, is invested in the development of pay TV systems. The networks and broadcasters have said that if over-the-air pay TV is successful and allowed to function, they will be interested in it. In such case, of necessity, CATV would have to become interested in it, too.

Instead of CATV being the opening wedge to pay TV, the very reverse is true. CATV systems as they exist today are unsuited for pay TV. They would have to be substantially altered in order to originate pay TV programs. Moreover, all of the contracts for the use of telephone poles by CATV systems that I have seen expressly

prohibit pay TV. Before CATV could ever experiment with pay TV, these contracts would have to be reformed—a not inconsiderable obstacle.

This fear that CATV is "the opening wedge to pay TV" has been so widely circulated, even at times by people closely connected with the CATV industry, that it is high time these fears be laid to rest.

I will venture to predict that if CATV systems ever engage in pay TV it will be because broadcasters force them by their pay TV activity to engage in the business.

Of course, CATV systems make a small monthly charge for their antenna reception service; it is, thus, a paid-for service. But even in its most basic sense, television is never "free." The term "free television" has to be analyzed. Broadcasters buy the right to broadcast programs and advertisers buy time. Individuals buy television sets—black and white or color, portable or console—to suit their taste and purse. Set owners buy antennas and pay to have them erected, or they pay a fee for an antenna service.

The sum total of all these purchases, at either the broadcasting or receiving end, make so-called free television one of the largest industries in America. Every phase of this industry is interrelated and important. If pictures could not be received clearly on TV sets, broadcasters would not sell as much time to as many advertisers and would not need to buy as many programs. In other words, the antenna service operator, like the dealer of rooftop antennas, contributes to the all-important task of making reception of television signals better for the public.

In its public notice G of February 15, 1966, the Commission has served notice that it would ask the Congress to legislate with respect to the use of a CATV system to engage in pay TV.

Of course, the Congress will want to look into all the aspects of pay TV. Certainly, if pay TV is a danger to so-called free broadcasting, and the Constitution allows pay TV to be suppressed, Congress will want to prohibit it altogether or to limit it drastically whether via broadcast or CATV service. If the Congress believes pay TV should be experimented with, the experiments should be permitted to broadcasters, CATV systems, and anyone else.

The danger of pay TV via CATV is one of the "horribles" which has been conjured up by the opponents of CATV systems as an excuse for regulating them more strictly. If Congress decides to prohibit pay TV or limit it drastically by radio frequencies as well as cable, there would be little, if any, objection by CATV operators.

D. Originations.—We endorse the Commission's action in referring to Congress the policy question, with respect to origination for which no additional charge is made to the subscriber. There are many ways in which CATV systems can originate programs which could never be offered on a continuing basis by a TV station with its limited capacity. In fact, it is questionable whether any TV station can offer truly local service to more than the one community to which it is assigned and even then, it can hardly present such truly local programs as city council meetings, local basketball games, et cetera, on a continuing basis.

Television broadcasters are faced with a very difficult and perplexing problem in providing public service for the areas they serve.

Although a television station is assigned to a principal city, it is responsible for providing public service to the entire area covered by its signal. Since the broadcaster's only saleable commodity is time, he is faced with a dilemma in allocating time for public service use, sufficient to serve his area, while at the same time retaining enough time for sale to make the continued operation possible as well as paying the bill for the public service presentations in which he engages.

In looking at a few typical markets in the country some interesting problems present themselves. For example, the broadcaster in Joplin, Mo., KODE–TV, channel 12, in addition to the city of Joplin, covers all or part of 13 Missouri counties, all or part of 6 Kansas counties, all or part of 5 Oklahoma counties, and all or part of 2 Arkansas counties—a total of 26 counties or portions thereof in 4 different States. In addition to the city of assignment, Joplin, there are numerous other sizable communities within this 26 county area. The station faces an insurmountable problem in attempting to provide local public service for such an area.

The operator of Green Bay, Wis., channel 5, WFRV, serves all or part of 23 Wisconsin counties and 1 county in the State of Michigan, with the city of Green Bay and portions of 23 Wisconsin counties within his coverage contour, it would be interesting to determine how much public service time is devoted to Menominee, Mich., the principal city in the single Michigan county covered by WFRV. Also, it would be interesting to note how much coverage is given to the cities of Cheboygan, Manitowoc, Oshkosh, Appleton, and Fond du Lac.

Television station WHBO–TV, channel 13, Memphis, Tenn., covers all or parts of 12 Tennessee counties, all or part of 13 Mississippi counties, all or part of 10 Arkansas counties, and parts of 2 Missouri counties. Again, an example of a major market television station which has within its coverage area parts of 4 different States and a total of 37 different counties.

We have observed that in such cases the typical pattern is for the broadcaster to do the best job he can of providing for the public service needs of his city of assignment, because these people have the easiest access to the broadcaster. Thus, they are more apt to make their needs known and cooperate in translating these needs into usable program material.

For the balance of his coverage area, the broadcaster typically adopts an area concept and does the best job he can of providing public service programing or spot announcements to serve those areas beyond his principal city—in a general way only. For example, during a Red Cross fund drive, a typical broadcaster might provide some coverage for the campaign and its progress within his city of assignment even to the extent of attending some of the organization meetings and showing film on his news programs of the campaign in preparation and in progress.

For the area outside the principal city, he discharges his obligation to provide public service in this same campaign by running spots prepared by the American National Red Cross, calling the public attention generally to the fact that this is Red Cross Month. It is a practical impossibility for the broadcaster to keep his audience posted on the exact campaign goals and progress of the campaigns in each of

the outlying communities, or, to identify and credit the people responsible for conducting these campaigns.

In general, it might be said that in the areas beyond the city of assignment the squeaking-wheel principle applies. The group or city that persists in seeking coverage is apt to get it. But there is, however, a limit to the amount of public service information a station can actively seek out and present to its audience.

With your indulgence, we might relate this problem to another field of endeavor. Most stations make an effort to keep their audiences advised of the progress of election campaigns, and particularly on election night strive to keep their audience abreast of the trends established by the returns as they are tabulated at their election headquarters.

Again, it is convenient for the station to cover its city of assignment, but quite inconvenient for them to cover in detail the outcome of elections in the surrounding areas. In so far as returns from outlying areas affect major races of statewide or regional interests, an effort is made by statewide news services to provide this information. In some cases, station personnel are assigned to other areas to gather this information. However, for offices of local interest only, such as city council, assemblymen, mayors, and other elected local officials, information is available usually the next day, and quite often only in the newspaper.

Again, this is pointed out not to chastise the broadcaster, who does the best job he can with the staff available to present available information, but to call attention to the fact that the area in which he is assigned a specific responsibility to serve the public interest is in many instances too vast for a single broadcast organization to cover.

Another example of a problem confronting broadcasters is the disproportionate value of advertising purchased by a businessman or candidate who can benefit from the entire coverage area served by the station, as compared to the smalltown business or candidate for local office who can benefit from only a small portion of the large area covered by the station. There is no satisfactory answer to this problem.

In the case of the Memphis station and others which serve portions of four or more States, a considerable inconvenience to its audience is involved whenever a candidate for any office short of the Office of President or Vice President is afforded time on the station. Residents of four States are involved in the coverage area of the Memphis station. In three of the four States the residents have no opportunity to vote for a candidate appearing on the station, and little interest in hearing what he has to say with respect to a campaign in another State.

If time is made available for candidates from States other than the State the station is located in, the station is imposing its commercial opportunity on residents of its city of assignment, even though the political race involved has no interest to the people of the community. This is not unlike the 50-kilowatt radio station, licensed to serve vast areas of the country, using its facilities to inform people in three time zones about traffic bottlenecks in downtown Chicago.

Some opponents of CATV propose to prohibit any origination of programing by community antenna television systems. If they are

serious in this proposal, they are, in effect, taking the position that residents within the contours of existing television stations are receiving all the public service benefits from television to which they are entitled, and no provision should be made to give them any more. They might even be saying, in effect, that only the broadcaster has the right to communicate with the public.

We believe that after the Congress has considered all of the aspects of this potential service it will determine that there should be no restrictions of the diversity of program sources available to the public and will reserve any action in this area until some pressing need is demonstrated. If, however, you believe that some action should be taken now, we believe that only those statutory provisions relating to the origination of programs by television stations should be considered for CATV such as sections 315 and 317 of the Communications Act.

III. H.R. 12914 AND H.R. 13286

There are many small CATV systems in the United States with only a small number of customers who cannot understand why their few customers should scare broadcasters whose signals cover such huge audiences. These numerous CATV operators feel very strongly that the only good bill in this area would be one like that introduced by Congressman Walter Rogers. This bill (H.R. 13286) would prohibit any branch of the Federal Government from interfering with their right to receive television signals and feed to their neighbors. If it were amended to include State governments, I am sure it would receive wide support. We are deeply appreciative of the same confidence Chairman Rogers has shown in our industry that he has always shown in the broadcasting industry. We do feel constrained, in the light of the matters to which I have referred, to go a little further in an effort to arrive at a compromise between the contending groups.

H.R. 13286 introduced by Chairman Staggers, by request of the Commission, defines "community antenna system" and relates the activity to broadcasting rather than to community antenna television systems which is the crux of the problem under congressional consideration. It then gives a broad grant of authority to the Commission over community antenna systems, "with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services."

This would, in my view, make the principle of section 307(b) providing for a fair, efficient, and equitable distribution of radio service among the several States and communities equally applicable to CATV reception service. We believe this to be desirable from the public's point of view. The cities and towns in this country were not located with the problems of radio frequency propagation and interference in mind.

There is a limited amount of spectrum space available and the economic support for television stations requires substantial concentrations of population. With this provision in the law our entire population is assured of equal rights to receive television programs in equal quality of signal and number of signals insofar as it is possible within the state of the CATV art. The Commission will be enjoined to regulate this reception service so as to provide for equality of reception insofar as there is a demand for it.

The bill next contains a provision giving the Commission discretion to exempt certain systems from regulation. The Commission would apparently exempt apartment houses, some of which contain thousands of sets, while retaining under control small systems in small communities serving over 50 subscribers. In our view, this action would be highly discriminatory and should not be permitted. It should be made clear in the report that the exemption authority is to be administered equitably.

The bill would then prohibit originations except as authorized by the Commission with no additional charge to subscribers. This provision would give the Commission broad powers of censorship to deprive the public who desire to connect their sets to a community antenna system, from receiving on a separate channel the divergent views of those who might have access to this method of communicating with the public.

I can understand the desire of broadcasters for protection from being required to compete with each other, but I do not believe that they would be willing to pay for such protection by depriving both the CATV operator and the public of their constitutional liberties. If this provision is aimed at pay-TV, that is a charge to the subscribers on a per program basis, it should be dealt with much more forthrightly and explicitly. I have stated our views on pay-TV. In short, television stations and cable systems should be treated the same in this respect, but the spectre of pay-TV should not be used as an excuse to prohibit the community service which one channel in a CATV system could supply.

Finally, the Commission would have you authorize State regulation of CATV except to the extent that such regulation is in direct conflict with this act or regulations promulgated under it. I can think of no provision of law relating to CATV which could possibly generate as much dispute and litigation as this provision. I do not believe it is sound legislation or in the public interest to place an industry in the regulatory cross-fire between necessarily changing Commission rules and regulations and State legislatures. How would anyone including the public ever know what their rights were, except by court decree.

Our television transmission system is a national system. CATV is engaged in interstate commerce in receiving TV signals. Therefore, the entire regulatory scheme, insofar as any regulation is necessary and with the exceptions I have noted, should be a Federal function.

I would now like to turn to the affirmative position of the CATV industry which was unanimously adopted by the board of directors of the National Community Television Association. A copy of the bill is attached hereto (exhibit B).

It contains a concise definition of a community antenna television system (CATV) and confers upon the Commission specifically defined authority to regulate CATV in specified respects. A section-by-section analysis of the bill follows.

The first section of the bill would amend section 3 of the Communications Act by revising two definitions and adding a new definition. Section 3(h) defines the terms "common carrier" and "carrier." The bill retains the present definition and adds to it the proviso that a community antenna television system is not deemed to be a "common carrier." Section (o) defines "broadcasting." Again the bill retains

the present definition and adds to it the proviso that a community antenna television system is not deemed to be engaged in "broadcasting."

Section 3(gg) is new; it defines "community antenna television system." The definition makes it clear that the act is applicable only to a CATV system which receives signals from at least one television broadcast station whose transmitter is located more than 30 miles from the main post office in which the community antenna system is located. In other words, if a CATV (1) only receives television signals from stations located within 30 miles of the system; or (2) if it only originates its own television programs; or (3) if it only receives or originates audio programs, or any combination of these three elements, no FCC jurisdiction would exist.[1]

The reasons for the exclusions are patent. So far as program origination is concerned, there are only a few instances where CATV systems originate their own programs. Moreover, there is a serious doubt as to whether Congress can constitutionally authorize regulation of a communications medium—that is, origination of program material—where there is no factual need for regulation based on inherent scarcity of facilities such as exists in the case of radio-frequencies. Since there is no evidence of a pressing problem in program origination by CATV systems and since substantial constitutional problems are involved in a system of regulation of program origination by CATV systems, NCTA urges that the matter be left in status quo unless and until it becomes a matter of pressing urgency.

So far as audio programs are concerned, somewhat the same policy considerations obtain. While the same consitutional objection may not be present as in the case of program origination, NCTA is not aware of any problems caused by audio reception on CATV systems. Congress should not be called upon to act in a vacuum. If events at a later date seem to call for remedial action, Congress can at that time fashion an appropriate remedy.

Section 2 adds a new section 331 to the Communications Act. It gives the Commission authority—

> to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the technical characteristics and operation of community antenna television systems to the extent necessary to carry out the purposes of the Act with due regard to both the establishment and maintenance of broadcast services and the provision for multiple reception service.

Under this grant of auhority, the Commission can make reasonable rules and regulations regarding technical characteristics of CATV systems so as to make sure that they cause no interference to radio services. The Commission can also make reasonable rules and regulations with respect to reception of signals on CATV systems and the protection to be accorded television stations where these regulations are necessary to the maintenance of broadcast services and do not impair the essential function of CATV systems in providing a multiplicity of reception services.

The grant of authority to the Commission is specifically limited in four respects, as follows:

---

[1] Section 3 (gg) does not provide for a specific exemption of small-sized CATV systems. The Commission however, in section 331(b) has been given the authority to exempt any CATV system in whole or in part where such action is desirable because of the size or nature of the system so exempted.

(1) The Commission may not require any CATV system to receive on its system signals of television broadcast station whose transmitter is located more than 30 miles from the main post office of the community in which the CATV system is located. The CATV system may choose to receive such signals; the Commission cannot compel such conduct.

(2) The Commission cannot require a CATV system to receive on its system the signals of a television broadcast station which originates fewer than 10 hours per week of its own programs. This proviso is directed at stations such as translators and satellites which originate fewer than 10 hours per week of their own programs. Such stations are not true media of local self expression. A channel on a CATV system is a valuable communications medium. It should not be wasted by a Commission requirement that it be used for a translator or satellite which has little or no programming of its own.

(3) The Commission cannot compel a CATV system to receive the signals of a television broadcast station which duplicates in whole or in substantial part—that is, more than 75 percent—the programs of another television broadcast station received by such CATV system. The proviso differs in two respects from the previous one. In the first place, this proviso is directed at a station which originates at least 10 hours per week of its own programs. Hence, the Commission, under proviso 2, could require its reception if the station were within 30 miles of the CATV system. Second, the CATV would nevertheless be excused from receiving the programs of such a station if it were, in effect, a semisatellite, that is, one which duplicated in substantial part—that is, more than 75 percent—the programs of another television broadcast station, that is, provided that the signals of the parent are actually received by such CATV system. It would obviously be a wastage of facilities to require the CATV system to receive both the parent and semisatellite.

(4) The Commission cannot prohibit a CATV system from receiving any signals it desires. This judgment is left to the CATV operator and its subscribers. The Commission, however, in its role—of protecting a local television broadcast station—that is, one whose transmitter is within 30 miles of the main post office of the community in which the CATV system is located—could require that the programs of a distant television broadcast station—that is, one whose transmitter is more than 30 miles away—may not be received on the CATV system if and when the CATV system is receiving the same program on a simultaneous basis from the local station.

IV. CONCLUSION

In conclusion, I would like to summarize the position of the CATV industry.

We believe the Federal Communications Commission should be given limited jurisdiction over CATV systems. We do not believe that the Government, either through regulation or legislation, should prohibit or limit the right of the people to receive television signals either directly off the air or through community or master antenna systems.

62-610—66——10

We believe that CATV is an extension of the reception facilities of the public rather than an arm or a subsidiary of the broadcaster.

We believe that whatever impact CATV has on television stations is more than balanced by the benefits to the public of increased program competition between broadcasters that clear signals promote, the diversity of signals provided, the stimulation of viewing by the public, and that we will promote rather than harm the economic health of broadcasters.

We are agreeable to receiving the "local" station although we do not believe a station 75 miles away is a local station, but that 30 miles is about as far away as a station can be and still be classified as "local."

We are agreeable to refrain from receiving signals on our system which simultaneously duplicate programs on the "local" station.

We are opposed to the artificial restraint on CATV systems being established in the first 100 markets and believe this rule is highly discriminatory against this large section of the public who want and desire a greater diversity of television signals. Such restraints should not be permitted by the Congress. CATV should not be legislated into a locked room when the public desires its reception service.

We oppose the extension of section 325(a) of the Communications Act to CATV.

We oppose any limitation on the origination of programs by CATV.

We believe that whatever disposition Congress makes of pay TV, television stations and CATV systems should be treated alike.

We oppose being placed under both Federal and State regulatory authority. We believe that because of the nationwide interstate character of the transmission and reception of television signals any necessary regulation should be in one agency.

We do not wish to injure television stations in any way. We do not believe that we have or that operation under the proposed amendments to the bill will injure them.

We believe that we are generally a much smaller and less profitable business than broadcasting and we ask this committee to sanction the growth and development of this reception service. We ask that you not permit an industry with such great potential for the public good to be stifled, restrained, contained, and hobbled with extremely complex regulations which I doubt that many of us understand.

We believe that the program we have presented is all that is warranted or needed.

I have attached also the exhibits and I would like to have them printed with my statement, if it is permissible.

Mr. STAGGERS. Without objection, they will be included in the record.

(The exhibits accompanying Mr. Ford's statement follow:)

EXHIBIT A

A STUDY OF CATV AND UHF TELEVISION STATION DEVELOPMENT AND POTENTIAL WITH RESPECT TO THE FCC'S "TOP 100 MARKETS" RULE

(Prepared by National Community Television Association)

There are today 109 commercial UHF television stations in operation or planned to be operating this spring.

Of the 109 operating stations, 22 are independent—i.e., not affiliated in any way, to our knowledge, with any of the 3 national networks. Eighteen of these

independent stations are clustered in 12 of the top 100 markets; the other 4 are in lower rated markets.

These 109 stations are located in 70 television markets. Thirty-six of these markets are among the top 100. Thus UHF stations are pretty evenly split above and below the top 100 markets.

In 36 markets among the top 100 there are commercial UHF stations now or soon-to-be on the air.

In one-third of these markets—12 of them—there are 1 or more independent stations.

Among these 36 markets there are 7 which are all UHF; i.e., all stations operating in the market are UHF stations. Yet, in these seven markets, where the best opportunity exists for the development of an independent UHF, there is only one independent UHF television station on the air—in Fresno, Calif., the 91st market according to the market rankings of the American Research Bureau.

One of the seven all-UHF markets is Scranton-Wilkes-Barre, Pa.—No. 70 in the ARB ranking—whose circulation is greater than 17 all-VHF markets in the top 100. Another is Springfield-Holyoke, Mass., the 78th ranked market with a circulation greater than that of 11 all-VHF markets in the top 100.

In these 7 all-UHF markets, there are 21 UHF television stations. Twelve have been on the air since 1953; 18 have been operating for 10 years or more—and all 21 have been in operation during the past 5 years. The most recent station is the lone independent which came on the air in 1961.

Yet, in these 7 ideal markets among the top 100, wherein there was a built-in audience capable of receiving UHF television signals, through then available all-channel sets or UHF converters, only one independent station has come into being.

In only one of these seven markets has there historically been any appreciable CATV development. That market is the Scranton-Wilkes-Barre market.

Certainly CATV was no deterrent to UHF growth in these markets.

Rather, there are strong indications that the largest of these markets, and the only one with any significant CATV development—Scranton-Wilkes-Barre—may owe its present high market ranking because of CATV.

Based on data available, NCTA estimates that there are in excess of 145,000 CATV homes which receive 1 or more of the 3 Scranton-Wilkes-Barre signals. The market's ARB circulation is less than twice that amount—275,900 TV homes.

The value of CATV subscribers to these stations is further underscored by the fact that historically the stations have employed on a full-time or major-function basis personnel whose duties were to maintain liaison with CATV operators and to encourage CATV systems to receive the stations' signals.

It is possible that without CATV the all UHF Scranton-Wilkes-Barre market would not enjoy its current high market ranking.

Another aspect of the 36 top 100 markets having within them 1 or more UHF television stations:

Excluding the 7 markets which are all UHF, of the 29 other markets, 17 are intermixed with UHF and VHF network-affiliated stations.

Certainly, when any more UHF stations come into being in any of the top 100 markets, it will be almost impossible for them to obtain network affiliation. For all practical purposes, all new UHF stations will start operations as independent stations.

What are their chances to secure a sizable audience to maintain economic viability?

The 17 markets intermixed with UHF and VHF network-affiliated stations may help to point the way.

ARB circulation data for the year 1965 are available for UHF television stations within 12 of the 17 markets. Twenty-one UHF stations are represented; 17 have been on the air since 1953. All 21 have been on the air for the past 5 years. The VHF stations have been on the air for comparable periods of time.

Excepting the one market wherein one UHF station and its two satellite operations exist, with a combined ARB station ranking, the best percentage of the total market ARB that a UHF station obtains is 60.3 percent of the audience. This station is WTVO, in the Rockford, Ill., market, an NBC affiliate.

The average audience penetration for all UHF stations in these markets is only 40 percent of the ARB circulation of the largest VHF station in the market. The median is only 37 percent. The range is from 9.4 to 60.3 percent.

Even in the case of the one market with ARB circulation credited to the parent station, although three stations are involved, this combined circulation is just shy of 80 percent of the market total, as set by the lone VHF station in the market.

Only 3 of the 21 UHF stations could alone make the top 100 market ranking. Most of the others wouldn't be within hailing distance.

In 4 of the 17 markets, the UHF stations predated the VHF stations in the market. However, none today surpass the VHF circulation.

In these four markets TV set owners had to have all-channel sets or UHF converters on their sets in order to receive any television at all. In all 17 markets, set owners needed all-channel sets or converters to be able to see the 3 national networks.

In summary, 17 of the 21 UHF stations in these markets have been on the air since 1953—and their average share of the market audience is only 40 percent.

There are no comparable studies that can be made with respect to independent UHF station development in intermixed markets. ARB data are available for only 5 of 12 such markets. Two of the stations—with very small ARB rankings—appeal to specialized audiences. One station has been on the air for a year, and another for 2 years—in Detroit and Chicago respectively.

However, the one other market—Milwaukee, Wis.—deserves some attention. The independent UHF, competing in an otherwise VHF market—number 23 in ARB ranking—has been on the air for nearly 7 years. Yet, its ARB ranking is only 19.3 percent of the total market ARB circulation.

The experience of the network-affiliated UHF television stations in intermixed UHF-VHF markets, and the experience of the Milwaukee independent UHF station, points to the major obstacle to UHF development: the limiting factor of the restricted distance covered by a UHF broadcast signal—unless a station can get network affiliation, and even this makes for marginal operations in some areas.

Certainly, if even UHF network-affiliated stations in major market areas historically served by UHF television can't compete in terms of audience with VHF stations, then the independent UHF station is going to have a much less share of the audience.

The only way an independent UHF television station is going to receive a fair share of the public's attention in the market it serves, is to give it access to the market * * * to allow it to compete for a just portion of that market. The distance limiting nature of the UHF signal can't do the job alone. But, given an opportunity to be received on CATV systems within the top 100 markets, the prospective independent UHF stations have a chance to go on and stay on the air.

What are the odds for UHF survival in a CATV-developed market? Could a UHF operate successfully with a CATV system colocated in the same community?

As mentioned earlier, there are now or soon-to-be 109 operating UHF commercial stations, representing 70 television station markets.

The 36 markets within the top 100 have already been examined here. As to the remaining 34 markets, these markets represent 34 separate cities and adjacent areas served by the stations within these single cities.

In 16 of these 34 cities there are colocated a CATV system and one or more television stations. In other words, in 47 percent of the principal cities in the 34 markets with UHF stations which are outside of the top 100 markets, a CATV system and one or more TV stations coexist side by side. In 9 of these 16 city markets the CATV system was in operation before the UHF station went on the air.

CATV can hardly be called an adverse factor in UHF development in these markets.

And what about the future for UHF in markets outside the top 100?

There are today construction permits outstanding for UHF television stations in 14 markets below the top 100. In 9 of these markets there is already an operating CATV system in the city of assignment—9 out of 14 communities—64 percent.

Additionally, there are applications pending for UHF assignments in 22 other communities not within the top 100 markets. In 11 of these communities there is already an operating CATV system, 11 of 22—50 percent.

Of the 100 UHF television stations that have gone off the air, 62—62 percent—were located in the top 100 markets. Six were in all-UHF markets. Others were in intermixed markets.

Most certainly something other than CATV in these markets caused those stations to cease operations. Whatever the reasons—and CATV was not one—they couldn't make a go of it.

In fact, two tried and failed in the market offering the best chance for success: the Scranton-Wilkes-Barre market, a historically all-UHF market, ranked No. 70 by the American Research Bureau. One stayed on for 2 years; the other held on for 5 years before merging with one of the network-affiliated stations.

And this all-UHF market has a greater circulation than 165 other television station markets in the United States, and the individual station's audiences are considerably higher than many other stations in much higher ranked markets.

Regardless of the evidence submitted here, should the rule be applied, there are presented below data to illustrate the enormous complexities with which the Commission will be faced, the burdens that will be placed not only upon the CATV operator but the broadcasters and the already overburdened FCC staff as well, the waste of private moneys and Government funds, and the denial to the public of their right to access to a variety of television programs for their cultural and entertainment needs.

According to records on file at NCTA, there are about 460 of the 1,600 currently operating CATV systems within one or more grade A contours of television stations in the top 100 markets. There are 119 of 282 systems now under construction which also fall within these contours.

In addition, of 716 other communities which have granted CATV permits, approximately 500 are within the FCC-defined top 100 market contours.

And, finally, of 1,500 communities wherein CATV applications are pending before local governments, we estimate that 80 percent—or 1,200—are within the grade A contours of the top 100 market television stations. Using 1965 CATV activity as a guide, we can expect that 600 or more of these 1,200 communities will grant permits within the current year.

Considering only those systems under construction or which have been authorized by local governments to begin construction, there are at this moment at least 619 parties which must seek FCC approval before they begin to serve potential subscribers.

Add to these cases the 600 additional cases that will insure this year because of communities which will grant CATV permits before the year is out, and you now have a total of 1,219 separate cases that will come before the FCC this year.

And this total does not include the 460 operating systems, many of which are converting from low band—up to five channels of service—to high band systems, offering up to 12 channels. If, with their added capacity, they seek to bring in new additional so-called distant signals they, too, must seek approval of the Commission. And some of these systems, now bringing in distant signals or proposing to add distant signals, are also desirous of geographically extending their present systems. In such situations, any interested party can petition the FCC to call a halt to such territorial expansion. These, too, would turn into hearing cases.

Consider, too, that wherever there is a CATV system in operation—approximately 1,600 localities—or where CATV systems are under construction—282 localities—or where permits have been granted—716 communities—that broadcast stations may also request more protection than offered by the rules, and that CATV operators may seek waivers of the rules.

It is significant also to consider that already in 75 of the top 100 markets and in 111 of the 145 principal cities in those markets—wherein the television stations are located—there is currently some sort of CATV activity.

There are CATV systems in operation in 17 of these cities; systems are under construction in 4 others. Twenty communities have already granted permits.

Thus in 41 of the 145 cities the public is receiving CATV service or a system has been authorized to come into being. The public in these communities have been told they will get CATV service. Many thousands have already expressed a desire to become subscribers.

And in 70 other communities CATV applications are pending before city governments. Through newspaper reports, the public in these communities are becoming aware of potential CATV service; certainly many are expectantly looking forward to the service.

For a more graphic understanding of the figures referred to immediately above, there are appended to this study maps of six States showing the vast extent of the geographical coverage of grade A contours of the top 100 market stations which serve the States in whole or in part:

(1) The map of the State of Pennsylvania (fig. 16), on which there is superimposed the grade A television contours of top 100 market TV stations which serve the State in whole or in part. These contours were taken from the 1965 edition of Television Factbook, a recognized television industry sourcebook. The contours, therefore, are not precise, but certainly more than adequate for the purpose here. These grade A contours consume approximately 70 percent of the total land area of Pennsylvania. They embrace every major center of population. This State ranks No. 3 in terms of population, with 11,300,000 inhabitants, according to 1960 census figures.

All communities within these contours could conceivably become involved in hearing cases before the FCC.

Television markets are not cut-and-dried entities separate from each other. Grade A contours of stations of one market frequently overlap grade A contours of stations from another market, as illustrated by the light-shaded areas between the contours etched in by the broken lines. The number superimposed on the light-shaded areas indicates the number of markets at that location which have overlapping grade A contours. The dark-shaded areas define those portions of the State which lie beyond grade A contours of top 100 market stations. These indications apply for all the maps to follow.

(2) Illinois (fig. 17): Grade A contours from television stations within the top 100 markets extend over 50 percent of the land area. They cover practically every major center of population. Illinois ranks No. 4 in population, with 10,100,000 people within its borders.

One market in Illinois—the Champaign-Decatur-Springfield market, including the city of Danville—extends more than 150 miles east to west. One of the principal cities, Champaign, is well beyond the grade B contour of one station in the market; and although the Danville station is included in the market, it is beyond the B contours of three of the five stations in the market. The Springfield station is also beyond the contours of two of the stations.

Here is a paradox, wherein no CATV within the grade A signals of the Springfield station, the Danville station, and the Champaign stations would be permitted to offer service until it obtained FCC approval. Yet the only way all of these market areas could receive all the stations in the market would be if CATV's were operating within the total market area.

There are two other top 100 markets wherein similar situations exist.

In fact, in 14 of the top 100 markets, there are areas served by the grade A signal of one station but which are beyond the B grade signal of one or more of the stations in the market.

Yet, under the FCC's carriage rules, CATV systems located in these areas would not be obliged to carry all the market signals, inasmuch as these locations would be beyond the B contours.

The only way all portions of these markets could be served by all stations in the market would be through CATV system service.

(3) North Carolina (fig. 18): No. 12 in population, with 4,500,000 inhabitants. About 60 percent of the land area is within the confines of grade A contours of TV stations in the top 100 markets, and practically every sizable population center.

(4) New York (fig. 19): No. 1 in population. Within the grade A contours of top 100 market television stations is approximately 56 percent of the land area, and every major center of population.

(5) Massachusetts (fig. 20): For all practical purposes, the entire State (99 percent of the land area) is within grade A contours of TV stations in the top 100 markets. This applies also to the neighboring States of Rhode Island and Connecticut, in which 99 percent of the land area is within grade A contours of top 100 market TV stations. Massachusetts is ranked No. 9 in terms of population, with 5,100,000 residents.

(6) The State of New Hampshire (fig. 21), which, except for one small isolated area, lies completely within grade A contours of TV stations located in the top 100 TV markets.

Finally, one further area of comment as regards the effect of CATV on potential UHF growth:

In 1964 the National Association of Broadcasters retained an economist—Dr. Franklin M. Fisher of the Massachusetts Institute of Technology—to undertake a study of the economic impact of CATV on television stations. This was an extensive study, reported widely as costing in excess of $50,000.

In his findings, Dr. Fisher concluded that if a new television station came into being in an area already served off the air by four television stations, the new station would not experience any drop in audience or loss of revenue from CATV service in its coverage area even if the CATV system did not carry the fifth TV station.

There are 61 of the top 100 markets in which today 4 or more TV signals are available to television homes within the best ranked viewing areas in the market—i.e., those areas where the ARB measurement is 50 percent or more of television homes receiving the local station or stations.

On that basis alone, 61 of the top 100 markets should be exempt from the Commission's rule.

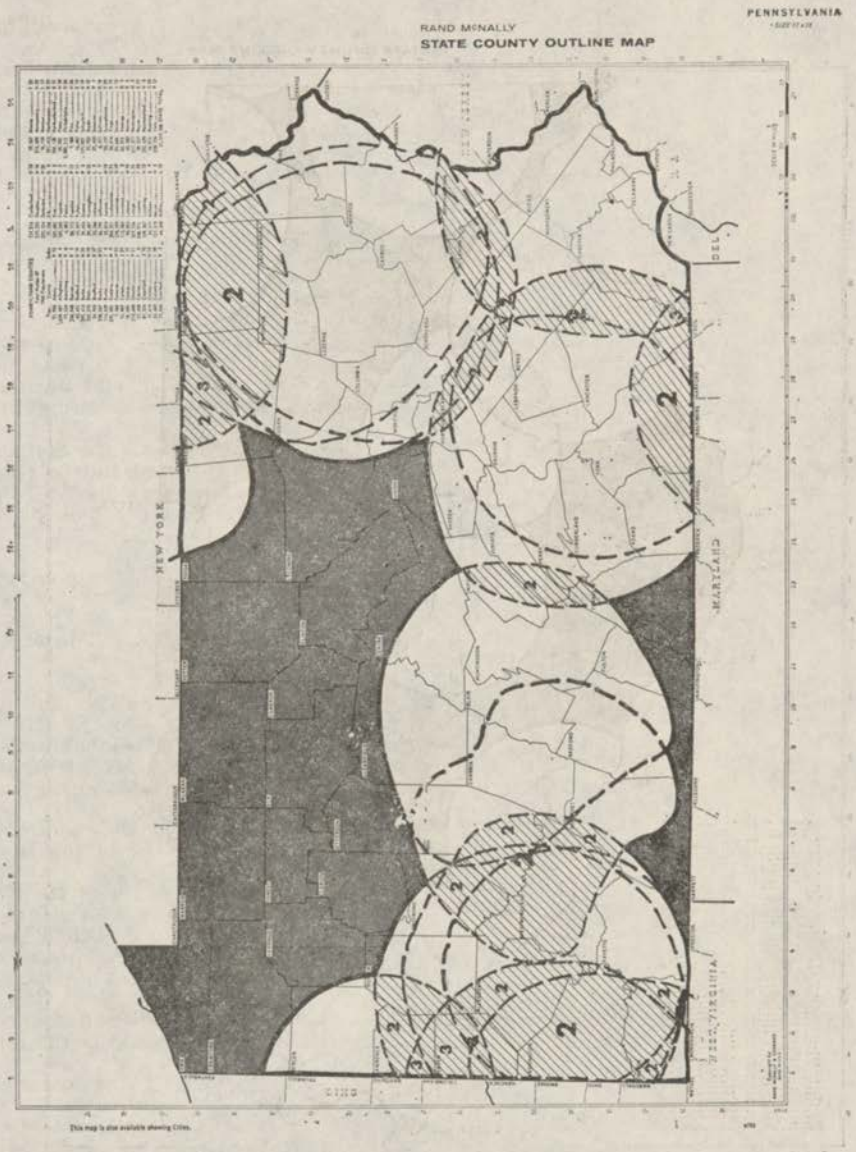
RAND McNALLY
STATE COUNTY OUTLINE MAP
PENNSYLVANIA
NEW YORK
MARYLAND
DEL.
WEST VIRGINIA
OHIO

FIGURE 16

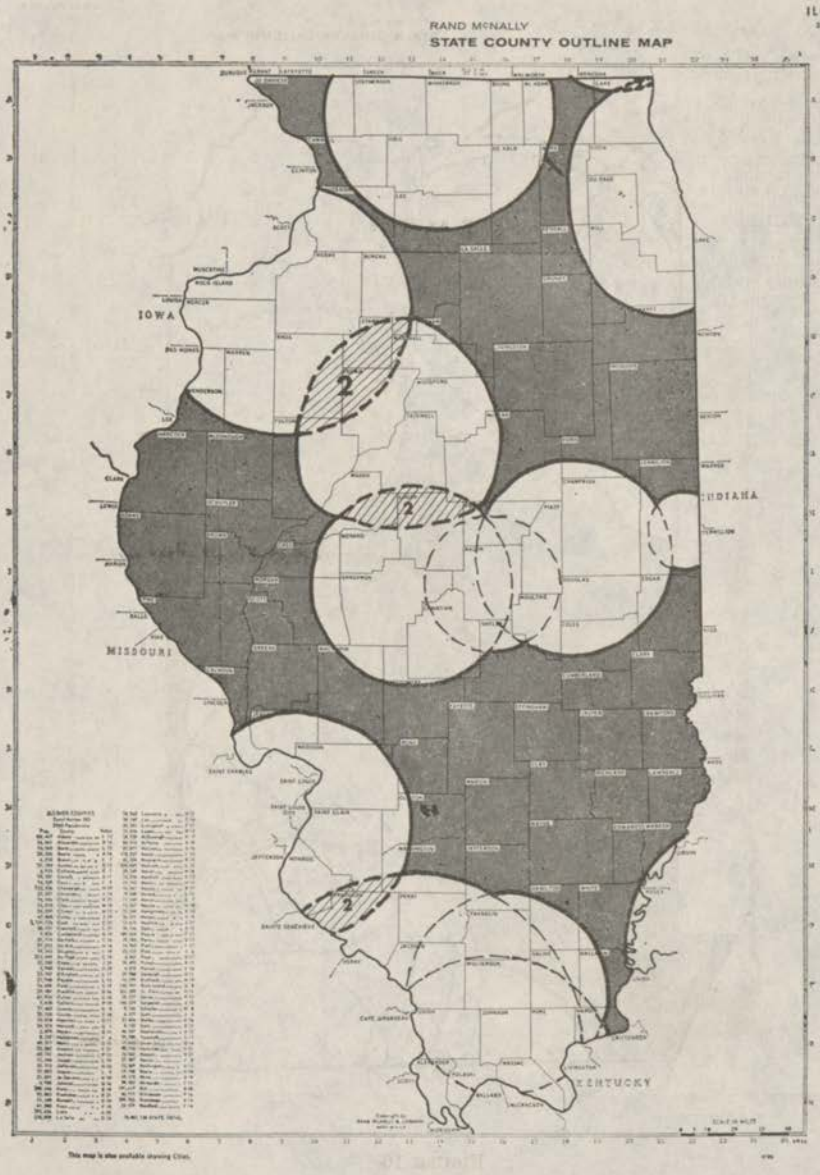
RAND McNALLY
STATE COUNTY OUTLINE MAP
ILLINOIS
IOWA
MISSOURI
INDIANA
KENTUCKY
2
3
2

FIGURE 17

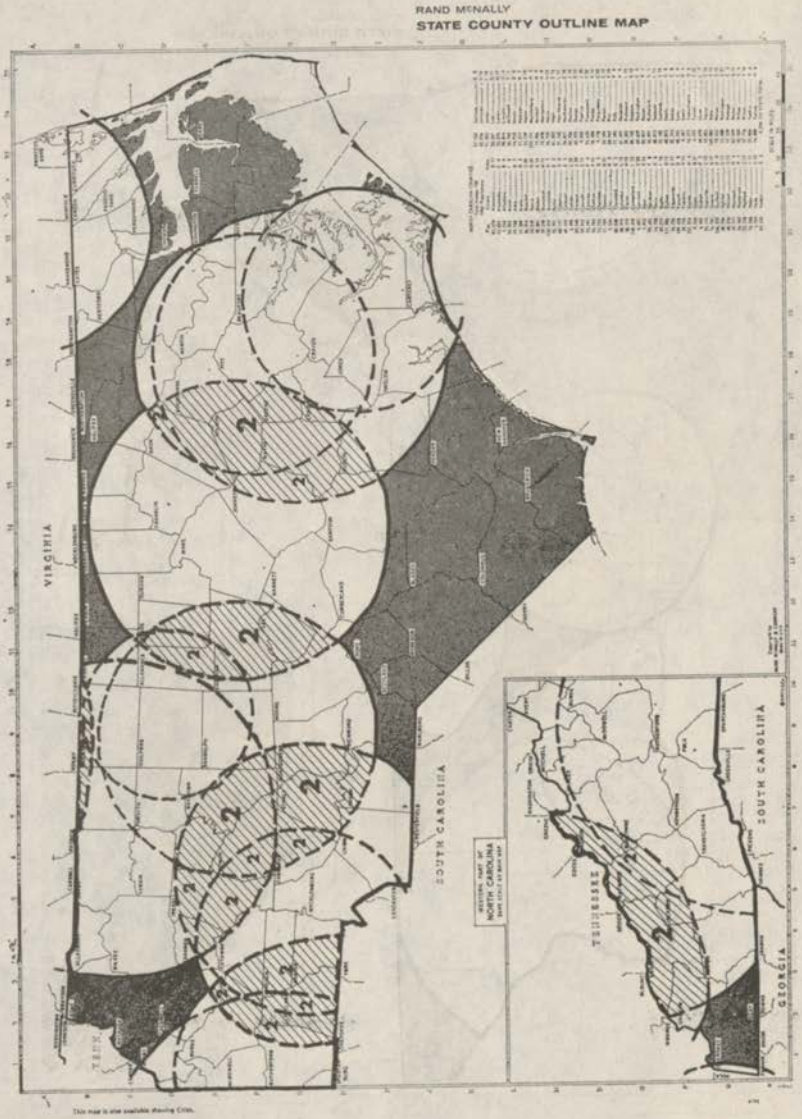
RAND McNALLY
STATE COUNTY OUTLINE MAP
VIRGINIA
SOUTH CAROLINA
TENNESSEE
GEORGIA
SOUTH CAROLINA

FIGURE 18

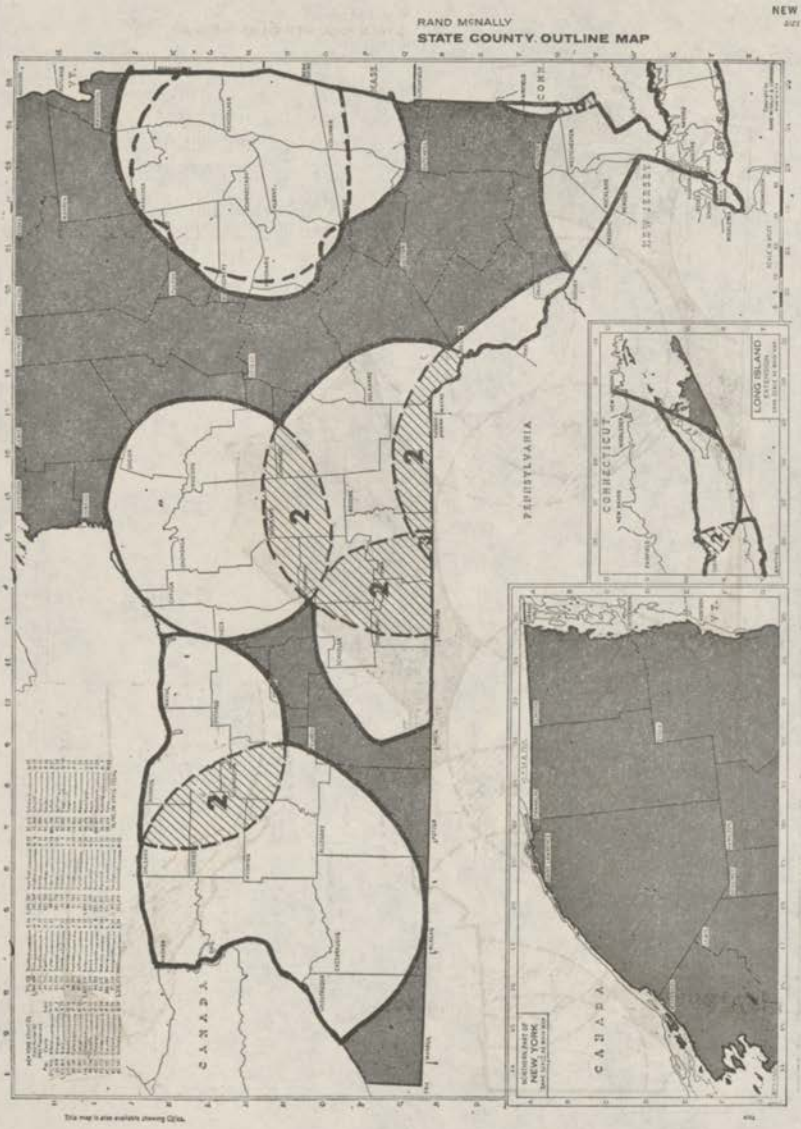
RAND McNALLY
STATE COUNTY OUTLINE MAP
NEW YORK
CANADA
PENNSYLVANIA
LONG ISLAND
CANADA
2
2
2
2

FIGURE 19

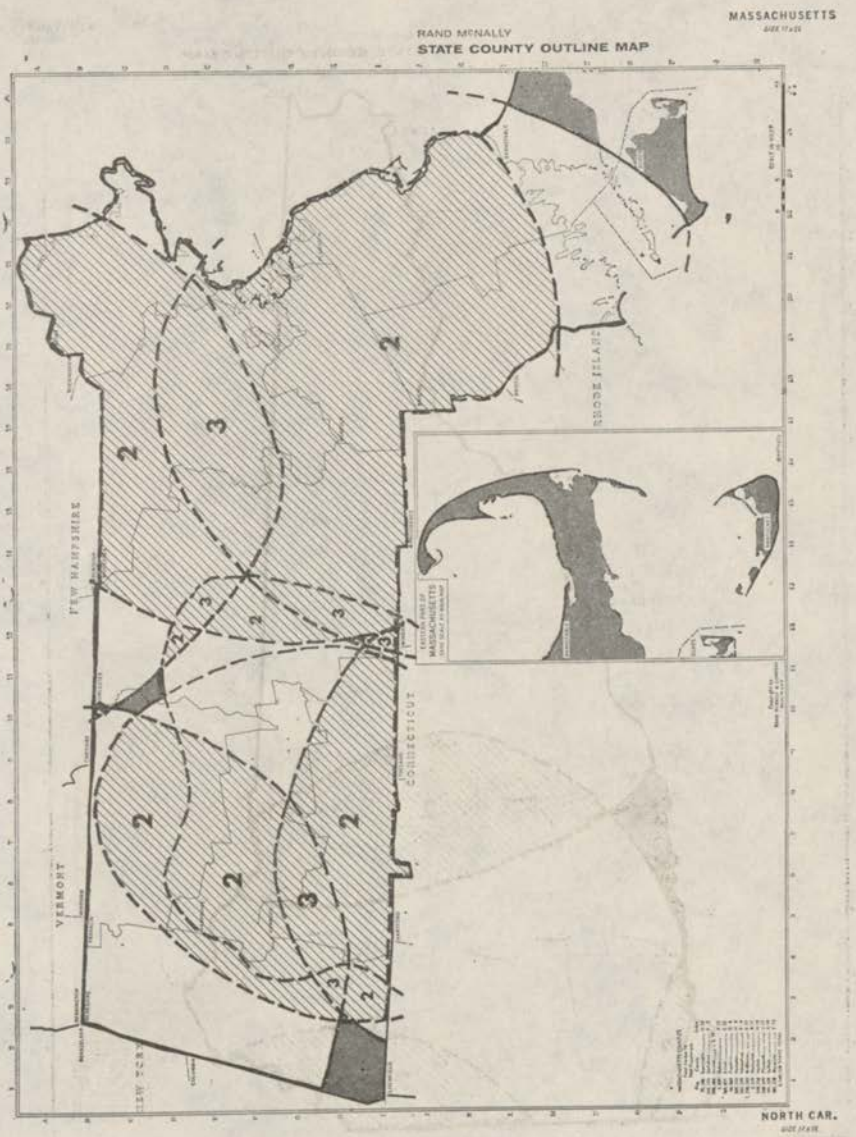
MASSACHUSETTS
RAND McNALLY
STATE COUNTY OUTLINE MAP
NEW HAMPSHIRE
VERMONT
CONNECTICUT
RHODE ISLAND
NORTH CAR.
2
3

FIGURE 20

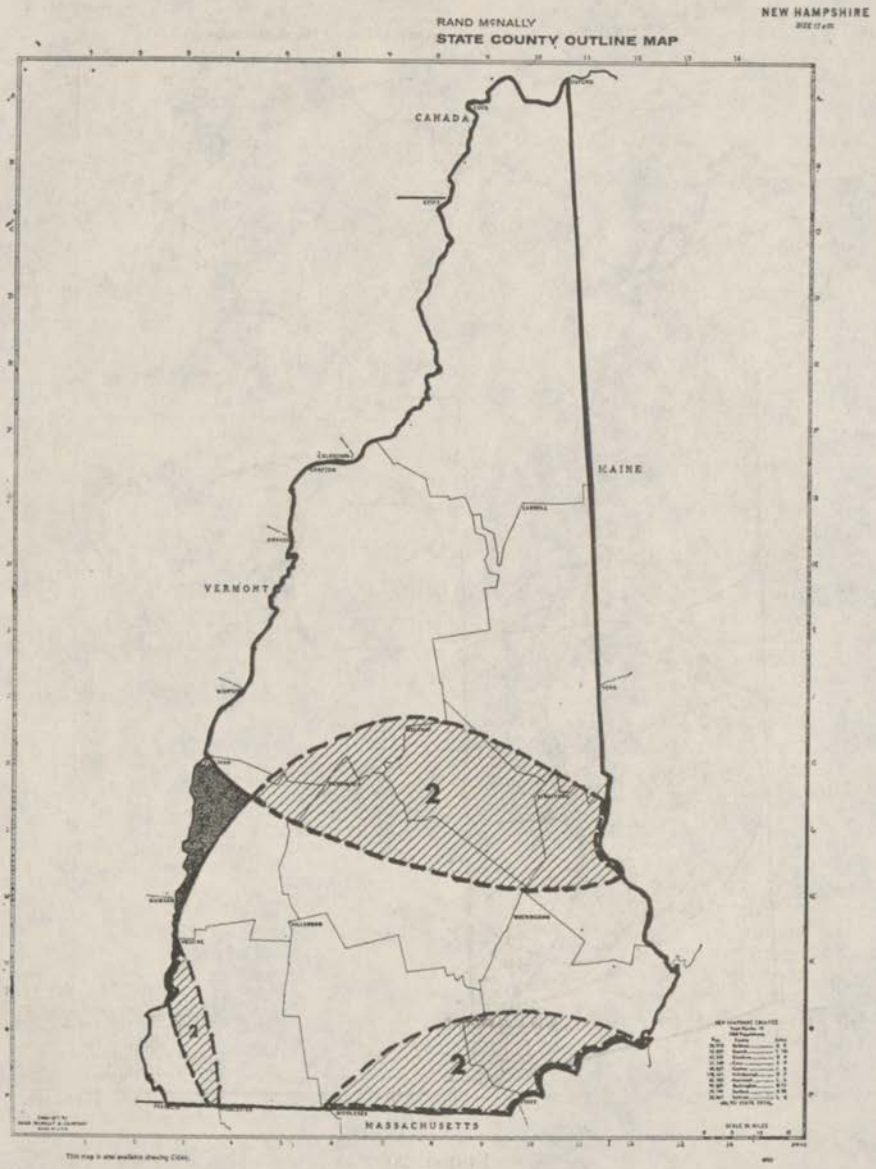
RAND McNALLY
STATE COUNTY OUTLINE MAP
NEW HAMPSHIRE
CANADA
MAINE
VERMONT
MASSACHUSETTS
2
2
2

FIGURE 21

EXHIBIT B

A BILL To amend section 3 of the Communications Act of 1934 (47 U.S.C. 153)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by amending subsections (h) and (o) thereof and by adding a new subsection (gg) as follows:

"SEC. 3. DEFINITIONS.—For the purpose of this Act, unless the context otherwise requires—

* * * * * * *

"(h) 'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio or in interstate or foreign transmission of energy except, where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting or in operating a community antenna television system shall not, insofar as the person is so engaged, be deemed a common carrier.

* * * * * * *

"(o) 'Broadcasting' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations; but a person engaged in operating a community antenna television system shall not, insofar as the person is so engaged, be deemed to be engaged in broadcasting.

* * * * * * *

"(gg) 'Community Antenna Television System' means a facility utilizing a receiving antenna or antennas, connecting wire, cable, or relay facilities and associated equipment to which members of the public may obtain an attachment or connection of their television receivers to facilitate or make possible reception by such members of the public of the signals of one or more television broadcast stations, but such term shall not include for the purposes of this Act any such facility which (i) only receives television signals from transmitters located no more than thirty miles from the main post office of the community in which such community antenna television system is located; or (ii) only originates its own television programs; or (iii) only carry audio programs; or (iv) a combination of (i), (ii), and (iii) or of any of them."

SEC. 2. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"COMMUNITY ANTENNA TELEVISION SYSTEMS

"SEC. 331. The Commission shall, as the public interest, convenience or necessity requires, have authority—

"(a) To issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the technical characteristics and operation of community antenna television systems to the extent necessary to carry out the purposes of this Act with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services; provided, however, that the Commission shall have no authority—

"(1) To require a community antenna television system to receive on its system the signals of a television broadcast station whose transmitter is located more than thirty miles from the main post office of the community in which the community antenna television system is located; or

"(2) To require a community antenna television system to receive on its system the signals of a television broadcast station which originates fewer than ten hours per week of its own programs; or

"(3) To require a community antenna television system to receive on its system the signals of a television broadcast station which duplicates in whole or in substantial part (that is, more than 75 percent) the programs of another television broadcast station received by such community antenna television system; or

"(4) To require a community antenna television system to delete or refrain from receiving signals carrying any program of any television broadcast station unless (i) such program is broadcast by a television broadcast station whose transmitter is located more than thirty miles

from the main post office of the community in which the community antenna television system is located, and (ii) in addition duplicates simultaneously a program broadcast by a television broadcast station whose transmitter is located within thirty miles of the main post office of the community in which the community antenna television system is located, and (iii) whose signal the CATV is required to receive.

"(b) To make general rules exempting from regulation, in whole or in part, community antenna television systems where it is determined that such regulation is unnecessary because of the size or nature of the systems so exempted."

The CHAIRMAN. I would like to congratulate you on reading this very voluminous record. The job was well done. This information will be quite helpful, Mr. Ford.

Mr. ROGERS of Texas. Mr. Ford, has there been any judicial determination that a CATV system is engaged in interstate commerce?

Mr. FORD. Yes, sir, I think I cited the case in the statement.

Mr. ROGERS of Texas. Which was that?

Mr. FORD. Inter Mountain.

Mr. ROGERS of Texas. Was it a general decision that all CATV systems are engaged in interstate commerce?

Mr. FORD. I don't recall the specific facts of that case at the moment.

I am advised there may not be a case in which it was precisely at issue. I thought the Circuit Court of Appeals for the District of Columbia Circuit had in one of its decisions made that statement. I thought I had cited it in this statement.

Mr. ROGERS of Texas. I believe your statement said the NCTA believed it was engaged in interstate commerce and I would think the best time to believe that would be after it had been determined by a court of proper jurisdiction.

Mr. FORD. That was the source of our belief.

I think we are crossing up on maybe whether the court has said this or whether the court has ruled in a specific case in which this specific case was in issue. I may be relying on dicta rather than a specific determination.

Mr. ROGERS of Texas. That was my understanding, that it was dicta, and that it has not yet been determined. As a matter of fact, the FCC is not too anxious for the court to make the determination. I am not sure whether they are or not.

I would think, Mr. Ford, it is a matter that ought to be determined by the courts because if we are going to get into the area of making this interstate commerce simply because this signal is on the air and is in interstate commerce in the first instance, there is not going to be any intrastate commerce in this country.

I doubt seriously that there is a grocery merchant in the smallest town who is not handing out or distributing something that came to him in interstate commerce. This is the point that I think is quite interesting because, take for instance, the question about originating programs in these CATV operations. I do not think any one would argue unless the Federal communications Commission has said one way and meant another, which has not been unusual in some instances, that they do not have jurisdiction of an operation, of a wire operation which does not receive signals off of the air.

In other words, if all of the programs of a wired communication in a city were originated in the studios, which I understand can be

done—I am not a technician in this regard but I presume they can be done—but these are not and would not be under the jurisdiction of the Federal Communications Commission because they are not interstate in nature.

Mr. FORD. I think that is correct.

Mr. ROGERS of Texas. If the man had an area in which he was getting signals off the air and he only operated this CATV operation by off the air from 6 o'clock until 12 o'clock at night and all the rest of the day he used for originating his own programs, which, let us say, or let us assume it is intrastate commerce, he would be engaged in intrastate commerce a greater length of time than he would be in interstate commerce and I think some attention should be given to this.

I don't know for sure but I think these are questions that can arise. I understand the FCC intends to include this sort of operation.

Say, for instance, an industrial organization with employees in the area of 1,500 people are in an area where they do not get good signals and put up a community antenna and everybody ties on to a community antenna.

Now, under the Federal Communications' position today I do not see how you could escape the fact that they would have jurisdiction over that, whether a charge is made for those services or not. If it was furnished even free as a part of an inducement to get people to come to work in that area, if there were over 50 people there, this would be under the jurisdiction of the Federal Communications Commission and they would have to come here for their evidentiary hearings, and they would have to, in the first instance, get a certificate of construction to start off with, despite what the chairman said this morning, because he did say that, essentially, a certificate of public convenience and necessity would be needed although a license is not anticipated.

Let me ask you one further question: The one other thing that I want to say, Mr. Ford, that I think we ought to take into consideration and I think it was pointed up by the witness who was here before you, and that was Mr. Davis, in your statement you said a compromise had been reached more or less between the two sections of the industry.

I found out in my experience in Congress every time a compromise is reached between two people who are fighting over some profits somewhere, the public usually comes out on the losing end. I think these matters ought to be fought out on a straight legal basis. If the law needs to be changed, it ought to be changed, but I do not think we should submit to any board or bureau or anyone else—the State or the Federal Government—the power of determining what people can or cannot receive each day if they are willing to pay for it or if they are willing to buy a set that can receive it.

Maybe I am wrong in my conclusion that in the first instance the Communications Act was born to make it possible for communications to be expended and more widespread, and there has never been an intention in anything done that has been accomplished by the Congress—there have been some efforts—but there has never been an effective move to curtail or to restrict communications, whether it is in this field or in building libraries or anything else to make it possible for people to see and hear and understand and get better educated.

I think we are moving into a field where we are trying to restrict what people can find, so we had better be careful.

Mr. FORD. May I comment that the proposed solution that I presented here today, I do not believe either the Commission or the National Association of Broadcasters or anybody else knew what that solution would be. That is not a compromise. I presented it in my statement in an effort to present it as possibly something that they could come to. There has been no discussion with anyone outside of the association on this particular proposal.

Mr. ROGERS of Texas. I may be wrong, but as I recall you used the word compromise.

Mr. FORD. I said in an effort. In other words, I am offering this and they will have their opportunity to comment on it and if they want to buy it maybe the Congress would say this is a good solution.

Mr. ROGERS of Texas. Do you think the public should be heard on this also, Mr. Ford?

Mr. FORD. Yes, sir.

Mr. ROGERS of Texas. You say in your conclusions you believe that the Federal Communications Commission should be given limited jurisdiction over CATV systems. I would say the testimony which has come forth here has been that the Federal Communications Commission has the power of the President, the Congress, and everybody else unless it is changed by law. I do not know where they get this idea.

You say:

> We do not believe that the Government either through regulation or legislation should prohibit or limit the right of people to receive television signals either directly off-the-air through community or master antenna systems.

Do you not think, Mr. Ford, that people in Akron, Ohio, or Dallas, Tex., who elect their city councils ought to be the ones to make the determination whether they need further service? Do you think this is a matter that ought to be under Federal jurisdiction?

Mr. FORD. To the limited extent that we have proposed carrying the local station on the system, a station within 30 miles, and not duplicating its program; to that extent I think that the Federal Government has the authority and the right to act.

Mr. ROGERS of Texas. I think there have been indications all through this thing that city commissions are not to be trusted and that they do not have enough sense to know what they are doing and they would sell out for a quarter to anybody and I have not found it that way.

I do not think the people in Washington ought to take the position now or ever before that they know everything, because I know a lot of people back home who know a lot more than a lot of people I know up here. I never did feel any smarter up here than I did back there

I think the local people ought to have a say in this.

Mr. FORD. That is the position we are advancing here before the committee.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I would like to ask the gentleman, Mr. Ford, this question: It seems to me this deals with some incon-

sistency. You state in your conclusions that the FCC should be given limited jurisdiction over the CATV system.

As I understand what you just said to Mr. Rogers, by limited you mean only with respect to carriage and with respect to nonduplication?

Mr. FORD. That is right.

Mr. PICKLE. That is, you will carry and not duplicate without carrying? Is that what you mean?

Mr. FORD. There is a little more to it than that. I think the grant of authority is a little broader than that. I think that probably the Commission is best qualified, for example, to determine technical parameters of systems, to prescribe what will produce good signals and so there will be good uniformity in the construction of facilities. This would be included in the grant of authority and not limited.

Mr. PICKLE. You do say though the FCC should be given jurisdiction over CATV?

Mr. FORD. That is right.

Mr. PICKLE. Yet you go further in your statement and say you oppose any limitation on the origination of programs by CATV.

Mr. FORD. That is right.

Mr. PICKLE. You want them to be given jurisdiction but you do not want them to put any limitation on your broadcasting?

Mr. FORD. Only what I have said, 315 and 327, political broadcasts and identification of sponsors. I am saying there should be no greater limitation. The Commission said if you originate we will decide what you can originate and what you cannot originate, and to me this is censorship, a prior restraint on what can be said.

Mr. PICKLE. Did you say somewhere in your statement that you did not think the Commission had the constitutional authority to enter into this field?

Mr. FORD. I do not think they have the constitutional authority to tell you that you can talk about the mayor and put a program on about the mayor but you cannot put a program on about something in another town.

As I understand it, their position is, in the report and order that carrying the proceedings of city councils and things like that will be fine and those they will let us carry, also time, weather, news, they will let us carry by general rule, but when it comes to entertainment or anything like that, by rule they will exclude it.

In other words, they would decide what they would let you say and in what areas you could talk, and in what areas you could not talk. To me, this is a violation of a constitutional right.

Mr. PICKLE. Do you think the CATV should have the right to originate their own programs?

Mr. FORD. I think you have to keep clearly in mind when a CATV originates its own program, it is not acting as a CATV. It is acting as closed television system then.

The terms in which I am speaking, CATV picks up the signal as an antenna service for a particular citizen. That is the true concept of the community antenna.

When a community antenna uses a separate channel in the cable that is its antenna system, then it is not actually acting as a community antenna system in that respect; it is acting as a closed circuit television system.

Mr. PICKLE. If you have the right to originate your programs, would you say it would be practical that in time broadcasting or origination could grow to possibly much larger concepts than exist now?

Mr. FORD. I do not visualize that myself.

Mr. PICKLE. You would admit that is a good possibility?

Mr. FORD. No; I would not admit that. It could be a substantial growth.

Mr. PICKLE. You are just being a little cautious?

Mr. FORD. No; because we do not have the capacity to deliver a signal to a rural area on an economical basis.

Mr. PICKLE. Can you exist now without the broadcasting stations, the major networks and CATV?

Mr. FORD. I don't think so.

Mr. PICKLE. You know so. You would not even have a job if it were not for that.

Mr. FORD. I agree with that.

Mr. PICKLE. I am not arguing the point. I am saying you operate only because they (broadcasting) exist and there is a tremendous amount invested.

You feel no other element should be allowed to grow so large that it would knock them out or it would compete too heavily for everybody's reception?

Mr. Chairman, I do not know whether I asked a question or made a statement or propounded such a big one as to cause confusion.

Mr. FORD. I cannot agree to that. I do not think in the first place it is going to happen. What you are asking me to say on a theoretical basis, if we could deliver a signal to every home in the United States that we should not be permitted to do it.

On a theoretical basis if we could do that, then I would oppose any regulation, because then you would have the marketplace involved. The question then would be, with a closed circuit nationwide system, will the people subscribe to it or will they listen only over the air. Theoretically I do not think I can put myself in that position. From a practical point of view I would say the CATV systems cannot grow that big at the present state of the art.

Mr. PICKLE. You say in black and white here, "We oppose any limitation on the origination of programs by CATV."

As I read it that means you would just like to get into the full business of originating and broadcasting a program without any limitation, generally speaking.

Mr. FORD. No, I think you will find I qualified that by earlier referring to sections 315 and 317 of the Communications Act.

Mr. PICKLE. Mr. Chairman, that is all.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. Ford, may I join my colleagues in thanking you for a very fine statement. I am frank to admit that after hearing it, it could well be that the bill would do more than I assumed it would and had been told it would do.

Now, may I for the purpose of clarifying a problem about which I am concerned—I referred this morning to a small TV station serving a local community in my district. It was not doing so well. There was an attempt to move it into the State of Iowa at one time, which

I opposed. The Commission sustained my objection and we still have a television station in Mankato, Minn. We have many cables systems serving communities in the area and they are getting along just fine by mutual understanding and mutual agreement. I find none of them that would argue against a particular program being broadcast by the local station.

The local cables companies are willing to show this program and not pick it up from another station if it is shown at that same time by the Mankato station. There seems to be no argument about it. My only concern is that the local station which is licensed be given that simple protection. I am not interested in going beyond that or limiting the public's opportunity of receiving a wide range of programs. For example, if they do not want to show the particular program that is on the local station, they could pick another one if they wished. I do not want to limit that at all.

In your judgment the FCC bill would do much more than I have outlined here. Is that not true?

Mr. FORD. I think it would give the Commission great power to stop the receiving of distant stations. Eighteen months is a pretty fast time for a hearing. If you get 1,200 of them backed up, we are talking about 4, 5, 6 years. Chairman Henry said it would not take 5 years.

One of the lawyers in the section of the Commission in which I was employed before I became a member of the Commission was working on a case across the river from Philadelphia. He went into the Army, came back 4 years later and had to write the final decision in that case. When you start talking about hearings, you are not talking about just a little justice of the peace trial in which you get a decision the same night. This takes time. I think effectively 90 percent of the sets in the United States are locked up in the 100 market rule.

Mr. NELSEN. I gather from your statement on page 61 that you really do not argue or dispute the need for recognition of the local TV station and you do subscribe to limited jurisdiction by the Commission.

Now, when you plan to originate programs, which obviously you would hope to do as was indicated by your reference to elections and athletic contests and so on, how would you propose to do this? Would you have cameras to feed the program into the cable system?

Mr. FORD. A camera would put it on the cable system.

Mr. NELSEN. Is that generally being done now?

Mr. FORD. No; I would not say it is generally being done. They have a little table with a little camera sitting on it and it vibrates and turns between a clock and a barometer, weather equipment, so you can turn to one channel and you can see what time it is and then it will move over to the temperature and so on. They call that a time and weather channel. It is a little device that feeds one channel. It is a service to the listener for which he pays no additional amount.

Mr. NELSEN. In the event the Commission were given limited authority over the cable companies, would it then be your intention that the Commission would have the right to license future cable companies as they appear all over the country?

Mr. FORD. They say it is not a license. I think it has been held no matter what you call it, if it is permission, it is still a license. If

you did not get the permission of the Commission under rulemaking in the case of time and weather or in bringing a signal into a grade A area, if you did not get that permission you could not do it. Whatever you call it, I think it is still a license.

Mr. NELSEN. I return to the situation that I am concerned about. When this particular TV station that I referred to this morning was licensed by the FCC, it was then given the opportunity to serve its market area, and to originate programs. Its economic potential is relatively small, and at times it has been very difficult to keep going.

If another facility came into this market and could originate programs on a competitive basis, then the original license really would mean nothing. I want to be sure that we do not make a move here that in effect will put so much competition within all areas that none of them can survive. That is what I am primarily concerned about.

I hasten to add that if this bill does as much as your 64 pages say it will do, you have me frightened.

Thank you, Mr. Chairman. No more questions unless there is comment Mr. Ford would like to make.

Mr. FORD. Where there is truly a local station you are describing, there is nothing for the CATV to do. Actually, when CATV would originate a program, they would have to orignate something that the people would want to see.

It is doubtful to me that there would be any impact at all on the license, unless, for instance, it was a highly controverted high school football team, then the local station could put it on; otherwise, the CATV puts it on. I am talking about originations at the expense of the CATV system.

Mr. NELSEN. You would not quarrel with the requirement that if the CATV uses this, they would then have to take it from the local station?

Mr. FORD. No. They should carry and receive the local station.

Mr. NELSEN. Thank you. I have no other questions, Mr. Chairman.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. Mr. Chairman, I have one or two questions.

Referring back for a moment to the discussion, Mr. Ford, you and Mr. Pickle had, are you saying that you think it is proper for us to guarantee that the Federal Communications Commission has this limited jurisdiction when your system is acting as a community antenna but that when it is acting as a closed circuit transmitter that there should be no jurisdiction.

Mr. FORD. I think that is true and there might even be some question—and I think Congressman Rogers raised the point—if you have a wire beginning and ending in a State and a program is put on that wire from one county to the next county, there is a great question as to whether any interstate commerce is involved and whether there is authority in the Congress to move into the States to that degree.

That is one of the reasons I think it has to be questioned.

Mr. SATTERFIELD. One thing came up this morning which has not been touched on to my knowledge.

How do you feel about the taping of TV? Do you feel this should be treated as originating a program when you run a tape?

Mr. FORD. I was in complete disagreement with Chairman Henry this morning. I do not know where he got the information that CATV systems tape and originate. I personally know of none that do that because you immediately raise copyright problems. There may be some but I have never heard of them.

Mr. PICKLE. If the gentleman would yield, I made the point this morning because I thought the language was so drawn that it would permit the taping. I asked for his comment and he said it ought not be allowed. Am I correct in that?

Mr. FORD. I believe that is correct, but I was disturbed about Chairman Henry's assertion: He is either in error or I misunderstood. I understood him to say that the FCC has the present authority to impose 325(a)—imposing it directly on CATV systems and to permit a charge to the CATV system for the benefit of the broadcasting station.

Mr. PICKLE. If you say with respect to taping that you know of no station that does it, as if this would be unheard of. You say in the same breath there ought not be any limitation. That is not altogether origination. and I mean the taping and playing it back. In effect, that is still originating a broadcast.

Mr. FORD. We do not think so. We think when you tape a broadcast and store that program, you are not acting as a CATV system, as a reflector or what came off the air simultaneously with the broadcast and as a part of the antenna system. What you are doing is taping something and storing it and playing it at a later time. I do not think this is a real question here, although the statute may seem to give that authority. I doubt whether it was intended. In fact, Mr. Henry said it was not.

Mr. SATTERFIELD. Assuming arrangements were made to tape a program through permission or otherwise, and it were played at a later date or even later on the same day, do you feel that this should be considered as an originating program?

Mr. FORD. I do not think there is any question about that.

It is originating, but then you have other problems outside the scope of what we are talking about—that is the copyright code.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. I have no questions.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. I would like to thank you for one of the best statements I have heard since I have been on the committee. I have been very impressed with the CATV industry and its possibility of giving local coverage on matters that are not covered by the big stations.

This morning a question was asked which interested me and that was why it was necessary for the FCC to take the bull by the horns and start passing orders before this committee got into things.

If this order were suspended, do you see that it would do any injury to anybody?

Mr. FORD. Frankly, I do not. I think the order should be suspended until the Congress has an opportunity to prescribe how this industry shall operate.

Last year, the industry here came up and proposed some interim legislation. Its people were frightened, but a year has gone by and

nothing has been done. Another year could go by and, as a matter of fact, we are very hopeful that it does not go by but that Congress acts on it this session.

Mr. MACKAY. Are your recommendations in the form of a bill?

Mr. FORD. They are in the form of a bill and I have submitted it actually as an amendment, a revision and rewriting of the Commission's proposal.

Mr. MACKAY. Would it not be more orderly to introduce a new bill to reflect the recommendations of your industry?

Mr. FORD. Frankly, I had in mind suggesting that to Chairman Staggers, and I will be glad to suggest it to you.

Mr. MACKAY. I think it much easier to examine a bill rather than amendments to another bill. I think it would be most helpful to have.

I have no further questions.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. This morning, Mr. Pickle and I asked some questions on this nonsimultaneous duplication. You mentioned in your testimony, for example, the housewife who might not want to hear the 6 o'clock news and would rather let it go by then and hear it later at 9 o'clock in the evening. Were you anticipating or how were you anticipating this was going to be done for this housewife?

Mr. FORD. Reception of the signal from a different station.

For instance, supposing it came in one station itself—the station itself, not the CATV system——

Mr. ADAMS. Let's say the network carries the news at 6 o'clock and the housewife wants to see it at 9 instead of 6. You said that nonsimultaneous duplication was all right but you wanted this other reserve. I want to know how you are going to put it on at 6 o'clock. Are you going to can the 6 o'clock news and put it on at 9?

Mr. FORD. Definitely not. We are talking about bringing in different signals, receiving on the CATV system. There is no way the CATV system can insure it will be on at 9 instead of 6. I was using that only as an example. If it were on the system at 9 o'clock, the CATV system should not be required to black it out.

Mr. ADAMS. You view the possible regulation or lack of regulation of anything other than a signal that you receive at a particular time over the airways or microwave as putting you into a different class of regulation? One might be referred to as a closed circuit television as opposed to community antenna.

Mr. FORD. I think they are two different functions.

Mr. ADAMS. And possibly two different types of regulations should apply.

Mr. FORD. That may well be. I think in the local carriage of the of the local station and nonduplication of the station has no bearing on the question of a particular origination.

Mr. ADAMS. This goes into the question of jurisdiction and I have some confusion where you indicated that you felt that there should be a Federal regulation rather than a State regulation. Then you indicated or felt that this was possibly something that would be important in terms of whether or not we should allow an area to be set aside for litigation as in the area of the copyright laws, for example. We get to 325(a). If 325(a) were to be applied to CATV which would provide in effect copyright protection, in your opinion would this preempt the presently pending copyright cases?

Mr. FORD. I think they are two different things. Here the consent would be to the station. In the copyright it is not the station normally. For instance, WRC here in Washington normally does not have many copyrights but they emit the signal and requiring consent to use it you would go to them and ask them to use it. They might say we want all kinds of money for that consent, but that has nothing to do with who owns the program.

Mr. ADAMS. There is a position that 325(a) cannot provide protection, in other words, that the broadcast signal as it goes out in effect is completely in the public domain. Do you not believe that this has an effect upon the copyright protection?

Mr. FORD. No, I don't think any action on 325 would have any bearing on the copyright because 325 goes to the consent of picking up the signal and does not go to the property interest of what is in the signal.

Mr. ADAMS. We may have a disagreement but I will pass on as to whether or not it enters the public domain and whether or not it is protected by Federal regulation as opposed to the copyright laws.

Mr. FORD. I think 325(a) could probably be amended in such a way to accomplish the thing you are talking about.

Mr. ADAMS. Suppose you have a situation—continuing on in the copyright versus private right area—of either a high school game or a college game where the NCAA is exercising an allocation system of its own and impressing this upon the system and they have written into their particular contracts that this shall not be allowed in x area, and then it comes back in through a CATV system picking it up from a nonexclusive area and funneling it back into the area.

Do you feel this should be allowed with no regulation, or do you think this should be in the private domain of copyrights or whatever litigation or suits that might want to be filed by the team or the NCAA or the company.

Mr. FORD. I understand that these sporting events are not copyrighted.

Mr. ADAMS. That is correct, but they will offer a form disclaimer at the beginning of the event that reproduction of this without the permission of the teams involved is improper and prohibited and they have not given any permission for and you have indicated there should not be any necessary regulation of CATV bringing this back into the area and showing it in a fashion that they have not permitted.

Mr. FORD. We think once they have permitted it to go out over the air and it is received in the air by an antenna and that antenna is a community antenna, it is no different; it is then in the public domain.

Mr. ADAMS. Should this be regulated under 325(a)?

Mr. FORD. I think it could be regulated under 325(a) but I think 325(a) would have to be extensively amended.

Mr. ADAMS. My last question is this: As I understand the present problem which is now causing the controversy is caused to a very great degree because there are 12 and 20 channel CATV channels available as opposed to the original equipment which carried only a few stations and therefore there is now available a series of additional channels that can be used for providing additional attractions to the subscriber or viewer.

What do you think of a CATV company together with a UHF station or some other low-power station getting together to run, for

example, nothing but movies all day—should there be any regulation in this area of the two companies combining to produce, for example, on the remaining five channels various types of programing which may not be pay television in the sense that the programs are being paid for, but you could have channel 4 if you paid $3 a month but the companies say we have an arrangement where we can bring you by cable x number of programs if you want to pay so you can watch symphony all day on this channel and movies on this one, and so on." What is your feeling about that?

Mr. FORD. You are speaking now of originations.

Mr. ADAMS. It would not be origination if we had UHF or a captive station to combine with say in terms of movies. This would be a very simple operation, not the usual extensive broadcast facility.

Mr. FORD. I am not real clear that I understand this. What you are saying is, I believe, in conjunction with a UHF station a local CATV system sells to its subscribers three channels for $3 and they will hook up the other three channels for another undetermined amount, and the three channels are truly reflector CATV which include the local UHF plus additional originations of old movies and so on.

Mr. ADAMS. Specialized, brought in either from a cable of great distance or from a more or less captive UHF station.

Mr. FORD. If we go one step further and assume more than one CATV is offering this service, one would be a true reflector and one would be a closed circuit operation.

I would see no problem in it if the closed circuit were combined to a small area or apartment building, it should not be under regulation. With the signal not coming to rest in the other case, there would be no question about the Federal Government's power to regulate the CATV.

Mr. ADAMS. I still have not determined whether you feel there should or should not be regulation in this area. We are talking about the concept of should there be regional services available to a CATV network that would provide it with a substantial additional service in addition to the reflectors, say in the California area or any other large market area.

Mr. FORD. Do you mean closed circuit?

Mr. ADAMS. They can pick it up off the air from their cooperating station.

Mr. FORD. As long as this is being broadcast by a television station and received, to me it is part of the CATV true reflector system. I am sorry, I do not really follow you.

Mr. ADAMS. Therefore it is your position there should be no regulation?

Mr. FORD. That is correct, other than what we have suggested here.

Mr. ADAMS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. In exhibit A, page 13 of the prepared statement you quote from the study of Dr. Franklin Fisher of MIT regarding the impact of CATV on established broadcasting stations, and Dr. Fisher concluded in his findings that, "if a new television station came into being in an area already served off the air by four television stations, the new station would not experience any drops in audience

or loss of revenue from CATV service in its coverage area even if the CATV system did not carry the fifth TV station."

Is this essentially the information that you provided the committee during last year's hearings?

Mr. FORD. That is correct, and during last year's hearings after that was done Dr. Franklin Fisher wrote to Congressman Rogers and he challenged that statement. I have no recollection of his letter. He said he sent it to NCTA. Recently I appeared before the Small Business Committee and I repeated substantially the same thing. Today I was handed a letter that he wrote to Congressman John Dingell challenging this.

We still think this is true. I think it appropriate, however, that his letter challenging my statement be included in the record.

Mr. VAN DEERLIN. He apparently wanted you to look at some footnotes which substantially alter the conclusion you have on this matter.

Mr. FORD. We disagree with what he says and what his studies show. Actually it is more or less immaterial to the point I am making, but I think since he has challenged it, it should go in the record and we think we are right. I will reexamine it again and if I have any doubt as to the correctness of my position I would like to reserve the right to submit a further statement on that particular point.

Mr. VAN DEERLIN. I have not seen Dr. Fisher's letter to Mr. Dingell but I notice in the letter sent to Chairman Rogers which is carried on page 315 of the committee hearings he says that far from having no impact, the impact would be measured (and I don't know how he reaches this conclusion, either) but the impact can be measured at the rate of $1,566 per 1,000 CATV subscribers, which would be quite a difference from no impact at all. It does seem to be a factor in dispute, and one of the most important areas of consideration in this whole picture.

Mr. FORD. I think his letter is contradictory. Therefore, I think it should be a part of the record.

I would like an opportunity to again examine our conclusions based on this. Certainly I do not want to be unfair to Dr. Fisher or make any contentions which are not accurate before this committee.

Mr. VAN DEERLIN. Since you have utilized his conclusions and cited them, perhaps your disagreement with those conclusions should be made a part of the record.

Mr. FORD. Also at that same time, and I did not realize it was in this testimony, I referred to a clear channel station carrying traffic reports in downtown Chicago. This has been challenged by Mr. Ward Quall—I had no reference to Mr. Quall's station in that and that is the reason I deleted the term "clear channel."

I was going down Mount Vernon Boulevard one night about 3 years ago and I turned on the radio and I heard a station in Chicago and they told me all about the traffic conditions on Michigan Boulevard. I thought it was pretty peculiar for a high-powered station like that when I was really interested in the traffic conditions here.

Mr. Quall, incidentally, is very much incensed over this and that is the reason I omitted the words "clear channel" because it was not Mr. Quall's station.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. FORD. May I insert this letter?

Mr. ROGERS of Texas (presiding). That is the letter you were speaking about?

Mr. FORD. This is a letter to Mr. Dingell, which apparently his lawyer here in town sent a copy to me. Perhaps I should ask the consent of Mr. Dingell first.

Mr. ROGERS of Texas. It would be fine if you would prefer to do that.

Mr. FORD. Perhaps I should do that. Since it was sent to me by Dr. Fisher, perhaps I should extend that courtesy to Mr. Dingell.

There are a lot of witnesses who are going to appear here following us. Would it be possible for us to reserve the right, unless the committee wants us to testify in person, to submit comments on subsequent testimony after we complete the testimony?

Mr. ROGERS of Texas. Yes, the record will be held open so this can be done.

Mr. Ford, if you would like to submit that letter, the record can be held open by the committee subject to the opportunity of Mr. Dingell to object. If he does object, of course we would not insert it in the record.

Are there any objections by the members present?

If not, the matter will be handled in that fashion.

Mr. FORD. A third question that came up was the question Mr. Henry raised on his own with respect to utilities. This goes back to the early days of radio and starts the quarrel over again as to whether broadcasting was a public utility. Mr. L'Heureux has prepared a document. I have sent a copy to each Member of Congress and it has an excellent article in here on public utilities. If I may be permitted, I would like to submit that as a refutation of the position taken by Chairman Henry.

Mr. ROGERS of Texas. The Chair will receive that article subject to the approval of the chairman and the ranking minority member for inclusion in the record, or for the file, whichever may be appropriate.

Mr. Springer.

Mr. SPRINGER. Mr. Ford, at the present time, what percent of the television viewers are CATV?

Mr. FORD. Two or three percent of the population, roughly 6 million people, I think—it is going up—but I think that is a round figure.

Mr. SPRINGER. This would all be pay television, would it not?

Mr. FORD. Here we get into a question of definitions. It is paying for an antenna service, but not payment for a televised service on a program-by-program basis.

Mr. SPRINGER. You pay for the service?

Mr. FORD. You pay for the service.

Mr. SPRINGER. It is not the same thing you discussed in 1958 where you put the slot in the instrument and you got your program, but you are paying for all of the programing for a month?

Mr. FORD. I could not agree with that. I would have to say what you are paying for is an antenna service that receives the program for you in substitution of building your own.

Mr. SPRINGER. They are paying so much per month and they get a bill for that month's service?

Mr. FORD. That is right.

Mr. SPRINGER. Let's come for a moment to the question of origination. What kind of programs would you like to originate?

Mr. FORD. Preliminarily at this point I think about the only thing that is being originated is time and weather and a service called telemation in which a news printer is run in front of a camera and a subscriber may sit in front of his set and read it.

I think there are some other types of origination. I think of one instance in which the giveaway films, which are sort of educational on the copper industry, on various types of industries, A.T. & T. There is a great deal of free film available which is educational in nature.

I think one system operator has purchased the right to run films and has run real old movies.

Mr. SPRINGER. Would you like to originate sports?

Mr. FORD. I think high school basketball games and that sort of thing.

Mr. SPRINGER. But not professional football, baseball, or boxing?

Mr. FORD. Certainly not professional football or boxing, because there is no way you can originate and pay the $26 million that some of these stations pay for a season of professional football.

Mr. SPRINGER. You do not want to ultimately bid on those contracts when you get this system built up to 20 or 25 million people?

Mr. FORD. I would say if CATV develops in such a fashion that it is feasible for them as an antenna service only—well, I do not believe they will ever come to that point. I think it is so hypothetical that the day when a CATV system can bid on professional sports is just not going to come.

Now, pay television is the only way it could come.

Mr. SPRINGER. Repeat that again.

Mr. FORD. I believe pay television is probably the only way it could come and I think that is one of the issues to be considered here before the Congress. If the Congress considers that to be bad, it should be prohibited.

Mr. SPRINGER. Would you repeat what you think the Congress should prohibit again?

Mr. FORD. I said if the Congress believes that charging for a program on a program-by-program basis either over wire or over television frequencies is not a good thing, then it should prohibit it. I have set it forth very specifically and precise language in my statement.

In other words, the thing you are driving toward, it seems to me, or the idea I get, you are asking if CATV is going to develop into pay television. Your question is, are we the beginnings of pay television. My answer is "No," but if it is the belief of the Congress that this would be detrimental to television and not in the interest of the country, it should be prohibited now by the Congress.

Mr. SPRINGER. Are you talking about originations?

Mr. FORD. I am not talking about originations on which there is no extra charge on the customer. I am talking about a program-by-program charge.

The charge that is made against CATV is that we are an antenna service now, but we are really going to develop into a program-by-program charge service and we will have a coinbox on everybody's

set so no one can watch unless they pay. If that is the thing that the Congress thinks should not happen, they should prohibit it now.

Mr. PICKLE. Would the gentleman yield?

Mr. SPRINGER. I yield.

Mr. PICKLE. Are you saying CATV would carry these if they could?

Mr. FORD. No; I am saying if CATV in its present format of $3 or $5 a month provides no money to buy programs of any kind on an extensive basis other than a service like telemation and time and weather, we just cannot do it.

Mr. PICKLE. If you could, you would think you should have the authority and the right to originate programs?

Mr. FORD. I am saying we should be treated the same as a broadcaster when we start in to originate programs—315, 317, whatever the limitations are on a broadcaster—CATV should have exactly the same limitations.

If a broadcaster is going to——

Mr. SPRINGER. If you are saying that, then you are saying you have the power to originate any program then?

Mr. FORD. I do not know how to answer on the word "power." We do not have the facilities. We do not have—if you are talking about the capacity or the technical state of the art to construct a system in which you could originate anything on cameras, then we have that capacity now. Or it is possible, although not very many systems do it.

Mr. SPRINGER. Essentially you are saying you have the same right to originate as TV? That is what you are saying, in effect, at the present time.

Mr. FORD. Yes, sir.

Mr. SPRINGER. So you could under your interpretation originate any programs?

Mr. FORD. I say that the first amendment applies to a CATV operator the same as it does to a broadcaster.

Mr. SPRINGER. I just want to be sure your position is on the record, and you believe you ought to have that right, is that correct?

Mr. FORD. I believe we ought to be authorized to originate programs.

Mr. SPRINGER. Have you, in the CATV work, discussed this with any member of the TV networks?

Mr. FORD. Other than perhaps a casual conversation. I do not believe I have discussed it to any great extent with anyone.

Mr. SPRINGER. There is a sizable portion of the networks who are in the CATV industry, are there not?

Mr. FORD. I am told CBS has an option on part of a wire system in San Francisco and they own either half with an option to buy the rest, or some ownership interest in a system in Vancouver, British Columbia. Other than that I have not heard of any ownership on the part of the CBS.

Recently NBC purchased a system—I believe, in Kingston, N.Y.—and the trade press carried many reports of efforts on the part of ABC to purchase a series of CATV systems which was not consummated. So I think I must say all three networks have exhibited an interest in CATV, and I believe that answers your question.

Mr. SPRINGER. But there are people who are influential in all of the systems who have been interested for the last 10 years in pay TV.

Mr. FORD. In pay television?

Mr. SPRINGER. Yes, sir; in pay television.

Mr. FORD. In all three networks?

Mr. SPRINGER. In any network, Mr. Ford.

Mr. FORD. I do not know of any active member of any of the networks who has been so interested. There may have been, and there may be many of them, but I am just not in possession of that information.

There is a retired member of some of the networks, people who are no longer active.

Mr. SPRINGER. If there are 3 percent of the people who are receiving by pay TV say somewhere between 5 and 6 million people, this means then that 97 percent of the people are receiving free TV; is that right?

Mr. FORD. In the first place, I just cannot assume that CATV is pay TV, which I would have to assume.

Mr. SPRINGER. If you do not want to go on the record then we will say CATV.

Mr. FORD. I do not believe you can take the 3 and come out with 97. I do not believe 97 percent are all TV homes, so I think we have to pull it down to 95 percent.

Mr. SPRINGER. The people who are receiving on CATV and pay TV or whatever you want to call it, are people who can afford that service, very evidently; is that not correct?

Mr. FORD. I am not really sure about that. I visited a town not long ago. A friend of mine took me down to a section which was a forest of television antennas. He said, "There are people there who have fine color sets who do not have bathrooms in their houses."

Mr. SPRINGER. I think that is true, because CATV has been receiving in areas where you could not receive free TV for the most part.

Mr. FORD. This was in a town which now has a CATV system.

Mr. SPRINGER. I think when the Commission issued that order some time ago they used these words and I think they were talking about the 97 percent or the 95 percent, "because of the prohibitive cost of extending the cables beyond heavily built up areas"—this is what you were saying:

> The CATV systems cannot serve many systems reached by television broadcasting signals. Persons unable to obtain CATV service and those who cannot afford it or are unwilling to pay are dependent upon local or nearby stations for their television service. The Commission's statutory obligation is to make television service so far as possible available to all of the people of the United States on a fair, efficient and equitable basis, sections 1 and 307(b). This obligation is not placing primary reliance on a service which cannot technically be made available to many people and which practically will not be able to many others, nor would it be compatible with our responsibility to permit persons willing and able to pay for additional service to obtain it at the expense of these dependent upon the growth of television broadcast facilities for their choice of services.

As best I can make it out, and having talked with these people, this is primarily why you have the American Farm Bureau Federation, the National Farmers Union, the National Grange and the labor organizations affiliated with the AFL–CIO, opposed to your position. Do you think this is a fair statement?

Mr. FORD. No, I do not think that is a fair statement at all. Are you talking about the fair statement that they are opposed is true, but I do not agree with it at all.

Mr. SPRINGER. They are opposed in my own congressional district because you are unable to supply the service to the other people and the question is today if the FCC were only looking today anybody could make the decision. The question is, What is going to happen 5, 10, or 15 years from now? This is the problem with which we are faced now. If you are talking about today, what you have done thus far, I do not see any danger to free TV but just in taking the past history of CATV when you have gone outside of these areas and offered free TV and this is what the fellow out in Grand Anchor, Nebr., is not on the service but 3 years ago objected to where CATV moved in and creamed the top off.

Mr. FORD. There is no evidence that CATV has injured any television. Commissioner Cox wrote a long report about the bad things that would happen to certain stations and those stations have doubled their rates. There has been no substantiation for it.

Mr. SPRINGER. I think he was talking about there not being any danger up to today. I am saying that the growth and the magnitude with which this thing is being undertaken to go into the areas which will serve a very closely populated area and skim the cream off the top is the danger represented to the other free-TV areas.

Mr. FORD. In the first place, we don't skim the cream off the top. We are not competing for the same dollars. We furnish an antenna service for which a subscriber pays a small fee. We do not go out to the drugstore and say, "Give us your business and don't give it to the television station." As a matter of fact, a UHF station that is on the CATV system, its excellence of picture is equated with the VHF, and he is much better off with that. As a matter of fact, Chairman Henry testified to that before the Small Business Committee.

Mr. SPRINGER. Let's go to the Small Business Committee for a moment. Suppose that the three networks copyright these programs. Where are you then?

Mr. FORD. The record is closed in the fortnightly *United Artists* case. The *CBS* case will be tried following the court's decision in the *United Artists* case which will come fairly shortly, we think.

Mr. SPRINGER. That is in the courts so, therefore, we have no answer to that problem at the present time?

Mr. FORD. No, sir; except the Judiciary Committee of the House has under consideration the revision of the copyright law. I have testified there and explained at great length what our position is with respect to the amendments of the copyright law and the present copyright law.

Mr. SPRINGER. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Mr. PICKLE. Mr. Chairman, I have one or two short ones, if I may.

You said if pay television comes it will come because of the regular broadcasting industry and because of CATV.

Would you explain that?

Mr. FORD. There are several reasons for it. No. 1, our contracts with the telephone companies prohibit it so we have to get their agreement to let us do it before we can even experiment with it.

The second reason is that Zenith and other companies have been experimenting with pay television over the air for some time. Paramount has a system, a coin-box system. Some of the others now have various systems. Telemeter is Paramount's system. There are three or four that have systems perfected for the delivery of scrambled signals for pay television programs over the air.

There have been some developments with the system in Los Angeles, a means whereby it could be accomplished with CATV. But so far there has not been a single CATV system constructed other than the Los Angeles system which the telephone company owns, and that was not CATV, that was strictly subscription television and had no connection with the CATV industry.

Mr. PICKLE. When you say the industry, would that be the cause of pay television going into the field?

Mr. FORD. There is a program on the air now which charges program by program.

Mr. PICKLE. This is by the broadcaster?

Mr. FORD. That is right.

Mr. PICKLE. Do you know if this is being attempted by such companies as CBS or NBC or ABC?

Mr. FORD. I have no knowledge of any attempt by those companies to go into over-the-air pay television.

Mr. PICKLE. You state that the people who might bring it about are the people in the allied broadcasting field and not the current broadcasters?

Mr. FORD. I would say the current broadcaster has authorization from the Federal Communications Commission to operate and is operating an experimental pay television system over the air. This is not going on in CATV. What I say is that—as a matter of fact, they have a proceeding pending. The trade reports are full of what the Commission is going to do. This would permit any television station in the United States to go to pay TV. We are nowhere near anything of the sort in CATV where we would charge program by program.

Mr. PICKLE. And you do not intend to?

Mr. FORD. Certainly not.

Mr. ROGERS of Texas (presiding). The present plans are to hear further testimony from the FCC, and the NAB in April. Tomorrow the committee will convene at 10 o'clock in the morning and we will attempt to hear as many of the out-of-town witnesses as possible. If anyone has a statement they want to submit and they want to catch an early plane and if it looks like the time will not permit personal testimony, we would be glad to receive it for inclusion in the record the same as if you had presented it to the committee.

Mr. FORD. Mr. Chairman, may I say just one more thing.

I would not want the record to be closed on my testimony without explaining very explicitly that I debated a long time as to whether I should even talk about origination because there are so few people in the CATV who are interested in it, but it seemed to me I had to do it in order to make a full presentation.

It seems to me that my questioning here today has been way out of proportion to the interest of the CATV industry in any origination of any kind.

Mr. ROGERS of Texas. If you think of anything else, Mr. Ford, and I am in the chair, you will be permitted to present it.

(Following is a supplemental statement, with exhibits, submitted later by NCTA:)

ADDITIONAL STATEMENT OF NATIONAL COMMUNITY TELEVISION ASSOCIATION, INC.

INTRODUCTION

This statement is submitted as a refutation of various statements made by opponents of the CATV industry before this committee during the hearings on H.R. 13286, H.R. 12914, and H.R. 14201.

I. The top-100 market rule

The most intolerable rule which the Commission has adopted is the one pertaining to new CATV systems in the top-100 television markets. It is a virtual freeze on the further development of CATV in those forever-shifting top-100 markets. CATV is apparently regarded as a menace in those markets. Still, this belies the Commission's apparent recognition of the wonderful variety of television fare which CATV systems make available to those of the public who choose to subscribe to their antenna reception service.

Here is what the Commission has said about the services of CATV systems:

"CATV systems, as we recognized in the first report (pars. 43, 48) and here again emphasize, have risen in response to public need and demand for improved television service and perform valuable public services in this respect. CATV (like other auxiliary television services) makes possible the provision of a variety of program choices, particularly the three full network services, to many persons in areas with no local station and in one- and two-station markets. CATV systems also afford a means of providing non-network commercial and educational services to many persons in areas with insufficient population to support local broadcast outlets of this nature. CATV systems make important contributions by providing good quality reception of color signals and improving reception of local signals in areas within the predicted contours of local stations where off-the-air reception is inferior or precluded because of terrain, man-made structures, or other factors. We do not intend to deprive the public of these important benefits or to restrict the enriched programing selection which CATV makes available. Rather, our goal here is to integrate the CATV service into the national television structure in such a way as to promote maximum television service to all people of the United States (sections 1 and 303(g) of the act), both those who are cable viewers and those dependent on off-the-air service" (FCC second report and order, p. 28, par. 47).

Still, perhaps the only service mentioned by the Commission, which CATV systems might conceivably render less frequently in the top 100 markets is that of making available to its subscribers signals containing the three network services. Are CATV systems to be regarded as useful only if they give the networks large television viewing audiences?

On page 2, in paragraph 3, of its second report and order on CATV, the Commission states categorically that it is dealing only with part I and paragraph 50 of this proceeding which does not include the question of UHF in major markets and the question of distant stations being received by CATV systems. Those are matters to be decided in part II at a later date (ibid., p. 2, par. 2).

Presumably, the Commission believes it has done nothing on preventing distant signals in the present proceeding.

On the one hand, the Commission states:

"The general questions of whether there should be some limit on the distance and number of nonlocal signals brought in, as well as the matter of 'leapfrogging,' are being considered in part II of this proceeding" (FCC first report and order, p. 40, par. 72).

Still, on the other hand, the Commission prohibits any new CATV system in the grade A contour of 1 of the television stations in the top 100 markets from receiving the signal of any television station beyond its grade B contour without the permission of the FCC. In effect, this means that a new CATV system so situated cannot generally bring in a singal of a UHF station which is more than 50 miles from the CATV system's tower or a VHF station which is more than 70 to 90 miles from its tower. This is highly discriminatory against UHF and is a

definite limitation on the distance and number of nonlocal signals which can be received by a CATV system.

Now, how does the Commission propose to decide whether to grant its permission to the CATV which makes an application to receive those nonlocal signals? First, it will want to establish to what extent the CATV system and other existing and applying CATV systems will achieve very substantial penetration in the major market and what their impact may be projected or estimated to be upon UHF developments in that market, including UHF stations in existence, as well as UHF channels applied for and those still not yet applied for.

The proof is that after years of paper hearings on CATV in dockets Nos. 12443 in 1959, and in dockets Nos. 14895, 15233, and 15971, RM Nos. 636, 672, 742, 755, and 766 in the last few years, in all of which the Commission fully explored the claims and counterclaims about the alleged impact on UHF which CATV systems might conceivably have, the Commission has come out with the following conclusion on March 8, 1966:

"The plain fact is that on the record before us, it is not possible to give a definite answer to the future growth of CATV—to whether it will achieve very substantial penetration in the major markets and, correspondingly, to what its impact will be upon UHF developments in these markets" (FCC second report and order, p. 63, par. 12).

"Here again we have reached no final determination but rather have concluded that this is a question warranting thorough exploration in the hearing process. It may be that whatever the disparate conditions for operation, there is no need for concern because the CATV will not significantly affect the development or healthy maintenance of UHF television broadcast service. But as stated we cannot make that determination on the record now before us. It follows that on this ground also, there is need for a procedure pegged to full exploration of the issue in the context of an evidentiary hearing" (FCC second report and order, p. 74, par. 138).

Will a CATV applicant have to go through 3 years or more of hearings on each application and, if so, what assurance does he have that the Commission will not still be baffled by this imponderable? One thing is certain, if the Commission's present rule with reference to the top 100 markets stands, there will be absolutely no penetration by CATV in the top 100 markets.

Still, the Commission has no reason to believe that CATV systems may not render as useful a service in the top 100 markets as they do now everywhere. The Commission has stated:

"It may be that CATV, if allowed full, unfettered growth, would prove to be an excellent supplement, bringing in additional service and diverse programing to millions of people in built-up areas who can afford it, without detriment to the provision of additional local broadcasting service to the entire Nation" (FCC second report and order, p. 86, par. 155).

So why not leave it "unfettered" until some facts can be adduced which prove that it is having an adverse effect upon the public interest?

Although the Commission at one time protests that "we are not committed to the status quo—to protecting existing investment against new technological advances" (FCC second report and order, p. 86, par. 155), in another part of its report and order it indicates plainly that it will resolve the uncertainties in favor of the broadcaster. It states:

"This is one of those situations in which the public requires that conditions conducive to the sound future of television 'be assured rather than left uncertain.' This is particularly so, where we have two modes of service, one of which is almost completely dependent on the other for its product. In such circumstances, uncertainties should be resolved in favor of insuring the healthy growth and maintenance of the basic service" (FCC second report and order, p. 28, par. 45).

There can be nothing but uncertainties involved in deciding as knotty a problem as whether a CATV system may have a substantial adverse effect even on an unborn, unapplied-for UHF channel. The Commission has served clear notice on future CATV applicants that those uncertainties will be resolved in favor of the broadcaster.

What will be the burden of proof which the CATV applicant will have to bear? He will have to prove not only that he will not have in the future a substantial, adverse economic impact upon existing television stations in whose television market he will operate, but that he will not discourage the entry of potential broadcasters into the UHF or VHF field because of the fear of the competition for the viewing audience that his CATV operation may cause. In effect he will have to prove the state of mind of some unknown persons. The Commission has already indicated that this may be an impossible task to perform.

The impossibility of this type of proof although with reference to TV stations which are not yet in operation, has been referred to by the president of the National Association of Broadcasters in an address before the Federal Communications Bar Association at a luncheon in Washington, D.C., on February 18, 1966. Mr. Wasilewski complained that a local broadcaster in the markets outside the top 100 television markets in order to prevent a CATV system from being constructed would have to prove that the carriage of distant city signals on a new CATV system would imperil his station's existence. He added:

"But more important than this is the near impossibility of proving damage before the system goes into effect."

The Commission could not point to a single case where a CATV system had put a TV station out of existence or had caused it injury to an appreciable extent throughout the entire 16 years of CATV existence.

The Commission bases its rules upon the present trends of CATV development, not upon the existence of proof of past injury to TV stations. The Commission says:

"In sum, the Commission's judgment on this ground was based very largely, not upon the past, but upon the trends, which were already evident and whose dimensions called for action now to assure the public interest in the future" (FCC second report and order, pp. 16 and 17, par. 28; p. 13, par. 23; p. 17, par. 30).

Apparently, the Commission believes that even if 1,650 CATV systems in 16 years have had no appreciable impact even on small struggling television stations or the growth of stations in the smaller television markets, then it might well have a serious adverse economic impact on the giant metropolitan television stations. If 1,650 CATV systems have had an undiscernible effect on TV stations in smaller television markets, isn't it more than likely that even in multiplying that by 3,000 or 4,000 CATV systems, particularly in the larger metropolitan markets, that the result will still be "0"?

The Commission has not simply rested its determination to halt the reception of distant signals by CATV in the major metropolitan markets upon the professed fear of their impact upon the growth of UHF stations in those markets but upon the old bugaboo of the fear that CATV systems may develop into pay-TV systems in those markets which will be discussed later. However, if the Commission possesses all the jurisdiction it professes to have over CATV systems in this second report and order, it can easily and simply prohibit CATV systems from going into pay-TV operations. The fear of pay TV is not a serious or convincing ground for prohibiting or impeding CATV in the major markets, let alone for allowing a broadcaster to impede the CATV system's geographical growth through an evidentiary hearing, as the Commission's rules provide (FCC second report and order, p. 80, par. 149). Neither is the fear of a conjectural impact on future UHF station development or the fear of pay TV adequate grounds for a general rule of the kind addressed to the top 100 television markets.

Still, the Commission has made those restrictions applicable to all new systems and to extensions by existing systems as of February 15, 1966, by simple notice. We do not believe this meets the requirements of the law. It was not an official notification carried in the Federal Register before its effective date.

Broadcasters first tried to base their request for protection upon an alleged adverse economic impact. When they failed to prove the existence of this adverse economic impact and they could not point to a loss of advertising revenue, they started to claim that CATV systems might well discourage the construction of new UHF television stations. When CATV started to be in demand in the larger cities, the larger members of the Association of Maximum Service Telecasters joined the group of protesters and began to exert great efforts in behalf of the still unborn UHF stations and asked the Commission to prohibit the public from getting more TV station signals than the table of allocations and the Commission's sixth report and order had provided.

Of course, it was immaterial to them that the table of allocations had been based upon the available spectrum space in view of the scarcity of channels particularly in the VHF band and that it was never meant to deprive the public of TV signals which they could get through new technological discoveries. This scarcity of spectrum space favored the quasi-monopoly of the larger members of AMST and they naturally wanted to perpetuate it. Although they had been silent when small local broadcasters for years asked that CATV systems be curtailed, they did become aroused and they joined with them in asking that restrictions be placed upon CATV systems when the latter began to invade what they considered to be their exclusive large markets.

The Commission knew that it could not seriously restrict the operations of existing CATV systems and put them into bankruptcy. Furthermore, it could not be proven that they had injured local TV broadcasters in the past. Also the Commission knows that most small towns in the television markets below the top 100 are already almost completely saturated with CATV systems. These systems can grow almost only with new subscribers, not geographically.

If the Commission could not validly base its rules upon a finding of a past adverse economic impact, it could attempt to stem the future development of CATV and please the big city television broadcasters by basing its restrictive rules upon a supposed fear that CATV systems might keep UHF stations in big metropolitan areas from being constructed and upon an alleged fear that CATV systems might later be converted into pay-TV operations.

Once that ground was alleged, the Commission could effectively stem the growth of the CATV industry only where it could still develop—in the large metropolitan area even through there are many small towns and hamlets in those top 100 markets which have inadequate television reception and which would face interminable delays or outright prohibition against their being served by CATV. By placing an impossible burden upon a CATV applicant, namely, to prove that he would not discourage the growth of yet unapplied for or constructed UHF stations, the Commission could hold interminable hearings and rule at the conclusion thereof that the CATV applicant had not met the burden of proof to the Commission's satisfaction. No one could gainsay the Commission as the burden of proof thus imposed on the CATV applicant is unknown to American jurisprudence. The result, if the Commission is allowed to get away with this, is to lodge an absolutely arbitrary power of life or death in the FCC over the construction of CATV systems in the top 100 markets and to prevent the further geographic growth of the presently existing CATV systems in those markets, even though there are many small towns and villages in those markets which need improved television reception as much as those in the markets below the top 100 markets.

The Commission has indicated in many ways that it wants to stem the growth of CATV systems in those top 100 markets. It is a sweeping rule. As the Commission points out:

"Finally, the top 100 markets include roughly 90 percent of the television homes in this country. Our policy therefore focuses on the critically important areas." (FCC second report and order, p. 77, par. 144).

The Commission knows too that in the next several years, 80 percent of the population in the country is expected to be lodged in the large metropolitan areas. It has made sure that CATV will serve only the areas decimated in population.

The Commission keeps reiterating that CATV is a "supplementary" service. It wants it to be only the handmaid of broadcasting, it wants it to carry only the local TV stations (FCC second report and order, p. 82, par. 151), and then only in the smaller centers of population. Thus the Commission states:

"Further, it is in the markets below 100 that there may be underserved areas where CATV can make its most valuable and traditional contribution." (FCC second report and order, p. 77, par. 145).

Why does not the Commission let the public decide whether it is "underserved" in the top 100 markets? Certainly, there is much less danger in those markets that CATV systems will carry programs which duplicate those of the local stations, because it is in the small towns in the large metropolitan areas that independent TV stations with independent (non-network) programing are available.

The Commission has admitted this fact (FCC 2d Rep. and Ord., p. 77, par. 145).

We deny emphatically that the top 100 market rule will not halt CATV service or growth, as the Commission states (FCC 2d Rep. and Ord., p. 82, par. 151). It cannot but discourage the growth of CATV in those markets. Many manufacturers of CATV equipment will die on the vine and the costs of CATV equipment for replacements which will have to be charged by the few survivors among them will be prohibitive because there will no longer be mass production.

Why should 90 percent of the television homeowners, many of them living in small towns, be made second-class citizens through this drastically restrictive rule? Why should the big-city broadcasters become the only privileged characters who can have access to the television sets in that 90 percent of the television homes in this country? The rule simply does not make sense, except as a not too subtle device to effectively stop the growth of this wonderful television reception service which is in such great demand throughout the country.

How long will this rule be effective? As long as there are UHF channels available? If so, there will probably never be new CATV service in those top 100 markets. The Commission realizes fully well that such a policy logically cannot stand for all time. Thus it has stated that "the distant signal procedure is of interim nature, subject to discontinuance or revision." (FCC 2d Rep. and Ord., p. 27, footnote 31). However, the Commission has not stated how long it will wait for those UHF channels to be activated before it takes the wraps off of CATV. This committee should question the Commission closely upon this point, if it intends to permit this rule of containment to remain in effect. NCTA urges you to make evident in the law which the Congress enacts or in the committee report that this type of rule is not within the authority of the Commission.

The Commission apparently feared that most reasonable television broadcasters would probably not take advantage of this iniquitous rule and would by private agreement absolve the CATV operator from complying with it. The broadcaster may do this with respect to all other rules which are made primarily for his protection in the Second Report and Order. (FCC 2d Rep. and Ord., p. 32, par. 56). In fact, the restrictions generally do not go into effect except upon his written request. However, in the case of the top 100 markets, the Commission has stripped the broadcaster of this privilege. The Commission has warned:

"Private agreements will not avoid the necessity for evidentiary hearing for the importation of distant signals into the top 100 markets (pt. II, below), though such agreements will be considered in our decision." (FCC 2d Rep. and Ord., p. 29, par. 33.)

This provision alone will keep a CATV application on the shelf for a long time, even if all the broadcasters who are affected are willing to allow the CATV system to bring in a TV signal beyond its grade B contour, as the Commission wryly observes:

"We recognize that the evidentiary hearing may consume some significant period of time." (FCC 2d Rep. and Ord., p. 76, par. 143.)

Finally, the top 100 television market rule raises grave constitutional questions. Courts have frequently ruled that governmental power cannot be delegated to individuals to determine the conditions under which laws shall come into operation. (See *Schecter Poultry Corp.* v. *United States*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A.L.R. 947; *Eubank* v. *Richmond*, 226 U.S. 137, 33 S. Ct. 76, 57 L. Ed. 156, 42 L.R.A., N.S. 1123, *Washington ex rel-Seattle Trust Co.* v. *Roberge*, 278 U.S. 116, 49 S. Ct. 50, 73 L. Ed. 210, 86 A.L.R. 654, *Rouse* v. *Thompson*, 228 Ill. 522, 81 N.E. 1109.) In this case, the Commission delegates to a private organization, the ARB, the power to determine which are the top 100 television markets from time to time.

II. Most television broadcasters do not need protection

The main problem with the Commission's approach to regulation of CATV systems is that its rules look to the economic protection of television stations, rather than to the public's freedom to choose the programs of television stations of its choice, as Commissioner Bartley so well brought out in his testimony before this committee.

Still, there is not one word in the Commission's first or second reports and order pertaining to CATV on the tremendous and unprecedented profitability of television broadcast service. It would seem that the question whether television broadcast stations need protection, in view of their unusually high profits, would be quite germane to the subject of whether the public should be deprived of its right to subscribe to the service of receiving TV stations of its choice in order allegedly to protect the profits of TV stations or their ability to provide a good broadcast service to a particular community.

Although the Commission has in its files the annual financial returns of all television stations, not once to our knowledge has it tested the claims of television stations to a need for protection by reference to the balance sheet of the television station as shown on its annual financial return.

Why has not the Commission done this? Is it afraid that its findings will not support its rules?

Still less has the Commission bothered to inquire whether television stations generally should be able to obtain protection automatically under its rules for the mere asking of it in view of the broadcast industry's profitability as a whole. Fortunately, we do have figures on this.

The most recent available economic figures compiled by the FCC show that the revenues of television stations and networks in the United States in 1963 exceed $1,599 million.

The FCC's own economic assessment of this affluent industry, which the FCC makes CATV systems protect against competition, before Federal tax, but after deduction for salaries, depreciation and all other expenses, shows a profit of more than $343 million for 1963. As a matter of fact, the FCC reports that some 87 television station operations in the United States reported a profit of more than $1 million each in 1963. And 1964 was bigger and better. Broadcasters had a net income in 1964 of $415,600,000 before Federal taxes on gross revenues of $1,800 million (up 21.1 percent from $343,200,000 in 1953). More than 100 stations showed a profit in excess of $1 million each in 1964. The original cost of tangible property for TV broadcasters totals $780,781,000, which now had a depreciated value of $393,057,000. Therefore, according to FCC statistics, broadcasters reap a 50.3-percent annual return on their original investment and 105.7 percent on depreciated investment.

In view of the profitability of the television broadcast industry as a whole, one can reasonably ask: Should the Congress follow the suggestions of television broadcasters who come to it seeking insulation against what they consider competition (competition only for the viewing audience, not for the advertising dollar) or should the Congress follow the proposals of television broadcasters such as Frederick Gregg, Jr.? Mr. Gregg testified before this committee. He told this committee that he has spent about $2 million dollars to construct a UHF television station and that he has committed an additional $800,000 to improving it. Mr. Gregg stated:

"On the other hand, however, it is obvious from the situations that I have described to you, which have arisen as result of regulations already adopted by the Commission, that regulation can have the effect of damaging both UHF and CATV when it is directed to prohibiting the carriage of signals. When this is done, the results are inequitable in the extreme and CATV is deprived of its opportunities to serve—most importantly in the area of helping UHF to grow. The fact is that there is no reason to deprive any market of CATV service if someone is willing to make the investment necessary to provide a CATV facility. It is also a fact that UHF and CATV have a common cause, which is circulation and reach: and that CATV can and should be an important factor in giving the public a greater choice of pictures.

"The public will be best protected if the FCC's regulatory authority is confined to the areas of pay TV, origination, carriage, and nonduplication, and if it is precluded from adopting regulations that would exclude any broadcast signal from any CATV system."

When asked if he did not fear having a CATV system carrying several signals of distant television stations, Mr. Gregg said he did not because the local TV station, if it truly performs its duty of providing a reasonable amount of programs of local interest will get the major portion of the audience. This is the kind of a broadcaster whom this committee should listen to, the type of television broadcaster who carries out the purposes of the Communications Act by giving to his viewers meaningful local service.

III. Big interests versus CATV

During the course of these hearings you have seen big interests lined up against the CATV industry. All of them missed the boat in this industry of ours. CATV operators are doing what broadcasters should have themselves started doing years ago—delivering good reception service to the people who want it.

One group of these big broadcast interests you heard from is the Association of Maximum Service Telecasters (AMST). They profess to be the protectors of UHF in their top 100, and indeed, in all the television markets.

If these minimum service telecasters really want to help foster the development and growth of UHF in big and small markets, let them give it a big boost by cutting in half their maximum radiated power and their maximum tower heights. Then, small market stations might have a chance.

IV. CATV and color broadcasts

Any television broadcaster will tell you that within the next 2 years practically all television programs will be in color. Prices can be expected to continue to drop on color TV receivers. The present television contours do not mean much with respect to color television reception. Good color reception is difficult to obtain outside of the city of assignment and the further you go into the fringes of the community. CATV systems make possible excellent color reception of a color broadcast of good quality. The NCTA's suggestion that a CATV system be

excluded from FCC regulation if it receives and protects through simultaneous nonduplication the signals of television stations within 30 miles is more than adequate to protect the truly local television stations, particularly when they broadcast in color as all of them will do in the next year or two.

V. CATV reception of local television stations

When the Commission states that many local television stations are not received on CATV systems, it disregards its own findings on the matter. (See par. 104 of second report and order.) This confuses this committee. The reason is that the Commission considers as "local" all television stations throughout their grade B contours. Even the Commission understands that all grade B signals cannot reasonably be received on a CATV system. The Commission's second report and order expressly exempts CATV systems from receiving certain grade B signals if this prevents the CATV system from receiving a different television signal containing different programs from an indpendent television station. The CATV system will not add on one B signal after another with the same programs, if the CATV system can receive the signal of an independent television station with different programing. This is obvious, because its subscribers want a variety of television fare. Still, when the CATV system for excellent reasons does not receive a grade B signal, the Commission says that it does not reveive a "local" station.

If the Congress regards a local television station as one within 30 miles of the CATV community entitled to carriage and nonduplication, as suggested by NCTA, then the truly local stations will all be carried and protected through simultaneous nonduplication, the Commission will not be burdened with countless evidentiary hearings, and peace will be restored between the broadcaster and the CATV operator to the great benefit of the public.

VI. Switches

The Commission has properly excused the CATV operator from carrying a grade B or higher priority station under certain circumstances, such as when an equal grade station with the same programs is already carried and a contrary rule would prevent the CATV subscribers from receiving an independent station's signal with different programs.

However, the Commission has provided:

"Where a system is not carrying the signal of a grade B or higher priority station, it shall offer and maintain for each subscriber a switching device to allow the subscriber to choose between cable and noncable reception, unless the subscriber indicates in writing that he does not desire this device" (FCC Second report and order, p. 37, par. 66).

This provision should be stricken from the rules by congressional action. It is highly irregular and of doubtful constitutionality to impose this type of expenditure upon a free private enterprise. Although VHF television broadcasters, as a group, are one of the most profitable enterprises in the history of the United States, the Commission did not force them to put, at their own expense, converters on their viewers' television sets so that the less profitable and efficient UHF stations might be able to compete better with them. A CATV system is not even a competitor with television stations in the ordinary sense, because they do not compete for the advertising dollar. At most it may be said that they compete for the same viewing audience. After all, if a television viewer values at all the privilege of seeing the additional TV stations, he can pay for the installation of a switch on his set. This is not a service normally rendered by a CATV operator, as the usual CATV operator does not service or repair his subscribers' sets.

VII. Simultaneous and delayed nonduplication

The Commission has stated:

"We believe it is desirable to avoid disruption to the established viewing habits of the public as much as possible" (FCC Second Report and Order, p. 30, par. 53).

Simultaneous nonduplication is one way in which undue disruption can be avoided. As an incidental benefit, this simultaneous provision will still more greatly reduce the areas of possible dispute between broadcasters and CATV's in complying with the rules. This was regarded by the Commission as an incidental benefit of its change in the rules from 15 days to same-day delayed nonduplication (FCC Second Report and Order, p. 30, par. 53).

The Commission, itself, has recognized that broadcasters have a public relations problem with TV viewers in their area if they insist upon delayed nonduplication.

Speaking of the disruptive effect of the 15-day nonduplication rule upon both long-existing and new CATV systems, the Commission has stated:

"First, even in the case of the new system, there is disruptive effect to the extent that the CATV subscriber may not be able to view programs from distant stations at the times specified in his TV guide (and may be unable to view them at the later date presented by the local station for any number of reasons). It is our understanding that it is essentially for that reason that some broadcasters, although previously entitled under our microwave rules to 15-day before and after nonduplication protection, have requested only simultaneous nonduplication" (FCC Second Report and Order, p. 31, par. 54).

With respect to the nonduplication of nonnetwork programs, delayed nonduplication accomplishes very little, if anything in the way of protection of the broadcaster, but it would effectively cripple the activities of the average CATV system. Every little cartoon, for instance, has to be afforded delayed nonduplication, and it would be virtually impossible to make use of automatic timeclocks to avoid duplication. Expensive additional personnel would have to be retained by the CATV operator to do manual switching. The problem is almost as great for the broadcaster to comply in advance with the properly required 8-day notification to the CATV operator in the case of nonnetwork programs.

The Commission has frankly recognized this problem. It has stated:

"We also considered the question of retaining the 15-day before and after nonduplication provision for nonnetwork programing. But, as we have previously recognized, and indeed stress in this report (pars. 123, 131 infra), 15 days before and after nonduplication affords, at best, only minimal protection with respect to the presentation by local stations of syndicated and film programing. Such programing is not presented on a nationwide simultaneous or even nearly simultaneous basis. Retention of the 15-day provision for nonnetwork programs alone would serve little effective purpose. Stated differently, the adoption of a uniform 'same day' rule will not, in our judgment, significantly affect the protection afforded as to nonnetwork or independent programing. Rather, we have determined that we must look elsewhere if we are to achieve effective relief in this respect" (FCC Second Report and Order, p. 31, par. 55).

In view of the fact that the Commission admits "the adoption of a uniform 'same day' rule will not, in our judgment, significantly affect the protection afforded as to nonnetwork or independent programing," it is surprising that the 24-hour nonduplication with respect to non-network programs is being retained in the rules. The 24-hour nonduplication should be abolished and a simultaneous only nonduplication requirement should be the only requirement imposed upon CATV operators with respect to nonnetwork programs. As the Commission states, even the 15-day delayed nonduplication did not afford what the Commission considered as "effective relief" (FCC Second Report and Order, p. 31, par. 55), so the 24-hour relief is presumably still less effective and, therefore, useless.

The Commission has made the finding that the amount of delayed network broadcasting in the median one-station market is about 5½ hours per week, and in the median two-station market it is about 11 hours per week (FCC First Report and Order, par. 108; FCC Second Report and Order, p. 32, footnote 35). Accordingly, it is doubtful that this small amount of protection afforded by delayed nonduplication can really make a difference in the amount of advertising which the local station can attract. The type of simultaneous nonduplication which we have recommended would give a local TV station the bulk of the protection it wants.

VIII. A response to the suggestion of Chairman E. William Henry that CATV is a public utility

On March 22, 1966, Chairman E. William Henry departed from his statement of the Commission's views before this committee to add his own personal views on whether CATV is a public utility.

Mr. Henry stated that he agrees with the Commission's view that a CATV system is not a common carrier. However, he proceeded to quote from a book entitled "Basic Principles of Public Utility Rates," written by Prof. James C. Bonbright, of Columbia University.

Mr. Henry indicated that a CATV system is a public utility:

1. Because it is one of "those enterprises which supply, directly or indirectly, continuous or repeated services through more or less permanent physical connections between the plant of the supplier and the premises of the consumer";

2. Because, like the utilities, it possesses "technical characteristics leading almost inevitably to monopoly, or at least, to ineffective forms of competition."

3. "Any rate regulation that may be necessary is generally for the protection of the customers rather than for the producers of the service, or the tax payers in general." The CATV subscriber has no bargaining power.

4. "CATV does provide what generally might be considered in this context as a necessary service."

Mr. Henry attempted to prove the necessity of this service by referring to the mail that Members of Congress and the Commission "received when the public thought that its television service might be lost."

Mr. Henry said that because a CATV system is an integral part of interstate commerce, it is within the power of Congress and altogether appropriate for it to determine as a matter of policy whether CATV is a public utility.

NCTA believes that the Congress already has made it evident in the Communications Act that the Congress envisioned television transmission (broadcasting) and reception (including a reception service such as a CATV system) as competitive commercial enterprises—"largely self-regulating in its nontechnical aspects—to be built and operated by free enterprise tempered by voluntarily assumed social responsibility" (see FCC Docket No. 12782, Second Interim Report by the Office of Network Study, Television Network Program Procurement, pt. II, FCC, Washington, D.C., 1965, p. 12—hereinafter referred to as pt. II of network study).

That the Congress has already preempted this field of television transmission and reception in the manner stated is explained fully in a brief prepared by NCTA's general counsel and contained in the committee's printed hearings on H.R. 7715, held in May and June of 1965, beginning at page 277, and specifically discussing this point at pages 281–283. Therefore, these arguments will not be repeated at this time. Mr. Frederick W. Ford, the president of NCTA, told the committee that NCTA does not agree with Chairman Henry and he introduced into the record of the hearings a reprint by TV & Communications Magazine containing a somewhat longer brief by NCTA's general counsel to the effect that a CATV system is not a public utility and should not be made one.

The interesting point is that Mr. Henry's characteristics of a utility were still more applicable to the television broadcast industry than to CATV, although he said that public utility regulation should not be made applicable to the television broadcaster.

Taking up his points one by one:

1. There is no less a "permanent physical connection" between the plant of the broadcast station and the premises of the television viewer, because you can see the cable, but you cannot see the airwaves or the ether. This is well brought out by the Federal Communications Commission's part II of the network study, cited above, which states in a footnote on page 12:

"Despite the adoption of a regulatory pattern based on competition, the analogy to 'public utilities' has continued. In its first comprehensive statement of the element of the 'public interest' the Radio Commission stated that the: ['Correct analogy' was with those public utilities] engaged in purveying commodities to the general public, such as for example, heat, water, light and power companies, whose duties are to consumers [just as is the case with these utilities] a broadcaster uses a franchise from the Federal Government to bring its commodity over the channel through the ether to the home."

Judge Justin Miller, who for many years had been a leader in the field of broadcasting, in an address to the NAB convention in Washington, D.C., in 1961, stated:

"* * * the broadcaster, being * * * vested with a monopoly by virtue of his license, is charged with a higher duty than to program so close to the line as to require excuse or rationalization * * *." (Ibid.)

There can be no doubt that a television broadcaster has a monopoly. It can be absolute or relative, but it is, as Judge Justin Miller said, a "monopoly." In some areas, there is only one TV station, as Chairman Henry stated. In fact, in comparatively very few communities are there more than two. Even in three-station television markets, each TV station has an exclusive on the network programs of one of the three networks.

The Commission's network study and its proposals are designed to regulate network program practices because there does not exist the competition which

was to supplant the need for public utility regulation. (See pt. II, FCC's Network Study, pp. 10–20.) (See exhibit A for excerpts from this study.)

In fact, there is much less reason to regulate a CATV system as a public utility than there is to control a television broadcast station as a utility, because it is undeniable that there is a great scarcity of television channels. That was the reason for granting authority to the Commission over radio and television stations in the first place.

Concededly, there is no scarcity of cable and anyone can apply for a license to conduct a CATV operation.

The fact alone that CATV systems generally make use of utility poles is not a reason for converting them into public utilities. Radio and television stations have made use of leased lines on public utility poles for years. The same is true of Muzak, burglar alarm and banking services and many other competitive business enterprises which are not public utilities.

2. Mr. Henry's second point, namely that a CATV system possesses "technical characteristics leading inevitably to monopoly" is based upon a lack of adequate information about CATV systems and industry trends. Mr. Henry stated that there is usually only one CATV system per community. This confirms our complaint that the Commission did not hold an evidentiary hearing and find out all the pertinent facts before its members proceeded to make recommendations for the regulation of CATV systems.

Mr. Henry's statement was made on March 22, 1966. Still, by a quick check of NCTA files, we were able to turn up 38 communities which have 2 or more CATV systems authorized. There may be many more. Communities seldom grant exclusive franchises, except in Connecticut where the PUC is allowed to do so. We know that several CATV systems compete with other such systems for the same subscribers, down along the same streets. Several communities have three or more systems competing with each other. The city of Seattle has eight CATV systems in operation.

In the past, before it was realized that CATV service would be in such great demand, a community was fortunate if it could induce even one company to construct a CATV system and take the financial risks involved. Now, the telephone companies have offered a CATV tariff service to CATV systems in almost all of the States. Much less of a capital investment is required than in the past, if a CATV operator does not construct his own system and rent space on the poles. Many broadcasters and others are obtaining CATV service through a telephone company tariff and are overbuilding existing CATV systems and competing with the one already in existence for 12 or more years. This happened, for instance, in Rumford, Maine, last year. There have been well over 100 communities where agreements have been signed to obtain CATV service under a lease. Therefore, the list of municipalities where two or more CATV systems exist is growing longer. The trend is in that direction.

There is not only competition for the viewing audience from TV broadcasters who keep obtaining permission from the FCC to raise their towers, and reach larger viewing audiences, and from boosters, satellites and translators, but now each CATV system is facing the possibility of competition from other CATV systems in the same community. Therefore, another reason for public utility regulation, mentioned by Chairman Henry, is nonexistent.

3. Mr. Henry's third point is that "any rate regulation that may be necessary is generally for the protection of the customers rather than for the producers of the service, or the taxpayers in general."

This begs the question of whether any rate regulation is necessary or a need therefore is even indicated. A recent study by NCTA into this matter concludes that CATV subscriber rates have increased by only 4 percent in the 15 years of CATV existence. This compares very favorably with consumer prices which have more than doubled in the same period. Interstate telephone rates, which are under the jurisdiction of the State public utility commissions have risen between 35 and 45 percent in the same period. While CATV rates have not been subject to rate-fixing from the start, neither have consumer prices which have more than doubled.

The reason why CATV subscriber rates cannot be increased substantially is because subscribers can discontinue their subscription at any time and revert to viewing the television stations available via their rooftop or rabbit-ears antennas, or they can group together and build a translator or get a TV station in that area to raise its tower height, or install a booster or satellite, and television can be obtained in any of those various forms.

Accordingly, there is no outcry from CATV subscribers generally about rates. The Congress should not lightly convert these private enterprises, any more than broadcast stations, into public utilities without evidence of widespread abuses which would make this imperative in the public interest.

4. Finally, Mr. Henry considers CATV as providing a necessary service because the public writes a great many letters in protest to the Congress and to the FCC when it is threatened with the loss of television service. All we can say about that is that the Commission does not seem to consider CATV service very necessary when it curtails it as drastically as it proposes to do in its rules and in the proposed legislation. Furthermore, if the Congress considers television a necessity of life like gas, electricity, and telephone, this should apply still more to television stations which reach much larger viewing audiences. Besides, popularity of a service has never been a criterion of whether it should be converted into a public utility service.

There is hardly an area left today where television reception cannot be had without CATV service. A CATV subscriber is not a captive. He is so free and exercises his freedom so readily, that CATV subscriber rates as a result have increased only about 4 percent in the 15 years of CATV existence. As it has been already stated, by comparison, the intrastate telephone rates, although regulated by PUC's, have increased in the same period by about 35 to 45 percent. A telephone subscriber does not have a substitute service for telephone service. He cannot conveniently send a message every time he wants to communicate and he cannot conveniently used a walkie-talkie. This is why a telephone company is regulated as a public utility. A CATV viewer has a large number of services which he can substitute for the CATV service which he now prefers.

Just imagine what would happen to CATV service if Mr. Henry's recommendations to this committee were implemented.

(1) The Commission would have full authority to regulate CATV as it pleases under the Commission's bill.

(2) Its subscribers could only receive the programs the Commission would let them view.

(3) The States could regulate CATV systems as public utilities, hold them down to a 6 percent return on their investment despite the fact they are a high risk business, and dry up their venture capital.

(4) If the Congress considered seriously the recommendation to make 325(a) applicable to CATV systems, the broadcaster could cut CATV off from receiving his signal for any or no reason.

It would be simpler for the Congress to write finis to the activities of all CATV systems. Millions of viewers among the public and thousands of CATV operators would suffer.

In closing, let it be observed that a CATV system is in the field of the reception of television channels containing entertainment via the airwaves, which has never been regarded as a necessary or a necessity of life, like public transportation, gas, electricity, telephone service, and the other matters which Professor Bonbright mentioned. No mention was made of CATV service among those necessities of life in Professor Bonbright's book, although examples of all utilities were given

The Congress would be establishing a dangerous precedent by declaring an entertainment medium as a public utility. There would be no end to the number of industries which could then be made public utilities with as much color of justification by analogy with the CATV industry, if this novel principle were to be adopted by the Congress. We could soon be faced with a truly regimented economy, rather than with our present, traditional free, competitive enterprise system which has made America the leading industrial nation of the world.

As Chairman Henry has stated, the Congress has the right to declare what type of a business an enterprise in interstate commerce should be. The committees of Congress should redeclare in the committee reports on their lgeislative recommendations to the House and Senate that the Congress still adheres to its intent in the Communications Act that television transmission and reception services should remain competitive commercial enterprises.

The reasons why it would be unfair to regulate CATV systems as public utilities were well reexplained by the Harvard Law Review in a note entitled, "The Wire Mire: The FCC and CATV," in its December 1965 issue. At page 373 of that note, we find the following:

"In the past, when State public utility commissions have considered asserting jurisdiction over CATV, it has been concluded that to regulate would be ultra vires. The States have found that CATV's do not fit within the statutes defining

utilities,[58] or that CATV is a part of interstate broadcasting, a field preempted by Federal legislation.[59]

"It would be unfair to regulate CATV systems as public utilities. Such systems, unlike most utilities, cannot rely on a monopoly position; not only might a CATV have to compete against other CATV's, but it will most likely face competition from over-the-air television—an obviously similar product—which is not within the general range of State regulation. Moreover, CATV is not like normal regulated utilities such as gas, water, and telephone companies which supply a service so essential that the public must be assured of reasonable rates and practices. CATV could enjoy none of the benefits of utility regulation, yet would be saddled with many severe handicaps, the most serious of which would be rate regulation. Since fear of excessive rates seems to be the basis for many State regulatory attempts,[60] it is worth noting that, at least where a CATV system is faced with competition from other services,[61] such competition should be sufficient to bring about rate reductions. In communities where such competition does not exist, the fact that CATV is essentially a luxury will force it to keep prices within reasonable bounds.

"Not only does State regulation seem inappropriate for the CATV industry, but most of the field of broadcasting may well be beyond the range of State control because of the Federal Communications Act."

It is noteworthy that although the National Association of Broadcasters has urged very stringent control of CATV systems, it has not recommended that they be regulated as public utilities. Mr. Albert Hardy, representing the International Brotherhood of Electrical Workers, spoke in favor of the present type of municipal regulation rather than at the State level (committee hearings transcript, pp. 1171–1172). Even Mr. William Putnam, an outspoken foe of CATV systems for many years, testified that neither the broadcaster nor the CATV operator should be subject to rate regulation (committee hearings transcript, p. 873).

We would urge the committee to reject NARUC's amendment, which would permit the States to regulate CATV systems as public utilities, and also, to reject the Commission's proposals, thus leaving the law as it presently is, and allowing States or municipalities to continue to regulate the local aspects of CATV systems, such as issuing licenses and easements to use city streets, exercising their usual police powers and their usual taxing powers, but permitting both broadcast stations and CATV systems to remain private, competitive enterprises as under the present law.

IX. William Putnam and alleged economic impact

Mr. William Putnam in general terms spoke of having to discontinue originations on his satellite station WRLP because of the presence of CATV systems. Mr. Putnam was much more specific on this matter in his charges before the Federal Communications Commission in docket Nos. 14895 and 15233, but NCTA completely refuted his statements upon the alleged facts. Attached hereto as exhibit B, is the excerpt (pp. 33–59) from NCTA's reply comments in opposition to proposed rulemaking, in the above-mentioned dockets, which disprove his statements completely.

It is easy for Mr. Putnam to make a simple statement to the effect that his failure to provide original programing, as he had promised to the Commission, was due to the presence of CATV systems in his station's area. It is quite another matter to prove the truth of his statement. However, as Mr. Putnam admitted during his statement, this would not be the first occasion upon which he failed to treat fairly CATV operators.

WRLP began operations on June 29, 1957. There were then 10 CATV systems within its contours. WRLP was assigned to Keene, Brattleboro, and Greenfield. There was one CATV system in Keene and one in Brattleboro. These two CATV systems received WRLP's signal and made it available to their sub-

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[58] E.g., *Television Transmission, Inc.* v. *Public Util. Comm'n*, 47 Cal. 2d 82, 301 P. 2d 862 (1956).

[59] E.g., *Edwin Francis Bennett*, 89 P.U.R. (n.s.) 149 (Wis. Pub. Serv. Comm'n 1951).

[60] See, e.g., *ReCokeville Radio & Elec. Co.*, 6 P.U.R. 3d 129 (Wyo. Pub. Serv. Comm'n 1954). The Wyoming Public Service Commission's conclusion that CATV could be regulated was reversed in *In the Matter of Community Television Systems*, 17 P & F Radio Reg. 2135 (Wyo. Dist. Ct. 1958). See also note, *State Regulation of Radio and Television*, 73 Harv. L. Rev. 386, 388 (1959).

[61] While the basic range of prices to subscribers ($3 to $6 per month) has remained stable, there are some systems that apparently do not charge for installation, which in the past has generally cost $100 to $175. Compare 1959 report and order, 26 F.C.C. 403, 407, with ABC Report I."

(NCTA NOTE.—The trend today is to simply charge the cost of making the installation varying from $17 to $25, or to make no installation charge at all.)

scribers. There was no CATV system in Greenfield, which was the third of WRLP's cities of assignment.

The latest television factbook indicates that there are now 15 CATV systems in WRLP's contours. Eleven CATV systems carry its signal. Four CATV systems do not carry WRLP's signal. Of the four systems that do not carry WRLP, three cannot receive WRLP's signal and it is not available at their head ends and it is not available in the communities where these three CATV systems are in operation, because of terrain, distance, and other causes. One of these systems (Bennington) attempted to obtain microwave service and WRLP protested. The Bennington CATV system had to spend thousands of dollars to prove that WRLP's signals could not be received in Bennington.

The Commission, upon receiving this proof, granted a microwave license to serve the Bennington CATV system.

According to Mr. Putnam's testimony, WRLP serves about 100,000 homes. The total number of CATV subscribers amounts to about 25,000. Therefore, 67 percent of the CATV subscribers can receive WRLP's signal via CATV systems. There are about 8,000 CATV subscribers who cannot receive WRLP's signal, but it is not available either to other television viewers in the community or at the CATV system's antenna site, so Mr. Putnam cannot prove injury in any way.

Mr. Putnam stated that Massachusetts communities can issue exclusive franchises to CATV systems. NCTA's legal department is of the opinion that Massachusetts communities can, as in almost all States, simply issue nonexclusive permits to do business to CATV systems or easements to use public ways, alleys, etc. There is no provision of law allowing local governments in Massachusetts to grant exclusive franchises to CATV systems. Members of NCTA advise this association that their permits are not exclusive. In fact, where the term "franchise" is used it is a misnomer for a simple permit to do business, because there is no provision of law in Massachusetts allowing exclusive franchises to be granted.

Mr. Putnam testified to the effect that he tried repeatedly to obtain simultaneous nonduplication agreements from CATV operators in Massachusetts. Members of NCTA advise us that Mr. Putnam's proposals looked toward obtaining the privilege of WRLP's signal being the exclusive National Broadcasting Co. (NBC) outlet in his area. In other words, he objected to other NBC stations' signals being received by the CATV systems, regardless of duplication or nonduplication of WRLP's programs. That is quite different from a simultaneous nonduplication agreement. It was a bid by WRLP for a monopoly position with respect to NBC network service in WRLP's service area. (See exhibit C for an example of this.)

The 10 CATV systems which were in operation when WRLP went on the air naturally felt some responsibility to their subscribers not to change their viewing patterns unless they so desired. One CATV system in Athol, Mass., entered into an agreement with Mr. Putnam's television station to receive its signal in preference to Westinghouse's channel 4 in Boston, Mass. The CATV subscribers signed a petition with hundreds of signatures protesting this change and asking that the Boston television station be placed back on the CATV system. The city council in Athol, Mass., also protested this change vigorously. With that experience in mind, other CATV operators were not likely to take kindly to Mr. Putnam's suggestion that his station be the exclusive NBC outlet in its area of operations.

Mr. Putnam testified that he had tried unsuccessfully to obtain an agreement from two members of the NCTA board in WRLP's service area. There are two members of the NCTA board from New Hampshire. They are Mr. A. J. Malin, of Rochester, N.H., and Mr. Albert J. Ricci, of Keene, N.H. Mr. A. J. Malin informs us that he is not even acquainted with Mr. Putnam and that he does not even have a CATV system in WRLP's service area, hence there have been no communications of any kind about an agreement. Mr. Albert J. Ricci formerly owned the Keene (N.H.) CATV system and that system has carried WRLP since it went on the air. Mr. Ricci informs us that Mr. Putnam's proposals have always been to allow WRLP to be the exclusive NBC outlet in that area. He did not want other NBC-affiliated television stations to be received on the CATV system in Keene, regardless of duplication or nonduplication. If Mr. Putnam was referring to Athol, Mass., this community is not actually within the grade B service area of WRLP, the transmitter of which is only 15 miles from Athol. Athol has a CATV system and is theoretically within the city grade contour of WRLP–TV, but engineering estimates predict less than grade B service from WRLP–TV in Athol. (See exhibit B, hereto.) This disparity is caused by mountainous, forrested terrain between the transmitter location and Athol. Hence, Mr. Putnam's testimony is inaccurate in this respect, also.

This example underscores the importance of NCTA's proposals contained in the Mackay bill (H.R. 14201), which would reduce to a minimum the amount of evidentiary hearings which the Commission would have to conduct. The exaggerated claims of broadcasters alleging adverse economic impact should have to be tested in the crucible of evidentiary hearings before the public is deprived of the privilege of obtaining a CATV reception service. If this committee listens to the suggestions of broadcasters that the rules should be uniform in the top 100 television markets and those below the top 100 such markets, the uniformity should follow the rules applicable to the markets below the top 100, because only in this way can the broadcasters allegations be tested through cross-examination and an examination of the complaining television stations' books in order to establish the truth or inaccuracy of the broadcasters' claims. This would be much more logical than to force a CATV operator in the grade A of a television station in the top 100 television markets to attempt to carry an almost impossible burden of proof; namely, to establish that he will not adversely affect the development or growth of a still unborn and unapplied-for UHF television station However, NCTA's proposals contained in the Mackay bill (H.R. 14201) would provide for carriage and the simultaneous nonduplication of all truly local television stations, and would eliminate the necessity for evidentiary hearings. This is a simple approach which is much preferable from an administrative and efficiency viewpoint to inviting a large number of evidentiary hearings and it combines the advantage of a uniform procedure which would be applicable in all television markets.

Mr. Putnam did not tell this committee that the WRLP audience is sold as a bonus along with that of its mother television station, WWLP, also owned by Mr. Putnam. When Mr. Putnam first made these charges in 1964 before the FCC, WWLP revenues had since 1957 exceeded the $1 million mark. These revenues have constantly increased since then. Only seven other UHF stations in this country had amassed revenues in excess of $1 million at the time he made his charges. The combined balance sheet for WWLP and WRLP show impressive profits for UHF stations (see exhibit B, hereto). The trade press recently quoted Mr. Putnam as claiming still much greater profits from his UHF operations. This committee should ask him for these figures. These figures would dispel the fear that CATV systems are having an adverse economic impact on UHF stations and would corroborate NCTA's claim that CATV systems actually increase the viewing audience of UHF television stations and place their signals on a parity with the much stronger VHF signals.

In its publicity to sell advertising, WRLP tells a story which is very different from the one it tells this committee. In a brochure which it distributes to the trade and potential advertisers, it states:

"Community antenna systems, plus VHF and UHF translators, extend the WRLP signal to 15,000 TV homes beyond the area measured by the rating surveys for off-air reception on channel 32. This is bonus coverage difficult to include in the rating surveys and extending well beyond normal signal patterns of WRLP.

"Viewers in southern Vermont and New Hampshire and northern Massachusetts watch WRLP on channels 2, 4, 6, 9, 10, 32, 74, and 81. This helps to explain the difficulty in recording people's viewing habits by channel number."

The brochure mentions 15,000 TV homes from CATV and translators. Yet only 6,975 are outside indicated coverage area—7,985 are inside. Total of both is 14,960. But the brochure states the 15,000 homes are "beyond the area measured by the rating surveys for off-air reception on channel 32 * * *" "* * * extending well beyond normal signal patterns of WRLP." This can be construed as agreement that the 6,975 CATV and translator TV homes within the indicated contour are outside normal off-the-air reception. None are translator TV homes within the contour. (See exhibit B, hereto, and exhibit S attached to exhibit B.)

Exhibit A

SECOND INTERIM REPORT BY THE OFFICE OF NETWORK STUDY—TELEVISION NETWORK PROGRAM PROCUREMENT PART II—FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

The first radio conference convoked in 1922 to consider the need for Federal regulation of radio and the form it should take, was presided over and guided in its deliberations by President Hoover, then Secretary of Commerce. (There were

subsequent conferences in 1923, 1924, and 1925.) In 1922, the conference resolved that radio was, in nature, a "public utility" and should be regulated by the Federal Government as such (p. 96, post). In 1924, President Hoover, who was the prime mover in providing the conceptual basis for Federal regulation informed Congress (see p. 78, post):

"Radio communication is not to be considered as merely a business carried on for private gain, for private advertisement, or for entertainment of the curious. It is a public concern impressed with the public trust and to be considered primarily from the standpoint of public interest to the same extent and upon the basis of the same general principles as our other public utilities."

Experience gained in his somewhat futile attempts to regulate radio under inadequate powers conferred by the Radio Act of 1912 had convinced President Hoover that broadcast channels were in the nature of public property and that their use must be limited to selected licensees of the Government who would be required to operate them in the "public interest"—among other things to provide fair opportunity of access to broadcasting facilities under a general standard imposed by Congress. They should be "regulated so as to give the maximum service." Limitation on the number of stations, however, combined with the rapidly increasing commercial utility of radio, caused President Hoover to fear both "monopoly" and the necessary "entry into the dangerous field of censorship," which a licensing system involved. The "quality of the program" service should, according to Hoover, be one of the principal criteria in determining who would be permitted to broadcast. Hoover warned that in this process:

"We cannot allow any single person or group to place themselves in a position where they can censor the material which shall be broadcasted to the public, nor do I believe that the Government should ever be placed in the position of censoring this material.

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"It seems to me therefore that the fundamental thought of any radio legislation should be to retain possession of the ether in the public and to provide rules for the orderly conduct of this great system of public communication by temporary permits to use the ether. It should be kept open to free and full individual development, and we should assure that there can be no monopoly over the distribution of material."

The notion that radio should be regulated in the same form as "other public utilities" receded before the increased use of radio as an advertising medium and the competitive conditions provided thereby. In 1925 the fourth national radio conference took cognizance of the evolution of radio and resolved that:

"* * * benefit to the listener must be the basis for broadcasting service (but recognition of that principle) does not bring the broadcaster into the category of recognized public utilities * * * and such matters as regulation of rates and other similar features of supervision exercised by governmental bodies over public utilities generally, should still * * * remain under the exclusive control of station owners."

Congress in the Radio Act of 1927 and the Communications Act of 1934 did not specifically exempt broadcasting from "public utility" status as it did from status as a "common carrier." However, it did not provide for public utility type regulation with regard to rates and other similar business activities of broadcasters. Indeed it accepted the concepts of competition and public service as the principal tenets of regulation. The rapidly developing commercial competition for advertising revenues among stations was considered adequate to regulate the business aspects of broadcasting. The maintenance of "competition" in broadcasting at all levels has remained a cardinal and essential feature of the regulatory pattern. Its principal purpose is to avoid monopoly of broadcast facilities or overconcentration of control over broadcast matter. As President Hoover had said the "dangerous field of censorship" could not be avoided. But, under the Radio Act, censorship and control of programs was intended to be widely dispersed among "local monopolies" and limited by the social responsibility imposed on licensees to seek out and serve the needs and interests of their communities for broadcast service. Under this system, no central group would be "placed in a position" to "censor the material—broadcasted to the public." That carefully devised pattern of "safety" in numbers and geography has been largely nullified, in practice, through the growth and development of networks—first in radio and then in television. Despite the adoption of a regulatory pattern based on competition, the analogy to "public utilities" has continued. In its

first comprehensive statement of the element of the "public interest" the Radio Commission stated that the:

"('Correct analogy' was with those public utilities) engaged in purveying commodities to the general public, such as, for example, heat, water, light and power companies, whose duties are to consumers (just as is the case with these utilities) a broadcaster uses a franchise from the Federal Government to bring its commodity over the channel through the ether to the home." A minority (two Commissioners) opposed the Chain Broadcasting Regulations in 1941 partly on the ground that because of the responsibility of broadcasters to provide a "balanced" program service and "inherent" natural limitations:

"There is no open market condition in the business of broadcasting as in other businesses. Nature has determined that. To attempt to circumvent these basic economic laws is fraught with peril to an industry which has hitherto achieved a marked degree of success." (Emphasis supplied.) (See p. 133 post.) Indeed as late as 1956, Senator Bricker, former chairman and than a ranking member of the Committee on Interstate and Foreign Commerce of the Senate, in describing the "very nature of the broadcasting business" said:

"The individual station is subject to license. It is controlled and regulated by the rules of the Commission; it is responsible to the public interest; it is, in fact, a public utility."

(For further detail on the legislative history of the Radio Act, see p. 59, post.)

Further Excerpts From FCC Docket No. 12782

(VII) EFFECT ON ALTERNATE SOURCES OF PROGRAMS

It is indicated that alternate sources of first-run programs appropriate for nighttime exhibition have been drastically reduced, if they are not "virtually nonexistent," at present. At most, they appear to constitute a mere pittance of the maximum of "diverse and antagonistic" program sources which a truly competitive national television industry might sustain and support [59] (pp. 755–771).

The restrictive control exercised by network managers over network programs is both economic and creative. Also they control the production and supply—and to a considerable degree the distribution of programs in the nonnetwork or syndication market. New product for that market is now composed almost exclusively of "off network" filmed program series, that is, programs which, in previous seasons, were designed and produced either by network managers or under their direct supervision and control and were exhibited in network schedules. Such programs, usually film series, after their network "run," frequently become "available for domestic syndication" and are "sold" on a station-to-station basis.[60]

The net result of these practices on the public interest in "the widest practicable variety in the choice of programs available for broadcasting" [61] is servere, indeed. No matter which way he may turn, the station licensee must choose most of the programs from which he constructs his evening schedule from among stocks of "new" and "used" programs which are almost exclusively from the same ultimate source—the managers of the three television networks.[62] Even though an individual licensee diligently seeks to program in accordance with the public interest in his community as he has discovered it, the "lions share" of his schedule—both network and nonnetwork—must, of necessity, be composed of programs designed and produced either currently or in the past seasons by or under the control of the network managers. Thus, the independent judgment of the station licensee is immobilized and he is virtually reduced to choice between "tweedledum and tweedledee."

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[59] The Commission has adopted as a part of the public interest in program service, the test laid down by the Supreme Court of the United States that the first amendment to the Constitution of the United States requires that the content of our "free press' be drawn from as many "diverse and antagonistic sources" as possible. See pp. 1157–1158, post.

[60] Each of the network companies has a syndication "arm" and taken together they distribute a large part of the syndicated fare available to the public. Almost invariably in those cases where the program is distributed in syndication by an independent company, the network managers retain a share—often 50 percent—in the profit of such syndication.

[61] See Learned Hand, J. pp. 1148–1150, post.

[62] Not many station licensees protest. Apparently they find it economically "convenient" to accept the 'dictates" of the managers of the networks which they collectively compose.

(VIII) OVERALL EFFECT ON PUBLIC INTEREST IN COMPETITION

This situation is almost the direct antithesis of the anticipated continuing "condition of competition" relied upon by Congress as the principal safeguard of the public interest in broadcast service and upon which our present system of broadcast regulation was constructed. As we have said, President Hoover had warned Congress and the industry in 1924 [63] that the system of broadcast regulation, based on licensing of "local monopolies" which he had then proposed would, unless carefully guarded by the Government against noncompetitive practices, be peculiarly susceptible of monopolization; that constant vigilance would be required to protect the public interest against the "naked commercial selfishness" of those who might seek to gain control either of broadcast facilities or of the content of broadcast service, or both. He could not, of course—nor could Congress—have foreseen all the varied forms in which such monopolization or overcentralization might take. However, Congress, first in the Radio Act of 1927 and then in the Communications Act of 1934, aware of these dangers, provided a sufficiently elastic authority to enable the Commission to strike down each new set of restraints on competition as they arose and thus, continuously to maintain and encourage "conditions of competition" in broadcasting at all levels, adequate to safeguard and protect the public interest (pp. 772-782, post.).

(c) Duties and responsibilities of broadcasters and network managers as "free press." [64]

All television program service—whether it be drama and other entertainment or news and public affairs—is afforded the protection of the first amendment to the Constitution of the United States as a part of the product of a "free press." But to acquire the characteristics of our "free press" and to qualify for the high privilege such constitutional protection affords, obliges the assupmtion, by broadcasters, of appropriately high duties and responsibilities. As Judge Justin Miller said: [65]

* * * the broadcaster, being * * * vested with a monoply by virtue of his license, is charged with a higher duty than to program so close to the line as to require excuse or rationalization * * * the dominant characteristics (of the broadcasters vocation) concern the service rendered to the pubilc in the vital field of education, information, and instruction in many subjects ranging over the entire field of American culture * * *

This statement echoes similar statements by President Hoover during the formative period of radio regulation. Speaking in 1924 of the "wonderful (technical and commercial) development" of radio he said (Post, p. 115):

"* * * in our self congratulation let us not forget that the value of this great system does not lie primarily in its extent or even in its efficiency. Its worth depends on the use that is made of it. It is not the ability to transmit but the character of what is transmitted that really counts. * * * For the first time in history we have available to us the ability to communicate simultaneously with millions of our fellow men, to furnish entertainment, instruction, widening vision of national problems, and national events. An obligation rests on us to see that it is devoted to real service and to develop material that is transmitted into that which is really worthwhile. For it is only by this that the mission of this latest blessing of science to humanity may be rightfully fulfilled." [66]

It is axiomatic under our system of free competitive enterprise that, unless regulated by the government in the public interest, a commercial monopoly—especially one purveying goods or services useful or necessary to large numbers of consumers—is inconsistent with and, mayhap, highly damaging to our basic

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[63] See p. 11, note 48, ante.

[64] For further discussion see pp. 106-109, post.

[65] Post, p. 109.

[66] President Hoover's concern as to the use to be made of the vast reach of radio suggests the immense importance of mass communication in a large democracy. The need for adequate means of free communications to serve the purposes of democracy has been a guide post in the progress of Western society. In Ancient Greece, the "cradle" of democracy and Western culture, political philosophers assumed that a society based on free democratic institutions was impractical except in a city-state small enough to enable its inhabitants to assemble in a single agora or a single theater where they could hear the voice of the orator or actor. Ever since, free institutions have been largely dependent for their development on consonant developments in free mass communications. In our consideration of the role of television in our society, President Hoover's thought that it is the "character of what is transmitted that really counts" seems particularly apposite when we realize that television is rapidly acquiring the technical capability to supply both agora and theater for the "democracy and great society of the world."

institutions. But an unregulated "monopoly" in television program production and procurement seems doubly objectionable and, indeed, potentially dangerous to the ideals and objectives of our free democratic society. It not only tends to stultify economics but also to govern and shape within narrow compass the crativity and flow of information and ideas which are transmitted to most of the American people each day of the year, and constitute a significant part of the "raw materials" from which public opinion is produced. As Walter Lippmann has recently said: [67]

"A press monopoly is incompatible with a free press, and one can proceed with this principle if there is a monopoly of the means of communications—of radio, television, magazines, books, public meetings—it follows that this society is by definition and in fact deprived of freedom.

A free press is not a privilege but an organic necessity in a great society. * * * [68]

Network television is, of course, but one of the mass media which compose our free press. However, it is a vital part of our total system of mass communications. Each day it reaches vast audiences and exerts an impact of impression which is, perhaps, unique in history. Network managers, whatever their intentions or motives, wield a social instrument of great power and importance as an informational agent and cultural stimulus in our society. Such power of persuasiveness imposes the imperatives of fidelity and integrity to public trusteeship and of informed concern for the public welfare. Such is particularly the case as their power is derived from the combined use of local "monopolies" created and licensed by the Government.

EXHIBIT B

30. Perhaps the most misleading comments submitted to the Commission are those of Springfield Television Broadcasting Corp., because they touch on a subject close to the Commission's heart, UHF television development. Springfield Televison complains that,

"The spread of CATV service in the WRLP coverage area has resulted in the steady loss of audience potential for WRLP, an attrition in the number of local merchants willing to advertise on the local station, and a loss of national advertising revenues. The end result of these circumstances prevents WRLP from achieving full economic stability and thereby places undue restraint upon the ability of WRLP to completely fulfill its role as a source of local program service. This situation is of conern to Springfield not only as the licensee of WRLP but because Springfield earnestly believes that the experience of WRLP is typical of any UJF [sic] station faced with CATV competition."

Of course, Springfield does not submit figures to prove its allegations. These are conclusions which are easy to state but financial figures are more convincing. Before determining whether the conclusions are correct, a true appraisal is needed of the circumstances under which WRLP is operating in order to determine whether it is doing as well as it could be expected to, whether it ever had a chance to succeed or whether it was just another case of bad judgment which was so true of many UHF operations in the past which went bankrupt because of the smallness of the market and the availability of the signals of other TV stations. NCTA's comments have proven that CATV systems have not eliminated TV stations (NCTA's comments, pp. 10–13). NCTA has proven that CATV systems have not hindred the development of UHF–TV stations, 15.2 percent of all existing UHF's (roughly one out of every six) were constructed in communities in which CATV service existed when the UHF went on the air. There are 92 commercial UHF stations now on the air. Twenty-two of these have CATV service in the same community. In 5 of these 22 instances, the UHF station went on the air before the CATV system came into existence, and in 14 instances the CATV service existed before the station went on the air. (NCTA's comments, pp. 35 and 36.) Those are facts, not assumptions. UHF stations do go on the air in communities that have CATV service. In fact, many UHF television broadcasters have recognized how much CATV operations have helped

[67] On "The Profession of Journalism," Editor & Publisher, May 29, 1965, p. 64.

[68] Mr. Lippmann goes on to point out the increased importance of the free and uninhibited flow of information and ideas in a big and complicated urban society:

"In such a great society the environment in which individuals act and react is not the visible world of their homes and their neighborhood and the communities. It is an invisible environment which has to be reported to them. For this reason a great society cannot be governed, its inhabitants cannot conduct the business of their lives, unless they have access to the services of information and of argument and of criticism which are provided by a free press."

them and have put this in letter form and in statements to newspapers. (See, for example, NCTA's comments, exhibits Nos. 6 to 9, and the results of an on-the-spot investigation by the Columbia, Mo., Tribune, contained in an article therein of Monday, April 27, 1964, and attached to these reply comments as exhibit No. 7.)

31. While it is to be hoped that UHF television will develop and prosper, it is appropriate to ask what if it does not develop or if it succeeds in only a few localities? Will not CATV service be needed more than ever? The re are people whose vast business prospects are tied to their making the right judgment in predicting trends in the television industry. Many of these believe the UHF experiment will not succeed. (See, for example an article from the Wall Street Journal of May 1, 1964, in appendix hereto—separate volume—exhibit No. 6. NCTA takes issue with the statement therein that CATV is a threat to UHF development and has refuted this in its "Comments," pp. 10–13.) These observations are important in that the Commission should not outlaw or curtail CATV systems served by microwave upon a mere assumption that they may prevent the development of UHF stations. Proof of serious, adverse economic impact should be required with respect to UHF stations as well as VHF stations. Otherwise the Commission may well rue the day when it prevented the growth and the corollary technical improvements in CATV, if it is faced with another debacle in UHF development.

32. Because Springfield Television's "Comments" smack of the scare tactics used before the Senate Subcommittee on Communications in 1959 (see "NCTA Comments" p. 13) and before the Commission in connection with docket No. 12443 in 1959, it is important to analyze the source of these comments.

33. Springfield Television Broadcasting Corp. filed comments in this proceeding urging the Commission to take steps to cope with what it alleged to be "unrestricted and unregulated" activities of CATV systems. These comments are replete with inaccuracies and they are illustrative of the false charges sprinkled throughout the docket in this proceeding that CATV systems are causing the demise of "local" television service. It is respectfully intended that the following analysis of Springfield's comments will demonstrate that CATV systems are not responsible for the paucity in local programing in the area served by WRLP, Greenfield, Mass. For example, on page 2, Springfield, without foundation, claims that the existence of CATV's in WRLP's service area has resulted in "* * * an attrition in the number of local merchants willing to advertise on (WRLP), and a loss of national advertising revenue." NCTA will show in paragraph 46, infra, that this statement is entirely at odds with the facts and that nonconfidential data submitted by Springfield to the Commission establishes that WRLP's local, regional and national revenue increased in 1962 as compared to 1961. Equally inaccurate is WRLP's gratuitous conclusion on page 2 that CATV's have prevented "* * * WRLP from achieving full economic stability * * *" and from "* * * completely fulfill(ing) its role as a source of local program service." NCTA will demonstrate in paragraphs 42–43, infra, utilizing only Springfield's representations, that WRLP is potentially a financially sound satellite of its prosperous, thriving mother station, WWLP, Springfield, Mass.

34. Springfield's construction permit for a new television station at Greenfield, Mass. (BPCT–2115) was granted in July 1956. In its application Springfield stated in paragraph 12:

"This application is for a station to be operated as a satellite of WWLP in Springfield, Mass., until such time as economic conditions will allow a more localized operation."

Program tests were authorized in June 1957. As of that date, CATV systems were in operation in the following communities within the area served by WRLP: Athol, Mass.; Keene, N.H.; Brattleboro, Vt.; Springfield, Vt.; Windsor, Vt.; Woodstock Vt.; Claremont, N.H., and Lebanon, N.H.

In November 1956, Springfield amended its application to specify a new transmitter location at Winchester, N.H. The amendment stated that:

"(It) in no way changes the programing plans for the satellite operation * * *"

In September 1957, Springfield petitioned for a waiver of section 3.652 of the of the Commission's rules in order to permit WRLP to identify itself with the three cities of Greenfield, Mass.; Keene, N. H.; and Brattleboro, Vt. In support thereof, Springfield relied heavily upon the fact that, although it did not maintain a studio in any of these communities, its transmitter site, at which its studio was located, was but 14½ miles from Greenfield, 9 miles from Brattleboro, and 16 miles from Keene. Thus, it urged "* * * WRLP is in commuting distance

of all three cities." It is significant that 10 months previously and before Springfield had received program test authorization, when it specified a new transmitter site in Winchester, no mention was made that Winchester was so strategically located to each of these three communities. It is also significant that in its request for tri-city identification Springfield stated that inasmuch as operating from Winchester, it provided a minimum field intensity of 80 decibel units to the three cities, WRLP "* * * should be considered a *local station* for each." (Emphasis supplied.) When Springfield was seeking extraordinary relief from the Commission it did not hesitate to make promises regarding the local programing it would provide to the three cities. Thus, it first discussed the local programing already carried on WRLP as follows:

"Local programing at WRLP commenced in September 1957. The first local program was a newscast, where news coverage of all three cities was provided by the WRLP newsmen and photographers."

Excluding the above reference to a single newscast, there was no other reference to any "local" programing actually carried over WRLP. The remainder of the request for waiver consisted of promises by WRLP regarding the future:

"WRLP plans to invite citizens from each of these cities to participate in discussion and talk-type programs, and, in addition, representative groups and organizations from all three communities are encouraged to appear and participate. The residents and businessmen of each of these communities have been enthusiastic, and, the management of WRLP is confident that there is enough local talent in each city to allow a reasonable amount of time for local programing, which will include religious, educational, and civic matter. Accordingly, WRLP looks forward to satisfying its positive responsibilities in making articulate the voice of these three communities."

35. The Commission in January 1958, granted the request for waiver, undoubtedly relying upon WRLP's extensive representations regarding the local programing it promised to provide for the communities of Greenfield, Brattleboro, and Keene.

36. On July 20, 1960, however, William L. Putnam, president of Springfield, apparently very concerned that the public would apprise the Commission of Springfield's failure to carry out its representation, wrote Commissioner Ford.[1] The letter seeks to explain away Springfield's admitted failure to carry out its representations regarding local programing. The letter is particularly significant because Springfield, just as it has done in the comments filed in this proceeding attemped to hold CATV's responsible for the station's failure to carry out its representations to the public. The letter is also similar to the comments filed by Springfield in this proceeding in that it is misleading. For example, Putnam stated:

"Anyhow with our national income down by about 20 percent of about a year ago and since our local income at WWLP, although up, has not been up enough, we have been unable to afford the continuing drain of providing this local service at WRLP."

There can be no dispute that this sentence is inaccurate. *Springfield* was a party respondent in *Triangle Publication Inc.* (docket 14577). In that proceeding it introduced into evidence financial data concerning its revenue from WWLP which was the subject of findings in paragraph 97 of the initial decision released December 26, 1963 (see 63D–146). That finding discloses the following information regarding WWLP's revenue for the year 1959 and 1960:

	Network	Spot advertising, national and regional	Local	Other	Total
1959	220, 146	544, 002	397, 046	33, 545	1, 194, 739
1960	206, 666	437, 428	519, 091	35, 162	1, 198, 347

[1] The letter begins as follows: "We have undertaken a change in our programing policy at WRLP that may be brought to your attention by some of the residents of the area served by that station. In order that the facts get on record before the opinions I would like to give you this information ahead of time, with the hope that you can also make your fellow Commissioners aware of this situation."

Utilizing WWLP's own figures it is clear that although WWLP's national and regional revenue for 1960 was below that of 1959 by $106,574, the station experienced an increase in local revenue totaling $122,045, leaving a favorable difference of $15,471. The importance of these figures is that they demonstrate that the gain in local income exceeded the loss in national and regional income. The letter indicated exactly the opposite conclusion. Furthermore, WWLP's total revenue for 1960 exceeded that of 1959 by approximately $4,000. What emerges from this comparison of revenue is that Springfield was prospering. Indeed, its total revenue exceeded $1 million for both 1959 and 1960.

37. Springfield thus had no legitimate reason for failing to carry out its representations to the Commission that it "* * * look(ed) forward to satisfying its positive responsibilities in making articulate the voice of (Greenfield, Brattleboro, and Keene)." It seems clear that this misleading statement of Springfield's financial picture was designed to excuse its failures to meet its commitments to the viewing public. Furthermore, just as it has done in this rulemaking proceeding, Springfield, without foundation, attempted to shift the responsibility for its failures to CATV systems. In attempting to portray CATV systems as the cause for Springfield's failure to carry out its responsibilities to the public, it must be emphasized that Springfield failed to disclose that but one CATV system within WRLP's service area was established subsequent to the time that WRLP went on the air. Put otherwise, Springfield, the licensee of WWLP since 1953, was completely knowledgeable concerning the CATV systems in operation when it applied for Greenfield. It was aware of the existence of CATV's system when it made grandiose programing representations to the Commission in seeking a waiver of section 3.652 to permit tricity identification. It was only when Springfield became concerned that the public treated these representations more seriously than it did, that it became necessary to fall back on the convenient whipping boy, CATV.

38. Springfield succeeded in escaping from the responsibility of meeting its programing commitments to the residents of the Greenfield, Brattleboro, Keene area, for in an application filed on June 4, 1963 (BPCT–3199) Springfield stated:

"WRLP operates as a satellite of WWLP in Springfield, Mass."

In this connection, Putnam testified on April 5, 1963, during the *Triangle* proceeding, *supra*, at transcript 4538 that WRLP originated only approximately 1 hour programing per day.

39. In paragraphs 46–47, *infra*, there is set forth the financial data submitted by Springfield in document 15326 which reveals increasing revenue for WRLP and no corresponding increase in program expense for 1962 as compared with 1961. Thus, Springfield has achieved what must appear to it to be the best of all possible worlds—absolution from its programing commitments together with authorization for a full-power TV station which is operated on a shoestring as a satellite of a station grossing more than $1 million annually in revenue. However, does not the public deserve more?

40. Springfield contends on page 4 of its comments that CATV service "* * * creates a splintering of the available viewing audience * * *." It is significant that Springfield omits mentioning that in its advertising material, it presents a dramatically opposite picture, stressing the advantage to the advertiser that WRLP is carried on CATV's within its service area. As illustrated by the attached advertising brochure, Springfield goes to some length to point out to advertisers that it is carried by 11 CATV's within its service area. Thus, the brochure states:

"(WRLP's) signal extended by community antenna systems * * * over a three-State region."

Springfield cannot have it both ways. It cannot, on the one hand, try and reap the benefits of its enlarged circulation brought about by CATV systems within its service area and on the other hand, claim CATV systems splinter its audience. In this connection, WRLP is now being carried on the following CATV systems operating within its service area: Keene, N.H.; Hinsdale, N.H.; North Walpole, N.H.; Charlestown, N.H.; Brattleboro, Vt.; Bellows Falls, Vt.; Windsor, Vt.; Woodstock, Vt.; Springfield, Vt., and on Athol, Mass., until 7:30 p.m.

41. Since station WRLP is basically nothing more than a satellite of WWLP and since both stations are licensed to the same corporate entity, any realistic appraisal of the situation must also include an analysis of the economic position of the parent station and of the licensee corporation. In its comments, Springfield Television carefully mentions only WRLP, thus omitting any reference to its extremely prosperous operation at WWLP. Such omissions are, of course,

consistent with the biased approach taken by Springfield, but we submit that the Commission is entitled to the entire picture.

42. It should first be pointed out that in each year since 1957 the WWLP. revenues have exceeded the $1 million mark. The precise WWLP gross revenue figures, taken from data submitted by the licensee in other proceedings and applications,[2] is as follows:

1957	$1, 027, 408
1958	1, 088, 500
1959	1, 194, 739
1960	1, 198, 347
1961	1, 217, 313
1962	1, 388, 333

That this high revenue level has continued was announced by Springfield' president in a recent oral argument [3] before the Commission when he stated that WWLP's gross revenues for 1963 would again be in the neighborhood of $1,300,000 The magnitude of these revenue figures is emphasized by the fact that in the most recent Commission release of TV financial data only seven other UHF stations amassed revenues in excess of $1 million.[4] Moreover, since WWLP has recently been granted a modification [5] which will enlarge its service area the prospects are for even larger revenues in the future.

43. As might be expected with such high revenues, WWLP's profits during these years have also been impressive.[6]

1958	$125, 845
1959	169, 589
1960	118, 708
1961	124, 516
1962	189, 287

In addition to the foregoing, the following facts [7] further attest to the economic strength of the corporation: (1) In January 1964, Springfield purchased station WKEF–TV, Dayton, Ohio, for $153,000, a portion of the purchase price and cost of operation to be met from existing profits; (2) Springfield's pending application for a new station in Toledo contemplates construction costs of some $700,000 to be partly defrayed by $100,000 in profits from Springfield's existing stations; and (3) the corporate balance sheet as of March 31, 1963 (the most recent date available in the Commission's public files) shows assets in excess of $1 million, with dividends paid in 1962 totaling almost $30,000.

44. The foregoing clearly demonstrates the affluence of Springfield Television, and when viewed in the context of its burgeoning prosperity, Springfield's allegations of economic hardship ring quite hollow. The image which Springfield attempts to project shifts with the occasion. For example, when it is to Springfield's advantage to show itself financially qualified to expand its operations (viz, the Dayton purchase and the Toledo application) then it relies upon the huge profits derived from its existing operations. When the scene shifts, as in the subject proceedings, then Springfield does a complete about-face, conveniently neglects to mention its profit figures, and attempts to pass itself off as a hardship case. In a proceeding as significant as this, the Commission certainly deserves a more candid presentation than that submitted by this licensee.

45. Further illustrative of the misleading nature of Springfield's pleadings are its allegations concerning station WRLP. Thus, on page 2 of its comments, Springfield bemoans an alleged decline in revenues as constituting the reason for the paucity of local programing carried on the station. But here, as throughout its comments, Springfield offers no substantiating revenue figures. However, in connection with other proceedings and applications Springfield has been required to divulge such data, and the facts thus disclosed reveal a situation considerably different than that projected in Springfield's comments.

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[2] See paragraph 97 of the findings of fact in *Triangle Publications, Inc.* (WNHC–TV) (FCC 63D–146) and exhibit C in Springfield's application for a new UHF station in Toledo, Ohio; docket No. 15326.
[3] See page 263 of the transcript of oral argument on Oct. 4, 1963, in docket No. 14232.
[4] *Final TV Broadcast Financial Data—1962* (public notice of Sept. 19, 1963, mimeo No. 40706).
[5] See BMCT–5805 granted Sept. 25, 1963, 1 RR 2d 309.
[6] See footnote 1, paragraph 42, supra.
[7] See WKEF–TV BAPCT–335; part III and exhibit 1–A of the Springfield application in docket 15326.

46. For example, the gross revenues of station WRLP for 1962 (the most recent data available in the Commission public files) totaled some $154,000 and were the highest ever received by the station.[8] Moreover, the 1962 revenues were higher in all categories (network, national, regional and local) than in 1961 by a total of some $37,000, thus representing an increase of some 29 percent over 1961.[9] These figures thus contradict Springfield's undocumented assertions of declining revenues as well as its blanket assertions (comments, p. 4) that the presence of CATV automatically lessens a station's attractiveness to advertisers.

47. With respect to Springfield's contention that the paucity of local programing on WRLP is attributable to declining revenues, it is interesting to note that although gross revenues for WRLP increased by some $37,000 in 1962 over 1961, the amount spent on WRLP programing in 1962 actually decreased from that expended in 1961.[10] In fact, during 1962—the year in which WRLP's gross revenues were the largest in its history—the amount allocated to programing was the lowest since the station went on the air. That Springfield would devote less of its resources to WRLP programing during a year when its revenues had reached a new peak plainly indicates that Springfield does not plan to nor has it allocated additional revenue received by WRLP to satisfy the programing needs of the people served by the station. Instead, notwithstanding Springfield's pious protestation concerning its awareness of these programing needs, the additional revenue is siphoned off to further increase the already handsome profits of Springfield. These circumstances also cast considerable doubt as to the sincerity of Springfield's protestations that it is precluded from providing local programing by factors beyond its control.

48. It is recognized that WRLP has not to date been a financial bonanza. But in 1962, when WRLP's operating expenses were only some $132,000, the station showed a slight profit and appeared to turn the corner financially. Further, as pointed out above, the financial status of WRLP cannot be viewed apart from the extremely prosperous mother station in Springfield. Most significant for the purposes of this proceeding is the consideration that at least a part of WRLP's revenues are attributable to the circulation enjoyed by WRLP via its carriage on the area's CATV systems. Indeed, in its own promotional advertising WRLP claims CATV coverage as being a substantial reason for advertisers to buy time on the station.[11] Yet in its comments, Springfield typically ignores this factor and seeks to portray CATV as being the sole factor inhibiting the further growth of WRLP revenues.

49. There are, of course, a number of reasons—none of which are related to CATV—which more plausibly account for WRLP's situation. The most important factor is undoubtedly the very nature of the operation; i.e., a satellite station operating with a minimal staff and offering de minimis local programing. The residents of the WRLP service area can scarcely be expected to develop an affinity for a station which pays such little heed to local programing needs. Thus, for the vast majority of the broadcast day the programing of WRLP is indistinguishable from that of mother station WWLP, whose service area overlaps a substantial portion of that of WRLP.[12] Indeed, it is highly incongruous, yet in character, for Springfield to demand nonduplication for WRLP when it is WWLP itself which is a principal source of such duplication. Nor should Springfield by permitted to relieve itself of its programing obligations by its unsubstantiated allegations concerning CATV. The responsibility for these deficiencies should be placed precisely where it belongs—on Springfield itself.

50. Another significant consideration ignored by Springfield consists of the engineering and terrain characteristics which limit the receivability of WRLP's signal, even within its predicted service area. A prime example of the effect of these factors occurs in Athol, Mass., which is located within the predicted or theoretical city grade signal of station WRLP, but which does not actually receive a satisfactory signal. (See the Commission's findings on this point in *Millers River Translators, Inc.*, FCC 63-375, and FCC 63-504. In the latter memorandum opinion and order the Commission stated (p. 3):

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[8] The financial data cited is from respondents' exhibit 25 in docket No. 14577 and from exhibit D in the application in docket No. 15326.

[9] It should also be noted that of the 12 UHF stations whose revenues in 1962 were in the same category as WRLP ($100,000-$200,000), only 2 other stations—in addition to WRLP—showed a profit.

[10] The data as to WRLP's expenses is from the same sources cited in note 1, par. 46, supra.

[11] See par. 40, supra.

[12] The overlap of the grade A and grade B contours of WWLP and WRLP has been substantially increased by the recent modification of license granted WWLP; see *Springfield Television Broadcasting Corporation* (WWLP), 1 R.R. 2d 309 (1963). In fact under its authorized operation WWLP's grade A contour will extend within about 2 miles of Greenfield, and the WWLP grade B contour will extend beyond Greenfield all the way to the WRLP transmitter site, see BMPCT-5805.

"However, the Commission has no reason to change its earlier finding, in this proceeding (FCC 63-375), that Springfield has not shown that station WRLP provides service to Athol."

Accordingly, it is only by means of its carriage on the Athol CATV system that WRLP receives any circulation at all in Athol. (See NCTA comments, p. 96, and exhibit No. 18 therein and appendix hereto, separate volume, exhibit No. 1). For a licensee to attack the sole reliable means by which it reaches a nearby community borders on the incredulous and further demonstrates its utter indifference to the needs of the people in and around Athol.

51. In its publicity to sell advertising, WRLP tells a story which is very different from the one it tells the Commission. In a brochure which it distributes to the trade and potential advertisers, it states:

"Community antenna systems, plus VHF and UHF translators, extend the WRLP signal to 15,000 TV homes beyond the area measured by the rating surveys for off-air reception on channel 32. This is bonus coverage difficult to include in the rating surveys and extending well beyond normal signal patterns of WRLP.

"Viewers in southern Vermont and New Hampshire and northern Massachusetts watch WRLP on channels 2, 4, 6, 9, 10, 32, 74, and 81. This helps to explain the difficulty in recording people's viewing habits by channel number."

The brochure mentions 15,000 TV homes from CATV and translators. Yet only 6,975 are outside indicated coverage area; 7,985 are inside. Total of both is 14,960. But the brochure states the 15,000 homes are "beyond the area measured by the rating surveys for off-air reception on channel 32 * * * extending well beyond normal signal patterns of WRLP." This can be construed as agreement that the 6,975 CATV and translator TV homes within the indicated contour are outside normal off-the-air reception. None are translator TV homes within the contour. (See exhibit No. 8 attached hereto for WRLP brochure, bragging about its CATV coverage.)

52. The above facts concerning Athol are also significant in that they are symptomatic of Springfield's attitude toward the WRLP service area. Thus, in March of 1959, Springfield Television was granted a construction permit for a UHF translator station to carry WRLP in Athol. But Springfield never effectuated its proposal and its construction permit was ultimately deleted at its own request in 1963. Not only did WRLP abandon its own translator authorization, but it also unsuccessfully attempted to block a nonprofit citizens group from establishing a translator in Athol. (See the *Millers River* proceeding, supra.) Thus, even though Springfield was not interested enough in its service area to provide a satisfactory signal to Athol, it nevertheless sought to preclude a local nonprofit citizens group from bringing television service to that community. Such indifference to the needs of its service area obviously falls far short of that to which the public is entitled.

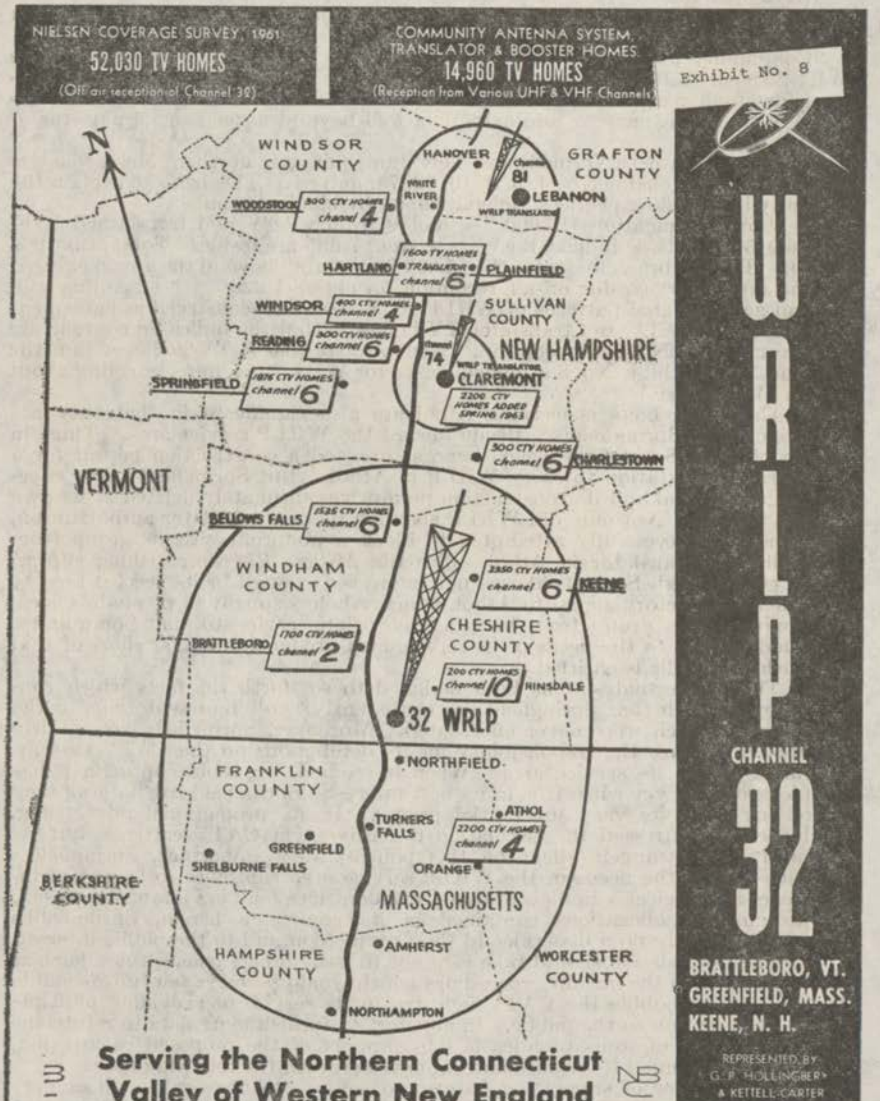
53. The above analysis has been designed to set forth the facts which conclusively establish that Springfield has consistently made representations to the Commission which were never effectuated. Moreover, Springfield has unfairly attempted to place the responsibility for its derelictions on the CATV systems operating within its service area. When it seemed propitious, Springfield has pleaded poverty, yet when it is in its best interests, Springfield has no hesitancy in relying upon its very substantial profits. In its promotional advertising, Springfield has stressed the circulation it receives via CATV carriage, but its comments are strangely silent on this point. Most important, Springfield's attitude toward the needs of the WRLP service area continues to be one of indifference and neglect. In view of these considerations, and in view of the biased, unsubstantiated allegations contained in its comments herein, Springfield's comments actually do a disservice to the Commission and to the public interest.

54. The Commission should take care not to issue broad general rules, such as those proposed in the instant proceedings which would permit a few unreasonable broadcasters to hobble the CATV industry in its service of providing multiple television reception to the public. In an effort to furnish more data to refute the broad assertions of some broadcasters in support of the proposed rulemaking, NCTA has continued its studies and submits herewith the following data:

55. The absence of supporting data in so many broadcaster pleadings may be caused by several factors, including: (1) The absence of any data supporting the broadcaster's opinions and conclusion; or (2) the existence of data which do not support the conclusions drawn and, therefore, were not filed. NCTA will leave the Commission to draw its own conclusions. Surely an issue such

as economic injury from CATV which has been subject to vociferous broadcaster complaints should be subject to relatively easy proof and immediate illustration if the allegations ever had any substance at all.

56. In addition, by taking local circumstances and mistaking this local data for a national trend, several television broadcasters have attempted to draw broad national conclusions which do not agree with the facts. This is dramatically illustrated by facts regarding the provision for reception (or "carriage," as the Commission puts it) with grade A contours. NCTA contends that a general rule such as this will create enormous administrative burdens for the Commission.



250,000 Viewers living in the Northern Connecticut Valley find *EXCLUSIVE LOCAL TELEVISION* on WRLP

- One Quarter of a Million consumers with ONE HALF BILLION DOLLARS to spend annually live in Channel 32 land
- Signal extended by community antenna systems and translators (VHF & UHF) over a three state region
- Fully Equipped:
  - Video Tape
  - 2 camera Mobile Unit and Microwave
  - 2 — 25' x 50' live studios
  - Telecast color
  - 200,000 watts power — 1000 ft. above average terrain
  - Motion picture and still photo facilities
  - 2 live studio camera chains
- In-store merchandising plan available — throughout the three state coverage area
- Pioneer Television outlet in Southern Vermont & New Hampshire & Northern Massachusetts
- Full schedule — local live programs
- NBC Television Network
- Represented by G. P. Hollingbery & Kettell-Carter (Boston)
  P.O. Box 32, Northfield, Mass. — Tel.: Northfield 336
  TWX — 413/773-8241

WRLP — Channel 32

BRATTLEBORO, VT. — GREENFIELD, MASS. — KEENE, N. H.

MANY CHANNELS DELIVER THE WRLP SIGNAL

11 community antenna systems, plus VHF and UHF translators, extend the WRLP signal to 15,000 TV homes beyond the area measured by the rating surveys for off-air reception on channel 32. This is bonus coverage difficult to include in the rating surveys and extending well beyond normal signal patterns of WRLP. Viewers in southern Vermont and New Hampshire and northern Massachusetts watch WRLP on channels 2, 4, 6, 9, 10, 22, 74, and 81. This helps to explain the difficulty in recording people's viewing habits by channel number. Just for the record, here is the lineup.

NIELSEN COVERAGE SURVEY, 1961, REPORTS
52,030 TV HOMES FOR WRLP-CHANNEL 32

	TV Homes	WRLP CHANNEL
CTV HOMES:		
KEENE, N.H.	2350	CHANNEL 6
HINSDALE, N.H.	200	CHANNEL 10
CHARLESTOWN, N.H.	300	CHANNEL 6
CLAREMONT, N.H.	2200	*to be added spring of 1963
WOODSTOCK, VT.	300	CHANNEL 4*
WINDSOR, VT.	400	CHANNEL 4*
READING, VT.	300	CHANNEL 6
SPRINGFIELD, VT.	1875	CHANNEL 6
BELLOWS FALLS, VT.	1535	CHANNEL 6
BRATTLEBORO, VT.	1700	CHANNEL 7
ATHOL-ORANGE, MASS.	2200	CHANNEL 4*
TOTAL CTV HOMES	13,360	
PLUS: TRANSLATOR TV HOMES		
HARTLAND, VT. — PLAINFIELD, N.H.	1600	CHANNEL 6
WEST LEBANON, N.H.	not known	CHANNEL 9
TOTAL TRANSLATOR AND TV HOMES	14,960	

*Exclusive NBC on cable

And undoubtedly there are a few more low powered VHF boosters around that we haven't located yet! When we do, our representatives from Hollingbery and Kettell-Carter will update your coverage map and set count.

Re testimony of William L. Putnam, Springfield Television Broacasting Corp., before House Committee on Interstate and Foreign Commerce.

ROBERT D. L'HEUREUX,
General Counsel, National Community Television Association, Inc.,
Transportation Building, Washington, D.C.

DEAR MR. L'HEUREUX: It it my understanding that during the course of his testimony before the House Committee on Interstate and Foreign Commerce during its hearings on H.R. 13286, H.R. 12914, and related bills, Mr. Putnam stated that he had offered to enter into a simultaneous nonduplication agreement with community antennas receiving hiss tations and that he also stated that the community antenna systems refused. Mr. Albert J. Ricci, president of Pioneer Valley Cable Vision, Inc., whom I represent and whom I believe Mr. Putnam had in mind, has attempted to negotiate such an agreement with Mr. Putnam pertaining to reception by community antenna systems operated or planned by Mr. Ricci of Mr. Putnam's television stations in Springfield, Greenfield, and Worcester, Mass.

By means of a letter dated January 19, 1966, modified to some extent in handwriting (not by my client), Mr. Putnam set forth the terms of a so-called "simultaneous nonduplication agreement" which he indicated at the time he was willing to execute. Attachment I to this letter is a xerox copy of this proposed agreement. You will note that the first paragraph of the letter contract provides that there shall be protection against simultaneous duplication by means of community antenna reception of the programs of Mr. Putnam's stations. You will note, however, that the second paragraph states that the agreement does not waive "our rights to further exclusivity in films, video tape, and other programs." Obviously, such programs will constitute the vast percentage of all television programs. I am sure that you are aware, and Mr. Putnam has to be aware, that the majority, if not all contracts between program suppliers and television stations, provide for "exclusivity" far in excess of the hour during which the program is being broadcast by the station. Thus, clearly as written, the contract provided for far more than simultaneous nonduplication, and cannot in fairness be called a simultaneous nonduplication agreement.

You will also note that the final paragraph, which is completed in handwriting on a second page, reserves additional protection rights such as might result from legal decisions or regulations issued by the FCC. Finally, you will note in that paragraph, that Mr. Putnam in effect demanded a confession of judgment in the event nonduplication protection were not given.

I advised my client that in practical effect the contract was not one for simultaneous nonduplication since, although, it called for that protection it also called for considerably more protection. I also advised Mr. Putnam's counsel to this effect in a letter dated January 25, 1966. Also, I urged that we, nevertheless, sit down and attempt to negotiate a simultaneous nonduplication agreement for our respective clients. A copy of this letter is attachment II, hereto.

I am also enclosing as attachment III, a copy of a letter dated February 7, 1966, which I received from counsel for Mr. Putnam, in which he indicates that his client cannot accept an agreement which does not include the additional protection beyond simultaneous nonduplication. I believe that any fairminded reading of the contract suggested by Mr. Putnam, and of the exchange of correspondence between counsel, will require a conclusion that this agreement did not call only for simultaneous nonduplication as that term has been used in both the broadcast industry and the community antenna industry during the past several years.

Very truly yours,

E. STRATFORD SMITH.

JANUARY 19, 1966.

PIONEER VALLEY CABLE TELEVISION, INC.,
Greenfield, Mass.
(Attention Mr. Al Ricci).

GENTLEMEN: This will confirm our understanding reached this day to the effect that the undersigned Springfield Television Broadcasting Corp., owner and operator of stations WWLP, WRLP, and WJZV emanating respectively from the cities of Springfield, Greenfield, and Worcester, Mass., has no objection to the maintenance and operation of your CATV systems which operate within the con-

tours served by our said stations provided that there shall be no simultaneous duplication by you of any program carried on our said stations and you agree that there shall be no such simultaneous duplication. We understand this exclusivity shall pertain to your CATV system where such system, now or to be built or extended in the future, may serve communities where our transmitter is the closest source of any program to which this agreement may be directed. We understand that this agreement cannot be enforced if a signal be of adequate quality from our stations is not available over any community to be served.

This agreement shall in no way be interpreted as waiving our rights to further exclusivity in film, video tape, and other programs.

This agreement shall remain in force for a period of 10 years from the date hereof and shall renew itself automatically for an additional 10-year period; provided however that 12 months' notice given by either of us to the other at the end of 9 years from the date hereof, this agreement shall terminate.

Nothing in this agreement shall alienate any rights to which either of us may be entitled by virtue of legal decisions or regulations to be enacted by appropriate bodies in the future. We further agree that failure on your part to provide this exclusivity poses a serious financial blow to us and that we are entitled to appropriate damages in that event.

Very truly yours,

SPRINGFIELD TELEVISION BROADCASTING CORP.

By ——— ———

President.

Accepted and agreed to:

PIONEER VALLEY CABLE TELEVISION INC.

By ——— ———

SMITH & PEPPER,
Washington, D.C., January 25, 1966.

MARTIN FIRESTONE, Esq.,
Munsey Building, 1329 E Street NW.,
Washington, D.C.

DEAR MR. FIRESTONE: As I indicated I would do last week, I am sending you a xerox copy of the letter contract which my client Pioneer Valley Cable Television, Inc. and your client Springfield Television Broadcast Corp. discussed in New York City last week. As I indicated to you on the telephone, from what I knew of the contract then, I might have difficulty in recommending that it be executed by my client. However, I suggested that you and I should make an effort to reach a simultaneous nonduplication contract which would be to the mutual advantage of our clients.

Unless I misunderstand or misread the enclosure, I do not believe that this agreement provides anything by way of advantage of Pioneer although it purports to be a simultaneous nonduplication agreement. The second and fourth paragraphs seem to indicate that any protection out and above simultaneous which might be required by the FCC, or to which Springfield might otherwise be able to show a legal right, would be accorded to Springfield. As you and I are both aware, the FCC will permit private agreements providing for less or more protection than provided in the Commission's rules. The letter contract can be construed to permit the FCC's rules to override the private agreement, which perhaps was not intended. If the agreement is intended to have the agreement take precedence during its term over nonduplication or exclusivity provisions of the Commission's rules, then perhaps with some clarification of the second paragraph, a basis may well exist for a contract which will be useful to both sides.

Finally, I will not be able to recommend to my client acceptance of the final sentence in the last paragraph which seems to constitute a confession of damage and an admission of liability for failure to provide nonduplication protection. I will, of course, discuss with my client what was intended by that sentence and naturally he will make the final decision.

In the meantime, I would suggest that we both give thought to a simple form agreement which would provide protection to your client against simultaneous duplication of its broadcast and which would make it clear that during the term of this agreement, it would supersede any rules or regulations adopted by the

FCC relating to nonduplication. If either party is free to abrogate the agreement in favor of some other arrangement, it is of little value to the other party. In any event, I am certain our clients desire to work out a solution to their problems, so let us make every effort.

Sincerely,

E. STRATFORD SMITH.

FEBRUARY 7, 1966.

E. STRATFORD SMITH, Esq.,
Smith & Pepper,
Washington, D.C.

DEAR MR. SMITH: I have your letter of January 25, 1966, concerning a letter contract between Pioneer Valley Cable Vision, Inc. and Springfield Television Broadcasting Corp. Your letter and the letter contract, have been the subject of discussions between William L. Putnam, president of Springfield Television Broadcasting Corp. and myself. The following matters were crystallized as a result of the discussions.

As you are aware, the agreements whereby Springfield Television acquires its nonnetwork programs provide for, among other things, territorial exclusivity with respect to the exhibition of such programs and the payment, directly, or indirectly, of copyright fees for use of the programs. Any agreement which excludes a provision similar to that set forth in the second paragraph of the present letter contract, would, in effect, constitute a waiver of its contractual right to territorial exclusivity by Springfield Television. Moreover, Springfield Television believes that such a waiver could have deleterious implications for those who hold the copyrights to programs presented by Springfield Television. This is of particular importance in view of the immediacy of the trial of United Artists' copyright test case against CATV systems in Fairmont and Clarksburg, W.Va.

Thus, Springfield Television can see no benefit accruing to it from entering into any agreement which does not include a provision similar to that contained in the second paragraph.

As a broadcast licensee, held totally responsible and accountable for its program activities, Springfield Television cannot comprehend Pioneer Valley Cable Vision's reluctance to accept the same responsibilities for its program service. It would seem, purely as a technical matter, that once nonduplication protection is afforded, a lapse in such protection would require a conscious and deliberate act. Therefore, Springfield Television cannot accept any agreement which does not provide it some recourse in the event of a failure to provide nonduplication protection. The adverse economic impact of CATV duplication of local station programing was made evident to Springfield Television at its station WRLP, Greenfield, Mass. Thus, it considers the protection envisioned by this provision an absolute necessity to any agreement.

The present letter contract fails to make any provision for the protection of the signal quality of those Springfield Television stations carried on Pioneer Valley Cable Vision CATV systems. Neither does it treat with the subject of satisfactory channel assignments on these CATV systems for Springfield Television's stations.

Finally, upon further consideration, it is Springfield Television's opinion that the instant agreement, unless it can be subsequently revised, would bind it to a form and manner of protection which is considerably less than that afforded by the Federal Communications Commission's proposed rules and regulations. Thus, in view of this determination, as well as the other matters discussed herein, Springfield Television is content to wait until CATV regulations are adopted by the FCC.

Therefore, it would appear that little can be accomplished at this time by negotiations between you and me.

Very truly yours,

MARTIN E. FIRESTONE, *General Counsel.*

(The following letter was submitted by Professor Fisher in relation to NCTA testimony:)

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
DEPARTMENT OF ECONOMICS,
Cambridge, Mass., April 4, 1966.

Hon HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
House of Representatives Washington, D.C.

DEAR MR. CHAIRMAN: It has been brought to my attention that in his statement before your committee on March 23 in the hearings on legislation with respect to community antenna television systems (H.R. 13286, H.R. 12914) Frederick W. Ford, president of the National Community Television Association, quoted a study of mine on the economic impact of community antenna television systems. Mr. Ford is in fact in the habit of misquoting my conclusions before congressional committees; the last occasion being before the Subcomittee No. 6, House Committee on Small Business, on March 8. I am enclosing a copy of the letter which I sent to the chairman of that committee on that occasion and if Mr. Ford's statement is to be made part of the printed record, then I respectfully request that this letter and the enclosure be printed along with it.

Sincerely yours,

FRANKLIN M. FISHER,
Professor of Economics.

MARCH 18, 1966.

Hon. JOHN D. DINGELL,
Chairman, Subcommittee No. 6, House Committee on Small Business,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: It has been brought to my attention that the National Community Television Association in the statement of Frederick W. Ford, their president, before your subcommittee, on March 8, 1966, cites my study of the impact of community antenna television systems on local television stations, "The Fisher Report." Mr. Ford attributes to me the conclusion that "any new television station coming into a community wherein four or more channels of television are available off the air would experience no drop in audience and no loss of income attributable to CATV." He concludes from this that my findings show that CATV is not an adverse factor in the potential development of UHF television in large cities.

I consider this to be a substantial misuse of my results. I am the more surprised to see it inasmuch as when NCTA made the same claim last June before the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, I corrected their error as regards my findings in a letter to the Honorable Walter Rogers, the chairman of that subcommittee. That letter was made a part of the printed record of the hearings and a copy was sent to NCTA. I am therefore unable to understand why NCTA persists in attributing to me a view which I do not share and findings which I did not find. If Mr. Ford's statement becomes part of the record, I respectfully request that this letter be printed with it.

The alleged conclusion of mine as regards the impact of CATV when four or more channels are available off the air is based on a complete misreading of table 1 of page 93 of "The Fisher Report." In the first place, that table has to do with various situations differing not in the number of channels available but in the number of different programs shown in the average time period rather than the number of signals. A city can have four or more channels and fail to have four or more program alternatives.

Second, even when four or more true alternatives are available, the conclusion NCTA attributes to me is false. As quite clearly pointed out on pages 91–92 of "The Fisher Report," the assumptions on which table 1 is drawn up become worse as the number of alternatives increases and cannot possibly hold for four or more alternatives. Specifically, if there are four alternatives in my sense, then at least one of the following things must be true. Either at least one station is an independent, or at least one station is an educational station, or at least one station is an affiliate of more than one network with programs overlapping those of the other three alternatives. In the case of educational stations, the number of alternatives to be used in reading the table should be reduced by one, and in the other two cases variables set equal to zero in constructing the table are not zero and their effect cannot be ignored. The direction of all the ignored effects is toward a greater impact for CATV.

Furthermore, the assumptions on which table 1 is constructed insure (even ignoring the above) that the figures given for economic impact are minimum figures. This is so because there is evidence that CATV viewers watch TV more than do off-the-air viewers similarly situated and the table ignores this phenomenon.

Finally, my study was directed at stations in one- and two-station markets and not at large city situations. While it is possible to extend my results to big city situations, it is dangerous to do so incautiously. Further, it is not in any case permissible so to extend results which are not mine and which are in fact a substantial distortion of my findings.

Sincerely yours,

FRANKLIN M. FISHER,
Professor of Economics.

Mr. ROGERS of Texas. The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4:55 p.m. the committee was recessed, to be reconvened at 10 a.m. Thursday, March 24, 1966.)

REGULATION OF COMMUNITY ANTENNA TELEVISION

THURSDAY, MARCH 24, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We are continuing our hearings on H.R. 13286 and H.R. 12914. Our first witness this morning will be our colleague from the great State of Utah, Congressman Dave King. He will put a statement in the record, and will introduce one of his constituents.

Congressman King.

Mr. KING. Thank you, Mr. Chairman.

Off the record.

(Discussion off the record.)

The CHAIRMAN. You may proceed, sir.

STATEMENT OF HON. DAVID S. KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. KING. Mr. Chairman, I have come here today to introduce one of my distinguished constituents, Mr. Lyle O. Keys, of Salt Lake City, Utah. I am grateful for your courtesy in allowing Mr. Keys and me to appear here. Mr. Keys is president of the TeleMation, Inc., a new electronic company, which manufactures some very interesting equipment used by community antenna television systems. I believe that Mr. Keys will demonstrate some of this equipment during his testimony.

I have read the testimony of Mr. Keys, and am in agreement generally with what he has to say, and earnestly solicit your careful attention to this testimony.

And at this point, Mr. Chairman, I will ask unanimous consent to submit the balance of my testimony for the record.

The CHAIRMAN. Without objection, it will be included in the record in its entirety.

(The full statement of Hon. David King follows:)

STATEMENT OF HON. DAVID S. KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. Chairman, I have come here today to introduce one of my distinguished constituents, Mr. Lyle O. Keys, of Salt Lake City, Utah. I am very grateful for your courtesy in allowing Mr. Keys and me to appear here today. Mr. Keys is president of TeleMation, Inc., a new electronic company which manufactures

some very interesting equipment used by community antenna television systems. I believe that Mr. Keys will demonstrate some of this equipment during his testimony.

I have read the testimony of Mr. Keys and am in general agreement with what he has to say. I earnestly solicit your careful attention to his testimony.

I think it is very wise that the FCC chose to ask the Congress to develop policy of CATV operations. Generally I think that regulatory recognition of this growing industry is necessary and desirable. I am concerned, however, that the language of the request bill may require some clarification. I believe that it will be in the public interest to permit exceptions of the general rule that CATV systems shall not originate programs. I believe that weather and news programs of the kind made possible with the use of equipment manufactured by Tele-Mation, Inc., along with certain educational, religious, and public service programs were not intended to be prohibited by the FCC recommendations. I believe that the only safe way to protect the services I have described is through an amendment to the Commission's policy that will spell out the exceptions. I respectfully request that your committee consider the following substitute amendment for the language in section 331(2)(b):

"(b) No community antenna system shall transmit over its system any program or other material other than that which it has received directly or indirectly over the air from a broadcast station, *excepting news, weather, educational and religious programs and local public service programs made available by the system to the viewer without per-program charge, and any other exceptions that the Commission may, upon an express finding that it would serve the public interest, authorize.*"

Let me again express my gratitude for allowing me to be here. I realize that you have more witnesses than you can conveniently hear. I won't have time to wait until Mr. Keys can present his testimony in the regular order of witnesses, as I have some other committee business to attend to.

The CHAIRMAN. I wonder if you will introduce your constituent, and have him stand.

Mr. KING. Mr. Keys.

The CHAIRMAN. Mr. Keys, we are pleased to see you and you will be called in order when we come to your name. And I might say to you off the record.

(Discussion off the record.)

The CHAIRMAN. On the record.

Mr. KING. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is our colleague from California, the Honorable Burt Talcott. Mr. Talcott, we will be glad to hear you at this time.

STATEMENT OF HON. BURT L. TALCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. TALCOTT. Mr. Chairman, members of the committee, I am Burt L. Talcott, Congressman from the 12th District of California. My congressional district consists of Monterey, Santa Cruz, San Benito, and San Luis Obispo Counties. Geographically, my district is the central coast of California, south of San Francisco and north of Los Angeles. I requested an opportunity to appear before your committee because I am deeply concerned about the proposed FCC rules to regulate CATV and the general condition of CATV in the United States. The FCC rules should not open up a "Pandora's box" of unresolved issues that will result in denial to the public of better television programs or reception whether it is "over the air" or by CATV. The FCC has requested guidance from the Congress on many points. The Commission should receive specific instructions from the Congress regard-

ing these rules. I am sure this committee and our Congress can and will resolve the problems of regulating CATV on the basis of the "public interest" rather than on the basis of the "selfish interests." We owe it to the industry and the public to establish guidelines that will eliminate confusion and prevent long, drawnout legal battles.

We need to act swiftly, but prudently. The FCC, with only six Commissioners and no Chairman, faces a standoff on any important decision. Dozens of petitions have been filed, further surfeiting the Commission. Dozens of lawsuits are pending, or necessary, to obtain resolutions. We can expect various conflicting and confusing legal decisions and interminable appeals and delays. Congress, with the advice and impetus of this committee, must act promptly, boldly, and clearly in the interest of the viewers, as well as the industry.

I have observed firsthand the struggle between the television stations licensed by the FCC to serve my district and the CATV interests which have sought franchises from city and county governments in that area. There has been a five-channel CATV system operating in Carmel since 1952. Since 1954, there has been a five-channel CATV system operating in Santa Cruz. Both operators used the San Francisco stations "off the air" signals to serve their subscribers on the CATV system. Neither of these systems carried our local TV stations directly until recently. The Carmel system provided "rabbit-ear" facilities at extra cost to facilitate reception of the local TV station for years. The Carmel system which now uses microwave carries the local station. The Santa Cruz CATV operator carries the local stations only partially.

Before my election to Congress, I was an attorney and, as an avocation, served as the chairman of the Board of Supervisors of Monterey County. I have some firsthand knowledge and experience with CATV legislation, with the practical aspects of the industry from the public point of view. I have no personal or financial interests in any mass media business.

The evolutionary process which resulted in a compatible coexistence of CATV and local television in my district covers a period of over 8 years. By way of background, the local TV station licensed to Salinas was established in 1953. Another station was licensed by the FCC to serve the area in 1955. There is now pending before the FCC an application for a new UHF station in Monterey. This UHF station will receive its greatest TV circulation by being carried on the CATV systems now operating in the district. There has always been some reception from the San Francisco stations. Those families willing to install and pay for very expensive roof-top antennas picked up the San Francisco stations from the air. Incidentally, masses of these tall antennas are very unsightly and sometimes dangerous.

The first full-scale controversy between the free television stations and the CATV interests occurred in 1958, when the Salinas City Council enacted a cable TV ordinance. The early CATV ordinances in my area were loosely written. They did not provide requirements that the local television stations should be carried on the CATV systems nor did they observe the nonduplication of important prime-time network programs carried by the local television stations. Fortunately, only two franchises were actually granted under these early ordinances.

In 1960, an ordinance was adopted by the Lompoc City Council in northern Santa Barbara County for a cable TV system in that city. This ordinance provided no protection for the San Luis Obispo and Santa Barbara television stations or their viewers. Lompoc is immediately adjacent to Vandenberg Air Force Base. The Air Force personnel in command of Vandenberg stated both privately and publicly that the "contribution which better television reception would provide to the morale and to the welfare of the airmen and families living at Vandenberg Air Force Base was very important."

Our district has been through three referendum election on cable TV ordinances. The first election was in 1959 in Salinas, the second was in Lompoc in 1960, and the third in Monterey in 1961. The Salinas and Lompoc franchises were overturned by a vote of the public. The Monterey franchise was sustained by a vote of the public. In each of these elections, a tremendous amount of time, effort and money was spent by the opposing parties. The opposing parties were the local television stations licensed by the FCC to serve the area, the motion picture theater owners, and the TV dealers who were afraid they would lose income from the sale of the expensive rooftop antennas on one side and the CATV operators who applied for the CATV franchises on the other side. During these elections, the free television stations in the area requested help from the National Association of Broadcasters (NAB) and the television stations located in San Francisco and Los Angeles whose signals were to be used on the CATV systems. They received no assistance. Certainly these small, local television stations that battled CATV needed help much more than the large television stations located in the major markets. These election campaigns educated both the general public and the legislative bodies about CATV. As a result, the ordinances written later protected both the televsion stations and the CATV operators and, primarily, the viewing public.

In 1961, when the Monterey CATV ordinance was upheld by the public in an election, it became evident to the television station owners in my area that the greater program selectivity was being demanded by the public. All cities and countries from Santa Cruz to Santa Barbara were bombarded with applications to establish CATV systems. Applications came from the largest CATV operators in the United States as well as other less experienced parties. At this point, the owners of the television stations serving our market made the decision to enter the CATV arena. Since that time, as you know, there have been scores of television station owners entering the CATV field.

The Board of Supervisors in Monterey County, of which I was chairman, drafted and redrafted the CATV ordinance. Simultaneously, the city of Salinas, Calif., was drafting an ordinance to regulate CATV. There were few guidelines for us to follow then because S. 2653 which was supported by our local television stations in 1959 did not become law. To my knowledge, the first official action taken by the FCC on CATV was Public Notice 16695. This was addressed to the city of Salinas, and was used by both that city council and our board of supervisors as the basis for our CATV ordinances. To my knowledge, neither the NAB nor the Association of Maximum Service Telecasters helped in any way to have this notice issued by the Fed-

eral Communications Commission. I would like to include this Public Notice as my Exhibit No. 1.

The Monterey County ordinance was adopted in 1962. I have marked it Exhibit No. 2 for your study. If you have time to read it, I believe you will find it is model legislation that protects the public viewer, the operation of local television stations an yet permits the establishment of CATV in the public interest. It provides for simultaneous nonduplication of programs carried on the local television stations. It also provides that the local stations must be carried on the local CATV system without degradation of their signals. It prohibits pay TV on a per program charge.

There were innumerable hearings. A record nine applicants sought the franchise. When we adopted this CATV ordinance and awarded the franchise, it was done on the following basis:

1. The highest quality of service to the subscribers.
2. The lowest rate to the subscribers.
3. The highest income to the local government.
4. The best technical TV experience.
5. The financial responsibility of the applicant, plus other considerations to safeguard the public interest.

The California Supreme Court has held that CATV is not a public utility. This decision is *Television Transmission, Inc.* v. *Public Utility Commission* (47 Cal. 2d 82). The State of California has excellent enabling legislation that is now used to grant CATV franchises. I submit it to you as exhibt No. 3. It s section 53066 of the Government Code of California. In my opinion, this is the best basis yet devised on which any franchise should be granted.

The California Community Television Association working with the legal staff of the League of California Cities has prepared a model CATV ordinance—now available to all 297 cities in California.

After studying the more than 100 pages of rules and regulations of the Federal Communications Commission released March 8, 1966, in Dockets Nos. 14895, 15233, and 15971, I am thoroughly confused by the efforts to establish the top 100 markets in which CATV cannot be started or extended without permission of the FCC. In my opinion, it is not the big major markets that need protection from competition. A large number of these top 100 market television stations belong to a trade association known as the Association of Maximum Service Telecasters. This group did nothing during the CATV ordinance elections in my district to help the small television station owners. In fact, the major market television stations have been sitting on their hands all these years on CATV regulations until they were threatened with competition in their own big cities. These television stations in big cities earn hundreds of million of dollars each year. If this is an economic struggle, why didn't they press for legislation years ago rather than besiege us now with restrictive legislation to prevent the establishment of CATV systems in the major cities of the United States? May I ask you to please look at exhibit No. 4. This shows television income and expense for 1963. You will note here that although these figures are 3 years old, television stations had a profit in excess of $200 million at that time. Do these television stations need help? Between 1957 and 1963, TV broadcast income increased from $160 million to $343,-

200,000, before taxes. During this same period there were only 15 new, authorized TV stations while the number of CATV systems had almost tripled in number. In order to give you recent income, I submit to you exhibit No. 5 which shows that television stations received more than $2 billion in income in 1965.

My principal confusion concerns the overall objective of the proposed rules and regulations. Now that the Commission has exerted control over CATV, their objective must now be the public interest in its entirety—both CATV and "off the air television"—in every marketplace—not simply the top 100 markets. Reference is made throughout the proposed rules to UHF. UHF development is important but should certainly be considered a means and not the end. From my viewpoint, the objective should be a plan for the full development and coexistence of both television and CATV in each individual market. In reading the proposed FCC rules, the comments made by the Storer Broadcasting Co., which are quoted on page 5 of appendix A, also confuse me. Storer is one of the largest television group owners in this country. They are very strong financially. They now operate many CATV systems, including some in big cities.

Midwest Television, Inc., comments, found on page 23 of the proposed FCC rules, is even more confusing. This company owns a very successful television station in Champaign, Ill., and purchased KFMB-TV, San Diego, from Transcontinent Television Corp. for $10 million.

Your committee and our Congress should respond to the FCC request, as contained in these proposed rules, by closing all loopholes and by providing guidelines for the safeguard of all electronic communications. The top 100 markets represent between 81 and 90 percent of the homes in the United States. Likewise, they receive up to 90 percent of the income from television advertising whether it is network, national spot, or local. The top 50 markets account for between 64 and 70 percent of the total homes and income.

As you know, television stations' rates to advertisers are based on prime time circulation. This means the station that reaches the highest number of homes in evening hours receives the largest rates from the advertisers that use the facility.

These FCC rules and regulations, recently released, contain at least one conflict that we must resolve. I refer to page 76, paragraph 141, which sets forth the top 100 markets where a CATV system cannot begin operations until the FCC approves. The 100 markets are ranked on the basis of net weekly circulation of the largest station in the area. Further confusion is added by footnote No. 63 on the same page. This recites that a CATV system located in a community within the predicted grade A contour of any station in one of the top 100 markets cannot operate without FCC approval. Tell me what they mean: Is it the largest station or any station, or a combination of all of the stations? Then, if you will, read page 29, paragraph 49, which sets forth the nonduplication protection, you will find this applies only to prime time network programs between 6 p.m. and 11 p.m. If a group of 100 top major markets is to be established where CATV cannot begin until it receives permission from the FCC, then the criteria used for both nonduplication protection and the figures used to establish each of these markets should be the same. In other words, you cannot base

prime time nonduplication on the prime time figures from ARB, and then signify which stations are in the top 100 markets by the net weekly circulation. Both criteria must be the same.

According to these rules, if any CATV system is to be established in any of these 100 markets, it must wait until it receives permission from the FCC. The criteria used to establish these 100 markets should be settled first. It certainly should not be the largest television station. It should be confined to the prime time audience within a radius of not more than 25 miles from the city of license.

In order to give you examples of the problems in establishing the criteria for protection, I refer you to exhibit No. 6 which is the ARB (American Research Bureau) television market rank which was used by the FCC to establish these 100 markets. If this is typical of the information that is used to regulate CATV, then we had better throw the whole thing out and start over. Let me point out just some of the discrepancies. If you will look at this television market rank document, you will find St. Louis is in the 10th position on the average prime home rank and is 12th on net weekly circulation. Glancing down the page, you will find Denver is 28th in prime time ranking and 40th in net weekly circulation ranking. New Orleans is 32d in prime time and 43d in net weekly circulation. Charlotte, N.C., is 52d in prime time rank, but 29th in net weekly circulation. Des Moines, Iowa, is 59th in rank on prime time and 76th in rank on net weekly circulation. South Bend-Elkhart, Ind., is 79th in prime time rank and 97th in net weekly circulation. Our own market, Salinas-Monterey-Santa Cruz, is 101st in prime time rating and 52d in net weekly circulation. Columbia, S.C., is 120st in prime rate and 83d in net weekly circulation. There are discrepancies throughout the entire study. Some stations rank high in prime time yet much lower in net weekly circulation. Others are ranked low in prime time, yet higher in net weekly circulation.

Of course, I am particularly interested in my own market, Salinas-Monterey-Santa Cruz. This market is listed as 101st in prime time, but in net weekly circulation is 52. These figures are completely misleading. This does not represent the Salinas-Monterey-Santa Cruz market; it represents instead, the total net weekly circulation of the San Jose station. For your information, the FCC is using figures of a station that is not licensed in any of the cities listed. Using figures of the largest station within the market cannot be the proper basis.

May I submit to you exhibits No. 7–A and exhibit 7–B. These are the official 65 coverage studies for my area. They list all of the counties that make up the TV circulation. If you study exhibit 7–A, the figures on which the new FCC rules are based, you will find homes added to the Salinas-Monterey-Santa Cruz that are located 60 miles north of San Francisco in Sonoma County. The TV homes located in those counties underlined in red on your exhibits, Nos 7–A and 7–B, include Alameda County, Contra Costa County, Marin County, San Francisco County, Santa Clara West, San Luis Obispo County, and Santa Barbara County should not be used to establish this specific market. These ARB figures cover a distance of over 300 miles. The station licensed to Salinas-Monterey-Santa Cruz simply does not cover these homes. In order to compute an accurate set count, it would be

necessary to deduct 256,000 homes. This would place the Salinas-Monterey-Santa Cruz market at about 149. Because of all of the discrepancies, potential problems and legal actions relating to the establishment of these 100 top market stations, that need protection, I would eliminate this basis and substitute the requirement that the television stations in any market which deserves to be protected against CATV competition must present to the FCC the audited financial report of all television stations in the market. The financial figures should be the criterion to prove the market should be protected from CATV competition.

If the Congress and FCC adopt regulations that set forth the requirement for protecting TV stations, then a different schedule of television market figures should be used to establish the major markets. May I suggest that the best way to do this would be to use figures supplied by the Census Bureau on the actual number of television homes located in an area 25 miles in radius from the city of license. The Census Bureau collected the television home figures during the 1960 census. These figures are readily adaptable for use in determining the top 100 markets.

As I read the proposed FCC Rules and Regulations in Docket Nos. 14895, 15233, and 15971, I find many points that must be specifically interpreted by the Congress now. If we do not interpret these rules now, we are inviting scores of actions before the Federal Communications Commission. History tells us that once a Government bureau is given control over an industry, the rules and regulations most generally increase over a period of time. As far as I am concerned, having been through this CATV problem in my congressional district, I believe the FCC has done the best it could under the circumstances with so many opposing parties fighting for their own interests. My concern is that we do not approve CATV regulations that could delay better television reception in any area. For instance, there are hundreds of areas which do not receive adequate television reception due to the terrain. These proposed FCC rules for regulating CATV provide for petitions before the Federal Communications Commission. As you know, this will delay action by the FCC for a long time. It also creates a "field day" for the legal fraternity. I hesitate to knock my profession but I know that the television stations in the top 100 markets can afford these legal fees and delay much better than the television stations located in smaller communities.

There are specific issues raised by the FCC on page 83 and page 85 of this FCC document. We are asked to give them the answers.

Since the CATV systems which use microwave are regulated by the FCC now, I believe that CATV systems that do not use microwave should be regulated, also. I do not see why we should have an industry that is partly regulated and partly not regulated.

Apparently, the most important points of the proposed regulation concerns the following requirements:

1. The local television stations must be carried on the CATV system without degradation of their signals.

2. The requirement that programs carried by the local stations cannot be duplicated by the programs of the television stations brought in from distant points for reception on the CATV system.

Regarding the degradation of signals of the local stations, it should be required in the rules and regulations that the local television stations must deliver a signal of high quality from an engineering standpoint in order to be carried on the CATV system. In this way, the public is protected.

Where the local station comes into being after the establishment of a CATV, the local station should be carried if permitted by the channel capacity of the CATV system and if adding such local station will not cause the CATV to drop station(s) (programs) previously carried and highly popular with the subscribing public.

It is almost inconceivable that any CATV would purposely degrade any signal. CATV systems characteristically strive to deliver the best signals possible under any given set of circumstances under which they operate. The "local" station is frequently available on "rooftop" antennas and the cable must compete with such reception which is frequently of first-grade quality.

Nonduplication should be on a simultaneous basis. This is the only basis the public will not be restrained in any way from access to the program when it is available on the air.

As far as pay TV is concerned, the ordinances in my district prohibit this on a per program charge. Whether it is legal or not, in view of the recent California Supreme Court ruling, I do not know. Even though some form of pay TV is permitted, this is a good regulation.

Prohibiting the origination of programs or other material by CATV systems unless these features are broadcast over the air may violate the third article of the Bill of Rights on "free speech." Neither the Congress nor the Federal Communications Commission should tolerate this regulation. CATV systems in my area, as well as in many other areas in the United States, carry a very valuable weather service which is important to every home. This is particularly true in any agricultural community. There should be no prohibition against the origination of this weather report. The carriage of FM music by CATV will help, not harm, the FM stations. Neither should there be any prohibition against the origination of program material in the educational field. Closed circuit instructional television is now of utmost importance to all school systems. There should be no rule that would prevent the origination of closed circuit instructional television. Would the FCC or the Congress prevent the origination of a program that allows the local, State, or national issues to be discussed in full? What about civil defense? This is origination of material other than received directly or indirectly over the air from a broadcast station. This is a matter of national security and should be encouraged.

On page 83, section III, the FCC has asked the Congress to consider under what circumstances CATV systems should be required to obtain the consent of the originating station for the carriage of its signal on the CATV system. This opens up a real can of worms. In some instances, it would perpetuate a monopoly and set up circumstances that would allow the television station owner to demand an interest in the CATV system which is going to use its signal.

On page 85, section IV, Congress has been asked to consider the appropriate relationship of Federal to State-local jurisdiction in the CATV field with particular reference to initial franchising, rate regu-

lation and extension of service. This is the matter with which I am most concerned. We should not allow any regulation by the FCC which will interfere with home rule. Any regulation of CATV must be confined to the FCC and the local city and county governments. It certainly would not be in the public interest to regulate CATV systems as public utilities. Either our bill, or the FCC regulations should state emphatically that CATV is not a public utility. The reasons for this are obvious. CATV systems, unlike most utilities, cannot rely on a monopoly position. Most of the franchises in my district were made on a nonexclusive basis. CATV systems in some situations compete against other CATV systems. In almost all cases, CATV systems face competition from over-the-air television stations. These television stations obviously transmit a similar product to that carried through the CATV system. This is not monopoly but competition and is not within the general range of State regulation.

Moreover, CATV is not like normal regulated utilities such as gas, water and telephone companies. These utilities supply a service so essential that the public must be assured of reasonable rates and practices. CATV could enjoy none of the benefits of utility regulation and yet would be saddled with many severe handicaps; the most serious of which would be rate regulation. Fear of excessive rates is the only reason for State regulation. Where CATV systems are faced with competition from other services, such competition will ordinarily be sufficient to bring about a rate reduction. Also, the city and county governments that grant the franchise do so on the basis that any rate increase must be submitted to them for approval. In communities where such competition does not exist, the fact that CATV is essentially a luxury will force it to keep prices within reasonable bounds. We should be very specific in advising the FCC that no one but the city or county governments can grant CATV franchises and set rates. California awards the franchises on the lowest rates to the customer as well as the highest income to the cities and counties in which they operate.

CATV is a private enterprise, financed by risk capital and operates in a competitive market. CATV cannot enjoy the usual forms of protection to which a public utility is entitled because the State legislatures are without authority over the competing methods of extending television reception in the electromagnetic spectrum: TV stations, boosters, translators, satellites, microwave.

There is another important issue at stake here. If CATV systems come under State public utility commissions, then the cities and counties where the CATV systems operate will lose the revenue as provided for in the original franchise grant. Cities and counties in my area receive from 2 to 5 percent of the gross income of the cable-TV systems. The franchise payments for 1965 from a very small number of CATV systems in my area amounted to more than $20,000. It is unnecessary for me to point out to you the tax problems in cities and counties. Since we have been taking so much on the Federal level, cities and counties are faced with tremendous problems with their tax structure. Nothing should be done either by the Congress or the FCC that would jeopardize this income. I reiterate that the California Supreme Court has ruled that CATV is not a public utility. The

Vermont Legislature has passed a law that CATV is not a public utility. I am sure that many other States have done likewise or will do so soon.

The most serious problem faced by CATV systems is this public utility threat. For instance, when the telephone company offers a lease-back arrangement, the prices for the telephone company construction and operation of a CATV system is considerably more than if the CATV system operator handles the construction and operation. It should be pointed out here that the telephone company leaseback arrangement delays the construction and operation of a CATV system. Of utmost importance, in this area, is the fact that the local city and county governments, as well as the subscribers to the system know much more about and are more concerned about the performance of the CATV franchise holder than some State government bureau which is far distant from a CATV operation.

It has been obvious to me from the beginning of my study that CATV is "here to stay." Free "off the air" television station operation is certainly here to stay. A plan of harmonious coexistence is essential. The local legislation that we enacted in my congressional district anticipated the realization of this study at the Federal level in which we are participating today. Although I realize that the FCC recognizes that a model piece of legislation of the size and scope with which it has dealt in its newly proposed rules cannot be drawn successfully on the first draft, it has asked this Congress for guidance. We would be derelict in our duty if we did not specifically set forth the basis on which such franchises for CATV systems are to be made. Let us keep the rules simple, specific, and "in the public interest." Situations vary from city to city, county to county, and State to State. However, there is nothing to prevent the FCC from creating a model piece of legislation to be used by the cities and counties in granting franchises to CATV systems. This would be most helpful. Tremendous investment is required, on the part of CATV applicants, but the final success or failure of any CATV system depends upon high standards and the public's acceptance of the service ordered. There is no rule that says a customer must subscribe even though the CATV system facility or cables pass right by his house. The public will not accept inferior CATV service, nor will they spend a lot of money for something that can be furnished through other means of electronic communications.

To summarize, here are the points that are, in my opinion, essential for any rule and regulations on CATV.

1. CATV can be established in any area unless the television stations in that area submit documented financial information to prove they will be damaged economically and the public will lose valuable "over the air" television programs. (It is almost impossible to determine in advance that CATV will economically injure "local" stations. To date, this has not been true. Economic injury is not evident and in many cases the local station is in the CATV business in the same area as the station.)

2. Any CATV system can originate such programs as time, weather, wind direction, closed circuit educational television, and similar public service material.

3. CATV systems are not required to obtain the consent of the originating broadcasting station for the carriage of the signal by the CATV system.

4. CATV is not a public utility and is subject only to regulations by the Federal Communications Commission and the local governments.

I thank you for the privilege of appearing before you today on this most important subject. I have studied H.R. 13286 and H.R. 12914. I now look forward to reviewing an amended bill which will include some of the points that I have presented today. Thank you.

(The exhibits presented by Mr. Talcott have been placed in the committee files.)

The CHAIRMAN. Are there any questions? If not, we thank you for your testimony, Mr. Talcott.

Mr. TALCOTT. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. Next we will hear from our colleague from Ohio, the Honorable Robert Sweeney. You may proceed, Mr. Sweeney.

STATEMENT OF HON. ROBERT E. SWEENEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. SWEENEY. Mr. Chairman and members of the committee, I wish to thank you for affording me the opportunity to appear before you today and to draw the attention of the committee to what I would consider to be the very heavyhanded action of the Federal Communications Commission in restricting the effort to improve television reception to the homes in the Akron, Ohio, area.

Mr. Chairman, the City Council of Akron, Ohio, unanimously approved a resolution calling upon the FCC to take steps to assure that Akron would have the benefit from the proposed Akron Telerama, Inc., CATV system. The people of the city of Akron and their elected officials are rightfully alarmed concerning the effect of the Commission's report and order as they feel it would substantially reduce their full and fair measure of television service.

As Congressman at Large for the State of Ohio, I have been briefed by those who have invested huge sums in the construction of certain facilities to implement the Akron CATV system. It is my understanding that unless the CATV system is actually at the broadcast stage on or before February 15, 1966, that such a system is cut off.

I believe such an order overlooks the very substantial investment of time, money and effort and certainly operates as a tremendous injustice to the developers, who in the particular instance of Akron, Ohio, have spent enormous sums for construction and have made substantial commitments for additional sums.

I do not believe, Mr. Chairman, that the FCC should be permitted by Congress to take any action which amounts summarily to an unannounced freeze of the entire CATV interest, and I would suggest that the Commission's attitute could be best described as arbitrary and unreasonable.

I hope and trust, Mr. Chairman, that the time has not arrived when this Congress is going to adopt an attitude of protection for the UHF interests of this country to the serious and mortal injury of the CATV system industry particularly where the supporters and investors in that industry have proceeded in good faith.

I call upon you, Mr. Chairman, and my colleagues on this distinguished committee to investigate the Federal Communications Commission's order and its effect on Akron and comparable cities.

Mr. Chairman, I support the effort of the FCC to institute responsible regulations in this field, but in good conscience, I cannot support ex post factor legislation, and I will not encourage action by the Congress or the Federal Communications Commission that would deprive residents of the greater Akron area, whom I represent, of their undiluted right to effective television service in that area.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Sweeney.

We will now hear from another Member, the Honorable Chester Mize, of Kansas. You may proceed as you wish Mr. Mize.

STATEMENT OF HON. CHESTER MIZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. MIZE. Mr. Chairman, members of the Interstate and Foreign Commerce Committee, in the flathead areas of the Kansas prairies, many television set owners would be limited to watching one channel of television if it were not for community antenna television systems. These systems are vital to the widespread viewing of television programs broadcast by stations representing the three networks and also programs of independent and educational television stations. Up until the advent of CATV, only residents living in major cities and the immediate adjacent areas had any real choice of television programs.

There are 33 CATV systems operating or franchised to operate in the State of Kansas. These systems make it possible for smaller rural communities to enjoy the same variety of television programs as those living in or near metropolitan areas. Many of these systems rely upon microwave facilities to bring television programing into their communities. With the present limited coverage of existing television stations, most of the smaller towns in Kansas look to CATV for improved television viewing.

Anything that damages the CATV industry and limits its right to bring television programs to these communities also limits the freedom of choice of the smalltown viewers who suffer a geographical disadvantage as far as television viewing is concerned. I feel that CATV provides a threefold service to the people in my district. First of all, it gives the people living in remote areas a choice of television programs. Secondly, it lets advertisers in metropolitan areas get their advertising messages to people living outside the rather limited areas covered by the television broadcasting stations. Third, it provides jobs for the people employed in the CATV systems.

So, I endorse the services CATV provides and hope that Congress will set down guidelines which will allow it to grow and prosper and continue the valued service it brings to the television viewers of Kansas and America.

Thank you.

The CHAIRMAN. Thank you for your views, Mr. Mize.

Our next witnesses will be Mr. Guy Main, and Bill Fox. Would they come forward, please? I understand you have a statement for

the record, and will summarize it. Mr. Main is executive vice president of Midwest Television, Inc., and Mr. Fox is station manager of KFMB–TV, San Diego.

Mr. Main?

STATEMENT OF GUY MAIN, EXECUTIVE VICE PRESIDENT OF MIDWEST TELEVISION, INC.; ACCOMPANIED BY BILL FOX, STATION MANAGER; AUGUST MEYER, PRESIDENT; AND CHARLES MILLER, LEGAL COUNSEL

The CHAIRMAN. You many proceed as you see fit. We will be glad to have your statement in the record and you may summarize it in any way you wish.

Mr. MAIN. Thank you, Mr. Chairman.

Mr. SPRINGER. Mr. Chairman, may I say that two of these gentlemen are constituents of mine, Mr. Main and Mr. August Meyer. The other gentlemen are from California, I believe, but these two happen to be two of my constituents.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. You may proceed. We have Mr. Van Deerlin over here who has some of his constituents and I would like for him to introduce them.

Mr. VAN DEERLIN. I just wanted to point out, Mr. Chairman, that one member of this testifying team is indigenous to San Diego, Bill Fox, who is sitting at my end of the group. He has been with channel 8, the original San Diego station, since they started, back in 1949.

He has worked his way up to vice president, in an organization that is now shared with ownership of the properties in Mr. Springer's district. I, too, am very proud to welcome this delegation this morning.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. You may proceed.

Mr. MAIN. Mr. Chairman, the only gentleman who has not been introduced here is Mr. Charles Meyer, our legal counsel.

Because of the critical importance to Midwest's stations of the issues facing this committee, we have submitted for the record a somewhat detailed statement of facts and of our views. In the interest of conserving this committee's time my oral statement will only summarize our prepared statement.

We are strongly opposed to H.R. 12914 for we think it has been clearly demonstrated that CATV will undermine if not destroy the existing system of free television provided by local and area stations unless it is subject to reasonable regulation by the FCC in the public interest.

Mr. FRIEDEL. You are opposed to what bill?

Mr. MAIN. H.R. 12914.

The CHAIRMAN. Go ahead.

Mr. MAIN. We support in principle H.R. 13286 the FCC's recommended legislation. To show why it is vital that the FCC act now and effectively I will briefly explain the threat to free local and area television in the markets served by Midwest's stations.

San Diego.—San Diego is only 112 miles from Los Angeles but it is a separate metropolitan area with a separate identity. Its citizens—over 1 million in number—have no particular identification with Los Angeles and do not want their city to become a suburb or satellite of Los Angeles.

Presently San Diego is served by five area stations that provide a full complement network programing as well as a wide variety of programing oriented to San Diego area viewers. In addition to these five stations, two and possibly three additional stations for the San Diego area are in the offing.

The fine service now provided by the San Diego area stations is gravely threatened by the many CATV systems presently operating and franchised to operate within the grade A service area of our San Diego station.

Each of the existing systems imports from six to nine stations from Los Angeles. The areas covered by the franchises of these operating and proposed cable systems cover an overwhelming share of the homes in San Diego County within our stations' grade A contour. Thus even though the Los Angeles stations do not program for San Diego and are not geared to meet the needs of San Diego viewers and advertisers, cable television threatens to import these stations generally throughout the San Diego area.

Already the importation of Los Angeles stations by CATV into the San Diego area has affected San Diego station audiences. If the coverage of Los Angeles stations becomes general, there is just no doubt that the resultant fragmentation of the San Diego stations' audiences will greatly reduce their ability to serve the San Diego area.

Advertisers pay for time based on the delivered audience on a program-by-program basis. If the station's delivered audience is cut in half, its rates to advertisers must be correspondingly reduced.

Moreover, and as an expanding CATV continues to dilute local station audiences some advertisers would cease to buy the local stations.

The ultimate result would necessarily be a deterioration of the local station's programing—expecially the expensive but important locally oriented programing that would not be replaced by the imported Los Angeles stations.

We had a recent striking example of the importance to San Diego of locally oriented programing. The voters recently approved a bond issue for $27 million to construct an athletic stadium in San Diego, and the exposure given this subject by the local stations was instrumental in the success of the stadium bond proposal.

If, because of the intrusions of distant station signals via cable, the local stations are forced to curtail this type of locally oriented programing, a major step will have been taken to transform San Diego from an independent, growing, self-sufficient community to a distant and dependent suburb of Los Angeles.

The rules recently adopted by the FCC, while generally commendable for recognizing the threat of CATV to free local and area television, fall materially short of solving the critical problem in San Diego. The basic defect is the broad "grandfather" provision that exempts systems already in operation when the rules were announced from the restrictions on distant signal importation.

Under this exemption the CATV systems in the city of San Diego, which now have a relatively few subscribers, could expand into giant systems covering the entire city without effective FCC control, unless we are able to convince the FCC that it should adopt a special rule to prevent this.

We have recently filed a request with the FCC for relief from these overly broad "grandfather" exemptions.

There are other deficiencies in the FCC's rules which are discussed in my full statement that has been submitted. We urge the Congress to give careful consideration to our statement and to encourage the FCC to ease the burdens on individual stations present under its rules and to take further steps to shore up the deficiencies in its rules.

In regard to central Illinois, CATV threatens to play havoc with the existing pattern of television service in the Springfield-Decatur-Champaign-Danville market in central Illinois.

Within the service area of our station—WCIA in Champaign—there are CATV systems either operating or franchised in 31 communities with a combined population of 370,000. Franchises are being sought in additional seven communities, including Champaign.

If these franchises are awarded CATV would be authorized in communities containing over one-half of the population of WCIA's entire service area. Virtually all of the cable systems presently carry or propose to carry distant station signals from Chicago and in some cases St. Louis and Indianapolis.

The local stations in central Illinois offer the programs of all three major networks as well as healthy volume of locally oriented service. All of the stations have proposed improvements in their operations that would extend their coverage throughout the area.

But if CATV is allowed to import signals of Chicago and other distant stations without restraint the proposed improvements of the local stations would be frustrated and the existing level of service would be greatly jeopardized.

If the Chicago stations are beamed generally into the area the audiences of the local stations will be splintered and their revenues would be greatly reduced. The ability to provide effective local service would be greatly impaired.

Impairment of local service in the central Illinois area would be particularly disastrous for the many thousands of farm families in the area that would not be served by CATV.

Unlimited importation of distant city signals by CATV can have other disruptive effects. An example: WCIA purchases rights from the University of Illinois to telecast selected home games of the school's basketball games. The school has limited our coverage in order to minimize the loss of attendance at the games and our rights payments compensate for whatever loss there is.

A Chicago station televises some home games of the University in Chicago that WCIA is not permitted to televise.

The university consents to this because telecasts in Chicago do not interfere with attendance in Champaign. But if a CATV system were to carry the Chicago station's signal into the Champaign area, it would produce the very sort of damage that the university sought to avoid in its bargaining with WCIA.

Moreover, this would be a type of program available only to CATV subscribers in the Champaign area and at no program or rights cost to the CATV systems. At the same time noncable subscribers, including farm viewers, would be denied the programs because the local stations are unable to obtain the rights to telecast the games unlimitedly.

Peoria, Ill., is currently served by three network-affiliated UHF stations. While no CATV systems are yet in operation within these stations' service areas several systems have been franchised and some are under construction. In addition, the city of Peoria has under consideration a proposal of a subsidiary of the General Electric Corp. to wire the entire city of Peoria to a CATV system that would carry no less than 13 distant city signals. If this system is permitted to operate and is successful in wiring up a substantial portion of the Peoria homes the audiences of the three Peoria UHF stations would be decimated and their ability to render effective local service to the Peoria area would be destroyed.

In sum, our concerns about rampant CATV expansion are real. They are the product of furious CATV activity in the areas served by our stations. Because we think the threat to existing television service in the areas served by our station is acute, and because we think other stations in communities throughout the country may be facing similar threats, we have come before the Congress to explain the situation.

We hope and believe that the situations we have described clearly demonstrate the need for effective regulation of CATV in the public interest. We urge the Congress to make clear then to the FCC that it expects the FCC to regulate CATV vigorously in order to maintain the existing free local and area television system.

Thank you very much, Mr. Chairman.

(The prepared statement of Mr. Main follows:)

TESTIMONY OF GUY MAIN, EXECUTIVE VICE PRESIDENT, MIDWEST TELEVISION, INC., BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES ON H.R. 12914 AND H.R. 13286

My name is Guy Main and I am executive vice president of Midwest Television, Inc. Midwest is the licensee of television stations WCIA in Champaign, Ill., and KFMB–TV in San Diego, Calif., both VHF stations, and WMBD–TV in Peoria, Ill., a UHF station.

With me today are Mr. August Meyer, president of Midwest Television; Mr. Bill Fox, station manager of KFMB–TV in San Diego; and Mr. Charles Miller from the firm of Covington & Burling, our legal counsel.

In the interest of conserving time my testimony will cover the issues before this committee insofar as they affect each of the areas in which Midwest has stations. However, Mr. Fox is prepared to answer questions directed specifically to the situation in San Diego. I will attempt to answer general questions as well as those dealing particularly with the situations in Illinois.

Midwest Television is opposed to the adoption of H.R. 12914. The apparent purpose of this bill is to withdraw from the FCC the authority to regulate CATV systems. We believe that the need for Federal regulation of these systems in order to preserve the existing free television system has been amply demonstrated. In my testimony today I shall attempt to show how unregulated CATV can undermine free television service now being provided by local and area television stations in the public interest.

Midwest supports in principle H.R. 13286. The Association of Maximum Service Telecasters, of which Midwest is a member, will testify before this committee in detail on H.R. 13286. Since we are in general agreement with MST's position on the specifics of this bill we will not take up the committee's

time with a repetition of the points that will be made by MST. Rather Midwest urges that the views of MST be given careful consideration by the Congress.

I should like today to explain to this committee the critical situation with regard to CATV now existing in the areas served by Midwest's stations. I do so in order to show that effective FCC regulation now is absolutely vital to the preservation of existing television service and the full development of UHF television in these areas.

THE SAN DIEGO SITUATION

San Diego is 112 miles from Los Angeles. It is a separate metropolitan area with a separate identity. The population of San Diego County exceeds 1 million. San Diego has never been a suburb or satellite of Los Angeles—its citizens have no particular identification with Los Angeles and no desire for their community to become a suburb or satellite of Los Angeles.

Yet there is at present a grave threat that San Diego will become a suburb or satellite of Los Angeles as far as television service is concerned because of the widespread and rapidly increasing efforts of CATV systems in San Diego.

At present the San Diego area enjoys extremely fine television service from five area commercial stations, three of which are affiliated with the three major national networks. These five stations together provide San Diego with a full schedule of network programs plus a large and varied amount of programing specifically oriented to San Diego viewers. In addition they provide San Diege area advertisers with excellent opportunities for television advertising.

Two additional UHF channels have been assigned to San Diego. A construction permit has been granted for a commercial station on one of these and a permit has been requested for an educational station on the other. In addition the FCC is considering allocating an eighth channel to the San Diego area.

Thus, there is now a wealth of television service from San Diego area stations and the future promises an even greater volume of service and an even richer diversity of television fare for the San Diego area from locally oriented San Diego area stations.

But the present high level of service in San Diego cannot continue and the promised new service will not materialize if CATV systems are allowed to inundate the San Diego area with signals of the Los Angeles station.

At the present time there are 13 CATV systems or portions of systems in operation in the city of San Diego and surrounding communities, all within the grade A contour of KFMB–TV. The number of subscribers hooked into these systems is still relatively small—we estimate about 17,000 homes, although facts and figures about CATV are very hard to come by. However, the CATV systems in San Diego have been working furiously since last April when the FCC first indicated it would regulate them—and especially in the last few months—to start construction and to extend their cables.

Additionally, franchises for CATV systems have been awarded in some 14 additional San Diego County communities within the grade A contour of KFMB–TV. The number of homes in areas with CATV systems either operating or franchised is over 90 percent of all homes in San Diego County within the grade A contour of KFMB–TV.

Each of the systems in operation imports from six to nine stations from Los Angeles. These Los Angeles stations are not designed to serve the San Diego area. Their programing is not geared to the needs of San Diego and their advertisers are not San Diego businesses. In every respect these stations are outsiders to San Diego.

Moreover, these Los Angeles stations do not bring a substantial amount of new types of programing to San Diego. Nearly all the programs on Los Angeles channels have been, are being, or will be shown on San Diego stations.

Yet the importation of these Los Angeles stations into San Diego is already having an impact on San Diego area stations and unless this importation is arrested the effect will be disastrous. Information compiled last summer shows that in homes with Los Angeles stations imported by CATV viewing of local San Diego stations has been reduced by as much as 50 percent. This sort of audience fragmentation, if it should continue as CATV expands, would have a profound effect on the revenues of the local San Diego stations and on their ability to continue their present high level of service.

Advertisers pay for time based on the delivered audience on a program-by program basis. If the station's delivered audience is cut in half, its rates to advertisers must be correspondingly reduced.

Moreover, as an expanding CATV continues to dilute audiences, some advertisers would cease to buy the local stations. Not too long ago a large national advertiser who purchases spots in major cities throughout the country told a KFMB–TV executive of his great concern that the expansion of CATV in San Diego would require his company to drop San Diego from its station lineup. This is going to happen all too frequently if national advertisers find that by buying a Los Angeles station they can obtain reasonably adequate coverage in San Diego.

Once the advertisers begin abandoning the local San Diego stations their future will be in grave danger. Their loss of revenue would require that they curtail their expensive programing—such as the feature films and syndicated programs. Expensive locally oriented programs would be cut back. Even the network affiliations would be endangered.

In short, the proliferation of Los Angeles station signals by CATV throughout the San Diego area could well mean destruction of the local station television service in San Diego that is provided today. And if this should happen the public would be the ultimate loser. Those without the means to pay the fees exacted by CATV systems or who live in outlying areas not wired by CATV would lose their present high level of television service. Even those able to purchase the service would lose the locally oriented programing now made available by the San Diego stations.

The importance of locally oriented programing to a community cannot be overemphasized. Let me illustrate. In San Diego recently a bond issue was authorized by the voters to construct a $27 million athletic stadium. Success of the drive for voter approval required broad public awareness of the potential benefits to San Diego.

Our station KFMB–TV and the other local stations give broad coverage to the question, including many opportunities for discussion on both sides before the largest possible audience. This broad exposure was instrumental in the success of the stadium bond proposal. Here were local stations responding to a local need. Service of this sort by local stations helps to maintain the separate identity of San Diego and to keep it from becoming a minor appendage of the greater Los Angeles metropolitan area.

Mr. Bill Fox, our station manager in San Diego who is here today, has explained that the athletic stadium bond issue is part of the continuing effort of the San Diego Greater Sports Association to bring major league sports to San Diego. Cable television poses a grave threat to the success of this endeavor. The principal source of funds to retire the bonds will be the gate receipts from San Diego Charger football games in the stadium. In keeping with the need for full attendance at the games, local stations are blacked out from television coverage of home games. However, the games are televised in Los Angeles. If cable television were to bring the games on the Los Angeles station into San Diego, attendance at Charger games would suffer and the bond retirement schedule could be impaired.

If this should happen repercussions in San Diego would be strong. Efforts to bring other major league teams to San Diego would almost certainly be thwarted. Local investors would not risk their capital in support of athletic teams if cable television is allowed to ignore the reasonable local blackout restrictions that are necessary to maintain a high level of attendance at athletic contests.

Moreover, impairment of the stadium bond issue could adversely affect future financing by all municipalities in the San Diego area. The marketability of municipal bonds could be impaired and the cost of financing would surely increase.

The illustrations I have given show that our fears about cable television are not far fetched or hypothetical. In San Diego the threat is real and it is significant. Unless regulated, cable television can change San Diego from an independent, growing, self-sufficient community to a distant and dependent suburb of the vast Los Angeles metropolitan area.

THE FCC REGULATIONS

The FCC's recently adopted rules alleviate to some extent the threat of CATV to free local television service generally. These rules prohibit the importation of signals of distant stations by new CATV systems into the grade A service area

of local stations in the top 100 markets unless the FCC first decides after a hearing that such importation is in the public interest. They also require CATV systems to carry local stations and prohibit them from carrying a distant station program that duplicates the program of a local station on the same day. These are important steps in the right direction and as a general proposition they will assist in preserving the national system of free local television service.

However, the FCC rules fall materially short in solving the critical problem in San Diego. This is because the rules give broad "grandfather" rights to systems alredy franchised and in operation. For example, the systems presently operating in the city of San Diego cover only limited sections. But their franchises authorize complete coverage of San Diego. Under the FCC's grandfather exception these systems will be permitted to expand their systems to new subscribers throughout the city of San Diego without prior FCC approval, no matter how small the system at present and how few its list of subscribers, unless a station in San Diego can convince the FCC that such extensions should be prohibited. We have just recently filed with the FCC a request for relief from the proliferation of CATV in San Diego by existing systems under the so-called grandfather provisions.

We see no justification for such a broad grandfather exception to the general prohibition of distant signal importation into the top 100 markets. At the very least, CATV systems should not be allowed to expand service to new subscribers after February 15—the day the FCC announced its rules without first showing compelling grounds for being allowed to do so. Indeed, since CATV systems have been on specific notice by the FCC since April 1965 that restrictions on importation of distant signals were being considered, fairness would compel grandfather protection only with respect to those subscribers actually receiving distant signal service from CATV prior to April 1965.

There are several other deficiencies in the FCC's rules which relate to San Diego and numerous other television markets. In general, the distant station rules place an enormous burden on individual television stations. Because the impact on local and area stations of the importation of distant station signals by CATV will be so severe, the FCC should have issued a simple rule prohibiting the carriage of station signals beyond their service areas except in remote, isolated areas that do not have and cannot be expected to receive in the future adequate, direct off-the-air service. Such a rule would have provided for hearings only after a CATV system had made a strong showing that the importation of distant signals in a particular case would not threaten the establishment and maintenance of television broadcast service.

Having failed to adopt this approach, the Commission should be encouraged to ease the burdens on individual stations and eliminate other deficiencies in its rules.

First, CATV systems are free to petition the FCC for exemptions from the requirement that there be a hearing before they can import distant signals within the Grade A service area of local stations in the top 100 markets. By failing to establish strict standards to govern these exemptions the FCC has virtually invited CATV systems to seek exemptions in every case. If this in fact occurs the administrative burden on the local stations of contesting each application would be intolerable. We believe the FCC should spell out specifically the situation in which it will permit exemptions and that the permissible situations should be strictly limited.

Second, importation of distant signals by CATV systems into the grade B service areas of local stations is permissible unless a local station files pleadings with the FCC supported by detailed evidence and, case by case, convinces the FCC that it should take affirmative action in each particular case. We believe that any general regulation on distant signal importation should apply within the grade B as well as the grade A service area of local stations. A station derives significant support from its grade B area. The fragmentation of its audience in that area is fully as harmful as the fragmentation of its audience in the grade A service area.

Third, the same-day nonduplication rule provides virtually no protection for non-network-type programing of local stations. Local stations make substantial investments in exclusive distribution rights to feature films and syndicated programs. They anticipate recovering their investment by showing these programs over a period of time. But every time the program is shown in the area by a distant station imported by CATV the audience for the local station's

showing of the program is reduced. Rarely do stations in different cities show these programs on the same day. Thus the same-day nonduplication rule will not protect the local stations' investments in this type of programing.

It is for this additional reason that there must be an effective all-encompassing prohibiion against importation into the service areas of stations, such as the San Diego station, of distant signals such as those of the Los Angeles stations, unless CATV makes a compelling showing that the importation will not jeopardize the establishment and healthy maintenance of television broadcast service in the area.

Fourth, the FCC's rule requires CATV systems to carry the local station sigmals without material degradation in quality, and to carry them on the channels on which the stations are transmitting, if possible, without material degradation. We believe that CATV systems should be required to take affirmative steps to insure that the local station's signals are carried without impairment of signal quality on the channels on which they are transmitting. Local stations like KFMB–TV have invested substantially in promoting their identification through their channel number. Yet KFMB–TV's signal on many of the CATV systems in San Diego is less satisfactory than the signals of Los Angeles stations.

Just the other day a businessman in San Diego told an executive of KFMB–TV that he had taken to watching the Los Angeles CBS affiliate because of the poor quality of KFMB–TV's picture on his CATV-served screen. As a consequence, he said, he had lost the habit of watching KFMB–TV for news and other local programs and had therefore lost touch with local San Diego issues.

CATV systems, which are using the local station's signal without charge to make a profit, should be compelled to preserve the hard earned good will of the local station by carrying its signal on the station's regular channel without degradation of the picture quality.

Let me summarize the San Diego situation by saying that unless the FCC is allowed to impose reasonable restrictions on CATV importation of Los Angeles stations into San Diego the free local television service in San Diego will cease to exist as we know it today. The restrictions imposed by the FCC in its recent rules will in no way impede CATV systems in the performance of their traditional supplemental functions. And while they afford only minimum protection to local broadcasters they are a necessary first step to preserve the existing free television system in San Diego. But further steps will be required to insure that CATV does not undermine that system to the detriment of the entire viewing public in San Diego. We urge the Congress to encourage the FCC to take these necessary further steps to shore up the deficiencies in its rules that I have just discussed.

THE CENTRAL ILLINOIS SITUATION

The spread of CATV activity in central Illinois is alarming. In the service area of WCIA, Midwest's VHF station in Champaign which serves the entire Springfield-Decatur-Champaign-Danville market, there are CATV systems either operating or franchised in 31 communities which have a total population of 370,000. Franchises for CATV systems have been applied for in an additional seven comunities, including Champaign itself, with a combined population of 138,000. The total population in areas in which the CATV's are operated or proposed is over half of the population of WCIA's entire service area.

The systems now in operation either presently carry or propose to carry distant station signals from Chicago and in some cases St. Louis and Indianapolis. The potential erosion of audience threatened by wholesale importation of Chicago and other distant signals into WCIA's area clearly poses a grave and immediate threat to WCIA and the UHF stations also serving the area.

At present the Springfield-Decatur-Champaign-Danville market is served by WCIA—a CBS affiliate, WAND–TV—an ABC affiliate in Decatur, and WICS–TV—an NBC affiliate in Springfield with satellite stations in Champaign and Danville. All three of the network affiliated stations have plans for improving their free service in this market. Midwest has been seeking a new UHF station in Springfield which would be operated substantially as a satellite of WCIA but which would originate some programing specifically oriented to Springfield. This has been delayed by a hearing before the FCC on overlap. Midwest will soon file a UHF translator application for Springfield in an effort to improve service without waiting for the hearing to end. WAND–TV has asked the FCC for permission to move its transmitter site and to increase the power of its

transmitter in order to broaden its coverage in the market. Also pending before the FCC is an application by the NBC station's satellite in Champaign for permission to construct a new tall tower that would improve service in the Champaign-Danville sector.

All of these improvements, which the local stations have proposed to undertake at their own expense in order to bring even better service to viewers in the area, might well be frustrated if CATV is permitted to continue its rapid and unrestrained expansion in central Illinois and to import stations from Chicago and other distant cities to viewers in the area. Such importation could not help but severely fragment the audiences of the local stations, thereby reducing their ability to provide expensive and desirable programing to their viewers.

The unchecked expansion of CATV and its resulting impairment of the service of local stations in the central Illinois area would be particularly disastrous for the many thousands of farm families in central Illinois that would not be served by CATV systems because of the high cost of installation that precludes CATV expansion into rural areas. The replacement of free local stations with CATV services would deprive these farm homes entirely of their television service.

Moreover, unrestrained CATV expansion and importation of distant city signals would virtually insure that the several unused UHF channels presently allocated to the central Illinois area would not become occupied, thereby thwarting the congressional goal of fully developed UHF television and depriving the people of central Illinois of local television outlets.

Unlimited importation of distant city signals by CATV can have other disruptive effects. An example: WCIA purchases rights from the University of Illinois to telecast selected home games of the school's basketball games. The school has limited our coverage in order to minimize the loss of attendance at the games and our rights payments compensate for whatever loss there is. A Chicago station televises some home games of the university in Chicago that WCIA is not permitted to televise. The university consents to this because telecasts in Chicago do not interfere with attendance in Champaign. But if a CATV systems were to carry the Chicago station's signal into the Champaign area, it would produce the very sort of damage that the university sought to avoid in its bargaining with WCIA. Moreover, this would be a type of program available only to CATV subscribers in the Champaign area and at no program or rights cost to the CATV systems. At the same time noncable subscribers, including farm viewers, would be denied the programs because the local stations are unable to obtain the rights to telecast the games unlimitedly.

The recently adopted FCC rules only partially meet the problem of importation of distant stations by CATV into the central Illinois area. For the reasons I have already stated the FCC rules are in important respects inadequate to preserve the existing television system from impairment by CATV importation of distant city signals.

I should also mention the situation in Peoria, currently being served by three network-affiliated UHF stations. While no CATV systems are in operation within the service area of the Peoria stations several have been franchised and some are under construction. In addition, the city of Peoria has under consideration a proposal made by a subsidiary of the General Electric Corp. to wire the entire city of Peoria to a CATV system that would offer the signals of 13 distant city stations. If this system is permitted to operate and is successful in wiring up a substantial portion of the Peoria homes the audiences of the three Peoria UHF stations would be decimated and their ability to render effective local service to the Peoria area would be destroyed.

In sum, our concerns about the effect on the existing television system of rampant CATV expansion are not hypothetical. They are real and they are the product of furious CATV activity in the very areas served by Midwest's stations. Because we think that the threat to existing television service in the areas served by Midwest's stations is present and acute, and because we think that other stations in communities throughout the country are facing the same or similar threats, we feel justified in asking the Congress to take whatever steps it deems appropriate to affirm what the FCC has done so far to regulate CATV in the public interest and to urge that the FCC issue stronger regulations in order to preserve the existing free television system against the threatened encroachments of CATV.

The Commission should also be encouraged to take necessary steps to foster the expansion of free local and area television service. This can be done through

the expanded use of translators and broadcast satellite stations. At the present time the use of these methods for expanding free service is inhibited in some instances by artificial rules that serve no real public purpose.

For example, Midwest would like to expand its free service into the Palm Springs area of southern California, which presently has no local television station. Because of a large mountain Palm Springs does not receive the signals of San Diego stations off the air, even though it is located within the theoretical grade B contour of Midwest's San Diego station. Under the Commission's duopoly rules it is not clear that Midwest could obtain a license for a Palm Springs station without going through a long and expensive hearing, even if there were no competing applicants for the license. Our doubts on this score have intensified as a result of the experience with our effort to obtain a license for a broadcast satellite station in Springfield, Ill. Because of the potential overlap with Midwest's station in Champaign this application has been bogged down in a hearing for some time even though there is no other applicant for the channel. As a result of the Commission's artificial duopoly restriction the capital of Illinois has been deprived for several years of better service and a second local station.

The Commission should be urged to eliminate these and other artificial restrictions on full expansion of free television service throughout the country.

We are grateful for the opportunity to appear before this committee today and we would be pleased to attempt to answer any questions any of the committee members may have.

The CHAIRMAN. Mr. Main, we are glad to have you with us. We shall begin the questioning now.

Mr. Rogers.

Mr. ROGERS of Texas. Mr. Main, I notice you start off by saying that you are opposed to the bill, H.R. 12914, and you say the apparent purpose of that bill is to prevent the FCC from regulating CATV. Now I want you to be fair with me about this. CATV is not mentioned in that bill at all, is it?

Mr. MAIN. I do not remember the precise language of the bill, sir.

Mr. ROGERS of Texas. Now the bill is very short. You have a copy of it there, don't you? The Communications Act has a section in it against censorship and there is one sentence added to that censorship, in this bill, 12914, and it says this:

> Nothing in this Act shall be understood or construed to give the Commission the power to control or regulate the reception of radio communications or signals transmitted by any radio station.

Now I want you to tell me, are you supporting the granting of power to the Federal Comunications Commission to control the reception of radio signals in this country?

Mr. MAIN. We believe that the FCC should regulate CATV.

Mr. ROGERS of Texas. Well, I did not ask you that, though, Mr. Main. There are a lot of other things involved in this besides CATV and everybody is getting their blinders on, and putting the focus on the bank accounts, and the result of the thing could very well be an imposition upon the people throughout this country.

Now my question to you was, did you feel that the Federal Communications Commission should have control, power to control the reception of radio signals in this country?

Mr. MAIN. If this does not, if this means that CATV would not be regulated, then we are opposed to it.

Mr. ROGERS of Texas. Well, you still have not answered my question. You are still talking about CATV. I am talking about the control of the reception of radio signals broadcast into the airwaves by a

broadcasting station. Now you said you were opposed to H.R. 12914, and I presume that you are speaking for the group you represent. Now if you are, you are saying that you are opposed to freedom of reception of radio signals by the people of this country, and that you are for the control of reception by a Federal bureau.

Now if I have misstated this, I think you ought to clear it up.

Mr. MAIN. We agree that the FCC should not have the power to regulate the viewer in his home.

Mr. ROGERS of Texas. Not to regulate——

Mr. MAIN. On his home set.

Mr. ROGERS of Texas. Well, that is what this bill says, but you say you are opposed to it.

Mr. MAIN. If that was all the bill was intended to do, we would not be opposed to it.

Mr. ROGERS of Texas. Now what you are saying, Mr. Main, is this: that if the bill sticks to where the reception will not be under their jurisdiction, you are for it, insofar as it might not affect your economics of your business, aren't you? But if it does affect the economics of your business, then you are willing to sacrifice the basic principle of granting power to a Federal bureau to control reception of television in this country, and radio signals, which has never been done, and I don't think the people will ever subscribe to it.

Mr. MAIN. We don't believe that CATV is strictly reception. We think it is transmission.

Mr. ROGERS of Texas. Well, then why are you against this bill, saying that it is confined to the reception? You say you are against my bill, which simply says that they don't have control of reception, yet you turn around and say that you don't think that CATV is reception, you think it is transmission.

Now if it is transmission, Mr. Main, are you familiar with the Communications Act?

Mr. MAIN. Somewhat, yes.

Mr. ROGERS of Texas. I will ask you if it isn't a fact that there isn't any place in that act where the Federal Communications Commission is given jurisdiction of the reception of radio and TV signals in this country?

Mr. MAIN. Well, I can't recall all the provisions of the act, naturally, but the CATV may be extending this reception and transmitting too far with the systems that they have installed.

Mr. ROGERS of Texas. Well, now, the point is this, Mr. Main: that you have confined your thinking altogether to a question of economics, have you not? The Communications Act and the sections applicable to radio signals is devoted entirely to the transmission of signals, and it was passed originally for the purpose of making it possible for people to get these signals, and not for restricting or hampering the carrying of these signals to people of the United States, because of the fact that the spectrum is considered a public domain.

Now what you are saying is that you want the Federal Communications Commission to have the power to determine that certain groups or certain peoples can't receive these signals, if those signals compete with your business, are you not?

Mr. MAIN. I believe that the economics do involve us, but they also involve the public, because if it is going to disturb and destroy the present broadcasting system, then it does affect a great many.

Mr. ROGERS of Texas. Well, now, that is your conclusion. That is your conclusion. What you are saying is that you don't believe in this country that a man ought to be able to get whatever he is willing to pay for. He doesn't have a free market. He has got to take whatever is put on the air, whether he likes it or not, and he doesn't have the right to buy anything else.

Mr. MAIN. In general, we would have to agree that the person receiving whatever he can get and pay for would be perfectly proper, but in this process, if this is going to destroy his services in the local areas, and the service to other people who could not afford to pay for that, then we are concerned for the people who are unable to——

Mr. ROGERS of Texas. You mean if it is going to affect your business, then you are for granting this power to the FCC.

Mr. Main, no one has gone to bat for the broadcasters in the Congress than I have to prevent unfair regulation, but there is a fairness in this whole picture to every other business in this country, and I do not think that in America, we ought to try to stall off competition by yielding to Federal controls, and I think that the day is going to come if we ever do get Federal control in the manner in which is being espoused right now, that it is going to end up to be the death knell of the broadcasters insofar as the free market is concerned.

That is just the way I feel about it, and I have studied the question pretty seriously.

There is one other thing that I want to say with regard to your statement. You say that if franchises are granted in a number of cities in your general area to wire communications, CATV's, that if these are granted, that that will get into your market all the way across.

For that reason, you support granting to the Federal Government the power to regulate a business, as opposed to the right of a city commission to grant or not to grant a franchise, don't you?

Mr. MAIN. We have not, we are not concerned at all with the right of the cities to grant the franchises. We are concerned with the distant importation of signals.

Mr. ROGERS of Texas. Well, if the city does not grant the franchise, they could not put it in there, could they?

Mr. MAIN. That is right.

Mr. ROGERS of Texas. All right, now have you been to the city commissions and said, "Mr. Commissioner, if you let this bunch come in here and put in cable TV, it is going to ruin or unfairly compete, or it is going to hurt our business in the television business"? Have you said that to the city commission?

Mr. MAIN. We have discussed this with various city commissions in our area, and we have explained this process to them, that it could deprive the various people of free service, the people who would not subscribe, or the people in the rural areas, the farmers.

Mr. ROGERS of Texas. Now what has been the reaction of the city commission, when you told them this?

Mr. MAIN. In most cases, they have responded to this, that they are concerned with it. It is a most difficult subject for them to understand, very frankly.

Mr. ROGERS of Texas. But now the people, Mr. Main, that you claim that you are trying to help, and that you are trying to save, they are the same people that elected those men to that city commission, are they not?

Mr. MAIN. Yes, sir.

Mr. ROGERS of Texas. Well, don't you think the best people to speak for them are the people on the city commission and not the Federal Communications Commission?

Mr. MAIN. Well, I believe this gets into the fact that Congress and the FCC have set up a national television policy, an allocations system.

Mr. ROGERS of Texas. Oh, well, now, Mr. Main, that is not what I asked you.

I asked you if you did not think they were better set up to determine the needs of their people. You said you were helping their people to provide them with free TV. Now the people you are talking about are the people that elected the city commissioners.

Now what I am asking you is, don't you think that those people, and the city commission that they elect directly in their home, are in better position to determine what they need and what they want than the people sitting on a bureau in Washington?

Mr. MAIN. If they understand the complete facts of the case.

Mr. ROGERS of Texas. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Main, due to the fact that yesterday, Mr. Ford asked some questions or made a statement with reference to a particular area which involves Champaign, Urbana, Decatur and Springfield, I have prepared here some questions which I wanted to ask you specifically, and here is the first one.

Yesterday, Mr. Ford made specific reference to the Springfield, Champaign, Urbana market, and I believe he said that the only way that all of these cities within this market could receive all of the stations serving this trimarket would be if the CATV's were operating within the total market area.

Now could you comment on this?

Mr. MAIN. Mr. Springer, I would have to disagree with Mr. Ford on that, because CATV would be unable to serve all of the area. A case in point would be the farmers in central Illinois, of which there are thousands. They have said, I believe, in their own testimony, that they could not economically reach these people.

In addition to that, the local stations are providing the free service, they are in the process of expanding their facilities. The NBC station in our area has announced, and I believe have actually applied for improvement of one of their satellites to major proportions, increasing their signal strength.

Mr. SPRINGER. Well, now, Mr. Main, just to be a little more specific, NBC is expanding. They are located in Springfield, first, are they not, some 90 miles from Champaign, or roughly 70 air miles?

Mr. MAIN. Yes, sir.

Mr. SPRINGER. Now they are improving their signal in the Champaign-Urbana area, which is some 70 air miles away, in order to bring into that a class A signal. Is that true?

Mr. MAIN. Yes.

Mr. SPRINGER. All right.

Now let me ask you about the second one, which happens to be WTVP in Decatur, or WAND, as it is now being revised to. They presently have, as I recall, something like a 600-foot tower on the edge of Decatur.

Now they are moving that northward about 12 miles to a high point, and are boosting their tower site to over a thousand feet, and doubling their power.

Is that true?

Mr. MAIN. Yes, that is right They have announced that.

Mr. SPRINGER. All right. Now what all three are trying to do is to bring as nearly to this area a class A signal. Is that not true?

Mr. MAIN. Yes.

Mr. SPRINGER. What you are in effect trying to tell this committee that you are trying—all three, CBS, NBC, and ABC, are trying—to bring as nearly as possible a class A signal to all of this area that Mr. Ford was talking about, which we will admit presently has a sizable B area.

Now, is that in effect what you are trying to say?

Mr. MAIN. Yes, that is correct, and it would then be free television to thousands of more people for all three services.

Mr. SPRINGER. Right.

Now, just to review for the committee: I have 11 counties, and in those 11 counties, in 7 of them, I have practically nothing but farms. In the other four, there are three sizable cities—Champaign, Urbana, Decatur, and Mattoon.

The others are substantially smaller, and the largest town below that would be something like 12,000, I believe, in Lincoln, which has a class A signal, as I understand it, from Springfield, and will have a class A signal from WAND in Decatur.

Now let me ask you a second question. There has been a great deal of discussion here of the Commission regulations, and one of the aspects that has been discussed has been the Commission's limitation on importation of distant signals.

Now I am talking about a whole lot of signals, 6 to 10, however many dials there are on the knob.

As I understand the Commission's regulation, it prohibits in the first instance only importations into a grade A service area of stations serving the top 100 markets. Now, some people said that the prohibition should also cover grade B service in these markets.

Could you tell the committee whether in the case of your station in Champaign, and of the Decatur stations, WAND, the importation of distant signals into those grade B service areas would make any significant difference?

Mr. MAIN. In the case of our station in Champaign, the grade B service area is a major factor in our audience, because, if I recall correctly, over half of our potential audience is within the grade B service area.

In the case of NBC and CBS stations, this would also be a major factor as well. I can't give you the exact figures on those stations.

Mr. SPRINGER. All right. Now, ultimately, with the increased power in these other two stations, you would have a sizably larger A signal than you have at the present time, but your B signal would also be expanded proportionately, would it not?

Mr. MAIN. In the case of the NBC and ABC stations, their grade A signal and grade B would be increased tremendously, especially the grade A.

Mr. SPRINGER. I have just this third question. I have heard it said that cable television ought to be required to obtain the consent of the broadcaster before they can retransmit the broadcaster's programs.

Now, do you have any feeling about this prohibition, which is not contained in the present regulations, or the recent order, we will say, of the FCC?

Mr. MAIN. I believe that a station should have the right to grant or deny that from a practical standpoint, and I would assume that most stations would grant this right with no problem at all within their primary coverage area, because this is the normal area that the home-viewer would be receiving the signal.

It would be questionable whether a station in some cases would grant his signal being taken into a distant signal, a distant city, or another market, because of his contractual problems.

For example, the contracts with our film suppliers, and contracts with, in our case, the University of Illinois in basketball. That particular contract in fact prohibits us to allow another station to pick up the signal and rebroadcast it. I would think that this should apply to CATV in a very distant area.

Mr. SPRINGER. Let me ask you this: Do you have in your contract with the University of Illinois, with reference to those basketball games which are broadcast—do you have any kind of a copyright on that?

Mr. MAIN. No, we do not have.

Mr. SPRINGER. All you have is a contractual relation. Is that true?

Mr. MAIN. We have a contractual relation, but that limits us to where we can televise it. We can televise it on our station, and that is all, or some other station, if we make that right in the contract.

Mr. SPRINGER. Then if someone else takes this signal from your station, then you are in effect violating your contract——

Mr. MAIN. Yes, sir.

Mr. SPRINGER (continuing). If you do not prevent that.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Thank you, Mr. Chairman.

Mr. Main, does the Federal Communications Commission have the authority today to regulate national broadcasters? The major networks?

Mr. MAIN. As I understand it, they do not, except through their owned and operated stations.

Mr. FRIEDEL. They do not have any regulations whatsoever?

Mr. MAIN. As I understand it, they have some regulation on networks activities, but mainly through their owned and operated stations.

Mr. FRIEDEL. That was my understanding.

Now under the bill H.R. 12914, introduced by my colleague, Walter Rogers of Texas, in reading his bill, it says:

> Nothing in this Act shall be understood or construed to give the Commission the power to control or regulate the reception of radio communication or signals transmitted by any radio station.

My question is this: If they have authority to regulate, on the major networks, why shouldn't they have the same authority to regulate on CATV?

Mr. MAIN. We believe that they should have more authority over the CATV, because they are transmitting programs, and in the case of the network, they are program suppliers.

Mr. FRIEDEL. But you are in favor of having regulation, both on the national broadcasters and CATV? They both should be regulated?

Mr. MAIN. As I understand it, the way it actually works is that because of the regulation of stations, they do have indirect or direct effect on the networks, not only the owned and operated stations of the networks, but for all other affiliated stations.

Mr. FRIEDEL. What I am getting at here is this: If we pass H.R. 12914, Mr. Rogers' bill, they will have no regulation whatsoever, and you feel they should have regulation.

My question is, or I understand that they do have some regulations on the regular channels, and it should be also on this CATV. Do you agree with that?

Mr. MAIN. Well, we feel that if they are regulating broadcasts, they should also regulate CATV.

Mr. FRIEDEL. Although the bill doesn't mention anything about CATV. They say anything that is transmitted should not have any regulations, and that is the reason I imagined that you were opposed to the bill that was introduced by Congressman Rogers. Is that correct?

Mr. MAIN. Yes, sir.

Mr. ROGERS of Texas. Would the gentleman yield?

Mr. FRIEDEL. Yes.

Mr. ROGERS of Texas. Mr. Main, one further question with regard to discussion about what we call long distance, bringing in of stations from long distances away. Now the truth about it is that the Federal Communications Commission today has jurisdiction to control that, don't they? In their microwave jurisdiction?

Mr. MAIN. Yes, sir. In their microwave jurisdiction.

Mr. ROGERS of Texas. Now the Federal Communications Commission today can prevent leapfrogging any time they want to, if microwave is used, under their present jurisdiction.

Mr. MAIN. Yes, sir; if a microwave is used.

Mr. ROGERS of Texas. Now what Mr. Friedel was speaking of, just a minute ago, just one further question, about regulation. Now you are not subscribing to regulation of the networks, are you, Mr. Main?

Mr. MAIN. We have no positon on that at the moment, sir. [Laughter.]

Mr. ROGERS of Texas (presiding). Thank you, sir.

Mr. FRIEDEL. That is all right now, Mr. Chairman. I yield my time.

Mr. ROGERS of Texas. Mr. Jarman?

Mr. JARMAN. No questions.

Mr. ROGERS of Texas. Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman, I feel that the witness was showing mercy to this committee by not reading his statement, and trying to summarize it, but I fear that this cost something. Also, there is underway in at least one of the cities that Mr. Main's properties service a very serious civic dispute. It was very prominently carried in the San Diego newspapers just last week.

Now first, they recounted the action that was filed by Midwest TV, with the FCC, asking the curtailment immediately of all further cable expansion in San Diego County. I think that perhaps in the testimony and the questioning that has thus far transpired, we do not have any feel yet of what the situation is in San Diego. This is a town where, as I mentioned yesterday, CATV has made deeper inroads than in most communities, and it has become a serious public issue there—one that finds clean operators on both sides, but men of principle can disagree on principle.

We shall be hearing later today from the principal cable TV operator from San Diego, and he will be wanting to talk about these same things. I think that it might help if we were to get from those people first a little better picture of what the situation is.

To what extent, might I ask, has CATV encroached upon the established viewing habits, or to what extent has it excluded the local signal in favor of distant signals—and by "distant signals," I mean signals imported from Los Angeles—to what extent has this yet had a measurable effect on the advertising dollar?

Chairman Henry noted yesterday that the economic factor is an important consideration in FCC determinations. And the fact that a man's business is going to be benefited or hurt, I don't think, excludes him from making a just case before this committee. Could any of the witnesses—perhaps Mr. Fox, who is more familiar with the San Diego situation—give us some idea of the audience division, any shifts that are yet discernible in advertising fragmentation, any shift of business to Los Angeles as a result, or any sound grounds for fearing that this might happen?

Mr. MAIN. Mr. Fox, would you answer that, please?

Mr. Fox. Mr. Chairman.

Mr. ROGERS of Texas. Mr. Fox.

Mr. Fox. Mr. Van Deerlin, you asked a number of questions. I will try to remember all of them. If I forget one, I hope you will remind me.

Specifically, I think the first question was just how far has CATV penetrated into San Diego. This is very difficult information to obtain. We have been engaged in endeavoring for several months, even as long as a year, to find out just how far CATV has penetrated into our area.

Unfortunately, none of the city or county agencies require that the CATV systems provide accurate information in terms of number of subscribers or locations of subscribers. They require only submission of revenues, and therefore, we cannot get this information from official sources, and the CATV people thus far are and have refused to divulge the specific information we have requested.

Therefore we have had to attempt to estimate just how far CATV has penetrated into our area. We estimate that approximately 5 percent of the television homes in our metropolitan area, or about 17,000 homes, are wired with CATV's.

I believe you asked them had CATV and the effect on our audiences been measured in any way. How could we actually tell that a CATV does effect the viewing patterns?

Sometime ago, we employed an independent research organization, in San Diego, used extensively by San Diego business people, chamber of commerce, and so forth, to conduct a survey for us, so that we would have some statistical information to see if community antenna or cable television or pay television affected viewership patterns to people who have cable television service versus people who do not, and the information simply reported that there is a dramatic difference between viewership of the local stations when CATV exists in the home—so much so that as much as 50 percent loss was experienced by the local stations as a result of out-of-town viewership.

You then asked if there had been any economic effect, had we been able to experience any specific loss of business.

Mr. VAN DEERLIN. Or have you noted any trend that might indicate a future loss of business, either advertising business to yourselves, or fragmentation of the San Diego market area, as a result of this?

Mr. FOX. This is a difficult question, and a complicated one. San Diego has had a difficult time for many years, establishing itself as a major market, primarily because of our adjacency to the Nation's second market, Los Angeles.

But since our station has been on the air, which has been 17 years, our market has finally become a major market, and has been receognized as a major market. Now this is so because it stands by itself as an entity, and it is not connected with Los Angeles, in terms of our community relationship, and in effect, it is not a suburb of Los Angeles, it is a major market unto its own.

Now in the early days, the size of San Diego was a factor here. Now we have reached a point where as a major market, if we find that our audiences are being reduced, and outside television through CATV can cover our market, then we stand a real danger of losing that national budget.

As a matter of fact, this past January, while I was in New York making a sales trip, selling time for my station, I had the occasion to be asked questions by a national advertising manager. This individual said that he had traveled to the coast, visited San Diego, visited Los Angeles, and had been reading about CATV, and just wondered how much effect CATV had made on our market, and was it true that Los Angeles coverage in San Diego was such that he could receive advertising benefits out of advertising schedules placed in Los Angeles, and then therefore would not have to purchase a San Diego television station?

Now this advertiser was in the process of making up his mind regarding the selection of 16 markets out of 30 possible markets; and one of the factors was whether he was getting sufficient coverage in that market.

Fortunately, CATV has not reached a point yet in our market where it can definitely hurt us. But it is so obvious to us that the pockets

of CATV, which exist today, if allowed to grow, based upon the survey information we have, and based upon client interest which we know exists, that it will have a direct effect, and next year, when I call on this advertiser, it may very well be that he says, "We have decided not to buy San Diego, because we feel we are getting enough coverage of our schedule out of Los Angeles viewership."

Now we know this to be a real threat, not something we think might happen. We know that if CATV continues to expand, that this will happen.

Mr. VAN DEERLIN. Mr. Fox, Chairman Henry touched on the degradation of signal on local stations when picked up on cable TV. Has this been a serious problem in San Diego, and what steps have been taken to correct it?

Have you really worked at it?

Mr. FOX. Yes. It is a very serious problem. We have been in communication with our city people, as well as with the CATV operators, trying to find an answer to, trying to get them to do whatever they must do technically to prevent the degradation of our signal. Our engineering people have gone out into the field to look at television homes, which are connected to CATV, and a considerable problem exists.

Mr. VAN DEERLIN. What happens to the picture, actually?

Mr. FOX. Well, several things. First, the picture is a ghosted picture. In other words, there are two or three images on the picture, and sometimes even more, at a time. Then there is a herringbone effect on the picture, or a beep pattern. Sometimes, there is a snowy picture, as if the signal was coming from a great distance.

Sometimes there is a bar which runs down the picture.

Basically, I think an experience which happened to a local businessman and his family illustrates the problem. These people live in a community, a fairly new residential area, where CATV exists.

They took the CATV service as opposed to putting up an antenna on the top of their house. They told me that the following has happened: The picture on the local channels is so bad that they watch network programing from the Los Angeles network stations. Now by so doing, they find that they are able, or they find it more convenient to continue to watch the network stations, and watch the network stations news from Los Angeles, not only because they are already on the channel, but because our picture is of less quality, poor quality, and as the wife put it, she said:

> We find that we have lost contact with our community, because we have relied upon television news for so many years, now that we are in this new house—

By "new" it is a couple of years that they have lived there—

> we find that we are watching out of town news and we find that things are happening in San Diego that we don't know about, because we are not exposed to regular news programing.

They indicated a great fear that if this spread, that a major media and its impact on the community would be lost, and we would not have television to reach our community and to provide information and news and so forth.

Mr. VAN DEERLIN. So to keep them advised of the activity of their Member in Congress, and all the other things. [Laughter.]

Mr. SPRINGER. Would the gentleman yield for one question?

Mr. VAN DEERLIN. Yes, Mr. Springer.

Mr. SPRINGER. In regard to your first question that was asked, Mr. Fox, I just want to read these few lines, and see if I am getting about what you are trying to say.

This is from the Commission's first order, and reinforced in the second.

"The Commission's statutory obligation is to make television receivers available so far as possible to all people"—and it says here, "All" is in italics—"of the United States on a fair, efficient and equitable basis, under sections 1 to 307 of the Communications Act. This obligation is not met by primary reliance on a service which we technically cannot be made available to many people, and which will not be made available to many others, nor will it be compatible with our responsibilities to permit persons willing and able to pay for additional services to obtain it at the expense of those dependent on the growth of television broadcast facilities for an adequate choice of services."

Now my question is that the economics of this situation is beginning to be felt. And this is what I am talking about. Anyone can decide what ought to be done today. Will free television still be available from your station as free television, 5, 10, or 15 years from now? This is really the issue which we are talking about.

Isn't that it?

Mr. FOX. Yes, Mr. Springer. That is precisely the issue.

Mr. SPRINGER. And this is what the Commission in this portion of the order has tried to say; isn't it?

Mr. FOX. Yes, sir.

Mr. SPRINGER. Thank you.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. I was not here to hear the testimony of Mr. Main, but I would like to ask for general information. As I read your report, in San Diego, you have got five commercial stations.

Mr. MAIN. Yes, sir.

Mr. PICKLE. And two UHF, one of which has construction reserved, and one of which has a construction permit pending?

Mr. MAIN. Yes.

Mr. PICKLE. So that you either have or will soon have probably seven commercial stations in the Los Angeles area. It that correct?

Mr. MAIN. San Diego.

Mr. PICKLE. In the San Diego area? Now what is the population of San Diego?

Mr. MAIN. Mr. Fox?

Mr. FOX. The metropolitan area, which is the prime area that we are concerned with, a little over a million people. The metropolitan television home figure is around 350,000.

Mr. PICKLE. Did I understand, then, you also say that in the San Diego area you have 13 CATV systems or portions of systems in operation?

Mr. FOX. Yes. That is right. About 13.

Mr. PICKLE. And where did they come from?

Mr. FOX. Do you mean what signals do they carry?

Mr. PICKLE. Yes. From Los Angeles?

Mr. Fox. All out of town viewing on these systems is from Los Angeles; yes. We carry San Diego stations and Los Angeles stations.

Mr. Pickle. Does this 13 mean that they total 13, both microwave and the regular cable system?

Mr. Fox. At the moment, none of the systems in San Diego use microwave. They are all over the air pickups.

Mr. Pickle. All of the air. Well, this may be sort of a vague question, but how can 13 of them make a go of it?

Mr. Fox. Well, when we say 13 systems, these represent pockets of our community. San Diego is hilly terrain, and many of these systems are under one franchise or one ownership. They are sections of our community, and in some cases, there are actually small incorporated areas, which are right within the hub of our market area, so when we say 13 systems in operations, we mean 13 separate pockets of CATV activity, throughout, in our metropolitan area.

Now most of these are owned by the same company. Most of these pockets systems are operated by the same cable television company.

Mr. Pickle. Yes. Then you really are not being correct except in the technical sense when you say you have got 13 different systems.

Mr. Fox. Well, we think it is. There are——

Mr. Pickle. How many main CATV systems?

Mr. Fox. Do you mean for full franchises that are held?

Mr. Pickle. Yes.

Mr. Fox. Well, there are about five franchises, but they are so broad. We have a river running through San Diego and the franchise to one CATV operator says, "You have everything west of the river". To another CATV operator it says, "You have everything east of the river".

Mr. Pickle. Does this mean you have about five separate companies who are operating CATV systems in the Los Angeles area?

Mr. Fox. Yes; approximately. Yes, sir.

Mr. Pickle. I assume, then, one of your points is that if you have got five CATV systems, at any given hour, one CATV is going to be running a program you have franchised, or you have scheduled, or they will ahead of you. Is that correct?

Mr. Fox. Well, that is one of the problems, but I was primarily addressing myself here to the fact that if these pockets continue to expand, and our studies have shown that they have strung cables as fast as they possibly could, in recent months, without fully connecting homes, so that they could cover as large an area as they could. If these systems expand, instead of being small pockets, these can become large areas that are wired for CATV, and have a dramatic effect on our audience levels.

Mr. Pickle. You are broadcaster, then, who favors the jurisdictional coverage of the FCC?

But you are also a broadcaster who does not like the rules as laid down all together. Is that correct?

Mr. Fox. No; we do favor the regulations. We do not feel, however, that they have gone far enough to protect the broadcaster, and the public.

Mr. Pickle. That is all, Mr. Chairman.

The Chairman. Mr. Rooney.

Mr. ROONEY. Mr. Main, you have great provincial pride in the city of San Diego, I see that you have testified it is not a satellite of Los Angeles, and I commend you for your civic pride. Can you tell me about the terrain in San Diego? I have never been there. It is in southern California, is it not?

Mr. MAIN. I would like Mr. Fox to answer that question, if you would, please.

Mr. FOX. Yes; San Diego is in southern California.

Mr. ROONEY. And what is the terrain in San Diego?

Mr. FOX. Well, it is somewhat hilly and mountainous, as I have mentioned.

Mr. ROONEY. So there are pockets in the area that really need CATV. Isn't it true that despite the fact that you can have a UHF station and an A or B contour, that the people because of the hills and the valleys in that area will not get good reception? Isn't that true?

Mr. FOX. Yes.

Mr. ROONEY. So then the CATV industry, then, complements the broadcaster in San Diego? Shall I direct this question to your counsel?

[Laughter.]

Mr. FOX. Whenever CATV provides service where there is a reception problem to local stations, we believe it is proper, and is serving a traditional function.

Mr. ROONEY. But as long as it is complementing the broadcasters in your area, and as long as it is not encroaching with respect to your market, your advertising market, you are then for it, but when the people in San Diego can see diversification by way of the CATV cable, then it is or you feel as though it is encroaching on your business, and you are opposed to it. In a sense, this is exactly what you are saying.

Mr. FOX. Well, we believe that the local stations, whenever there is a reception problem, should be carried on the CATV system. We are convinced that the importation of distant signals will adversely affect the services of the San Diego broadcaster to the public. And we therefore have requested the Commission to stop any further expansion of CATV until this matter can be heard in a full hearing.

Mr. ROONEY. Well, in other words, you are opposed to competition. Now let's get back to Mr. Main. You operate channel 3 in Champaign, Ill. I believe. Isn't this the only VHF station in Champaign, Ill.?

Mr. MAIN. Yes. The only commercial one. There is an educational one.

Mr. ROONEY. And have you not had in Champaign a running battle, fighting other VHF stations that want to come in and serve the people in the Champaign area?

Mr. MAIN. We have had no battle with other V's.

Mr. ROONEY. But you have opposed any other requests for VHF stations coming in?

Mr. MAIN. No; we have not opposed any, because there are no VHF channels assigned to that, except channel 12, the university educational station.

Mr. ROONEY. And there have been no applications for another channel in Champaign, VHF channel?

Mr. MAIN. No; there have not been, because there are no other VHF channels assigned to that particular city.

Mr. ROONEY. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Murphy.

Mr. MURPHY. No questions.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. Main, I have been interested in this discussion of the specific factual situation, but I would find it helpful if you or your counsel would undertake to set down a memorandum of what you think the principles, the general principles are that we are confronted with here.

Mr. ROONEY. Use the microphone.

Mr. MACKAY. I said I have been interested in the discussion of your problem in this specific factual situation, but in terms of trying to understand what principles should guide us in the shaping of legislation, it would be helpful to me if you could provide a memorandum which would state the specific principles that you think ought to be incorporated in the legislation.

Now I would like to ask you, and I am speaking as a layman, do you consider the CATV a new animal, really without precedent in the communications industry, or can you draw any analogy between any other part that would fit it under the communications law of the land now?

Mr. MAIN. Yes; I believe it is a new animal.

Mr. MACKAY. And in that respect, the FCC is without power, or rather, should be conferred power with Congress to deal with the situation.

Mr. MAIN. No; I don't think I can agree with that.

Mr. MACKAY. Well, if it is a new animal, certainly the Congress did not contemplate CATV when it enacted the Federal communications law, did it? There was not any CATV at the time Congress created the FCC and conferred jurisdiction on it.

Mr. MAIN. Yes, sir. That is right.

Mr. MACKAY. And your position is that you think the FCC should be given jurisdiction over CATV, and you differ with the Rogers bill.

Mr. MAIN. Yes, sir. The same—I think they should be, because they assumed jurisdiction over television, when that came along, too.

Mr. MACKAY. Now the second thing is that the discussion of the public interest here, I would find it helpful if you could have your counsel discuss a litle more fully what we mean by the public interest. It is very clear that the prime thrust of your statement is your concern with the economic problem that your business faces, and that is that CATV conceivably could stifle and possibly destroy your business.

Mr. MAIN. Well, by destroying our business and the other local stations in the area, it would destroy the service, the free service to the public in our area.

Mr. MACKAY. But it is true that CATV is a new means for maybe a little more localization of television than is possible now in an area system—isn't this true—on the closed circuit basis?

Mr. MAIN. If CATV's were allowed to originate local programs.

Mr. MACKAY. Well, would you oppose that?

Mr. MAIN. Yes, we would.

Mr. MACKAY. Then actually that would frustrate the use of CATV to provide neighborhood or suburban coverage which we do not get now, to the extent I would like to see, in a market that is very similar to yours. We have 1,500,000 people in the Atlanta area. Why would you oppose CATV's originating local programs?

Mr. MAIN. Well, it becomes a form of pay television, and in the process of originating the program, they are using the programs of the local or maybe distant stations for a base in order to do this.

Mr. MACKAY. I mean specifically, the idea of——

Mr. MAIN. They have not entered the program market, and to buy programs.

Mr. MACKAY. You cite the local use here. I live in a suburban county, and the idea of the county commission's discussion as to why we need a general bond issue being exhibited by CATV appeals to me as a brilliant new tool with which local government can work.

Do you see anything wrong with that? That is originating local programing.

Mr. MAIN. Yes, sir.

Mr. MACKAY. And it is not feasible, really, for a station that is serving 20 counties to telecast a 1-county commission, is it?

Mr. MAIN. It may be, and sometimes it may not be.

Mr. MACKAY. Now you are not legally charging monopoly against CATV, are you, when you say that the Los Angeles station might stifle your station? You are not charging monopoly on the part of the Los Angeles stations, are you?

Mr. MAIN. No.

Mr. MACKAY. And yet you are saying in effect that it has the effect of monopoly.

Mr. MAIN. No; on the part of the Los Angeles stations.

Mr. MACKAY. Yes, but the result of monopoly, you are saying that what you are moving toward is national programs, and the stifling of local programs.

Mr. MAIN. Well, it could conceivably set up a series of master stations in Los Angeles, Chicago, New York, and so forth, if this was carried to its natural extent.

Mr. MACKAY. But with the permission of the originating of local programs, it could have the opposite effect, could it not? If you balanced out your CATV program budgets with a certain percentage of local service items which we could require.

Mr. MAIN. Could you rephrase that question, please?

Mr. MACKAY. It does not necessarily mean that we would stifle local programs, does it? The use of CATV.

Mr. MAIN. If CATV was used to originate programs?

Mr. MACKAY. Yes.

Mr. MAIN. Well, it would still be a form of pay television, and if the only form of local television would be over a CATV system.

Mr. MACKAY. Well, just one other question, Mr. Chairman, and I will be through.

There is no free television, really, in this country to a poor man today, is there?

Mr. MAIN. That is an old argument in regard to whether advertising pays for television or whether it is consumer pays.

Mr. MACKAY. I can illustrate it specifically. I do not have a television set here in Washington, because I have two at home, and I can't really get into free television without spending a hundred dollars or $200 for a set. Is that not true?

Mr. MAIN. That is true, whether you are watching over a regular station or over CATV.

Mr. MACKAY. Well, I would like to reiterate my request, that if you and your counsel can organize a set of principles as you see them, it would be helpful to us in comparing other points of view, and I would like to have that.

Mr. MAIN. Yes, sir.

(The information requested follows:)

STATEMENT OF MIDWEST TELEVISION, INC., ON PUBLIC INTEREST FACTORS AND GENERAL PRINCIPLES TO GUIDE LEGISLATION

I. PUBLIC INTEREST FACTORS

Midwest Television, Inc., believes the following public interest factors are pertinent to the issues before the committee relating to CATV:

1. Free television broadcast service should be available to all Americans—rich and poor, city dweller and farmer.

2. A full nationwide pattern of local and area television broadcast stations is necessary to provide the maximum number of outlets for local and area expression and to meet local and area needs and interests.

3. The fullest possible use should be made of television broadcasting frequencies in order to bring the greatest diversity of television broadcast service to the greatest number of people.

4. CATV can and should provide a useful function as a supplementary facility but not as a substitute for free television provided by local and area television stations.

We believe these public-interest factors clearly follow from the congressional expressions of national policy in:

(*a*) The Communications Act of 1934, the purpose of which is "to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service" (sec. 1), and which directs the FCC to "encourage the larger and more effective use of radio in the public interest" (sec. 303(g)), and

(*b*) The all-channel receiver law of 1962 (Public Law 87-529), which was intended to encourage full use of the UHF broadcasting band in order to facilitate the maximum expansion of television service by local and area television stations.

II. PRINCIPLES TO GUIDE LEGISLATION

We believe that there are three basic questions to answer in considering whether legislation on the subject of CATV is called for:

Would the public interest factors listed above be advanced if the basic television system were a cable service rather than a system of local and area television broadcast stations?

If the public interest would not be advanced by the total or partial replacement of service through local and area television broadcast stations by a cable service, what is the likelihood of such replacement if CATV is not subjected to Federal regulations?

What Federal regulation is required to prevent CATV from supplanting the present system?

1. Would the public interest factors listed above be advanced if the basic television system were a cable service rather than a system of local and area television broadcast stations?

We believe that the public interest, as outlined above, would clearly suffer if the existing off-the-air television system were replaced, in whole or in part, by a cable system. This is because:

(*a*) the present service is free to the viewer whereas a cable service is not;

(*b*) the present service is available to all homes within the reach of the broadcast station's signals, whereas CATV is available only in areas of population density sufficient to support economically a cable installation. Hence, farmers, ranchers, and others living in outlying or rural areas would generally not be able to obtain service by cable;

(*c*) the present service makes available opportunity for local expression by television, whereas a cable system, if allowed to carry signals beyond stations' service areas, would break down the system of frequency allocations and thereby detract from local service now available in communities throughout the country;

(*d*) the present service is compatible with expansion through new television stations that would increase the choice of service available to the public, whereas a cable system, if allowed to carry signals beyond stations' service areas, would discourage the activation and expansion of stations and impair existing and future stations, thereby reducing rather than increasing the choice of television service available to all the people.

The last point deserves elaboration because of the contentions by CATV interests that their service promotes diversity by giving viewers a greater choice of television service. This is allegedly accomplished through the importation of distant station signals into areas where these signals cannot be received off the air.

Distant signal importation prevents real diversification of service. If a given community or area can support more television stations than now serve it, the importation of distant signals captures the audience that would have been available to new stations in the community. There are presently hundreds of television broadcast channels allocated by the FCC but not as yet in use by television stations. Most are UHF channels and if CATV is not permitted to foreclose their development there will be a great expansion in the use of these channels in the next few years.

If the community to which the distant signals are imported cannot support additional service, the effect of importation will be to impair or destroy the local stations' service capabilities.

Either way there will be fewer stations broadcasting than if CATV distant signal importation were not allowed and therefore less real diversity of service available to the public.

2. Since the public interest would not be advanced by the total or partial replacement of service through television broadcast stations by cable service, what is the likelihood of such replacement if CATV is not subjected to Federal regulation?

We believe the evidence presented to the committee as well as the evidence before the FCC amply demonstrates that the present television broadcast service would be impaired if not destroyed by continued unrestricted expansion of CATV.

Basically there are three ways in which unregulated CATV can impair or destroy existing free television broadcast service. Each arises because of the fact that a broadcast station's audience is its lifeblood. The size of the audience determines a station's revenue and its revenue determines its programing capability. If a station's audience is reduced, its revenue is reduced, and if it loses revenue it will have less to spend on programing.

CATV can impair a station's revenues in these ways:

1. It may refuse to carry the local station. Where this occurs every home tied to the cable is lost altogether to the local station. Hence, as the cable subscribers increase the local station's audience decreases.

Similarily, if the cable system offers a poor or distorted picture of the local station's programs cable viewers will be induced to watch distant stations on the cable, thereby reducing the audience of the local station.

There was testimony to the committee by stations that suffered from each of these practices.

2. The cable may duplicate the local station's signals with identical programs from more distant stations. This has the effect of dividing the audience for the particular program among two or more stations, thereby reducing the overall audience of the local station. A number of witnesses testified to their experiences with CATV duplication of their programing.

3. Even though it carries the local station and does not duplicate its programs at the same time or on the same day, a CATV system can impair the local

station's audience by importing the signals of many distant stations into a local station's area. The effect is to fragment the local audience, leaving to the local station only a fraction of the total audience it previously enjoyed.

The committee has before it the testimony of a number of witnesses who operate or plan to operate stations in such cities as Philadelphia, Pa.; Jacksonville, Fla.; Lafayette, Fort Wayne, and Bloomington, Ind.; Peoria, Ill.; Springfield, Mo.; San Diego, Calif., and Waco-Temple, Tex. All of those witnesses, many of whom were operators of UHF stations, testified how the importation of distant station signals would have a profound adverse effect on their ability to render local service. Many of these stations are already experiencing audience fragmentation through the importation of distant station signals.

In short, the evidence is clear that unless reasonable regulations are adopted, CATV expansion of the carriage of distant signals by CATV will necessarily result in an impairment of present off-the-air service and a stifling of growth of this service. And the greater such expansion of CATV the greater the impairment of existing service, the greater the hindrance to entry by new stations, and the greater will be the instances of CATV replacement of existing service.

3. Since there is a substantial likelihood that cable service would replace the present system if not subjected to Federal regulation, what Federal regulation is required?

We believe the evidence presented to the committee and to the FCC clearly demonstrates that four types of regulation of CATV systems are necessary to promote the public interest factors that have been previously discussed.

(*a*) *Carriage rules.*—CATV systems should be required to carry local stations on their assigned channels without degradation of the quality of their signals. We do not understand that CATV interests seriously object to carrying local stations and the FCC rules require carriage of these stations. The degradation problem, however, has not been met adequately.

(*b*) *Nonduplication rules.*—The evidence clearly demonstrates the need for a rule effectively preventing a CATV system from duplicating the programs of the local station. After proposing a more adequate rule, the FCC adopted a same-day, nonduplication rule. More is required.

(*c*) *Distant station importation rules.*—Because of the grave threat of distant signal importation to the existing television system, such importation of distant signals into the service areas of local television stations should be absolutely prohibited. The FCC's rule is substantially more limited. Moreover, the "grandfather" exceptions go too far.

(*d*) *Program origination.*—CATV systems should be restricted to the reception and simultaneous retransmission of television signals and not be permitted in addition to originate their own materials. This prohibition is necessary in order to prevent the back-door introduction of a pay TV system on the shoulders of the present free television system.

We recognize that arguments have been made in support of CATV origination of "local service" programing. However, the CATV interests that have appeared before the committee have been unwilling to accept a right to originate limited to public service programing. Moreover, we doubt that an effective line can be drawn between so-called local public service programing appropriate for CATV and such programing that would, but for the CATV intervention, be carried on broadcast stations. In this latter case CATV originations has the effect of detracting from the diversity of programing available to the entire public. Finally, there is no reason to believe that the type of public service programing to which the committee has been referred would not be carried to a large extent in particular communities by the new independent UHF stations whose establishment and growth will be fostered by the adoption of the types of regulations that we have suggested.

We are pleased to have had the opportunity to submit this statement of the public interest factors and of the principle that should guide the committee in considering legislation relating to CATV.

Mr. MACKAY. Thank you, Mr. Chairman; no further questions.

Mr. MAIN. We will be glad to supply that.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I wonder if you would have your counsel submit for the record—I don't think it is necessary to do it orally—what addi-

tional materials come in actually to the San Diego area from Los Angeles beyond the three networks? In other words, what would be brought into the area if the 1-day nonduplication rules covering the three network stations were to be in effect by the FCC?

Mr. MAIN. Yes, sir; we would be glad to supply that.

Mr. ADAMS. You understand what it is I am asking?

Mr. MILLER. You want the type of programing, Mr. Adams.

Mr. ADAMS. I would like to know specifically what type of programing and what the other stations in the Los Angeles area beyond the three networks bring in. In other words, what would come into your area if a 1-day nonduplication rule were to be enacted by the Congress or is put into effect by the FCC?

Mr. MILLER. We would be delighted to supply that.

(The information requested follows:)

STATEMENT OF MIDWEST TELEVISION, INC., CONCERNING THE NATURE OF LOS ANGELES PROGRAMS CARRIED TO THE SAN DIEGO AREA BY CATV COMPARED TO THE PROGRAMS OF SAN DIEGO STATIONS

Nearly all the programs on Los Angeles stations carried to the San Diego area by CATV have been, are being, or will be shown on the San Diego stations, either in the same form or by way of San Diego equivalents, unless the importation of Los Angeles signals by CATV to subscribers in the San Diego area is permitted to expand so that it affects the capacity of the San Diego stations to serve the public effectively.

This conclusion is supported by a study made of programs scheduled by the eight commercial stations in Los Angeles for the week of February 19 to 25, 1966, as reflected by TV Guide. The study shows that these eight stations scheduled approximately 978½ hours of programs during the week. Of this amount, 923½ hours, or over 94 percent of the total broadcast time, was occupied by programing falling into the following four categories:

(1) Network programs, almost all of which were broadcast by local San Diego stations (232 hours, 35 minutes);

(2) Feature films and syndicated shows, all or almost all of which are now, recently have been, or probably soon will be under contract to San Diego stations, especially with a new independent UHF station on the air and another soon to join it (325 hours, 45 minutes; 226 hours, 55 minutes);

(3) Local Los Angeles news, sports, and weather programs, which are directed to a Los Angeles audience and for which there are comparable programs on the San Diego stations directed to the San Diego audience (54 hours, 35 minutes);

(4) Other programing for which there is equivalent or comparable programing on the San Diego stations; e.g., religious, medical, teen, women's educational, and agricultural programs (82 hours, 50 minutes).

Only programs in the first category would be generally broadcast on the same day in both markets. Virtually none of the programs in the other categories would be subject to same day nonduplication treatment.

The remaining hours—less than 6 percent of the total—did not clearly fall into the foregoing categories. (It should be noted that total broadcast hours of Los Angeles television stations during the sample week was 978½ hours. Ten hours and fifteen minutes could not be identified, representing 1 percent.) Seven hours was devoted to musicians and other performers who appeared live or on video tape or film on music and variety programs. While during the sample week no San Diego station telecast any comparable program on a local basis, programs of this nature have been telecast in the past, and it is reasonable to assume that they will again be televised in San Diego. Six hours was devoted to live bowling, golf, ice hockey, and boxing broadcasts which were not carried in San Diego. Local San Diego stations, however, do broadcast play-by-play other sports events corresponding to those televised by the Los Angeles stations. Eight and a half hours were devoted to daytime game programs entitled "Dialing for Dollars" and "Let's Make a Deal." San Diego stations have televised live, local game shows in the past, and such shows may again return to the San Diego stations. Four and a quarter hours during the week were devoted to information

programs for special interest groups in the Los Angeles area providing ski information, surfing reports, racing information, or information about events occurring in the Los Angeles area. The information presented on these programs is not broadcast by San Diego stations in special programs, but much of the same information or its local equivalent is broadcast within San Diego news and weather programs. Nine hours during the week were devoted to late evening adult talk programs. There are no close equivalents locally. Finally, the Los Angeles stations presented 8 hours of programs for special interest groups or on behalf of special interest groups which are designed specifically for Los Angeles consumption. These programs do not have a specific interest for San Diegans. Examples are "Scholar Quiz," "Sunday Comics," "Ralph Story's L.A.," and "Executive Board."

As to programs broadcast by KCET, the educational TV station operating on channel 28 in Los Angeles, a large number of these programs would be carried on the local San Diego educational station when it goes on the air. Much of channel 28's programing is on tape which would be available to the San Diego station, and a network of California educational TV stations is contemplated, which would tend to increase the amount of duplication as between the two stations. In addition, the local San Diego stations carry educational programs.

Mr. ADAMS. The second thing is that following just a moment on Mr. Mackay's statement, you, then, do oppose local programing by CATV, even though it would not in any way be a duplication of what is being produced at the present time in your regular programing?

Mr. MAIN. Yes, sir.

Mr. ADAMS. In other words, local high school basketball games, or charitable groups, or a group that want to come in and hold some kind of an auction via TV.

Mr. MAIN. Yes, sir.

Mr. ADAMS. Thank you. I have no further questions.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman. I apologize for not hearing the testimony, and I have not read your written brief, but have you earlier told us exactly what effect CATV has had on your particular station, monetary effect? What loss of revenue, and so forth?

Home you told us that, or is it in your brief? If it is, then I won't repeat it.

Mr. MAIN. I believe Mr. Fox referred to that in the case of San Diego.

Mr. WATSON. He did.

Mr. MAIN. And in general terms he did as to the reaction of some advertisers and the trend that we notice. We believe that there will be very careful consideration in the future. In fact, tomorrow, in Chicago, there is a seminar of 600 people which is being conducted by the Chicago Advertising Club, which is mainly made up of advertising agencies, all the major advertising agencies in Chicago, and they are exploring this very problem, as to the effect of CATV in various markets.

Mr. WATSON. Perhaps we can narrow the question down. Do you presently have a CATV in your coverage area of the various stations that you own?

Mr. MAIN. Yes, we do.

Mr. WATSON. Would you tell the committee specifically how long it has been in there, and the direct effect on your revenues? Not a trend. I think we have been discussing too many trends, and we are apprehensive about this, but I would like to know, and I believe it

would be helpful to the committee to know exactly what adverse effect it has had on your revenues.

Mr. MAIN. As Mr. Fox stated in the case of San Diego, he only could point to the trends, because as yet, there is a relatively small amount of CATV, and this applies to our Illinois stations as well.

I could cite one example. One of our competing stations in Peoria had a satellite in La Salle County. This satellite was a relatively small station. It duplicated many or most of the programs from the Peoria NBC station, and at the same time, it originated local news programs, weather, public service programs, and so forth.

La Salle County is a county that has a number of thousands of CATV's in this area, and considerable CATV's in the coverage area of this particular station. This station had to pull back and discontinue—with permission of the FCC, by the way—all their local originations, because the station was losing so much money.

Now this was one of the factors. I do not claim this was all of the factors, because there was another problem of the market being large enough to support the station, but this was certainly one of the factors, because of so many CATV's in the area, as I understand, from this competing station.

Mr. WATSON. If I might make one further statement, I am interested in the regulation of CATV by the Commission. I am secondly interested in protecting the established stations, such as yours, but I believe it would be helpful if we could get some factual information rather than just refer to trends in reference to the adverse effects. I say that in all kindness.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Main, you and Mr. Fox, we want to thank you and the people who are with you, for appearing here this morning. You have been helpful to the committee.

Mr. Meyer, did you want to make a statement?

Mr. MEYER. Well, I felt that we would be derelict in our duty if we didn't mention that we were fortunate in having two Congressmen like Mr. Springer and Mr. Van Deerlin from our services areas.

We have observed that they are very hard working Members of Congress, and we are proud of them.

The CHAIRMAN. Thank you.

Mr. MEYER. There is one point, if I would not be out of order, Mr. Chairman, that I would like to offer to the record, if I may. It will be less than a minute, I would say.

The CHAIRMAN. How is that, sir?

Mr. MEYER. I say, there is one thing that I would like to offer for the record, which would take less than a minute, I believe.

The CHAIRMAN. Do you want to go ahead, then?

Mr. MEYER. Mr. Main referred to a meeting they were having in Chicago tomorrow. The subject of the meeting is CATV, pro and con. A full day's seminar with cocktails and luncheon—I didn't intend to read that part [laughter]—anyway, in the program, which I have in my possession, they make this statement "This impact depend-

ing on the number of homes served by CATV could change dramatically the economics and character of electronic communications, and the way broadcast media will be used and supported by advertisers."

I would like to offer this for the record.

The CHAIRMAN. I do not believe the menu should be included, but what you read will go into the record.

Mr. MEYER. All right.

The CHAIRMAN. Thank you very much, all of you, and we appreciate your being here with us this morning.

Mr. MAIN. Thank you very much, Mr. Chairman.

The CHAIRMAN. At this time, we will have Mr. Joe Foss, commissioner of the American Football League.

Mr. Foss, would you come forward, please? I see you have with you, as counsel or as your assistant one of the former distinguished Members of the House of Representatives, Mr. Lovre.

Proceed as you see fit, put your statement in the record, and summarize it, or whatever you wish to do.

STATEMENT OF JOE FOSS, COMMISSIONER, AMERICAN FOOTBALL LEAGUE; ACCOMPANIED BY HAROLD LOVRE, COUNSEL (A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA)

Mr. Foss. Thank you, Chairman Staggers, and members of the committee. I will just hurriedly cover this prepared statement. I would like to have it inserted in the record.

The CHAIRMAN. It will be inserted in the record in its entirety, and you can summarize it or give it in full, whichever you wish.

(The statement referred to follows:)

STATEMENT OF JOE FOSS, COMMISSIONER, AMERICAN FOOTBALL LEAGUE

Mr. Chairman and members of the committee, my name is Joe Foss and I am the commissioner of the American Football League. Our offices are in New York City and we currently have professional football teams in Boston, Buffalo, Houston, New York, Denver, Kansas City, San Diego, Oakland, and Miami.

We of the American Football League thank the members of the committee for granting us this time to testify on H.R. 13286. Our interest in H.R. 13286 arises as a result of televised professional football games by our league teams and their relation to the community antenna systems which are mushrooming throughout the country. We would like to have protection for our live telecasts. Perhaps some background would be appropriate at this time.

Professional football leagues, to protect attendance at home games, provide in their bylaws that no club shall be permitted to televise a game into the home territory of another team when the latter team is playing at home. In 1953, the Department of Justice brought an action against the National Football League contending that such "blackouts" violated the Sherman Act in that they restrained televising and radio broadcasting of professional football games. Judge Grim, sitting in the Eastern District Court of Pennsylvania held that restrictions preventing telecasting of outside games into home territories of other teams on days when they were playing at home was not illegal under the Sherman Act. He stated:

"The purpose of the Sherman Act certainly will not be served by prohibiting the defendant clubs, particularly the weaker clubs, from protecting their home gate receipts from the disastrous financial effects of invading telecasts of outside games. The member clubs of the National Football League, like those of any professional athletic league, can exist only as long as the league exists. The league is truly a unique business enterprise, which is entitled to protect its very

existence by agreeing to reasonable restrictions on its member clubs." (*U.S.* v. *National Football League*, 116 F. Supp. 319)

Thus, as can be seen, by the Grim decision professional football was given the right to "black out" within a reasonable area surrounding the city in which a professional football team was playing at home. In 1961, the Congress affirmed that professional team sports should have this "blackout" protection when they passed Public Law 87-331 (15 U.S.C. 1291). This law provides that professional team sports may sell the television rights of the league's member clubs in one package without being held in violation of the antitrust laws. To protect home teams, the same act provides in section 1292:

"Section 1291 of this title shall not apply to any joint agreement described in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, *except within the home territory of a member club of the league on a day when such club is playing a game at home.*" [Emphasis added.]

I have cited instances in which a Federal district court and the Congress of the United States have held that it would not violate the antitrust laws for a team to "blackout" their home territory when the team is playing at home. Now, with that background in mind, I should like to discuss what this has to do with H.R. 13286 introduced by Chairman Staggers to amend the Communications Act of 1934 to authorize the Federal Communications Commission to issue rules and regulations with respect to community antenna systems, and for other purposes.

This protection which has been afforded professional sports leagues by the courts and the Congress is now in jeopardy because of the growth and expansion of community antenna systems. I would like to give you an example of what can happen. We currently have a franchise in the city of Buffalo, N.Y. Advertisements have been carried in the Buffalo Courier Express on August 1 and 18 of 1965 and February 27 of 1966 by the Courier Cable Co. of Buffalo which is promoting subscriptions for a community antenna system in Buffalo. I would like to quote from their advertisements:

"Although most people in the WNY area are able to receive only the signals from channels 2, 4, and 7 clearly, signals from Rochester, Hamilton, Toronto and Erie are usually poorly received. Through the use of CATV-Courier Cable Co. you will receive all 12 area stations with exceptional clarity enormously increasing the entertainment value of your television set * * *. Enjoy every major sporting event in the comfort of your living room. Whether it's hockey, football, baseball, horseracing and basketball let the Courier Cable Co. pick up that crisp clear picture you've always wanted and deliver it to your home, in black and white or color * * * the reception is exceptional."

The advertisement of August 18 is even more direct in its approach. It states:

"Hockey from Canada, at home pro football, Buffalo * * * no more driving to Erie to watch blacked out Bills game played at home. Basketball, baseball, horseracing. You name it."

It then goes on to point out that the cheapest ticket for Buffalo professional football games is $3 for an end zone seat, whereas with the Courier Cable Co. service you can get a seat on the 50-yard line for only 16 cents a day which is their daily service charge.

This activity is directly contrary to the protections which have been afforded professional football leagues by court decisions and by Congress and it is the reason we are here today requesting legislation to provide protection for our live sports telecasts.

I would like to make it clear that we are not qualified to comment on such community antenna television stations relaying their signals to householders in rural areas or areas where the reception may be inadequate. We are fearful only of those community antenna facilities which are located within range of cities of large size. In my opening paragraphs, I pointed out the cities in which the American Football League has franchises. I should now like to point out those cities which have American Football League franchises where CATV is in existence or, at least, in the planning stage: New York City, Houston, San Diego, Oakland, Denver, Boston, and Buffalo. As can be seen, seven of our nine teams have community antenna facilities within at least 50 miles. I am not certain about Kansas City, but I have been told that a CATV proposal pending near Kansas City specifies it has a special channel for "blackout" sports telecasts. These stations like the Buffalo station can pick up a signal from elsewhere and send it right into the homes in cities where the courts and Congress have said

we could impose the "blackout". Such stations operating in or near our franchised cities can cut into attendance, thus, the individual teams and the leagues will suffer.

A second factor involved here is the attitude of the networks with whom we have signed contracts that they shall have the exclusive right to televise our games. With such community antenna facilities taking the game off the air for their own use, the networks can logically object. Since a good portion of the fabric of professional sports is woven around television income, it must logically follow that any diminution of television revenues would automatically result in extensive pay cuts for the participating players, coaches, and administrative personnel. This would be multiplied many times when one takes into consideration the permanent personnel such as ushers, ticket takers, and concessionaire personnel.

We have searched for a method of protecting the integrity of our "blackout" areas. We feel that this protection is of small value unless we can find some effective method of enforcement against those who would violate those rights which have been given us. We appeared last year before a subcommittee of the House Judiciary Committee requesting that we be given authority to copyright all games simultaneously with the original telecast. We feel that this would afford us the much needed protection; however, we feel that this committee could provide us protection in a more expeditious and less involved manner. The members of this committee are all familiar with section 325 of the Communications Act of 1934, as amended, which reads:

"Sec. 325(a). No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress or communication relating thereto, *nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.*" [Emphasis added.]

We respectfully request that H.R. 13286 be amended to provide that section 325(a) be amended to provide that no telecasting station as well as no broadcasting station shall retelecast a professional league football game or any part thereof of another telecasting station without the express authority of the originating station. We believe his would give us the protection we desire.

Again, I would like to thank the chairman and the members of this committee for granting us this time to present our case.

Mr. Foss. Thank you, Mr. Chairman.

My name is Joe Foss, and I am commissioner of the American Football League, and have been since the inception of the league in 1960.

At present, our offices are located in New York City, at 280 Park Avenue. We have, for the 1966 season, nine teams in the league. They are at Boston, Buffalo, Houston, New York, Denver, Kansas City, San Diego, Oakland, and Miami.

Now, at present, by our constitution and bylaws, and by our contracts with a major network which is carrying our games for the next 4 years—it was a 5-year contract, 1965 being the first year of that contract—we are protected by the *Grim* decision and by the television bill which was passed in 1961. These give us an opportunity to operate in our various cities without our own television coming back on top of our games.

This is absolutely necessary, for if we had our own television coming back on top of us, it would be tough to sell tickets, especially in some of the areas where we have inclement weather at certain times of year.

Now I can tell you from my experience as a lawmaker, and as an individual who has been interested in various communities, that I have previously been interested in CATV and seeing to it that television would be brought into the remote areas, whether it was by the regular stations or CATV or what it was, just so that these people out in remote areas could have the same advantage, or many of them, that we enjoy in the large cities.

However, the American Football League and I object to CATV coming back and providing the games that we are playing in the various league cities, while the home team is playing at home. Here I have an advertisment from the Buffalo Courier Express, as recently as Sunday, February 27, 1966. It said: "Courier cable is here! Now being installed on these streets," and then a list of all the streets, "Soon to be installed everywhere." And then the various programs: sports, movies, and so on.

Under "sports," it has hockey from Canada, at-home pro football, basketball, baseball, horse racing, you name it.

In previous ads, they have gone on to say that the cheapest seat that you can get for the Buffalo Bills—I am just citing that case, because I am very familiar with it—is a $3 end-zone seat. It says, "why take time driving all the way out and getting in the rush at the stadium and having parking problems and so on, when you can have a 50-yard-line seat for 16 cents?"

Well, that's a little tough to beat, when you compare $3 to 16 cents. We all like to save money, and especially if it is a real cold day, or raining, like it is out there today, if you can sit at home and enjoy the hospitality of the living room, that's exactly where you are going to be.

We have searched for a method of protecting the integrity of our blackout areas. We feel that this protection is of small value unless we can find some effective method of enforcement against those who would violate those rights which have been given us.

We appeared last year before a subcommittee of the House Judiciary Committee requesting that we be given authority to copyright all games simultaneously with the original telecast. We feel that this would afford us the much needed protection. However, we feel that this committee could provide this protection in a more expeditious and less involved manner.

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We respectfully request that H.R. 13286 be amended to provide that section 325(a) be amended to provide that no telecasting station, as well as no broadcasting station, shall retelecast a professional league football game or any part thereof of another telecasting station without the express authority of the originating station.

We believe this would give us the protection we desire.

Again, I would like to thank the chairman and the members of this committee.

Thank you.

The CHAIRMAN. Thank you, Mr. Foss.

Mr. Rogers?

Mr. ROGERS of Texas. Mr. Foss, you have the right to refuse to permit your games to be televised in the first instance, do you not?

Mr. Foss. Yes, sir; in the contract, we draw it out and specifically spell it out.

Mr. ROGERS of Texas. Well, what I am getting at is this: You do allow the televising of your programs in certain areas, because of economic reasons and the amount of money you get.

Mr. Foss. Yes, sir.

Mr. ROGERS of Texas. But you do not want those games televised back into the area where you are playing, because you want the people to come to the stadium to see the game.

Mr. Foss. That is correct.

Mr. ROGERS of Texas. Well, now, what about the people that are sick and in the hospitals, and can't get out?

Mr. Foss. Well, sir, in every situation, there is no way that you can legislate to take care of everyone. That I have found in the past.

Mr. ROGERS of Texas. We find that out every day. [Laughter.]

Mr. Foss. You can't do it honestly, and be all things to all people, and I have worked with the physically handicapped and the mentally handicapped since early 1940, and I understand their problems, but in order to take care of the great and vast majority of the people, and do it in such a way that the league could exist, we still have to black out in the area, and I realize there are some people that it would hurt, especially the shut-ins.

Mr. ROGERS of Texas. But you would feel that your problem could be settled, I see you say, by an amendment to section 325(a), and I do not quite understand your reasoning. You say, "another telecasting station." Now the thing is this: that if the CATV operation was a broadcast station, there wouldn't be any question at all but that the FCC would have jurisdiction of it.

I gather that you want a prohibition put in the act that your football games can't be put on wire communication, or radio signals, in the blacked-out areas.

Mr. Foss. That is correct.

Mr. ROGERS of Texas. And that would satisfy you. You do not go to the extent that you think that the Federal Communications Commission as a Federal bureau ought to have regulatory powers over a business, do you?

Mr. Foss. I am one of the first guys to run for high land on that. I would say I do not want to get involved in that. [Laughter.]

Mr. ROGERS of Texas. You mean if we will take care of the football situation, you will be satisfied.

Mr. Foss. Being down here, I am going to just stick to the one particular presentation that I have made, and questions pertaining thereto.

Mr. ROGERS of Texas. Thank you, Mr. Foss.

Mr. Foss. Thank you, sir.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Foss, you have a contract, do you not, with a certain radio or television and radio network for the broadcast of your games. Isn't that correct?

Mr. Foss. Yes.

Mr. SPRINGER. And the same as the National Football League, that is up for a bid, and you sell that to the highest bidder.

Mr. Foss. Yes, sir.

Mr. SPRINGER. Isn't there a provision in your contract that there shall not be any reproductions of this broadcast in certain areas on home games? Isn't that in the contract?

Mr. Foss. Well, while the game is in progress we have the blackout area for the home team, and the stations that carry the games there are blacked out for that game, and they know it ahead of time.

Mr. SPRINGER. And that has been your contract with the network which broadcasts that particular game?

Mr. Foss. That is right.

Mr. SPRINGER. All right. You can broadcast that, in an area 75 miles beyond the limits of the city. Isn't that about it?

Mr. Foss. We attempt to protect the home territory of a member club when a home game is being played which is approximately 75 miles, more or less.

Mr. SPRINGER. Last year, you had that with what network?

Mr. Foss. Last year, our first year of a 5-year contract with NBC, previous to that time, it was ABC for the first 5 years.

Mr. SPRINGER. Now when someone takes that signal off the air and runs that back to Buffalo, then that is a violation of NBC's contract, isn't it?

Mr. Foss. Not if it were under CATV. It would not be a violation.

Mr. SPRINGER. Now I am saying that you say, and there is at the end of any reproduction of this program, and you say that before it goes on the broadcast, don't you, any reproduction of this program is prohibited?

Mr. Foss. Yes.

Mr. SPRINGER. Without the authority of the American Football League or association? Isn't that true?

Mr. Foss. That is correct.

Mr. SPRINGER. Now when CATV takes that signal from the air, they are in violation of that contract, aren't they, and that prohibition?

Mr. Foss. Not as I understand it, sir.

Mr. SPRINGER. They are not?

Mr. LOVRE. Mr. Chairman, my understanding of the law is that it would not be in violation of the contract, so what we need is legislation—legislative remedy in order to protect the blackout area.

Last year, we appeared, and also the National Football League, before a judiciary subcommittee, trying to amend the copyright law to amend the definition of motion pictures, whereby the definition would include live telecasts of professional football games that are being taped simultaneously.

That bill is still pending in the Judiciary Committee. We feel that in addition to that, that we can also get similar protection by amending section 325A, and may I say this, Mr. Chairman—and I am prompted to say this on account of my good friend, Congressman Rogers—this Congress in 1961 granted professional football leagues this blackout right.

This is the right you gave us. You gave us this in 1961. The right to blackout the home territory of a member club when a home game is being played for the reasons that the Commissioner has already testified to.

MANHATTAN, KANSAS

Now in addition to that, the court back in 1953, if my memory serves me correctly, also gave us that right. In other words, they said it is not in violation of the antitrust laws.

Now we know what is happening by virtue of CATV. The commissioner has already given you one example and I would like to refer by reference only to the hearings before the Judiciary Committee of last year, on page 1836 of the hearings, where there is an advertisement taken from the Buffalo Courier Express, on August 18, and here is what it says, if I can read it. It is awfully short.

It is the best entertainment available anywhere in western New York. For instance, one package of cigarettes per day, 30 cents.

I am reading from the advertisement that appeared in the ad of the Courier on August 18, 1965.

Your Courier Cable, CATV, less than 16 cents per day. Cheapest tickets for Buffalo professional football game, $3 (end zone); Courier Cable CATV per day, 16 cents, 50-yard line.

Then it come to this, and this is what we are getting at mainly, and once again, this is a quote from the ad that you will find in the hearings of the Judiciary of last year on page 1836. It says "Sports: No more driving to Erie to watch blacked out ball games played at home."

All we are getting to, is right there. In other words, we are asking you to give us the protection to a right that you gave us by legislation in 1961, and which was also given to us by the court back in 1953, and we feel that the amendment to section 325 will do the trick.

Now if there is any other way, any other place that you can give us protection for the right that you gave us, it is immaterial to us how it is done. The only thing is that we want to protect, and while I am on that point I would like unanimous consent that this article be inserted in the record. It is an article written by Dale Brady appearing in the Sunday, March 13, 1966, edition of the Washington Post entitled "Community Antennas Puts Sports Telecasts in Peril."

I would like to ask unanimous consent that this be inserted in the record.

The CHAIRMAN. I am not sure that it can be. It can be put into the files. What are the contents thereof?

Mr. LOVRE. It is an article by a sportswriter.

The CHAIRMAN. Well, if it is appropriate, it will, and if not, it will be in the files.

(The document referred to can be found in the committee files.)

Mr. LOVRE. So, Mr. Chairman, that is really the substance of our request. Just a protection of the rights that you gave us.

Mr. SPRINGER. All right, now, Mr. Foss, the point that I am trying to get at, when you come up for your next contract in 1960-what?

Mr. FOSS. It will be 1970. Actually it will be negotiated, come up for—in 1969.

Mr. SPRINGER. This is what we are talking about, when we mention trends. When Mr. Watson says "trends" he is not talking about this minute. He has to be talking about economics as of last fall. We are talking about trends, and this is awfully important. If all of these games are received by CATV and as CATV expands during the

coming years, and they can bring these into the homes of people in the area, and the probabilities are, if I myself felt that I could get them for 16 cents, and did not have to pay $3 to $5 to get a ticket, I might do it myself.

Now, is your contract going to be worth anything in 1970, if everybody can receive the home game at home?

Mr. Foss. Absolutely not a thing. You see, this is the thing we are afraid of, and it is a point that has not been mentioned previously by us today. It would disintegrate our worth as far as having a television package is concerned.

Mr. SPRINGER. Now just one further thing.

Would you tell us what your 5-year contract with NBC is; how much was it?

Mr. Foss. It was for a total of $36 million. That is not including the all-star game, or the championship game. With those two games thrown in, it is a total package of $42,700,000.

Mr. SPRINGER. May I say to you, Colonel Foss, that if I was negotiating for NBC in 1970, I don't think I would negotiate a contract with you, if you can receive this on CATV at home for no cost at all. Now that is what I think of your contract in 1970, if it continues in the same trend that you are going at the present time.

Thank you, Mr. Foss.

Mr. Foss. Thank you. That is the thing that we are concerned with, Mr. Springer.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. I wonder, Mr. Foss, would you examine the possibility of renegotiating this contract with the networks, to include the protection generally in the amendment that you have set forth to the committee today?

Mr. Foss. It would not—the network would not be able to afford us protection against CATV, You see, we are all right with the networks. We provide in our contract for protection. Take for instance San Diego. In the contract that we drew up, we specified that the stations to the north would have to be blacked out because they were picking up the strong signal in San Diego from that, and we found that it was just cutting down attendance at the games.

Mr. DINGELL. What I am asking you, though, specifically is this. You make it very plain that CATV can, and I suspect probably will, in fact—I join you in your apprehension—have a damaging effect upon the stations which carry your signals who are essentially blacked out. But what I am trying to find out now is, have you approached the networks to secure protection for yourself and for stations who would carry your signals, subject to the contract, from possible impairment by operators of CATV?

Mr. Foss. No, we have not, and we don't have the right to do that.

Mr. DINGELL. Why not? You can certainly discuss it with them?

Mr. Foss. Oh, I have talked to some of the people about it, but there has not been any move on to get them highly involved in the thing. It it not, as far as I am concerned, as commissioner, their duty to seek out that protection for us.

Mr. DINGELL. What I am saying is have you talked to the networks?

Mr. Foss. I have talked to some of the people at the networks.

Mr. DINGELL. What has been the response of the people at the network to possibly changing this contract to afford additional protection to yourselves?

Mr. Foss. Well, there has just been no policy statement from the networks on it at all.

Mr. DINGELL. Have you pursued this with any vigor?

Mr. Foss. No; I have not.

Mr. DINGELL. Now with regard to the fundamental legislation, you have indicated that you need an amendment to H.R. 13286 in order to continue operating in the manner in which you operate today, and to protect yourself and to protect stations which carry your programs. Let me ask you this. More specifically, do you feel that if you were to receive the protection you seek without the passage of H.R. 13286 as separate legislation, you would be adequately protected?

Mr. Foss. If the copyright bill, as I call it, were to be passed, we would have adequate protection.

Mr. DINGELL. Let me ask you this. If the committee did not include the amendment that you discuss, and simply passed H.R. 12914, what would the impact upon your industry be?

This is the legislation which would amend the Federal Communications Act of 1934 to prohibit the Federal Communications Commission from exercising jurisdicton over the reception of radio signals, communications, and transmissions.

Mr. Foss. That, according to counsel, would not give us the protection that we need.

Mr. DINGELL. Well, it says:

> Nothing in this Act shall be understood or construed to give the Commission the power to control or regulate reception of radio communications or signals transmitted by any radio station.

What would the effect of that be on your agreement with regard to these joint sales of viewing time on the spectacles that are put on by your membership?

Mr. Foss. Well, sir, any leakage that we have would end up in depreciating the value of the package. On the whole, to date, pro football is a big business enterprise. Just the budget of running the separate clubs comes up to a million and a half dollars, and, of course, by the way it looks, that is just a starter from here on out. It is absolutely necessary that we have the high television revenues to maintain the present budget, plus a good attendance at the stadiums.

Mr. DINGELL. I see. Thank you very much.

Mr. Foss. Yes, sir.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Commissioner, I simply want to commend you for coming before our committee and presenting professional football's problem as related to these CATV's, and also compliment your very able counsel, former Congressman Lovre from the State of South Dakota.

I think the problem you outlined here is also really related in a different way with your amateur athletics, like the NCAA, who had a conference here about a month ago, or the Western Conference, involving games and, I have discussed this problem with them generally.

I am not authorized to speak for them, but they, too, investigated a concern of Big Ten games, mid-America games, and high school games, even, that could kill the gate.

I think that your contribution to the record here is helpful to the committee in hanging the overall problem, and I wish to thank you.

Mr. Foss. Thank you, sir.

The CHAIRMAN. Mr. Rogers of Florida.

Mr. ROGERS of Florida. Thank you, Mr. Chairman. What would you say is the percentage of income to your industry from television as regards gate receipts?

Mr. Foss. I would just hazard a guess. I may be way off on it, but I would say 70 percent.

Mr. ROGERS of Florida. Would be from television?

Mr. Foss. From television.

Mr. ROGERS of Florida. Income, and 30 percent from gate receipts.[1]

Mr. Foss. Yes, sir. When you pay the present salaries and bonuses, and they have a curve that goes not like a curve, but like a skyrocket that has a lot of horsepower, up, and each year it has been on the rise. At the time that we started, back 6 years ago—now this is the 7th year of operations—the budget of a club was running somewhere around $750,000. You could get by. It has now doubled in 7 years. Now it is a minimum of a million and a half dollars.

Mr. ROGERS of Florida. Now let me ask you this. In the 75 miles that you are blacked out, does this means that any station within that 75 miles is not—cannot carry the game?

Mr. Foss. That is partially right. When we draw up the contract, if there is any station in that area, we talk to the network, whichever it happened to be, that we are drawing up the contract with, and just leave that station out.

Mr. ROGERS of Florida. Now suppose there is a station beyond the 75 miles, but its signal would come into the 75 miles? You also black them out?

Mr. Foss. Yes; if the transmitter regularly delivers into the center of the home city what is called a city-grade signal. What we do in San Diego and Oakland is not bring the home game back in, but we have another game, so that we have one of our own league games coming over that station, and of course, the feeling being that even though you lose attendance at the stadium, you are going to lose fewer, because it is another game that——

Mr. ROGERS of Texas. It is not a home game, that has the home support.

Mr. Foss. Right. Whether it is a losing team or not, the average fan wants to be there and see his own team, so he has the privilege of cussing them out, or cheering them.

Mr. ROGERS of Florida. Now does it make any difference as to how many stations carry the program as to the income to you?

Mr. Foss. It does not, sir. The contract is based—is made with the network, and the number of stations that come on the line are varied,

[1] Commissioner Foss, on rechecking figures in the league office, subsequently submitted to the committee that actually approximately 49 percent of the net revenue came from attendance and 51 percent from television revenues, as opposed to the 30 percent and 70 percent figures stated in his answer to a question by Congressman Paul Rogers.

because they have a number of independents that just come on to the line after a certain date, or some that want to drop out early, but usually it is the other way around. It increases as the season rolls on. For various reasons, there are some that want to come on later.

Mr. ROGERS of Florida. Thank you.

Thank you, Mr. Chairman.

Mr. Foss. Yes, sir.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Mr. Foss, I certainly appreciate the necessity of giving you some protection in your areas where the game is played, and so forth. But in response to the question from Mr. Rogers of Florida, you said 70 percent of your revenue is from TV receipts.

Mr. Foss. Well, it will run close to a million dollars. We can figure it out right here now. It will run close to a million dollars per club from television, against, let's say, and the average attendance of the league last year ran—I should have the figure right on top of my head, and that is where it is, above my head. [Laughter.]

Mr. WATSON. Well, we can approximate it.

Mr. Foss. Anyway, approximately, I would say an average of $195,000 per game, times 7, would be your total income from gate receipts, minus your taxes and stadium rentals, that come out of there before you get it.

Mr. WATSON. Of course, there are far less headaches and problems involved with the dissemination of the game by way of television than your concessions and your problems that you have in the live conduct of the game. Isn't that correct?

Mr. Foss. That is right.

Mr. WATSON. Well, it would appear to me, not trying to adversely affect your local attendance, we need that in order to stimulate interest in the game, but you still have the complete control over the origination of the game; do you not?

If you don't give the rights to telecast that game, it can't be telecast. It can't go to one station without your approval.

Mr. Foss. That is right.

Mr. WATSON. Well, as your gate receipts might depreciate, obviously, with CATV and additional stations carrying this into remote areas, the value of the television rights would materially appreciate. Is that not correct, sir?

Mr. Foss. Not from CATV because we receive no revenue from them.

Mr. WATSON. Well, I mean, your television rights would appreciate, if you carried it into more homes?

Mr. Foss. If it comes on our network, and the ratings increase. Of course, you see, the whole thing is a matter of numbers. We can agree or disagree with the importance of the numbers racket, or numbers game, as they call it, in television, and of course the thing that we are interested in is having a high rating, and that is where the two leagues get into a battle.

They maintain it is not a battle, but we are improving each year. I also say when you start from scratch, there is only one way you can go, and that is up, and we have been doing that since the day we started. But with CATV, if they brought it into all of the homes, unless we had some contract with them, or some control over them, we

would just produce the games, and they would not even have to worry about saying thank you.

Mr. WATSON. Yes, sir, but CATV cannot get that signal unless it is orginally contracted for with you, with a national network.

Mr. Foss. That is right. It has to be on the air someplace so they can pick it up.

Mr. WATSON. And realizing the tremendous ruckus that you have made—and I applaud you for it—I am sure that you would be good enough businessmen that you would demand adequate revenue for that contract.

Mr. Foss. My counsel says we have 4 more years to wait for that, and in the meantime, the alligator may eat us.

Mr. WATSON. Thank you very much.

Mr. Foss. Thank you, sir.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Foss, have any studies been made to demonstrate or show the effect of local coverage on a game being played in the local community?

Mr. Foss. As I understand the question have any studies made previously that would indicate the effect that a televised game, home game has on the attendance?

Mr. KORNEGAY. That is right.

Mr. Foss. Yes, some other folks tried that some years back, and the folks just do not show up at the stadium. As I recall, the area happened to be the Los Angeles Rams, and they were going to be good guys at that time. They were riding high and filling that great stadium, and so they were going to, you know, be good guys and televise their own games, and folks that wanted to see it at home could.

A great percentage of them chose to stay home and see it free, so they cut off in a hurry and went back to the old deal—buy a ticket.

Mr. KORNEGAY. If you have any figures on that, it might be well to put them in the record to actually demonstrate what the effects of television—of televising home games is. Do they do this in college football? Black out the home area?

Mr. Foss. Well, that is one reason they fight so strenuously against it, they have tried. I don't have the actual figures, but I do have the results. The results have been, where a game is televised back on top of a live game, that it killed it from there on, that the attendance just dropped, period, and dropped so radically that they have had to do away with it. Even if the stadium is sold out, if you start it, it grows from there. They want it every time and the attendance drops to nil.

You just cannot make it, and that has been borne out by several experiences in the past.

Mr. KORNEGAY. Well, I think I see your problem, and I appreciate your coming here to tell us about it.

Mr. Foss. Thank you, sir.

Mr. KORNEGAY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. No questions, Mr. Chairman, but after hearing him answer these questions from the committee members, I understand how our witness shot down 26 Japanese planes.

Mr. Foss. Thank you, sir.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Foss, are any CATV systems now picking up signals of your games, and playing them back in other areas?

Mr. Foss. Right now——

Mr. PICKLE. Where they were blocked out.

Mr. Foss. Right now, there is a movement going on to set up CATV in seven of our nine league cities, and——

Mr. PICKLE. Blackout areas?

Mr. Foss. Yes, sir. With a possibility that those two that I am not certain whether or not they are going at the moment, looking like they probably will get it started there. The one that we hear more about than any other at the present time happens to be Buffalo, where they are very active and come out with these ads. That one ad as recently as February 27, 1966.

Mr. PICKLE. Well, my question is, "Is anybody doing it?" and I presume the answer is "No."

Mr. Foss. That is right.

Mr. PICKLE. But that there is a movement.

Mr. Foss. Yes, sir.

Mr. PICKLE. And by movement you mean that there is an indication that they want to have this, right?

Mr. Foss. Yes, sir; they are just in the act of selling. In fact, in this one ad, it lists the streets. This is up in Buffalo, "now being installed on these streets" and then all of these columns are the streets where they will have CATV shortly.

Mr. PICKLE. Do you think any CATV system should have the right to either originate or pick up these signals and broadcast them in your blackout area?

Mr. Foss. That is something that I do not wish to get involved in. As I say, I want to make—I want to stick right to my own——

Mr. PICKLE. I assume you are involved in it within the blackout area. Beyond that, you would not express yourself. Is that correct?

Mr. Foss. The only thing that I would say, as far as CATV is concerned, coming from an area that has a lot of remote areas in it—South Dakota—I think it is just wonderful to bring all of these programs to these areas where there is no signal. The only place that we get any quarrel—and it is not a quarrel, it is just a discussion; we just want some action on it—is in the large cities wherein our franchises are located, and specifically, just to see to it that they have to get permission from us, or from the station that originates the signal before it can come on the air.

Mr. PICKLE. Then your operation, your league has made no effort to contact CATV people to see if they would be interested in broadcasting these games?

Mr. Foss. No, sir.

Mr. PICKLE. You are satisfied——

Mr. Foss. No, sir; we have a contract with the network, and that is an exclusive contract.

Mr. PICKLE. Well, I was interested in the question Mr. Dingell asked, and if I understood the question, I would like to have a comment from

you, if you care to make it, and that is, he asked if you would favor H.R. 12914—that is Mr. Rogers' bill. Or rather, he asked if 12914 were passed, would that in effect vitiate the blackout rights that you have today?

Mr. Foss. According to my counsel, it would not help us.

Mr. PICKLE. You do not—what do you mean by "would not help us"?

Mr. Foss. Well, that would not be the answer as far as—we have to go one of two ways. Either with the bill, and I will try to get the number here.

The thing that we are trying to do, when you asked for what would the answer be, it is either to have protection under H.R. 4347, which is the one we appeared before the Judiciary Committee on, which we called a copyright bill. It would immediately on instantaneous broadcast, copyright our names, so that then a copyright of a creation at the moment gives you protection.

Secondly, because of the hearings of this committee, of the Interstate and Foreign Commerce, then we come up with this other proposal, that would give us the protection for H.R. 13286, to be amended to provide that section 325A be amended to provide that no telecasting station as well as no broadcasting station shall retelecast a professional football game, or any part thereof, of another telecasting station, without the express authority of the originating station.

Now someone will say, Well, why would the station? Well, because of our contract with the network, we have control over the stations that are going to carry it in the first place, or the network. If we have objections in a certain area, and it is inside what we consider the blackout area, that we are afforded protection today by the television bill of 1961, and the *Grim* decision, the court decision, that is it.

Mr. PICKLE. Let me restate this, if I may, Mr. Foss. If the Congress were to pass H.R. 12914, which would say that it would prohibit the FCC from exercising jurisdiction over the reception of radio signals, communications, and transmission, would that act either vitiate or cast a cloud on the authority that you now have under your blackout privileges in your opinion?

Mr. Foss. I would hesitate to answer that, before I checked with my counsel.

Mr. LOVRE. Mr. Chairman, if I may answer that, Mr. Congressman. The 1961 act, which was a special act, related to package television. We needed that act in order to get away from the antitrust laws, and under the act, which was passed here, it provides specifically for this blackout area.

It has nothing to do with the Communications Act, and is a special act by the Congress. All we are asking now is this: By virtue of this special act, the special permission that was given to us by 1961, and also augmented by the 1953 court decision which is documented in the Commissioner's statement that is filed and made a part of the record, all that we are asking now is protection, for that given right.

The only way that we know we can do it—if there is any other way I would like to hear it—is by amending the copyright law, as I have already stated, or by amending section 325 of the Communications

Act to extend that section to telecasting, and that will give us the same protection, insofar as professional ball is concerned.

That is all we are asking. In other words, we are just asking for protection in some manner or form. We are not interested in how. But we want protection for a right that has been given to us by the Congress of the United States.

Mr. PICKLE. Well, Mr. Counsel, I appreciate your intent, and why you would want that, and can understand that.

Mr. LOVRE. Thank you.

Mr. PICKLE. I don't argue that point. I am just simply saying that if the Congress were to pass a later act which says the FCC had no jurisdiction, no right to prohibit these radio-television signals, then wouldn't it follow that that in some way would cast a doubt on the right that you actually have for the blackout privileges?

Now I recognize that if you have gotten an individual contract between—the Congress has given you the right to have this blackout, but if we pass a later act, that might cast a cloud over your right to have this.

Mr. FOSS. It could very well be.

Mr. PICKLE. It might very well be.

Mr. FOSS. It could very well be.

Mr. PICKLE. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Murphy.

Mr. MURPHY. Mr. Foss, do you feel the program you broadcast should be treated the same way, as, let's say, the "Frank Sinatra Show?"

Mr. FOSS. I beg your pardon?

Mr. MURPHY. Should be treated and classified the same way as any other television show?

Mr. FOSS. Well, you have a different situation really, when you get to sports. Sports, whether it is amateur or professional, the reason that it is a marketable product in the first place is because of the overall structure that you have of a league or a conference, and it is important that all of its members be protected, not just one.

Like some others, we again talk about a very highly competitive society, and it is true pro football certainly is. You could compare it, in the presentation, it is for the enjoyment of people. It involves more people, however, as far as the actual production of it is concerned, to a community.

Mr. MURPHY. All right, how about outside of the blackout area? Say the B zone. Would you then consider that you broadcast this signal for public consumption?

Mr. FOSS. We certainly do. We try to bring it to just as many people as even we can, and of course the sponsors, the advertisers, they are interested in their money's worth in what they put on for the public, or there would not be any reason of their buying time in the first place.

Mr. MURPHY. So it is a free signal?

Mr. FOSS. That is right.

Mr. MURPHY. And with the exception of, say, an antenna picking it up, and with the exception of piping it back into your particular blackout area, you would have no objection to its going into, let's say, other areas that could not receive television?

Mr. Foss. I do not. As far as the league is concerned we certainly do not. Exposure is the thing that we are interested in, outside of the blackout area, or the immediate area, so that we can have our crowd at the stadium. In fact, when it comes right down to it, that is the reason that the American Football League is here today, because of the exposure that we were after—that we were afforded by television with a product that had an opportunity to go to the four corners of the United States, and other countries, and as a result, you build the thing up more and more people take a look at it, as the time rolls on, but in the blackout area, that has to be blacked out, or we are in trouble.

Mr. MURPHY. Thank you.

Mr. WATSON. Mr. Chairman?

The CHAIRMAN. Mr. Watson?

Mr. WATSON. May I ask the Commissioner one final question? History has a way of having feelings oftentimes reverse themselves. I know right now you are interested in trying to prevent CATV, which someone referred to as one medium of pay television, from adversely affecting you in a local area. I am concerned about professional football developing to the point of professional boxing, that we have strictly closed-circuit performances.

Now if this committee could protect you in your growth stage, could you give the committee the assurances that you will use your good influences in trying to prevent professional football from developing into strictly a closed-circuit, moneymaking proposition, and thus denying the people in the home from receiving free telecast of football games?

Mr. Foss. Well, all I can say is what I feel personally. I could give you that assurance personally. However, as time moves on, I don't know what the future has in store for us as far as sports productions of the future are concerned. I, as an individual, would not like to see it taken away and put into a closed circuit as boxing now is.

I have only attended one of those episodes or escapades, or whatever you call them, in the past, and I like it the way it is now, where it is on the network, and a great percentage of the people have the opportunity to turn it on and look at it. All I could say as far as giving you any word is my own personal feeling.

Mr. WATSON. Well, I certainly appreciate your position, and I know that circumstances change, but I think, for one, that I would take a rather dim view of it, if you come up before the committee and ask for protection at this time against one medium of so-called pay television, and later on, you join the ranks and then you ask for an exclusive on it.

I am sure that you would not do that, if you could control it.

Mr. Foss. Well, I can tell you one thing, I will guarantee you that this old bird will never appear before this committee for that reason.

Mr. WATSON. Thank you, sir. And I hope to see you back again. Thank you, sir.

The CHAIRMAN. Mr. Foss, we want to thank you for coming and giving us the benefit of your views.

Mr. Foss. Thank you, Mr. Chairman.

The CHAIRMAN. You have been helpful to the committee, and your views will be given careful consideration. You have a very able counsel with you in Mr. Harold Lovre, and I also want to commend

you, as Mr. Van Deerlin did, for your part in defending this Nation in years gone by. Every American is indebted to you and those who served with you.

Mr. Foss. Thank you, sir.

The CHAIRMAN. Thank you and good luck.

Mr. LOVRE. Mr. Chairman, could I ask unanimous consent that the advertisement that the Commissioner referred to be included in the record?

The CHAIRMAN. I will have to take that up and see if it is appropriate. If not, we will have it in the files.

Mr. LOVRE. Yes. The reason I ask is in Judiciary last year, we had two like advertisements.

The CHAIRMAN. I understand.

Mr. LOVRE. Thank you.

(The advertisement referred to can be found in the committee files.)

The CHAIRMAN. I might say that this afternoon we will have Mr. Pete Rozelle, commissioner of the National Football League, as our first witness. The committee will stand adjourned until 1:30.

(Whereupon, at 12:30 p.m., the committee recessed, to reconvene at 1:30 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 1:40 p.m., Hon. Harley O. Staggers, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

Mr. Pete Rozelle, commissioner of the National Football League. Mr. Rozelle, you may proceed as you see fit. If you have a long statement and want to put it in the record, you may do so and summarize it. Please proceed as you see fit.

STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE; ACCOMPANIED BY HAMILTON CAROTHERS, COUNSEL

Mr. ROZELLE. I have a very brief statement, Mr. Chairman.

The CHAIRMAN. All right, you may proceed.

Mr. ROZELLE. First, I would like to introduce Mr. Hamilton Carothers, our legal counsel.

Mr. Chairman, members of the committee, my name is Pete Rozelle, and I am commissioner of the National Football League, an association of 15 professional football clubs located throughout the United States.

The National Football League has a vital interest in H.R. 13286, the bill now pending before the committee which is designed to confirm the power of the Federal Communications Commission to regulate community antenna television systems.

The NFL and each of its member clubs would like to go on record in support of the purposes of this bill. We also believe that the recent action of the FCC in curtailing the activities of CATV systems in the major American cities is a significant and beneficial regulatory step.

From time to time, there are developments in our economy or in business practices which existing statutes and legal principles are not

designed to meet. When these developments occur, it becomes the obligation of Congress to modernize the laws to meet the new conditions, particularly where this is necessary to prevent one segment of the business economy from taking unfair advantage of another or of the public at large.

Community antenna television systems, particularly where they bring in signals from distant cities, are just such a development. The time is right to impose upon this new type of business enterprise regulatory controls which will insure that they operate in, instead of contrary to, the public interest.

The member clubs of the National Football League go to considerable expense to stage professional football games—in stadium rentals, travel and training costs, game expenses, promotion and administration, and the ever-spiraling player payroll costs. Their return for this effort comes from the sale of tickets to these games and the sale of rights to televise them. Although television has become an increasingly important source of income in recent years and the NFL is interested in bringing its games to the widest television audience, the primary objective of every NFL club must be to keep its stadium filled with interested fans. The NFL does not choose to follow the path of professional boxing and have its teams play in comparatively empty arenas before national television audiences.

In order to avoid conflicts between its game telecasts and its gate attendance, the NFL has found it necessary to exercise controls over the manner in which its games are telecast. These controls have been approved by the courts and endorsed by Congress.

Indeed, the privilege of limiting telecasts which interfere with home game attendance has been specifically affirmed by the 1961 act of Congress—Public Law 87–331, which permits the NFL to "blackout" telecasts in the home territory of a member club when the club is playing a home game. This legislation also imposes certain restrictions on the NFL, sought by the National Collegiate Athletic Association, as to telecasts in conflict with local college games.

In the sale of their television rights to national networks, NFL clubs, of course, incorporate these restrictions in their contracts of sale. These restrictions are in turn imposed by the networks on television stations which acquire the game rights. But these contract restrictions can be, and are, in practice, ignored by community antenna television systems, which appropriate NFL programs without the consent of either the program producers, the networks, or the television stations whose programs they carry—and offer to their subscribers for a fee.

Indeed, a sales argument made by many CATV's is that they will bring "blacked out" sports contests to their subscribers at far less cost than the price of a ticket to local sporting events. They do this by bringing into NFL cities where games are being played, and into surrounding areas, the signals of distant television stations which have been granted the right to televise NFL games in full compliance with the television sale contract.

Moreover, the local television station which honors its contract obligations to the network and the league finds itself subject to the damaging competition of a local CATV which does not do so.

Indeed, we cannot even carry out the mandate of Congress as established by the 1961 legislation. The law which gave us the privilege of selling our games as a package placed certain restrictions on our method of doing so. We cannot, for example, telecast games on Saturday in competition with local college games.

How do we meet this directive when we are unable to prevent a CATV from bringing a distant NFL telecast into local areas where college football games are being played?

There is probably no comparable situation elsewhere in the American economy. Programs expensively produced by the NFL are freely appropriated by others without its consent and used to damage the league's own financial interests. A profitmaking enterprise should pay its own way and should not be permitted to live off the efforts of others.

The recent FCC action limiting the importation by CATV systems of distant television signals into certain metropolitan markets is a step in the right direction.

There is, however, another basic problem. The question is whether CATV systems should be permitted to do as they please with programs which they have had no hand in producing and as to which they have made no payment.

The NFL believes that CATV systems should, like all American television stations, be required to recognize the ownership rights of others in the programs which these CATV's offer to subscribers for a fee.

The NFL, therefore, urges that this committee not only support legislation affirming the regulatory power of the FCC over CATV systems but that it also adopt legislation which will require CATV's to obtain the consent of professional leagues whose games a CATV system wishes to carry.

Through such legislation, CATV systems can be required to honor the contract restrictions which the NFL and other sports program producers are entitled to exercise and which they impose on the networks and stations which purchase their television rights.

We believe we have a sound case which requires the attention of this committee and that congressional action on this subject is fully justified.

The CHAIRMAN. Thank you, Mr. Rozelle.

Mr. Rogers?

Mr. ROGERS of Texas. Mr. Rozelle, did I understand your last statement that you were supporting placing regulatory powers over CATV in the Federal Communications Commission, and you are also advocating the proper legislation to see that your games are protected?

Mr. ROZELLE. Yes.

Mr. ROGERS of Texas. In other words, both. Now if legislation could be worked out from a copyright standpoint or otherwise to protect you, do you still take the position that you would advocate that regulatory powers be vested in the FCC?

Mr. ROZELLE. Our interest, of course, is solely in football.

Mr. ROGERS of Texas. In football. That is what I thought.

Mr. ROZELLE. And if our unique problem could be handled, we have no interest in side effects or in other legislation that might be passed.

Mr. ROGERS of Texas. All right. Just one further thing. I have been sort of at a loss to understand about this blacked-out area. Suppose you have got a city of a million and a half people, and you only have 50,000 seats, and those seats are all sold in advance. Now out of a million and a half people, you have got a million four hundred and fifty thousand that might want to see that football game, but can't. Now what about them? Isn't that in violation of the one-man, one-vote rule of the Supreme Court? [Laughter.]

Mr. ROZELLE. First, I will say that we were given this privilege through a Federal court decree in 1953, where its importance was established, and again in 1961, through Congress.

However, we are taking steps that we do feel are in the public interest. We plan to experiment for the next 2 years on not televising that home game in the home area, but, in an attempt to satisfy the interests of the public, on bringing another National Football League game into that city on the day their team is playing at home. This will be a 2-year experiment that we have agreed to, and we are hopeful that, because it is not the local game being televised locally, it will not have an adverse effect on attendance, and that we can continue this policy.

Mr. ROGERS of Texas. Maybe bigger stadiums would help. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. No questions.

The CHAIRMAN. Mr. Harvey?

Mr. HARVEY. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Mackay?

Mr. MACKAY. No questions.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. Mr. Commissioner, I would ask you the same question as we asked Mr. Foss. You do not want professional football to sink to the same level of closed-circuit TV as professional boxing and closing out any free reception of professional football games, do you?

Mr. ROZELLE. Would you repeat that, please? The first part was clear to me, not the second.

Mr. WATSON. Well, you do not want professional football to get into closed-circuit television and become only a paid proposition as boxing. Are you interested in that?

Mr. ROZELLE. We have no interest at this time in that. We feel that with changes that CATV could bring about, without restrictions on CATV, that we could be forced into that role in the future, however.

Mr. WATSON. If we would take the necessary steps to protect you now, as you request, would you in turn be willing to use your influence to protect the public and assure them that they will have the opportunity to receive professional games under reasonable safeguards, free, without resorting to closed-circuit television?

Mr. ROZELLE. That is my very strong belief, and I would support it.

Mr. WATSON. Thank you very much, Mr. Rozelle.

The CHAIRMAN. Mr. Adams?

Mr. ADAMS. Mr. Rozelle, referring to page 5 of your statement, I wanted to be certain what the position of the league was between two possible types of regulation.

You state that you would like to have or support legislation that would require the CATV systems to honor contract restrictions.

Are you suggesting that what you want is that the CATV station, as with the present networks, would have to deal directly with the league for the purchase of rights to portray or to show the games?

Mr. ROZELLE. We sell our rights on an exclusive basis to CBS. Under that contract, we are prohibited from any form of pay television. We would adhere to that contract.

Mr. ADAMS. All right, now that leads to the other suggestion that has been made by the FCC, to adopt a regulation for CATV similar to section 325(a), which basically says at the present time that a television station can't rebroadcast the signal of another television station without the original station's permission.

Now, would you deem it sufficient if this type of regulation were adopted? For example, that a CATV station could not rebroadcast a television's signal without their permission, would that plus your contracts give you the protection that you desire, in your opinion?

Mr. ROZELLE. Yes, because under our contract with the network, the network then is required in turn to impose certain conditions and restrictions on the station. Now if the station had the authority to withhold its signal from a CATV system—I believe we should call it a CATV system, rather than a station—then we would be protected. The answer to your question is yes.

Mr. ADAMS. That would be sufficient for your purposes in protection. I am trying to get whether you consider it necessary to have a direct relationship with the systems, or you can work through your present arrangements.

Mr. ROZELLE. We can work through our contract. You see, it was asked this morning, and I would like to clarify this, why couldn't we discuss this with the networks, and have them help us? Well, the fact is that the CATV systems do not have a contract with the networks; they do not have a contract with the National Football League. There is no way that we can impose our contractual conditions upon them.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. WATSON. Mr. Chairman.

Mr. ROGERS of Texas (presiding). Mr. Watson?

Mr. WATSON. There is purely an ancillary matter, but earlier, did you not state that you are running an experiment for 2 years, and bringing out-of-town games into an area where you have a home game being played?

Mr. ROZELLE. Yes.

Mr. WATSON. To see whether or not there would be any adverse effect on local attendance?

Mr. ROZELLE. Yes. Generally, we will, of course, attempt to bring them in at a time somewhat different from the time that the game is being played, but that will not be possible in all cases. We do intend to conduct this for 2 years as an experiment.

Mr. WATSON. And do you really believe people would rather go out and sit in a cold stadium and watch a team like the Redskins than sit home in the comfort of home and watch the Bears or the Packers?

Mr. ROZELLE. Well, while we were announcing this, the Redskins were taking steps to stop their season ticket sale at 43,000 in order to permit game-day purchases.

Mr. WATSON. The Redskins and their supporters are notorious optimists. They are the greatest preseason people in the world. [Laughter.]

Mr. ROGERS of Texas. Mr. Springer.

Mr. SPRINGER. Mr. Rozelle, when did you execute your last contract with CBS?

Mr. ROZELLE. Last December. It was a 2-year contract, wherein CBS has an option for a third year.

Mr. SPRINGER. And what are those figures per year?

Mr. ROZELLE. $18,800,000 a year for our regular season games, with certain provisions for additional payments during the term of the contract should we expand to 16 teams in the future.

Mr. SPRINGER. All right. Now in addition to that, how much for the championship game?

Mr. ROZELLE. $2 million a year.

Mr. SPRINGER. Does that go to CBS?

Mr. ROZELLE. Yes.

Mr. SPRINGER. Now would you give that first figure again?

Mr. ROZELLE. $18,800,000 a year.

Mr. SPRINGER. Roughly $21 million a year from both; is that correct?

Mr. ROZELLE. Yes, plus two other post-season games that are negotiated with other entities. Our playoff game in Miami, and the Pro Bowl game under the sponsorship of the newspapers.

Mr. SPRINGER. There is somewhere between $20 million and $25 million a year involved in such contractual relations.

Now if CATV should continue to expand at this rate, and pursuing the same course, do you think your chances of renegotiating another contract is as great 2 years from now?

Mr. ROZELLE. Not unless CATV has certain restrictions placed upon it. We feel that CATV's basic aim of improving the local station's signal is obviously in our interest and the interest of the public. We would be very happy to see that.

However, should CATV, through off-the-air pickup, or microwave, bring into a community three or four of our games, we are defeating the purpose of our exclusive contract with CBS. We are diluting and fragmentizing the audience, and I definitely feel that the value of our rights would suffer significantly and that this would be recognized at the conclusion of this contract.

Mr. SPRINGER. I notice that when you start out and when you conclude, you say that reproduction of these pictures are herewith forbidden, except with your consent. Have you consented to this?

Mr. ROZELLE. No, we have not, but we are advised that it is somewhat difficult to impose that restriction, as stated in our telecasts, upon CATV systems.

Mr. SPRINGER. That legally has not been tried out; is that true?

Mr. ROZELLE. That is correct.

Mr. CAROTHERS. May I speak to that, sir? Copyright is not likely to be a solution to this problem, either legislatively or at common law or in litigation, the reason being that professional football telecasts must be telecast live. There is no tangible object, no preexisting script,

no recording of the game, subject to routine copyrighting principles and procedures.

We cannot, with radio access to these games, run these game a half-hour later from tape, which would give us the routine copyright privilege.

We have made our appearance before the Copyright Committee, but, in light of these traditional copyright concepts, they will undoubtedly have difficulty in dealing with live television signals, which are as elusive and as intangible a subject matter for copyright at they have ever dealt with.

Mr. SPRINGER. What about your contractual relation, disregarding all question of copyright?

Mr. ROZELLE. Our contractual relationship is with the network. The network, in turn, has a relationship with its owned and operated stations and with its affiliates. CATV has not contractual relationship with any of us, as was pointed out this morning, in the case of San Diego.

Mr. SPRINGER. But don't you have a contractual relation at CBS that they not be reproduced?

Mr. ROZELLE. CBS has no control over the reproduction. They have not been successful in stopping the CATV's from taking their signals.

Mr. SPRINGER. Have they tried? That is my point.

Mr. ROZELLE. It is my understanding that there is litigation pending in this general area.

Mr. SPRINGER. Is this right, counsel?

Mr. CAROTHERS. That is correct, but as I understand it, they are in that instance dealing with motion picture films and scripted programs, which, of course, have that traditional copyright conformity.

Mr. SPRINGER. There has been no suit brought and no litigation pending on the contractual right between a professional athletic team and the networks. The networks have not instigated anything to that effect; is that correct?

Mr. ROZELLE. That is correct.

Mr. CAROTHERS. The difficulty, legally, is that all the traditional avenues which we might choose to follow, whether it is common law, or the laws of unfair competition, or copyright, were developed in a period when there was no such thing as CATV, and the issues are not only novel, but the traditional concepts are very difficult to apply to this situation.

Mr. SPRINGER. You do have a contractual relation. I am trying to get the answer to the contractual relation. Thus far, neither CBS or NBC in either the American Football League or the National Football League have filed a suit to determine whether or not this signal can be taken from them, have they? Have they?

Mr. CAROTHERS. The pending litigation, which involves a network, will probably establish some basic principles. It will not, as I understand it, cover live and unscripted programs.

Mr. SPRINGER. You have not yet tested the contractual relation between yourselves and CBS, and no one has done that, have they?

Mr. ROZELLE. Do you mean, have we told the network, "You must file suit"?

Mr. SPRINGER. No, I do not mean that you have to, but they haven't done it.

Mr. ROZELLE. No, they have not.

Mr. SPRINGER. Neither you nor they have done this, so that there is thus far pending no litigation on the contractual relation between you two, on the obligation that this shall not be reproduced by anybody other than that person in your contract.

Now that has not been contested; is that right, counselor?

Mr. CAROTHERS. That is correct, sir.

Mr. SPRINGER. So that neither CBS nor NBC has done anything about this contractual relation, in which they guarantee you in the contract of their being no reproduction.

Mr. ROZELLE. They guarantee us that there will be no reproduction from those of their affiliated stations located in the areas of our clubs. They have lived up to this. Their stations have not reproduced these telecasts.

Mr. SPRINGER. All right. Now therefore, it looks as if, under your contractual relation, there is nothing you can do about it, is there?

Mr. ROZELLE. That is our opinion, yes.

Mr. SPRINGER. This is your opinion, so therefore, neither CBS nor NBC has done anything about this, because contractually, they are not liable for doing anything about it, are they?

Mr. ROZELLE. They have fulfilled the terms of our contract. They have not permitted certain of their stations in our home territories to carry our games. That is all we asked for in the contract. They have lived up to that.

Mr. SPRINGER. There is no legal liability at the present time for CBS or NBC to do anything about this, is there?

Mr. ROZELLE. In their contractual arrangement with us?

Mr. SPRINGER. They have not violated any contract, have they?

Mr. ROZELLE. No, they have not, in my opinion. They have no control over any violation that occurs through CATV use of our programs.

Mr. SPRINGER. Well, would they have it if—well, of course, if they do not broadcast in their own community, then, of course, the CATV can't pick it up?

Mr. ROZELLE. They can pick it up from a more distant station, a more distant signal, and bring it in, and they do.

Mr. SPRINGER. This is what they are doing, but it is not a violation of their contract.

Mr. ROZELLE. On the part of the network, it is not.

Mr. SPRINGER. On the part of the network, so thus far, neither CBS nor NBC are in violation of any contract.

Mr. ROZELLE. That is the way the contract is now written; that is correct.

Mr. SPRINGER. The way the contract is now written.

Mr. ROGERS of Texas. Mr. Van Deerlin.

Mr. MACKAY. Mr. Chairman, I, just as an Atlanta area Congressman, wanted to thank the Commissioner for bringing the National Football League in the flesh to our community, so we don't have to wait on the resolution of this controversy to see football.

Mr. ROZELLE. We feel honored to have Atlanta as our 15th franchise, I assure you.

Mr. ROGERS of Texas. Mr. Broyhill?

Mr. SPRINGER. May I say, Mr. Chairman, if the gentleman from Georgia can just get the right CATV system they can pick them all up. They won't have to worry about it.

Mr. ROGERS of Texas. Mr. Broyhill?

Mr. BROYHILL. No questions.

Mr. ROGERS of Texas. Mr. Rozelle, just one question with regard to your contractual relations. Now your contractual relations only go to those people who are privy to the contract.

Mr. ROZELLE. Yes, sir.

Mr. ROGERS of Texas. And this is the reason that they do not have a suit against the CATV's, because there there is no connection, there is no contract, but you keep speaking, counsel does, of additional copyrights. Of course, there have been a lot of advances of mankind, and a lot of changes in the laws.

As far as your problem was concerned, why couldn't the copyright laws be changed to include this sort of situation?

Mr. CAROTHERS. They could, sir, and we have so asked that they be changed. But let me express it in these terms: This is a very novel problem in terms of the subject matter that is being pirated. Whether you seek to deal with this under laws of unfair competition, or protection of property right, or in the Communications Act, or under the copyright laws, there is an understandable tendency of the particular body before which you are appearing to believe that this problem falls in someone else's area.

There have been cases between stations and CATV's in which the courts have concluded that this is more nearly a communications matter, to be regulated by Congress, or a copyright matter, for which the plaintiffs should seek protections from Congress.

When you go before a Copyright Committee, there is an understandable tendency to feel that this problem more nearly falls in the area of communications than do books, records, or photographs.

We feel that this committee is more informed on this subject than any other committee of Congress, that it has this problem before it now, and should deal with it.

Mr. ROGERS of Texas. Well, let me say this: Now you talk about what the committee's thinking is, and what we think it is and what we think it might not be, it does not necessarily follow that that is a correct conclusion. The fact of the matter is that your whole problem is concerned with an individual or a private property right which you claim, as you say, is being pirated.

Is that correct?

Mr. ROZELLE. That is correct, sir.

Mr. ROGERS of Texas. Now what you are asking this committee to do is to grant authority to the Federal Communications Commission to take over the regulations of everybody in this country, in order to solve your private property problem. This is the thing I can't understand, is why you would not address your situation to the proper legislation to deal with your particular problem, rather than subjecting everybody else to some kind of regulation or control, many of whom have no interest at all in it, but who will be caught in this net, simply to solve your problem.

Mr. CAROTHERS. Well, we, of course, are concerned solely with sports, and the consent requirement that we ask, if it were limited to sports, would be wholly acceptable to us. We do not want to take on the burden——

Mr. ROGERS of Texas. Yes, I understand, but now if you go into the regulatory process, what you are saying, aren't you, if you follow it out to its logical conclusion, is that we are willing to have Federal regulations of a business, simply to solve our problem, and if you do this, then how in the world can you excuse or justify the Congress not granting Federal regulatory powers to bureaus and boards down town to regulate every business in the United States that happens to get into a competitive situation?

This is the thing that disturbs me. I wish I knew how to solve your problem very easily, but it is not an easy one to solve.

Mr. CAROTHERS. We have not abandoned our litigation rights.

Mr. ROGERS of Texas. Yes, I understand.

Mr. CAROTHERS. By no means.

Mr. ROGERS of Texas. You are pursuing them?

Mr. CAROTHERS. I am confident that if protections are not afforded here or elsewhere, that we will seek to assert those rights, but the problem is a novel one, it is primarily a communications problem, as we see it, and in the course of this committee's deliberations, it will probably have a clearer focus on the nature of the problem and appropriate methods of resolving it than any other body of Congress.

Mr. ROGERS of Texas. We appreciate your confidence.

Any further questions?

Thank you very much, Mr. Rozelle, and Mr. Carothers.

(The following letters were subsequently submitted for the record:)

THE NATIONAL FOOTBALL LEAGUE,
New York, April 4, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee, Room 2125, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN STAGGERS: As commissioner of the National Football League, I appeared before your committee on March 24 to oppose the continued unauthorized use of National Football League game telecasts by community antenna television systems. The committee explored this issue at some length. Much of the committee's questioning, however, was directed at witnesses other than those representing the NFL. To insure that the National Football League's position is fully understood, we respectfully request that this brief supplementary statement be made part of the hearing record.

The problem confronting the NFL as a result of the unauthorized use of its game telecasts by CATV systems is quite pervasive. It is considerably broader than the single issue of preserving home game blackouts. It is not answered wholly by the FCC's recent assertion of jurisdiction over CATV systems.

This comes about because the league's television sale contract with the network incorporates a wide range of league objectives, all of which are authorized by the 1961 television legislation and all of which are seriously interfered with by CATV operations. These objectives are closely identified with the interests of the league, its member clubs, and even its fans.

The contracts under which the league sells its television rights are, first, an authorization to the purchasing network to broadcast these games from its network stations. If these rights, as purchased by a network, are to have any significant value, they must be exclusive. The right of the league to accord this exclusivity to the purchasing network was specifically affirmed in the 1961 Television Act. But when, as in the current situation developing from CATV

operations, the purchasing network acquires no more than the privilege of competing with a large number of other NFL games imported from other areas of the country by other forms of television organization, the value of the rights purchased to the network is sharply reduced. There is no question that this will have a serious impact on the sale value of National Football League television rights.

These network sales contracts also impose restrictions on the purchasing network as to the time and manner and place in which NFL games may be telecast. These restrictions are either in accord with the privileges specifically reserved to the league by the 1961 television legislation or are specifically imposed on the league by that act. Among these are controls over the receipt of television signals within the home territory of member clubs and prohibitions on direct television conflicts with college games. Now pending before the House is S. 950, a Senate-passed bill which would impose like limitations on direct television conflicts with high school games.

Community antenna television systems operate without contract relations with either the league, the network, or the stations which carry NFL games. Thus the contract restrictions imposed on the purchasing network become largely meaningless. Moreover, the network and the stations which honor the league contract find themselves in the awkward position of having to withdraw from the field of competition with respect to these games, leaving the field entirely open to competing television organizations which do not operate under these contract restrictions. The sales value of the NFL television rights is thus further reduced.

There are further interferences by CATV's with the NFL television program. The NFL sales contracts with the network, in addition to authorizing the network to carry the games and limiting the manner in which it may do so, imposes certain affirmative obligations on the purchasing network. Among these is the requirement that the network carry all of the away games of each NFL team back to that team's home territory, regardless of the economic factors involved or the purchasing network's preferences. This requirement is imposed in order to insure that the hometown fans of each team have access to all of the games of their home team. One result of this obligation is the practice of regional networks for each of the seven games being played within the league on any particular regular-season Sunday. These regional telecasts insure the broadest possible regional interest in the games of each of the league's member clubs and promote the equality of playing field strength on which a successful professional football league depends.

Community antenna television systems need not, of course, assume these obligations. Through the importation of distant signals, they are free to vary the NFL television patterns on any basis which suits their interests. As a consequence, there is a very real possibility that the networks in the future will be unwilling to guarantee either the regional network structure or the availability to hometown fans of every away game of their home team, since CATV's are not required to do so and costs of assuming this obligation are a financial burden to the network.

Thus substantially every television objective of the NFL, as endorsed and encouraged by Congress in the 1961 Television Act, is seriously interfered with by CATV operations. CATV's cannot only destroy the exclusivity which gives value to the league's television rights, but they can directly damage the league's home gate attendance and bring about a breakdown of the league's present pattern of away-game coverage and multiple regional telecasts.

Unless Congress grants protections to professional league telecasts, the only techniques available to a league for controlling the situation are the gradual enlargement of its blackout programs in an effort to prevent CATV's from securing access to its signals or a modification of its present policy of offering free home television of its games. Neither of these alternatives appears to be in accord with the current wishes of Congress.

In urging legislative action upon this committee, the NFL seeks only to recapture the rights and privileges which the 1961 legislation afforded it. Where CATV's do no more than improve signals locally or bring television signals to communities and cities which would otherwise be without them their operations serve the interest of the league, the purchasing network, and the public generally. It is only when CATV's fail to honor and instead violate the principles of the sale contract that their access to NFL telecasts will be restricted.

An appropriate legislative solution to the specific problem presented in this letter arising from the unauthorized use of sports programs by CATV's would appear to be the addition of the following language to section 325(a) of the Federal Communications Act:

"No community antenna system shall receive and distribute signals transmitting programs of professional football, baseball, basketball, or hockey contests broadcast by a broadcast station without the express authority of such broadcast station."

Respectfully,

PETE ROZELLE, *Commissioner.*

COVINGTON & BURLING,
Washington, D.C., April 26, 1966.

KURT BORCHARDT, Esq.,
Legal Counsel, Committee on Interstate and Foreign Commerce, Room 2125, Rayburn House Office Building, Washington, D.C.

DEAR MR. BORCHARDT: You will recall our discussion following the recent hearings before the Committee on Interstate and Foreign Commerce at which Commissioner Rozelle appeared to protest the continued use of National Football League game telecasts by community antenna systems without the league's consent.

Attached to this letter is a proposed amendment to Public Law 87-331, 75 Stat. 732, which has been prepared in light of our discussion. It is designed to meet your suggestions as well as the major problems confronting professional sports leagues as a result of expanding CATV operations.

It must be understood, and we would hope that the legislative history would make this clear, that the amendment is intended to restore to professional sports leagues all the rights and privileges which were given them by the 1961 act relating to the telecasting of professional sports contests. The proposed amendment is designed to prohibit CATV's from using and distributing television signals of professional sports contests in all circumstances where such use and distribution would conflict with any established "blackout" practices of sports leagues, interfere with any limitations imposed by the 1961 act on conflicts between professional game telecasts and local college football games, or reduce or destroy the value of the television rights which a network or station has purchased.

If you have any questions about the proposed amendment, please let me know.

Sincerely,

HAMILTON CAROTHERS.

Any contract pursuant to which television rights to professional football, baseball, basketball, or hockey contests are sold or transferred by a league or its member clubs may contain provisions prohibiting any community antenna television system from receiving and distributing television signals of such contests telecast by any television station where such use and distribution would contravene any area or other limitations lawfully imposed on, or derogate from any rights lawfully granted to, any person to whom such television rights have been sold or transferred. No community antenna system shall, after notice of such provisions, act contrary to such provisions.

Mr. ROGERS of Texas. Now our next witness is Mr. Robert Beisswenger, president of the Jerrold Corp. Mr. Beisswenger, would you come forward and be recognized?

STATEMENT OF ROBERT H. BEISSWENGER, PRESIDENT, THE JERROLD CORP.; ACCOMPANIED BY JOHN MATTHEWS, COUNSEL

Mr. BEISSWENGER. Mr. Chairman, I would like to present Mr. John Matthews, our counsel, a partner of Dow Lohnes & Albertson.

Mr. Chairman and members of the committee, my name is Robert Beisswenger. I am president of the Jerrold Corp. of Philadelphia, Pa. As some of your committee members are aware, our company is

the pioneer manufacturers of equipment used in the community antenna television industry.

I am also president of 22 CATV systems in many States in which my company has interests as an operator. In addition, we manufacture a wide range of television home reception devices, including rooftop antennas, and transistorized booster amplifiers, for individual homes as well as equipment for educational television, master antenna and closed-circuit systems for commercial dwellings, hospitals, schools, and military bases.

In short, gentlemen, my company specializes in improved television reception which is here the heart of this entire CATV issue.

I am truly disappointed that the Federal Communications Commission has not been able to settle this seemingly complicated, but in fact relatively simple, situation. I say "simple" because under the mandate that Congress gave the Federal Communications Commission many years ago, all that should be involved is the ability of the American people to obtain the maximum amount of television service that our great electronic industries can provide.

Rather than address themselves to this simple task the Commission, without due process of hearings, they have never had us down there, the CATV people, to testify in front of them, nor to question us, and in fact, we had a trip run by our company, less than 60 days ago, to take, we invited the Federal Communications Commission to go see our system in Harrisburg, Pa.

Chairman Henry testified yesterday that CATV is the most important development in communications in 25 years. They had not seen a system ever until we took them up there 2 months ago. We did not have a hearing, and they have seen fit to issue a hastily concocted order, appointing itself the economic protector of one of the most profitable businesses ever to flourish in our free competitive society.

Allow me to make it clear that I understand full well that the NAB and MST party line is not the position of dozens of the most responsible and respected television broadcasters who seek no such artificial market protection. I wish to underline that, if I may, Gentlemen. There is a long roster of outstanding broadcasters who are in our industry.

In the famous sixth report and order of 1952, which established our television allocations system, the FCC assigned channels on a technical basis, that is to avoid signal interference. This concept has now been twisted and corrupted to appear as though channel allocations were made at that time on a basis of economic markets. Technical frequency limitations have become economic "Iron Curtains."

When these allocations were made, some cities were granted one TV station, some two, some three, and some as many as seven. Would the FCC deny that if it had been technically feasible to allocate 12 stations to a community it would not have done so? As they do on radio, as they have done in many other instances.

CATV and broadcasting, working hand in hand, can truly create a far better world of television—one that will satisfy the varied needs of all viewing interests. It is as true as even we are gathered here that if CATV is permitted to flourish, the public will never lack the quality and quantity of television programing it so clearly desires—for Amer-

ican ingenuity will as always find the way to fulfill the public need and desire, and is there any arbitrary limit to the number of magazines, newspapers, or other media? Of course not. Are there any restrictions here in Washingtonians reading the New York Times, because you already have several newspapers here in Washington, and therefore, you should be restricted to the ones that you can get here, or the Government should keep the postal authorities from delivering that newspaper to you?

I think not, so, why then, should the people, during the infancy of the visual media of television, be limited to a paltry two or three television channels, or why should they be denied the right to "read" if you please, a dozen or more channels of their choice. You will be hearing a lot of witnesses, you have already heard a lot of witnesses, who will go into many complex technical issues and to my mind, however, this whole problem boils down to one, very simple, basic issue: Shall the FCC be allowed to deny the viewer full freedom to choose the programs he wants to watch. We see today this regulatory agency, which for years has said it has no authority over reception, attempting to reverse itself and crack down on the inalienable right of the American people to maximum use of their television sets and their inalienable right to receive any programs made available to them. I will depart from the text here for a moment to cast out one thought, if I may.

The Congress passed an all-channel law on sets, so that they now carry or are capable of tuning to 28 channels. With the FCC rules, it would be pretty easy to turn out sets with maybe 5 or 6 channels, you don't need 28, because you are not allowed to put anything on those channels. In the new FCC regulations, which we hope you will persuade the Commission to suspend, that agency has said that the people of our 100 largest markets, comprising 90 percent of our television homes and these are the Commission's figures—may not subscribe to CATV systems until the Federal Communications Commission, in its own good time, says they may—or very probably says they may not.

To date, 2 million families, more than 6 million viewers, have demonstrated by subscribing to CATV systems that they believe CATV offers them an invaluable service providing a greater variety of programing and better quality television reception.

CATV vastly improves color television reception and spurs the sale of television receivers. CATV subscribers have cast their vote for CATV in the traditional manner of the American free enterprise system; they examined a service that was offered to them; they compared it to their off-the-air reception; they decided it was better and they bought it.

During the last 15 years, the residents of some 1,700 communities have so expressed themselves and now are enjoying the benefits of CATV. All of our citizens must be allowed freedom to choose from the best that the miracles of modern technology can offer.

If we had not learned how to transport 12 channels, and our engineers had only been able to transport 5 channels, even the Commission said they would be happy about that, because they think 5 channels is enough for anybody. I am quoting Commissioner Cox. He is on the public record with that.

I believe that no person or no area should be relegated to second-class viewing by Government decree.

We do believe in Government regulations to the extent necessary in the public interest. Some agency must control the allocation of frequencies or all our airways would be a howling chaos; but there is no rational justification for the kind of regulation that the Federal Communications Commission proposes for our industry.

The Federal Communications Commission is attempting to impose severe restrictions on a method of transmission that involves not the airways but cables, where no question of interference exists.

We are not broadcasters, we are a reception service. The FCC rests much of its argument for this kind of drastic regulation on the need to protect television broadcasters. We hear ad nauseum the *Carter Mountain* case quoted, usually out of context, and usually without any kind of real reference to the case in point at that time.

I hope you gentlemen will remind the FCC that the people you represent have invested more in television, through the purchase of their home receivers, than all of the broadcasters total. The public has the heaviest stake in what we are discussing here today. The market protection which the proposed Federal Communications Commission rules would guarantee the television broadcaster, is not only foreign to our system of free enterprise but is not sought by large and responsible agents and segments of the broadcast industry.

Other communications media, such as radio, motion pictures, and the press, have never been granted such a monopoly as is now proposed and suggested here.

We must not forget then that hundreds of CATV franchises have been granted by local municipalities after a thorough analysis of the local public interest. Many of these municipalities have conducted hearings lasting several weeks or even months, which completely examine local needs and desires. It is these locally elected public officials who are in the best position to know and decide the needs of their constituents and we might add to be aware of the adequacy of the job being performed by the local television station.

It is in our opinion presumptuous for a Federal agency to so sweepingly substitute its judgment for that of these responsible local bodies, which the FCC in fact had done to some 500 franchises in its top 100 market freeze.

And I will call it exactly that, gentlemen. We strongly support the philosophy of Congressmen Rogers of Texas that censorship by denial of reception is anathema to the American way of life. It is one step away from thought control by Big Brother. However, this does not mean that we oppose reasonable and nonrestrictive governmental regulation of our industry and on the contrary, my company supports regulatory measures which will provide for the continued healthy growth of both the broadcast and CATV industries.

I want to emphasize again, gentlemen, we are not competitors of the broadcasters.

We agree to the following points, and we would accept this, in terms of regulations, and I would submit this would be a simple plan that I am talking about here, and would allow good growth for CATV's, and I believe right down to the bottom of my soul, would not in any way hurt the broadcasters.

1. All CATV systems should be required to carry the local stations. I have left this somewhat loose, gentlemn. We do have a bill that we have discussed at our national level. I don't want to define local, other than to say it is say like 25 or 30 miles from downtown. Local does not mean 90 miles away, in the end of some hyphenated market.

2. The local stations so carried should be entitled to simultaneous nonduplication.

3. No CATV service should be utilized for a pay television system without congressional or Commission approval.

4. No restriction should be imposed on the occasional local closed circuit originations of CATV systems, particularly those of a public service nature.

5. The Congress should declare that CATV is a private enterprise business and it should, therefore, not be regulated as a public utility. Contrary to the position of Chairman Henry, and if you gentlemen will recall, he gratis gave a short treatise on our position as a utility—this monopolistic risk taking CATV business is not a public utility.

Beyond these proper areas for Federal Communications Commission regulation of CATV, we feel that the other proposals of the Federal Communications Commission are an unwarranted invasion both of local government jurisdiction and even more important, of the right of American television viewers to exercise free choice.

I believe if you will keep these basic issues in mind at all times, it will be perfectly clear that the Congress should speak for the American people by directing the Federal Communications Commission to suspend all portions of the second report and order except these five points.

There was a question asked Monday or Tuesday of the Chairman of the Commission, and it was asked of these rules now in effect, and the answer was the rules go into effect on April the 18th. That is an incorrect reply. The rules controlling the top 100 markets were put into effect on February 15 past.

I am sure that the Chairman just slipped on that one. I don't accuse him of telling us wrong.

It is a source of some concern that we must once again take the valuable time of your committee to plead for such relief and for an FCC fact finding inquiry concerning the CATV industry. This same request was made of the Commission by your former distinguished chairman, Representative Oren Harris, and seriously urged by responsible members of the CATV and broadcasting industry.

Instead of conducting any such inquiry, as it has done on every other important communications development in the last quarter century, the Commission rests its case on the unsupported and written allegations of the Association of Maximum Service Telecasters and the National Association of Broadcasters concerning the effect of the growth of CATV on so-called free television, particularly UHF.

We can dispose quickly of the argument that UHF stations now in being or still a gleam in someone's eye will be killed or aborted by CATV. Quite the contrary. Now all of the bugaboos that you gentlemen have heard here in the last few days about CATV driving television broadcasters off the air is absolutely pure conjecture. They cannot point to one single broadcaster who has ever been proven to be

driven off the air then by CATV. I state that unequivocally, gentlemen.

You heard Commissioner Bartley, when he went through a whole line up of if's he had a parlay of about five if's, to have happen what the FCC says is going to happen. Some years ago, one of the Commissioners presently on the Commission made absolutely the same dire predictions. They might happen, but they have not happened yet.

The weight of the evidence at hand indicates that CATV actually will help the UHF stations. It will enable them to reach immediately the homes that do not yet have receivers equipped to get any UHF transmission, and it will bring a stronger and higher quality UHF signal into homes that do have UHF receivers.

Look at the Seiden report commissioned by the FCC itself. Look at the CBS study. Look at the testimony by UHF broadcasters in Salisbury, Md., Lafayette, Ind., Walla Walla, Wash., Huntsville, Ala., Cleveland, Ohio, Albany, N.Y., and yes, even Philadelphia, Pa., and elsewhere, who support CATV but whose testimony is dismissed by the FCC in a footnote devoted to the fancied threat to UHF.

All of this testimony blasts the bugaboo of a CATV threat to UHF, and suggest it will be friend rather than foe. If UHF has anything to fear, it is from the Maximum Service Telecasters who are so ardently pushing for regulations to throttle CATV.

The minute a UHF station, and here Commissioner Lee of the Commission is very interested in having viable UHF stations, as are we—I underline that: as are we—the minute that you put a UHF station on a CATV system, it immediately stands in the same position as a powerful V. It is one click a way on the dial. It is exactly like the V when you put a U on a system.

The MST people seek to fortify even further their monopoly positions by preventing UHF from attaining equality with VHF on the cable subscriber's television set. This should give the UHF stations reason to wonder if the initials MST stand for minimum service television or monopoly service television.

For a brief moment, let us examine the Commission's recent and bulky action assuming jurisdiction over the CATV industry. The text of the Commission's recently released second report and order on CATV, including appendixes, is well in excess of 125 pages. I do not know how many of you gentlemen have studied the second report and order. I have studied it quite assiduously, because it strikes right at the very heart of my business, and I admit to you I don't understand it, and I have put a lot of hours in it. There are some points I understand: some of the requirements I simply can't understand them.

Unfortunately, as Commissioner Bartley has pointed out, this illogical and compex document imposing such serious burdens on my industry, like the first report and order, of similar length, is again based on conjecture and speculation. We also commend to your most serious attention the dissenting opinions and there have been many of them, of Commissioner Lee Loevinger.

On February 15, 1966, the Commission issued a press release and certain public statements which on their face may have been interpreted by some to mean that the Commission, in a highly complex situation had adopted a compromise which attempted to accomodate the

conflicting views of the broadcast and CATV industries. I spoke to some of the Congressmen, and they thought that we had been taken care of pretty good, because of the information that was carried in that press release.

In part, no one can be blamed, because this press release said, once again in part, and I quote: "Service presently being rendered to CATV subscribers will be unaffected."

Additionally, since parties attempting to operate, in the top 100 markets would be entitled to an evidentiary hearing, it first appeared as though due process had been afforded to all. However, these early optimistic and naive impressions—naive on my own part, I must admit—were soon destroyed when the full scope and effect of the Commission's action became apparent, following an examination of its lengthy and complex second report and order.

Gentlemen, I cannot urge you too strongly that what the Commission has in fact done by its assumption of jurisdiction and issuance of these detailed regulations is to impose significant administrative and legal burdens on the entire existing CATV industry affecting service to the public, and placed serious road blocks in the way of its growth and expansion.

Let me illustrate by certain references to the detailed regulations set forth in this second report. And remember that the Commission on February 18 said, "service presently being rendered to CATV subscribers will be unaffected" by the new rules.

However, this is, in fact, what hundreds of existing CATV systems located anywhere must do now or within the next 60 days. I am speaking of all systems, not in the top 100 markets.

(1) Substitute for stations presently being carried on their CATV systems, the signals of any grade B television stations not presently being carried thereon and as was the case in Clarksburg, W. Va., this can result in a serious disruption of existing service;

(2) Hold up on providing any new distant television signals to their CATV subscribers and until complex and detailed notification procedures have been complied with; and

(3) Hold up on construction of any new geographical area requiring a separate franchise until the same notification and publication procedures and time limits have expired.

Now in this, this last one is a real killer. It is exactly as though someone were putting a system in Washington, D.C., and you could not go across the street and wire Chevy Chase. He has to get through the while evidentiary hearing at the Commission.

During the period in which these procedures are being complied with, the Commission has quite plainly invited local broadcasters and other parties to file petitions objecting to even these improvements in existing services.

If such petitions are filed, the CATV system is helpless in this to implement these new service offerings or construct in new areas until the FCC has ruled on the question.

Now we have considerable experience in going to the Commission and asking for construction permits for microwave, and all we need is for someone to put in a protest. Some broadcaster protests on the basis of economic impact. He does not say it is going to put him out

of business, but he says that it could possibly hurt his profits, and then we are shot down for anywhere from 6 months to a year before we get that microwave.

While the Commission has indicated that it will attempt to give expedited consideration to these matters, past experience with the processes of this agency tells us that decisions of this type are quite often months and even years in the making.

I wish to emphasize that these provisions of the rules that I have described apply to all CATV systems and not merely those located in the top 100 markets. Thus, as you can readily see, notwithstanding the Commission's statements, present and future service to existing CATV subscribers will be seriously affected.

The existing CATV industry, rather than being grandfathered as many might believe by a cursory examination of the Commission's press release, has in fact, been saddled with unreasonable and extremely burdensome regulations which will seriously affect additional service to the public.

The situation with respect to the Commission's actions concerning CATV operations in the top 100 television markets is even more appalling. As you know, then, from Chairman Henry's testimony, the Commission will require a hearing before CATV service to the public may be commenced in these areas.

Do not let the figure 100 mislead you. The scope of this hearing requirement goes far beyond 100 cities or even 1,000 cities.

By the Commission's own estimate 90 percent of the television homes in the United States are located in these top 100 markets. As NCTA President Ford's testimony has so graphically demonstrated, the geographical extent of the Commission's action in such cases encompasses entire States and in others over 70 percent of the land area and 90 percent of the population.

Let me emphasize—under the Commission's rules every new CATV system within this wide area, including 90 percent of the television homes in the country, and every extension of an existing into a new geographical area will require a full evidentiary hearing before the FCC.

While the Commissioner has indicated that it may grant waivers of the hearing requirement in appropriate cases, Chairman Henry made it quite clear in his testimony before the House Small Business Committee a few weeks ago, that FCC grants for such waivers would be few and far between.

He said, "That is why we are making the rules, so we don't have to make a lot of waivers. We are trying to get this codified."

The Commission is assuming an intolerable administrative burden.

There are 460 operating CATV systems in the top 100 television markets; 119 systems under construction; 500 systems which have been awarded franchises; and approximately 1,200 applications pending. Under the Commission's new rules, every one of these situations must go through the complete hearing process, amounting to over 2,000 such situations, 2,000 full evidentiary hearings.

In view of the fact that the FCC cannot properly handle its present workload—and here I mean expeditiously—it is completely naive and unrealistic to believe that the hearing provision has afforded our in-

dustry due process. The Commission's staff, I am told, seriously urged that an absolute "freeze" on the expansion of the CATV industry in the top 100 television markets be imposed for an extended period of time, perhaps as long as 5 years. This approach was rejected by the Commission and some felt that relief of sorts had therefore been obtained. The actual facts could not be further from the truth.

The intolerable administrative burden imposed by these regulations on an already overworked and understaffed administrative agency can only result in serious and lengthy delays in the processing of CATV activity in the top 100 markets. In view of the fact that similar hearings not nearly approaching the number I have mentioned above can take as long as 2 to 3 years, I do not at all think it extreme or unrealistic to express the view that the 5-year "freeze" has descended on us in the form of bureaucratic redtape.

Immediate relief by this committee from this intolerable situation is required if the CATV industry is not to be stifled in its era of greatest potential expansion.

You all heard Chairman Henry say how worried he is about the growth of CATV. He wants us to help us grow. He wants it to be orderly, but he is for us. The Commission's restriction of CATV systems in the top 100 markets to the carriage of only those stations placing a grade B signal over the community is a ridiculous, illogical, and overrestrictive imposition on the viewing habits of the American public. Certainly, the program choices of the television set owners do not extend only to the outer limits of a station's grade B contour.

A number of the anomalous situations which the Commission's rules create have been and will be presented to you during the course of these proceedings, and I will not dwell at length on the many examples of same. What logic prevents the residents of Easton, Pa., from viewing the fine programs of the independent UHF television station on channel 48 in Philadelphia, Pa., but requires the eastern CATV system to carry the signal of channel 17 which competes with channel 48 in the same market?

There are two new UHF stations in Philadelphia. Because of the difference in their B contour, in the shape of their contour, one signal does not reach in its projected contours into Easton, and one does. So one has to be carried and one cannot be carried.

Can any rhyme or reason be found in a regulation which requires a Toledo, Ohio, CATV to provide to its subscribers the programs of the large successful VHF television stations in Detroit, Mich., but actually prohibits those same persons from viewing via cable the additional program fare afforded by the small new struggling UHF station on channel 50 located also in Detroit?

Yet this is exactly what the Commission's grade B restrictions accomplish.

The almost endless litany of these examples dramatically demonstrates one fact—in the few days it took the Commissioners to digest and adopt the bulky second report and order, the FCC could not and did not focus on the myriad of problems and illogical results which its decisions created. This fact emphasizes more than ever the absolute necessity of not making these decisions in a vacuum and of your

committee, Mr. Chairman, taking immediate steps to stay the effectiveness of these intolerable regulations affecting such a wide area of our country until a full congressional and FCC factfinding inquiry has been concluded. For I am afraid if this is not done, that those millions of television viewers residing within the areas of the top 100 markets will be effectively deprived of their right to view additional programing fare for an extended period of time.

If I may paraphrase one little bit, the FCC's rules are protecting the top 100 markets, or 90 percent of the population is being protected against us. Now I find it very difficult to understand why the 100 biggest, strongest markets need the protection and the other 10 percent do not. I simply cannot understand the rationale that brings out such a conclusion.

Now, if I may, I would like to pass to another topic, that of CATV closed-circuit program origination. The Commission's bill, H.R. 13286, would prohibit a community antenna television system from originating closed-circuit programing unless certain limited execptions were allowed by the FCC.

It would appear, however, that the Commission is seeking direction and guidance from this committee on the problem of CATV originations. I strongly urge this committee to take no action which would prohibit the origination of CATV programing, underlying CATV programing, particularly that of a public service nature and I want to emphasize immediately that I am not talking about pay television. I am entirely willing to leave the decision concerning pay television, either by broadcast or closed-circuit methods, entirely to the d ecision of the Commission and the Congress. I am convinced that efforts to confuse CATV program origination and pay television are deliberate attempts to cloud the obvious and clear distinction between the two.

In my personal opinion, as CATV grows and television viewers are given the choice of a greater number of programs, the allure of pay television rapidly diminishes. I submit this question to you, gentlemen, if I may, suppose you and your sets at home had three pictures on your receivers, I think if someone were selling you a pay television channel, you would then be a pretty good prospect. However, if you were viewing 12 free TV pictures and someone tried to then sell you a pay TV channel, I think his chances would be considerably less. I think way more than 4 to 1 the chances would drop off logarithmically.

However, CATV closed-circuit program origination can perform an excellent public service to supplement the public service and news programs of television broadcast stations. Because of time limitations and lack of advertiser support, television broadcast stations do not generally engage in that type of local in-depth programing which reflects neighborhood, local group, and smalltown activities and program needs.

Similarly, metropolitan newspapers are restricted in their treatment of these subjects due to the necessity of appealing to a broader range of reader interest. These shortcomings are inherent in the nature of the broader based communications media and are in no way a reflection on their outstanding public service offering of TV broadcasters. Just as smalltown and neighborhood or surburban newspapers have arisen

to fill a need for more specialized reporting, so can CATV, in our opinion, fulfill these needs. CATV could thus in television fulfill the classic role of neighborhood and suburban newspapers in publishing.

We submit that such a development would be eminently in the public interest and should be encouraged, particularly in communities which lack potential for a local television outlet. Specialized local CATV programing such as high school sports events, city council meetings, and civic events are well added to the diversity of programing to which the American public is entitled.

In closing, allow me, if I may, to cite the recent remarks of respected persons, who have characterized better than I the real nature and effect of the Commission's action. Broadcasting, a leading trade magazine of the television industry, said in its March 21, 1966, issue:

> They [the broadcasters] are, to put it in its simplest terms, openly asking the Government to prohibit a new competitor from freely entering the market that they now have to themselves * * * there would have been as much reason 20 years ago for radio broadcasters to ask for protection against television as for television broadcasters to ask for protection now against CATV. What if the FCC, in 1952, had issued instead of its television allocation plan, a set of rules preventing television from freely entering a market that radio had until shortly before that time to itself. The question would have seemed as preposterous in 1952 as it does today. Yet few television broadcasters think it preposterous now to ask Government to deny CATV entry into their market.

A recent decision of the Supreme Court of California is particularly applicable to the protectionist and economic basis of the Commission's actions:

> Monopoly in the field of communications can best be avoided by permitting the growth of that field of endeavor in directions and through media, which will provide the widest possible range and choice of ideas and expression.

Mr. Chairman, I deeply thank your committee for the time it has afforded me today. We look to the Congress of the United States to bring order out of chaos. Thank you.

Mr. MATTHEWS. Mr. Chairman, in addition to Mr. Beisswenger's remark, the members of the committee have been supplied with a reprint of an advertisement that appeared in a document published by Television Digest headed "Jerrold Believes."

I ask permission that this be included in the record to supplement Mr. Beisswenger's statement.

The CHAIRMAN. Without objection, this will be inserted in the record.

(The article referred to follows:)

> An open statement to the Congress of the United States, Federal Communications Commission, broadcast industry, CATV industry and all those concerned with the FCC's second report and order or proposed legislation regarding CATV.

JERROLD BELIEVES

1. All of the people have an inalienable right to maximum use of their television sets, as well as the right to receive any programs made available to them.
2. CATV presently renders an invaluable service by providing a greater variety of programing and better quality television reception to millions of people.
3. All of our citizens must be allowed the freedom to choose from the best that the miracles of modern technology can offer to the viewer, and no person or area should be relegated to second-class viewing status by Government decree.

4. UHF stations, existing or as yet unborn, can benefit greatly from the carriage of their programs on CATV systems, for CATV actually helps UHF stations achieve signal and coverage equality with VHF.

5. VHF stations also benefit greatly from consistent quality of reception (particularly color quality) that can be guaranteed all viewers served by CATV.

6. Public service and other types of CATV program origination are a valuable addition to present methods of communications, and cannot endanger broadcast television.

7. The limited and valuable broadcast frequencies available in any given market cannot in themselves satisfy the insatiable desires of all viewers for a wider variety of educational, entertainment and news programs. Such additional needs can be better served through the use of the multichannel cable television system.

8. The artificial market protection guaranteed the television broadcaster by the new FCC rules is not only foreign to our system of free enterprise but is unsought by large and responsible segments of the broadcast industry and has never been granted to other communications media such as radio, motion pictures or the press; it can only result ultimately in more severe regulation of the broadcast industry itself.

9. Hundreds of CATV franchises have been (and will be) granted by local municipalities after a thorough analysis of the local public interest; the Federal Government should not override such local decisions.

10. CATV is absolutely not pay TV. Efforts to confuse the two by special interests have clouded this distinction. As CATV grows and viewers are given the choice of a larger number of programs, the allure of pay TV diminishes.

Any legislation which does not incorporate the foregoing principles is not in the public interest. The public's investment in television receivers is greater by far than the total investment in television by all other segments of the industry.

We respectfully urge all those interested in the continued health and growth of television to support the basic purpose of the bill recently introduced by Congressman Walter Rogers, which preserves the public's right to freedom of radio and television reception.

THE JERROLD CORP.,
ROBERT H. BEISSWENGER,
President.

(The above ad is reprinted from "FCC Final CATV Decision" published by Television Digest)

The CHAIRMAN. Thank you very much, Mr. Beisswenger for your statement.

I turn the questioning over to Mr. Rogers of Texas.

Mr. ROGERS of Texas. Mr. Beisswenger, I notice all through your statement you have referred to certain things that you say you would leave to the Commission and to the Congress. Now I think it ought to be made clear, I guess I am old fashioned, but it has been my understanding and my belief that the Commission does not have anything to say about any of these things until Congress acts. We have been challenged on this by not only the Federal Communications Commission, but every other board and bureau that has been created, including many in the executive branch. I want the record to very clearly show that in my opinion this is a matter for the Congress, the duly elected representatives of the people of this country, and not a primary issue to be decided by a Commission that is appointed and is completely buffered and insulated from the electorate. I think it is a matter that ought to be discussed in that light.

Now, as I understand you, you have said that certain rules that your company will be in favor of with regard to nonduplication and this sort of thing to be promulgated by the Commission——

Mr. BEISSWENGER. By the Congress, sir.

Mr. ROGERS of Texas. Yes. I believe you said that you have gone over this 125 pages that had been submitted by the Federal Communi-

cations Commission very thoroughly and very exhaustively. I am sure you realize, Mr. Beisswenger, that what the Commission is asking for is the power to legislate, the power to write rules and regulations with regard to grandfather clauses, with regard to everything else having to do with a business.

Now, CATV is a separate and distinct industry as I understand it; is it not?

Mr. BEISSWENGER. Yes, sir.

Mr. ROGERS of Texas. There has been a lot of talk about these rules, what they would do and what they will not do. They had already changed their minds down there two or three times before they finally published the rules. Now they have published them, there is nothing in the world, if we grant them the power to change these rules, to change their mind tomorrow and to write other rules which will be just as effective in favor of CATV and against broadcasters or in favor of broadcasters and against CATV people. There is nothing in the world to keep them from doing that. The only way for the Congress to enter into that sort of situation is to come in and repeal the authority which they have granted to them which I sincerely hope they do not.

Now, does your company do much credit business, Mr. Beisswenger?

Mr. BEISSWENGER. We do some financing; yes, sir. We arrange financing for our customers.

Mr. ROGERS of Texas. Would it be good business for your industry or any other industry to lend credit for the establishment of some kind of facility or equipment that could be wiped off in a short period of 3, 4, 5, or 6 months by a simple change order in the rules of a bureau or board in Washington?

Mr. BEISSWENGER. No, sir; it would not be very safe for us. It is for that very reason that I am setting forth here these very simple points, that the Congress would lay down as to the total extent. I talk about these five points here to the total exclusion of that whole second order report. The Chairman of the Commission and the Commission seem primarily worried when they talk, as I hear them talk, about the protection of local stations. I say fine, I am happy to protect local stations and I will do that. And, second, they are very worried about duplication. I say fine, I won't duplicate that local fellow on a simultaneous basis because it is simple, it is easily done, it is understandable. I will not duplicate him on a simultaneous basis.

Three, everybody is scared to death that we are sneaking in the back door with pay TV via CATV. I say fine, let the Congress say that we cannot go into that. That disposes, I think, of about 95 percent of what the Commission says they want. I say fine, I will give it to them right now. And let them not go beyond that.

Mr. ROGERS of Texas. Your advocacy of any rule to be applicable to CATV is based upon the premise that the decision is made that the Federal Government ought to go in this business and regulate it in the first place, that if it is regulated that whatever rules applicable be spelled out in clear, unmistakable language by the Congress.

Mr. BEISSWENGER. Yes, sir.

Mr. ROGERS of Texas. You do not advocate a situation that would require you or anyone else in this instance to go hat in hand to a bureau downtown and beg for salvation under circumstances over which you have no control either directly or indirectly.

Mr. BEISSWENGER. I agree with that completely, sir. One of the compelling reasons why I even suggest that I would accede to any kind of rules being laid down by the Congress, it is very seldom that you see a businessman come in and plead for protection. That is not good business to my mind. I saw a lot of people pleading for protection here against some will-o'-the-wisps, but if we do finance systems, and we are investors, I happen to be the president of 22 cable systems, they are long-term investments. We have their stockholders' money. I have 6,500 stockholders I must worry about, too, while I am thinking about the public interest. We need something that will keep us from capricious acts of the FCC. They have taken jurisdiction of us already. They took jurisdiction of us via the back door with their microwave grants. They don't say no to us but it is the slowest yes you ever saw.

Mr. ROGERS of Texas. Thank you, Mr. Beisswenger.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Beisswenger, the Jerrold Corp. is one of the large producers of equipment.

Mr. BEISSWENGER. Yes, sir.

Mr. SPRINGER. What other companies produce TV equipment, CATV equipment?

Mr. BEISSWENGER. The Ameca Corp., Phoenix, Ariz., Viking Industries, in Elizabeth and Newark, N.J.; Spencer-Kennedy Laboratories in Boston, and Entron, Inc., in Sliver Spring, Md., and Kaiser-Cox are the primary ones.

Mr. SPRINGER. What share of the business does Jerrold have, percentagewise?

Mr. BEISSWENGER. We do not split out of a corporate setup—we report on a consolidated basis on our balance sheet and our profit and loss statements. We do not break out how much CATV business we do. Our company does many things besides community antenna television. We build home television antennas, sophisticated downrange missile tracking antennas, Harmon-Cardon high-fidelity music.

Mr. SPRINGER. What percentage would you estimate that Jerrold has?

Mr. BEISSWENGER. I would estimate something in the order of 20 percent.

Mr. SPRINGER. Do you have any interest in Television Digest?

Mr. BEISSWENGER. Do I have any interest in Television Digest?

Mr. SPRINGER. You or anybody in Jerrold?

Mr. BEISSWENGER. You mean a financial interest or interest in reading it?

Mr. SPRINGER Financial interest.

Mr. BEISSWENGER. No, sir. We bought that advertisement on there.

Mr. SPRINGER. This was very good, may I say, giving the full story of the order and all legislation pending. It was very helpful to me in discussing this matter with the witnesses.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Beisswenger, I was interested in this analogy that you drew at the bottom of page 2 where you ask:

Is there any arbitrary limit to the number of magazines, newspapers, or other media? Of course not. Are there restrictions against the New York Times to prevent it from competing with the Washington newspapers? Of course not. Why then should the people, during the infancy of the medium of television, be limited to a paltry two or three television channels?

And so forth.

You are such an articulate witness that I was able to detect no tongue-in-cheek as you covered that part of your testimony. I was wondering whether you asked this question seriously, or whether you realized very well what the answers to those questions are.

Mr. BEISSWENGER. I appreciate the compliment, Congressman. My tongue was not in my cheek. My position here, and, if I may take a moment to expand here, there was considerable talk here before this committee today about San Diego. I know that the Congressman comes from out in that area. At no time during those discussions did I hear it brought out that the people in San Diego can now see the Los Angeles signals without a CATV system in many, many places in San Diego. What we have done in San Diego with that CATV system down there, we are the suppliers of the equipment, we are not the owners of that system, but we supplied the equipment and it offers us an excellent market, towns like this, to ship our gear to people who are already able to see Los Angeles on home antennas—fantastically high, terriby ugly things, spoiling all those pretty homes. But they were able to get Los Angeles.

It is my position here, sir, that if we are able technically now to give them good pictures in that area where now they can just see bad pictures off their home antennas, why keep them away? Why not let them have access to as many signals as possible?

Mr. VAN DEERLIN. I have not reached any judgments in this matter, but I do think we should keep the arena of conflict well identified. You understand, do you not, that Congress may not interfere with the competition of the printed word, for the obvious reason that the Constitution says it may not. The reason that Congress must regulate in the field of broadcasting is that there is a limitation on the number of bands or channels, and you cannot have chaos on the airwaves.

There is another difference here, however, which seems to me to be present. That is that if a newspaper coming into Washington other than the New York Times, should seek to bring features that are owned by the New York Times and carried by the New York Times, they would have a lawsuit slapped against them so fast that it would make their head swim.

Now CATV, as we know it today, is in effect lifting features off the established stations and carrying them without any recompense to the station or network which originates the signal, and delivering them in a way that newspapers do not do.

Mr. BEISSWENGER. There is a copyright case right now, sir, that is going to determine that question you are talking about, the matter of compensation.

Mr. VAN DEERLIN. There is a difference technically in the operation. There is a production that the New York Times can figure which cannot be lifted by a competitive newspaper in Washington, and there is a production which is just automatically lifted by wire television. I don't like to use the term parasite.

Mr. BEISSWENGER. I don't like to have it used, either, sir, against us.

Mr. VAN DEERLIN. I have not used it.

Mr. BEISSWENGER. I have heard it used against us occasionally. But we have one thing going for us which is very, very interesting. We have an awful lot of people against us but not our customers. Our customers seem very pleased with the kind of service that we render. We recently opened a CATV system in Harrisburg, Pa., where people got something like three and a half signals. On opening night we had 16,000 people presubscribed to that system. I think that is very strong evidence of what I say, gentlemen, that here you are providing for the people a multiplicity of choice and the people are willing to subscribe to this service. If these people had enough money to put up that antenna that we have in Harrisburg, and here is a point that has been missed all through this, if someone wanted to get what we are providing him in his own home up in Harrisburg, he can get it. All he has to do is spend about $300,000 to $400,000 and put up an antenna right next to ours up on that hill and he can get them, himself. Those signals are in the air. There are 15 signals in that air. If I were a wealthy man wanting to provide television viewing for that family living in that area, I could spend $400,000 and put up a super de luxe antenna and provide it into my house. I wonder then if that would be poaching on signals. Those signals are free in the air as I understand.

Mr. VAN DEERLIN. The communications code, as you know, vests in Congress the responsibility of maintaining locally developed television throughout the country.

Mr. BEISSWENGER. Yes, sir.

Mr. VAN DEERLIN. For broadcasting.

Mr. BEISSWENGER. For broadcasting.

Mr. VAN DEERLIN. Therefore, this is a province in which Congress may feel some concern.

Mr. BEISSWENGER. Absolutely, as do we.

Mr. VAN DEERLIN. Now, just one matter briefly, about the testimony of the football commissioner in regard to the liting of signals and returning them into areas that are blacked out under their contracts with the networks. Would you comment on the validity of that testimony that they offered?

Mr. BEISSWENGER. I would like to comment, Congressman, but not on the validity of it. I would like to comment, I wish those two gentlemen had been after me so I would not be asked that question. That is a highly involved, legal, technical question. I think the copyrights case will move toward that, there are some of the extrapolations that can be made from the copyright case as to bringing in blacked out signals. I frankly don't know the answer.

Mr. VAN DEERLIN. A very candid answer, and I appreciate your giving it.

Mr. ADAMS. Would the gentleman yield?

Mr. VAN DEERLIN. Yes, I will.

Mr. ADAMS. Could your system exist without the free signal that you referred to in the air?

Mr. BEISSWENGER. Not CATV as we presently know it, Mr. Adams; it could not because ours is a reception service. If there is nothing to receive, you don't have a service.

Mr. WATSON. That signal was intended for all of the American people and not to be restricted only to those residing near or within a zone B area of local television stations.

Mr. BEISSWENGER. I would agree with that generally, Mr. Watson, not totally with that remark.

Mr. WATSON. But it was intended for all?

Mr. BEISSWENGER. It was intended for all?

Mr. WATSON. Intended for all.

Mr. BEISSWENGER. Yes, sir.

Mr. WATSON. And the CATV system can try to make it available to those areas that do not have an acceptable signal?

Mr. BEISSWENGER. We want to try to make it available to all. I have heard some talk here about rural areas. It has been touched on several times. I don't want to sweep any ashes under the carpet here. As our technology improves, and it is improving every day, it will not be too long before we can be everywhere in the rural areas. I am not talking about tomorrow. I am not talking about any big breakthrough we have on our drawing boards today. But we will be able to move through technical improvements further and further into areas of less and lesser density just exactly how the REA did in telephony. It was impossible to take telephones out into the rural areas; it finally got down to the point where REA was financing telephone systems with a density of two people to the mile. Technology improves.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. As I understand it, you have no restriction at all on originating programs by CATV.

Mr. BEISSWENGER. That is correct; on program origination on a CATV system, no extra charge, no pay TV. I want to be absolutely clear.

Mr. HARVEY. I am not talking about pay TV, but do I understand that you should be able to originate your own dramatic programs or any sort of programs at all?

Mr. BEISSWENGER. Yes, so long as we don't charge extra for them. It is an added service to the people. We do not charge for them.

Mr. HARVEY. Without any regulations by the FCC as well?

Mr. BEISSWENGER. I don't even want to be regulated by the FCC.

Mr. HARVEY. Pardon?

Mr. BEISSWENGER. I don't want to be regulated by the FCC except as an arm of the Congress under these very clear points that I have laid down, very simple points.

Mr. HARVEY. Your points don't control that at all, if I am correct. Your points leave that wide open and would have no control over it whatsoever.

Mr. BEISSWENGER. That is right.

Mr. HARVEY. In other words, you feel you should be able to originate programs without control but broadcasters should have control? Am I right?

Mr. BEISSWENGER. That is incorrect. I would be happy to have that same kind of control.

Mr. HARVEY. Is there any provision in your statement for that kind of control?

Mr. BEISSWENGER. No, sir. This is not a bill. I did not present a bill here. I presented some ideas. This does not even have the form of anything like the finished bill, Mr. Harvey. This is very incidental if I may say so. These local originations are very, very incidental.

Mr. HARVEY. I am not talking about local originations such as have existed. I am talking about what you are recommending in this committee. I was in doubt when I first heard it, but I would like to know again, are you recommending that this committee allow CATV to originate programs without restriction?

Mr. BEISSWENGER. I think it would be illogical for me to argue to be totally without regulation, because then we would run into political problems, equal time and all these doctrines. We would have to have some kind of regulation of that same type. But I want to impress, if I may, Mr. Harvey, that what we are talking about here is very, very incidental to the operation of a CATV system, very incidental.

Mr. HARVEY. At the present time.

Mr. BEISSWENGER. Yes. This is after 17 years. This business has been around 17 years.

Mr. HARVEY. But is could conceivably change——

Mr. BEISSWENGER. Yes, but I know a good way to beat local origination, if the Congress is worried about that. Let us have more signals off the air. Let us bring in the distant signals without being regulated and then we will fill all our channels up and we don't need much local origination to have a very attractive package to sell to our subscribers.

Mr. HARVEY. A few weeks ago or perhaps a few months ago, one of the CATV operators, I am told and I did not see this or hear it, but I am told that one of these CATV operators canceled the picture for the evening on most of the channels and took to the air, himself, urging CATV listeners to contact the FCC and to contact their individual Members of Congress expressing their particular view on this particular question, in effect, lobbying Congress in this maner. Do you feel this is a proper activity and is there anything in your statement or your rules that would prohibit this sort of activity?

Mr. BEISSWENGER. This was not done in any of my systems. I therefore am not in concurrence with this kind of activity to preempt some other station coming in off the air to do this.

Mr. HARVEY. Let me say this: Obviously, I think you have recognized that as an unfair form of lobbying.

Mr. BEISSWENGER. Yes, it would be an unfair advantage to the owner of the cable system.

Mr. HARVEY. You would not come before this committee and leave that impression for 1 minute?

Mr. BEISSWENGER. No, sir.

Mr. HARVEY. Let me ask this question: What in your suggested rules or regulations would stop the CATV system from cutting out ads and inserting its own ads?

Mr. BEISSWENGER. I am not trying to get around that question, because I want to answer the Congressman's question as directly as I know how. This is not a bill that I prepared here, sir. This would need a lot of work to polish it up and put in the proper framework before it could be considered as a bill. I submitted these points for the consideration of you gentlemen as the things I would want.

Mr. HARVEY. The answer is that there is nothing that is proposed that would prevent that practice. You do feel it should be prevented; is that right?

Mr. BEISSWENGER. Yes, sir; I am perfectly happy as a CATV operator to carry all signals as received with no deletion or alteration of any kind. I am very happy to have that.

Mr. HARVEY. Let me ask you a further question then, as to your personal belief. Do you think that CATV systems should be able to break football blackouts in the manner Mr. Rozelle testified?

Mr. BEISSWENGER. I just told Mr. Van Deerlin that I don't have the answer to that one.

Mr. HARVEY. I am not asking you to give us an answer, but I am asking you for your personal view. Is it your view that they should be able to break these football blackouts or do you recognize a property right in these football games?

Mr. BEISSWENGER. You are asking for my personal opinion? In my personal opinion, I agree with the football boys, personally. I am not speaking for the company here. This is, like Phil Foss said, not off the top of my head, it is above my head. This is a very difficult, legal, technical problem.

Mr. HARVEY. I appreciate all those factors, but I am not asking for the legal technical answers. I am asking you as a witness before this committee as to your personal view whether you feel that CATV should be able to break these football blackouts or whether you recognize the property rights contained in them.

Mr. BEISSWENGER. Those signals are in the air——

Mr. HARVEY. Your answer should be either yes or no.

Mr. BEISSWENGER. I will give you a yes or no answer. I have already told you how I feel personally. There should be an accommodation made to not upset that; make an accommodation with the local team or whatever.

Mr. ROONEY. Will the gentleman yield?

Mr. HARVEY. Yes.

Mr. ROONEY. In your area, have you abided by this rule?

Mr. BEISSWENGER. I believe generally that we have. Now, I don't want to answer this specifically, Mr. Rooney, because I simply do not personally run the systems. These 22 systems are all over the country. Each one has its own individual management. I have a management of the overall division. I cannot specifically answer that question simply because I don't know.

Mr. ROONEY. You stated though that it is your own personal opinion that they should be blacked out at the same time you stated that to the best of your knowledge——

Mr. BEISSWENGER. You see, in most of the places where we are, we are out in the more distant areas, this has not really been a serious problem. In the towns where we have the systems, there are no big league football teams. There is no AFL or NFL team in Ottawa, Illinois, or Pontiac. We have not really run into that problem, Mr. Rooney.

Mr. ROONEY. Thank you.

Mr. HARVEY. I have no further questions, Mr. Chairman.

Mr. ROGERS of Texas (presiding). Mr. Pickle.

Mr. PICKLE. Mr. Beisswenger, first I want to say that I think your statement has been a forceful statement. I want to ask you next with reference to the question that Mr. Harvey asked you—this may be a technical point—you say origination occupies a very small portion of your overall operation.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. Did I understand you to say that you did not think you had any right to originate programs or you did have a right to originate dramatic programs?

Mr. BEISSWENGER. I think we do have the right to originate as a CATV system, not as a pay TV. Now the fact of the matter is that in our systems we do practically no origination other than time and weather.

Mr. PICKLE. But you think you should have the right to do any of it if you wanted to?

Mr. BEISSWENGER. I believe so, yes, sir.

Mr. PICKLE. You say that no restrictions should be imposed on the occasional local closed circuit origination, particularly those of a public service nature?

Mr. BEISSWENGER. That is correct.

Mr. PICKLE. You would make it all the way, not just public service, but any kind that you wanted to?

Mr. BEISSWENGER. The same restrictions as the broadcasters, which is really not very stringent restrictions. It has to do with good taste and not be subversive and that sort of thing.

Mr. PICKLE. Do you think you have the right to originate a sports program, a football game?

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. On the present operation, you don't do it because it is not economically feasible?

Mr. BEISSWENGER. It is not economically feasible; and, moreover, we don't have the equipment to do it.

Mr. PICKLE. If it were economically feasible, and you had the equipment or if changes developed in the future and those two conditions would be met, you would probably originate sports programs?

Mr. BEISSWENGER. We possibly could; yes, sir, at no extra cost on that system. It comes as part of the monthly service charge.

Mr. PICKLE. I think your statement where you list five different points that you agree to are generally reasonable. The thing that interests me is that you say that you agree with the philosophy of Mr. Rogers.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. You go further and say that is one step to thought control by big brother.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. Would you tell me what you mean by that?

Mr. BEISSWENGER. If we have put in the hands of the FCC the total power to regulate reception—regulate reception—this is a concept which to my mind is entirely new in the American way of life. I have a transistor radio at my house and I happen to live down the seashore in New Jersey. If I want to listen to Fort Wayne, because I used to live in Indiana, if I want to listen to Fort Wayne, I can listen to Fort

Wayne, and nobody can tell me that I cannot. I can also listen to New Orleans at night or I can listen to the boats on the beach—I listen to the boat captains talking to one another out on the waters. Nobody stops me from doing that. But here the FCC is seeking to control the reception. The Chairman of the Commission had a very difficult time in deciding when the transmission of a signal stopped. If you recall the repartee that went on at the time, that they claimed that our CATV systems are part of the transmission of that signal. There was even the question, Did the transmission stop when it was on the face of the tube? And the Chairman said no, "I don't think it stops there under your definition. It has to go into your eye." Then there was some discussion about it. I don't want the reception, the control over what a person can receive. If it is in the air, I believe it to be completely illegal.

Mr. PICKLE. You are saying if the bill as proposed by our chairman or something similar to it were passed, that this would be in effect a totalitarian Government on the thought control process?

Mr. BEISSWENGER. It would open the possibility of it quite strongly.

Mr. PICKLE. You make a mighty big statement when you try to draw that analogy but, of course, that is your opinion. You do say though, oddly enough, that you don't want any control at all and yet as I understand it, you are saying there should be limited control, but along the five points that you list. My problem is that if we exercise jurisdiction or if the FCC exercises jurisdiction, put it that way, then the next step is for the FCC to list some rules. Now most people, it seems like, have said, we really would not prefer it, but we have to have some kind of jurisdictional control, but we don't want what they want, what FCC has recommended. The gist of your argument is that you don't think they ought to have any control of the reception.

Mr. BEISSWENGER. Of the reception, yes, sir. I am not against orderly rules for the conduct of our business. We have to meet many other rules other than the FCC's.

Mr. PICKLE. You do say then that the FCC or some other agency has to keep order in this field or there would be chaos. You said a howling chaos.

Mr. BEISSWENGER. Under the guidance of the Congress of the United States. I don't want the FCC making those ground rules, Mr. Pickle.

Mr. PICKLE. You think Congress would not allow a howling chaos and FCC would allow a howling chaos?

Mr. BEISSWENGER. Excuse me, sir, I did not follow that.

Mr. PICKLE. You don't think it would be a howling chaos if the Congress listed the rules, but it would be a howling chaos if the FCC did?

Mr. BEISSWENGER. No, sir. If I may call the Congressman's attention, I think you are making reference to the statement I made about a howling chaos if broadcasters were not controlled. If the frequency spectrum was not in an orderly fashion, you would have total interference all over. I believe that is what I said.

Mr. PICKLE. Let me say this in conclusion. Broadcasting is the mother lode, broadcasters are the mother lode.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. They are the core of our whole operation and you would not be in business if it were not for them.

Mr. BEISSWENGER. We would not be in business this way.

Mr. PICKLE. They have to be able to perform their operation in order to guarantee free television, whatever you call free television.

Mr. BEISSWENGER. Our kind of television is free television.

Mr. PICKLE. The Congress or the FCC has to try to protect them so that they can grow and continue to give the greatest mass of American people free television.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. Now at the same time, CATV, whether it is cable or micro, is supplementary to, in my opinion——

Mr. BEISSWENGER. Yes, sir; mine too.

Mr. PICKLE (continuing). The broadcasting industry as a whole. And they render a very important service particularly in areas that would not receive television otherwise. Now we have to see that both can grow and be protected and hindered with as little restrictions as possible, so long as both systems can be protected.

Mr. BEISSWENGER. Congressman, you are right; you are reading out of my hymn book. That is exactly the way I feel about it.

Mr. PICKLE. I am glad that I am.

Mr. BEISSWENGER. You are right with me. I agree with everything you say 100 percent.

Mr. PICKLE. You say amen.

Mr. BEISSWENGER. I say amen.

Mr. PICKLE. The problem though is how do we go about it.

Mr. BEISSWENGER. That is the problem.

Mr. PICKLE. We recognize that. We have to try to find the answer.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. Thank you.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Mr. Beisswenger, I have one or two additional questions. Did I understand you correctly to say that neither you nor any member of your industry had been given an opportunity by the FCC for a hearing on the proposed regulations before they were promulgated?

Mr. BEISSWENGER. Oral hearings. We have never had oral hearings. We were allowed to submit written briefs.

Mr. WATSON. But you have never been queried orally?

Mr. BEISSWENGER. No, sir; I have never been in front of the FCC.

Mr. WATSON. Were you submitted a copy of these FCC orders and asked for your comments?

Mr. BEISSWENGER. Yes, sir; written. But there has never been an oral hearing.

Mr. WATSON. You have never had an oral hearing?

Mr. BEISSWENGER. No, sir.

Mr. WATSON. Perhaps I am trying to overly simplify this thing, but do you know whether or not these music distribution systems are regulated by the FCC?

Mr. BEISSWENGER. I don't believe they are. No, there is no broadcast involved. I don't believe they fall under the regulation of the FCC.

Mr. WATSON. There is no broadcast?

Mr. BEISSWENGER. It is a closed circuit thing, and there is no transmission out into the ether.

Mr. WATSON. From the moment that the signal is picked up by your antenna, then, there is no open circuit broadcast of it?

Mr. BEISSWENGER. No, sir; we do not broadcast. We simply take the signals that come in on the antenna and transport them to the city on the person's set.

Mr. WATSON. You contend that the moment of reception is when you pick the TV signal up with your master antenna rather than when it is disseminated out to the viewing public.

Mr. BEISSWENGER. That is correct. When the signals which have been freely broadcast into the air or which are carried over a microwave link come into the receiving antenna that is when the transmission ceases. From that point in it is part of the set.

Mr. WATSON. Do you have any proposed franchise now or have you had any franchises that are under construction at this time?

Mr. BEISSWENGER. Yes, sir. We have one which we are building right now in Harrisburg, Pa., which is still unfinished. We are building some 300 miles of plant, 350 miles, probably 200 miles of which is now built. We are also building in Florida.

Mr. ROGERS of Texas. Would you yield at this point?

Mr. WATSON. Yes, sir.

Mr. ROGERS of Texas. Going back to this thing about Muzak that Mr. Watson was asking you about, now in talking about your origination of programs in a CATV studio, I think it should be made very clear that there is no broadcast under the Communications Act and the Federal Communications Commission has never claimed jurisdiction over those and does not claim jurisdiction now, as was stated by Mr. Henry.

Mr. BEISSWENGER. Yes, sir; that is entirely correct. They have denied jurisdiction over CATV up until a couple of weeks ago.

Mr. ROGERS of Texas. Yes, but if the gentleman will yield further, the point I am talking about is this: Where you originate this, there is no broadcast, no transmission of a radio signal at all. If you originate a football game or dance or meeting of the city commission in your studios, and it goes over a wire cable system, the Federal Communications Commission does not have jurisdiction of that unless it is interstate and then they have it as a common carrier.

Mr. BEISSWENGER. That is correct; yes, sir.

Mr. VAN DEERLIN. Just to keep the record straight, the FCC gave evidence of its feeling of responsibility in April of 1965, which is somewhat more than 2 weeks ago.

Mr. BEISSWENGER. That was their notice of proposed rulemaking, sir.

Mr. VAN DEERLIN. They would not be giving notice of proposed rulemaking if they didn't feel they had a responsibility in the matter, would they?

Mr. BEISSWENGER. I believe my statement was that up until this last week they never had authority over CATV and in fact have regularly denied their authority over CATV, but they took it on February 15.

Mr. VAN DEERLIN. I don't mean to haggle, but according to the statement of April 1965——

Mr. BEISSWENGER. OK, sir, I will stand corrected on that. I just talked about the event. They had talked about it in April, that is quite true.

Mr. WATSON. I yield the floor.

Mr. PICKLE. I would like to ask the gentleman one question. How many CATV operations does your company have?

Mr. BEISSWENGER. We have give or take 22 systems; yes, sir.

Mr. PICKLE. Give or take?

Mr. BEISSWENGER. We have new corporations formed every few days. I am not that close to them. I have been in Washington the last 2 or 3 days.

Mr. PICKLE. How many corporations or entities are you interested in where applications have been approved by the various local communities?

Mr. BEISSWENGER. About 20.

Mr. PICKLE. How many applications do you have an interest in which have been submitted but not yet approved?

Mr. BEISSWENGER. That would be a very large number, Mr. Pickle.

Mr. PICKLE. How large a number?

Mr. BEISSWENGER. A hundred.

Mr. PICKLE. So you are not only interested in 22, but you have 100 that you have within your grasp if regulation does not come about.

Mr. BEISSWENGER. Yes, sir; and I have something that goes beyond that, to be totally frank with you. I have a corporation that employs 2,200 people, and I am worried about them, because the whole size of the market is of great interest to me.

Mr. PICKLE. I understand that you also indulge in the manufacture of the equipment.

Mr. BEISSWENGER. Yes, sir.

Mr. PICKLE. So that is a considerable business interest, too, it would be to your interest to see that the industry did expand greatly.

Mr. BEISSWENGER. That is why I am mighty interested in it.

Mr. PICKLE. I understand.

The CHAIRMAN. Mr. Rooney.

Mr. ROONEY. Mr. Beisswenger, I would like to compliment you on your wonderful statement, but I am wondering whether or not your statement is after the fact. Have you ever thought about what Jerrold believed before the rule was allegedly promulgated?

Mr. BEISSWENGER. We have filed briefs to that effect which paraphrased what is there, Mr. Rooney.

Mr. ROONEY. Prior to when?

Mr. BEISSWENGER. Since April, last April, when the first notice of proposed rulemaking came out.

Mr. ROONEY. You agreed on the five principles that you stated on page 5 and continued on page 6 even prior to the rules, is that correct?

Mr. BEISSWENGER. Yes.

Mr. ROONEY. Has your company done anything at all to assist the Federal Communications Commission in giving them some idea of the understanding of microwave and off the air?

Mr. BEISSWENGER. Yes, sir, we have.

Mr. ROONEY. They mentioned the fact yesterday that there was a grant there, they talked about touring a microwave setup in Harrisburg. Was that part of your——

Mr. BEISSWENGER. Yes, sir, we arranged that trip. The Commissioners had never seen a CATV system. We arranged to have them be our guests up there. I really think it is a crying shame that we have not had oral hearings before the FCC so that they could understand more fully what we in CATV actually are doing. It is my very firm belief that there has been a real alteration in the position of some of the members of the Commission after having seen what a CATV system is.

Mr. ROONEY. I cannot believe that this is the first opportunity that the Commission had to see the first microwave.

Mr. BEISSWENGER. This is not even a microwave setup. This is a big off-the-air CATV. This is just a big antenna. Whether they ever saw a microwave feed system, I could not say. I don't believe they have. But they were highly interested, and I think they were quite impressed with the size of the investment that is in that town and the complexity of the electronic gear. To build a CATV system is not just a simple matter of hanging up a coat hanger and tying some wires to it. It is a complex sizable installation.

Mr. ROONEY. The 22 CATV systems which fall in the category of your corporation, actually what areas do they serve? Is it just within the State of Pennsylvania or does it include surrounding areas?

Mr. BEISSWENGER. No, sir, we are in many States. We have investments in Jersey, Florida, Mississippi, New York, Indiana, Illinois, Texas.

Mr. ROONEY. Have you ever taken into consideration the number of people that you serve—and I am talking now as a Representative from Pennsylvania—has your company ever gone into any statistics as to the number of people that receive the CATV microwave or the CATV off-the-air service in Pennsylvania? Have you ever taken into consideration the people that would not receive that signal had it not been for your company or CATV of other companies?

Mr. BEISSWENGER. I think that numbers about a quarter of a million. Maybe that is a little high. Something like 200,000 to a quarter of a million people.

Mr. ROONEY. Would not receive television had it not been for the CATV.

Mr. BEISSWENGER. Have little if at all, and the quality would be very bad and today with color extraordinarily bad. I don't think it has been touched on enough here in these hearings, the difficulty of receiving color being far away from a transmitter. Color sets are very susceptible to a poor signal. You just get bad performance out of them. You need first-class antennas in order to run—it could run as much as a hundred and a quarter or one hundred and fifty dollars for a good color antenna. We are selling them now.

Mr. ROONEY. People talk about paying for the CATV service. Can you give me any indication as to whether or not an individual that would be in the fringe area, whether or not he would have CATV or the regular conventional cable, have you ever given any cost analysis of either hookup?

Mr. BEISSWENGER. As I understand your question——

Mr. ROONEY. Let us say I live in an area that is a fringe area. They talk about A contour and B contour. I am one individual that believes in free television so to speak. I don't want anything to do with CATV. So I decide to put up an antenna. My next-door neighbor decides on CATV hookup. Certainly it costs me a certain amount of money to install a television antenna. Of course, the neighbor decides on the CATV. Have you ever given any consideration as to the cost and the upkeep?

Mr. BEISSWENGER. Yes, sir. I happen to have personal knowledge of that because you being from Pennsylvania—I live in Ocean City, N.J. It is my home. It is about 70 miles away from Philadelphia which puts me way out on the fringe of the three Philadelphia TV's. I have an ugly 60-foot tower that cost about $50 to put in place. I have a big Taco antenna that would cost anybody else $150. Since we own that company, I bought it at somewhat less. But it would cost somebody else $150. I am in a salt-spray atmosphere. So I have a $400 investment in a salt spray atmosphere and can get three pictures from Philadelphia, 75 percent of the time excellent, 25 percent of the time it goes from good to poor, depending upon the atmosphere and the amount of salt. The salt spray gives us fits down there. So I would have an investment there to get three stations—four now—we get the educational from Philadelphia—I have an investment of $400. Now, there is a cable system in our town. That is owned by H. & B. American, which is one of the big operators in this business. I am hooked onto their cable. Now we are going to have microwave down there on April 15. It didn't take long to get it. It only took 2 years to get that microwave in. It will be 2 years in June that it took the microwave in. It took about 16 months to get the microwave grant, but when that gets in, for $4.95 a month I will be able to see the four New Jersey channels and the four from Philadelphia for $5 a month. I will be able to see all eight of those really good, I mean studio quality. So, if you get out on the fringe, you can easily spend anywhere from $150 to $250, $400, to get a big rig with a rotor on it. If you have a rotor on, if you are looking at one station, you can really only effectively have one TV set in your home, because you are tuned in on that one, both sets have to be tuned to the same channel. It is not omnidirectional.

Mr. ROONEY. You stated also that you agree that the CATV industry has a right to originate their own programs.

Mr. BEISSWENGER. Yes, sir.

Mr. ROONEY. Don't you think that the CATV industry should have some restrictions as far as originating your own programs? You take in political campaigns, you have the right to favor one party or another party. Don't you feel that you have an obligation to your community in which you are serving not to engage in that type of origination?

Mr. BEISSWENGER. Absolutely.

Mr. ROONEY. When you talk about originating your own programs, what are you talking about? Are you talking about a public service?

Mr. BEISSWENGER. I am talking about public service, local events

I made reference to a CATV system having the position of a local or neighborhood newspaper to do local interest things. Local events. I must stress once again if I may, Mr. Rooney, that these are incidental to the reception service that is being performed over that antenna.

Mr. ROONEY. In other words, the industry itself is not really concerned about originating its own programs?

Mr. BEISSWENGER. No, sir. There are in some specific areas, but I am talking of the industry as a whole.

Mr. ROONEY. I have no further questions, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. Beisswenger, does your cooperation counsel agree with what appears to be the majority view of the FCC that they have jurisdiction conferred on them under the Communications Act of 1934 to regulate CATV?

Mr. BEISSWENGER. May I ask Mr. Matthews, who is our counsel?

Mr. MATTHEWS. Congressman Mackay, we will be filing a brief in behalf of the Jerrold Corp., essentially making the point which we have made on our behalf in the past, that whether or not they do have jurisdiction, they should defer to the Congress of the United States in that connection. That has actually been the position of the Jerrold company consistently over the last several years.

Mr. MACKAY. Are you just saying they ought to come up here to find out if they have jurisdiction?

Mr. MATTHEWS. That is right. That is what the Communications Act of 1934 came from.

Mr. MACKAY. In some of the material I have accumulated in my office, I have heard comments of Associated Maximum Service Telecasters, Inc., attachment A. I was interested to see that they took the position that they did not have jurisdiction. It is a rather interesting question whether or not you come to a legislative body to find out what the law means.

Mr. MATTHEWS. It is an interesting question. I might add that Jerrolds incorporated verbatim in its brief in docket 15971 the dissenting opinion of Commissioner Loevinger.

Mr. MACKAY. Do I understand you are going to file a statement that you are not taking a position here today whether or not it does or does not have jurisdiction over CATV?

Mr. MATTHEWS. We agree with Commissioner Loevinger's opinion. No one could have done a better job than Commission Loevinger did. We think it is immaterial, though, because we think in any event the Congress of the United States would be the first one that sets the——

Mr. MACKAY. Aren't you really saying that the Congress ought to confer limited jurisdiction on the FCC to regulate to the extent you are suggesting here?

Mr. MATTHEWS. It might be a confirmation of jurisdiction. That is one way to put it.

Mr. MACKAY. I don't understand Mr. Beisswenger's testimony that he is in favor of no regulation of CATV.

Mr. MATTHEWS. I don't believe Mr. Beisswenger said that. I think the statement will reflect the fact that it is the position of the Jerrold

Corp. that the continued healthy growth of both industries realisically in his age of regulations requires certain limited guidelines from the Congress.

Mr. MACKAY. As I understood your testimony—I am in complete accord that the FCC should have come to the Congress first and should not have taken the kind of position that it did here, that it was almost a contempt of Congress for it to proceed in this fashion. But leaving that matter aside, as I understand, we have the leader here in the CATV industry who is really proposing limited regulation of the industry as being in the public interest.

Mr. MATTHEWS. Yes, you can say that.

Mr. MACKAY. It is not the position that if you are going to do something, this is what you ought to do.

Mr. BEISSWENGER. Yes, this has been our position for a good period of time. It has been the position of our national organization that they would have to have in the public interest, to have sensible guidelines laid down but not the kind of thing we got from the FCC in the second order report. Unless these points are set down by the Congress to clearly delineate how far the FCC can go, then we are going to be right back into the grease again.

Mr. MACKAY. In the statement of section 1 of the Communications Act it states that the Commission was established for the purpose of, among other things, regulating interstate and foreign commerce, communications by wire and radio, so as to make available, so far as possible, to all people of the United States, rapid wire and communications service.

It would be of help to me if your counsel would examine the other purposes of the act and see if one or the other of the purposes of the act or any construction of the act would give weight to the argument that you ought to protect the broadcaster because that was the main thrust of Mr. Main's testimony this morning.

Mr. MATTHEWS. It is my opinion that the Communications Act of 1934 did not confer that type of protection jurisdiction on any Federal agency including the FCC.

Mr. MACKAY. I always understood that the act was to prevent chaos in the assignment of frequency so that you could get clear reception by the American people.

Mr. BEISSWENGER. Yes, sir, and the mandate of Congress to the FCC was to get the maximum amount of communication media for the people.

Mr. MATTHEWS. In 1952, and even before, on setting up its television allocation policy, one of the top priorities which the Commission gave to television and which was confirmed by the Congress was the priority of providing the maximum amount of television service to the people of the United States. I want to be candid with you, that is not the first priority. The first priority is that everyone get at least one television signal.

Mr. MACKAY. I would like to ask whether or not physically you know of any CATV system that is actually wired across a State line, CATV in interstate commerce in that physical sense.

Mr. BEISSWENGER. I don't know of any across a State line, not offhand. Maybe one of my colleagues might know of one—yes.

Mr. MACKAY. I think you touched on this but I would like you to comment on it again: What is the distance that would be the longest distance that your wire would go from the big transmiter to the consumer?

Mr. BEISSWENGER. A big antenna?

Mr. MACKAY. Yes, where you pick up your receiving signal.

Mr. BEISSWENGER. A receiving antenna to the home of the consumer?

Mr. MACKAY. Yes.

Mr. BEISSWENGER. It is limitless.

Mr. MACKAY. Physically do you know what extremity would be right now based on present installation?

Mr. BEISSWENGER. This goes to the construction of the system. As far as putting amplifiers in cascade where you can run them straight down 1 cable a certain distance, you can put 50 amplifiers in cascade and that will take you out 40 miles, 35 miles. However, you can go way beyond that because you can add amplification. If you take away the economics of the situation I can transport signals over a cable a tremendous distance.

Mr. MACKAY. I notice you used the term "transported," not the term "transmitted."

Mr. BEISSWENGER. Yes, sir, we don't transmit, we transport signals that come off the receiving antenna.

Mr. MACKAY. Will you distinguish between transmit and transport?

Mr. BEISSWENGER. Transport—I don't know whether I can. The derivative "port" is to carry and we carry, and transmit to my mind, is to emit and send out. That is the way I would differentiate between those words.

Mr. MACKAY. I would like to direct your attention to page 5 of your testimony. I would like you to amplify each of those five points, at the bottom.

Mr. BEISSWENGER. If I had my druthers as a businessman, just talking right out, no regulation of any kind, a sort of gray area to move in because you could do all kinds of things, but that is not a realistic way of life in this day and age, I am afraid, we agree to these points because so much attention was put on these by the Commission and they say these are the most important things they need.

You must protect local stations. Of course we will protect local stations. We love to carry local stations. Two, the local station so carried should be entitled to simultaneous nonduplication. We will help them. We will not duplicate their signals coming in from a more distant area.

Mr. MACKAY. Illustrate that with a specific program.

Mr. BEISSWENGER. You know, I had a happy thought as the testimony went the last couple of days. I thought if we were to give protection to Bonanza it would solve this whole problem because everybody is talking about Bonanza. If you have a station in Philadelphia, let us say, which is showing a certain program and you have that same program coming in from a more distant city which is carried on your system, you would not show that at the time the local broadcaster had his picture on the air.

Mr. MACKAY. Now, will you comment on No. 3.

Mr. BEISSWENGER. No. 3, no CATV service should be utilized for pay television system without congressional or Commission approval.

I put this in here specifically to shoot down the bugaboo that CATV puts you right into the pay TV business. That does not even happen to be true technically. It is not true economically. There are many reasons why it is not true.

Mr. MACKAY. You just prohibit pay TV?

Mr. BEISSWENGER. Do away with it, get it out of there.

Mr. MACKAY. Will you give a simple definition of what you mean by pay TV in this context?

Mr. BEISSWENGER. Pay television is one in which you originate and sell programs for a fee. Now this could involve program by program or it could even involve a fixed fee kind of thing. I have never seen any of the latter. But at the moment the only people who are in the pay TV business are the broadcasters, not the cable people.

Mr. MACKAY. No. 4?

Mr. BEISSWENGER. No. 4——

Mr. MACKAY. You have really altered your position on No. 4. I think you have already said there should be some restriction.

Mr. BEISSWENGER. Reasonable restriction.

Mr. MACKAY. Particularly in the area of politics and free competition of ideas?

Mr. BEISSWENGER. Yes, sir.

Mr. MACKAY. And then No. 5, you reject Commissioner Henry's statement that this is a public utility?

Mr. BEISSWENGER. Yes. People don't have to buy our services. The great majority of people in the United States do not have to buy our service. They can take signals right off the air and they can live with what they have. If they like that better they don't have to pay for the reception service. But most of them do.

Mr. MACKAY. Do you feel that Congress is being hindered in the consideration of this matter because there was not what you call an evidentiary hearing?

Mr. BEISSWENGER. Yes, sir.

Mr. MACKAY. Or a personal hearing in which you could present your arguments orally.

Mr. BEISSWENGER. I have never had any opportunity formally to talk to Chairman Henry like I am talking to you.

Mr. MACKAY. Do you think it would facilitate the resolution of the issues if this were done at this late hour?

Mr. BEISSWENGER. I am not so sure, honestly, at this late hour because in my opinion there is a very strong anti-CATV posture at the staff level in the Commission.

Mr. MACKAY. Do you feel that the suspension, assuming that Congress could do this and I am not sure that this could be done without act of Congress—do you feel that the suspension of these premptory orders would do injury to anyone?

Mr. BEISSWENGER. I have so testified. I think it is absolutely essential. I don't want them to take—I don't even like to bring up the term "pay TV." The Constitution here has just been upheld by the Supreme Court of California and Pat Weaver won in his position out there in that referendum but they laid that wreath on his grave.

Mr. MACKAY. I meant specifically, addressing myself to the world order, the present regulatory action——

Mr. BEISSWENGER. As was I, sir. Out there he was declared OK but that was 2 years later and his company lost some $20 to $25 million.

This whole industry is going to be seriously damaged from growing. It is going to cause disruption; it is going to make second-class viewers out of people in the big city. If you live in a big city you are never, never going to be allowed to have the quality and diversity of programming that we can give you if you happen to live in Logansport, Ind.

Mr. MACKAY. If this order were suspended and Congress took no action, do you see any injury that would result to the public or to industry or anyone?

Mr. BEISSWENGER. No, sir; I can't see any injury happening to anybody. I have heard about how the broadcasters are going to go out of business. I would like the FCC to bring in, in one of these evidentiary hearings, the record and see what kind of money the broadcasters are making. I am not against people making money because I am trying to do it every day for my company, but they are making fantastic returns on their investment.

As an industry, broadcasting has continued to increase its profits and it is a very strong and healthy business. And we are very happy because they are helpful to us.

Mr. MACKAY. Is it not true that CATV provides a means for grassroots reporting on political activities, that is, civic council type things not available through the large television station?

Mr. BEISSWENGER. Absolutely, sir.

Mr. MACKAY. Will you supply the mechanics of that if you were going to go to the city council in Decatur, in my town, will you explain the mechanics of how it would be done on the CATV system?

Mr. BEISSWENGER. Well, you would need a camera, a very simple inexpensive kind of pickup camera and some originating equipment in order to take a picture of what is happening in the city council room and show it on the system.

Mr. MACKAY. That is not transmitted?

Mr. BEISSWENGER. That is not transmitted. It never leaves this jacketed piece of cable. When you own that piece of cable up there in the area that is your own private spectrum, an infinite spectrum is encased inside that coaxial cable. You are not in the Government spectrum.

Mr. VAN DEERLIN. Will the gentleman yield for a moment?

Mr. MACKAY. I will yield the floor. Thank you very much.

Mr. VAN DEERLIN. In the interest of clarifying the testimony here, on page 4, Mr. Beisswenger has used the term "transmission" to describe CATV, and I think he might want to change that to "transportation."

Mr. BEISSWENGER. Yes, sir; I would appreciate that correction.

Mr. VAN DEERLIN. I am working for you all the time.

Mr. BEISSWENGER. I thank the Congressman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Mr. Beisswenger, I appreciate very much the directness of your testimony. Since you are such a direct man I would like to find which of the two sides of this issue you come down on in terms of whether or not you are a competitor to broadcasting. Now on page 4 at the bottom of your statement you start out by saying:

> The Federal Communications Commission rests much of its arguments for this kind of drastic regulation on the need to protect television broadcasters.

You then say:

> Other communications media such as radio, motion pictures, the press, have never been granted such a monopoly as is here proposed.

Again on page 15 you quote from "Broadcasting" where you say:

> They [the broadcasters] are to put in its simplest terms, openly asking the Government to prohibit a new competitor from freely entering the market they now have to themselves.

Then on the position you are putting into the record, point No. 8 says:

> The artificial market protection granted the television broadcaster by the new FCC rules is not only foreign to our system of free enterprise but is unsought—

and continues.

All of these statements indicate that in your opinion there is competition, because to create a monopoly you are knocking a competitor out of business or you are keeping your competitor out of business. These statements indicate that you believe you would be a competitor to a broadcaster, yet to Mr. Pickle and Mr. Mackay you have indicated, and I think very sincerely and very strongly, that you believe you are not a competitor, that you are supplementary to the broadcasting business.

Mr. BEISSWENGER. Absolutely the latter.

Mr. ADAMS. You are not in competition with the broadcasters?

Mr. BEISSWENGER. No, sir. I am describing their position here. We are supplemental to the broadcaster.

Mr. ADAMS. Therefore, you next have gone to the point that there should not be economic regulation but rather only technical regulation under the FCC. If you are not in a competitive position but in a supplemental position, then economic regulation of broadcasters or the determination how signals will be sent or controlled over the transmission or transporting process should not be of any particular concern because you are not in a competitive situation.

Mr. BEISSWENGER. We are not competitive with the broadcaster.

Mr. ADAMS. Do you believe that you put out a better signal than a system using the airwaves and transmitting over line-of-sight radio waves? Do you believe you have a superior product to that?

Mr. BEISSWENGER. Absolutely.

Mr. ADAMS. Do you believe that this is a competitive product?

Mr. BEISSWENGER. I do not believe it to be a competitive product; no, sir; no more than a good television receiver is a competitive piece of gear to a television broadcaster.

Mr. ADAMS. Now, do you believe that there would be or there is a competition between offering someone a choice to go on cable or to remain attached to a system that basically puts three or four rather expensive broadcasting facilities in an area and sends them out over the airwaves?

Mr. BEISSWENGER. We are not selling advertising.

Mr. ADAMS. No; I am just talking about whether or not there is a difference in availability or in service between a group using a series of airwave transmissions, using expensive broadcasting equipment and a cable system which I believe you just testified to is limitless in its signal area.

Mr. BEISSWENGER. In how far you can transport a signal.

Mr. ADAMS. Yes.

Mr. BEISSWENGER. Yes; for practical purposes that is true. You can move into hubs and go out from hubs. You are able to wire a city the size of Harrisburg, for example, or the size of Philadelphia.

Mr. ADAMS. You could wire a whole region and operate from three or four rather expensive broadcasting systems in the middle, could you not?

Mr. BEISSWENGER. If you were a broadcaster you then would be controlled by the FCC as a broadcaster.

Mr. ADAMS. I am talking about the fact that three or four major television stations or transmitters, three or four transmitters, can cover a limitless area on a CATV or a wired system without any limitations on how far the signals go or anything else.

Mr. BEISSWENGER. Yes, sir; not unlike the United States where three networks do that over the entire United States.

Mr. ADAMS. That is correct. In other words, you can establish a regional, or five or six, and agree on an area and cover the whole area.

Mr. BEISSWENGER. Yes, sir.

Mr. ADAMS. I take it because you do believe in your industry, and I think very properly so, that you believe that CATV should extend throughout the whole country wherever it wants to go.

Mr. BEISSWENGER. Let the marketplace be the judge, Mr. Adams. If the people don't want our product, then they don't buy it. Then we go down the drain economically.

Mr. ADAMS. The same would be true of the broadcasting system using airwaves and these expensive broadcasting systems. If the public doesn't want to use that system, let it go down the drain.

Mr. BEISSWENGER. Let it go down the drain. We have no guarantee when we go into any one town that any one person will go in our system but we give the very best product we can at the appropriate price.

Mr. ADAMS. Then the systems, if not the individual groups are competitive, aren't they?

Mr. BEISSWENGER. I am sorry.

Mr. ADAMS. A wired system or a system transmitting over a wire, a signal, is competitive then with an airwave broadcast system?

Mr. BEISSWENGER. No, sir. Let me draw this analogy, if I may. We never compete with a broadcaster. We are not in competition with a broadcaster. We are delivering his signal in a more powerified and a more reliable and a better way into the receiver. That helps the broadcaster because what he is trying to do is to get the best possible signal on the picture tube.

Now that also helps the advertiser because he is getting the best picture on that picture tube. There happens to be a franchise awarded right now in New York City and in New York City the signals that will be carried there will be the local signals. Mr. Kahn, who is the chairman of the board of Teleprompter Corp., is here in the room. He has the franchise to wire New York City. Now I don't know how familiar you are with the pictures in New York City, but the reception there is extremely bad. There are a bunch of man-made mountains so you have a lot of ghosts that are produced on your receivers. An interesting thing that happens here with the rating

services, some of them sometimes are accused of being a little nebulous as to how the ratings are obtained and what signals are really the ones that people want to watch. They might switch around a lot in New York because a lot of signals can't be received very well from some of the popular broadcasters.

Now Mr. Kahn's system will certainly not be in competition with the broadcasters. He will be doing what they don't. They don't want to put an imperfect picture on your set or my set, Mr. Adams. It is our business to do that. It is my business to do it many other ways.

Mr. ADAMS. I am not at all saying that I am hostile to your proposition of perhaps wiring the entire United States and carrying all television or all picture media via a wire and perhaps it may be more efficient. What I am trying to get at is in your opinion—and I will ask this of other witnesses as they come in because it goes fundamentally to whether or not there should be any type of economic regulation—whether there should be any type of regulation beyond a mere keeping of people technically apart on the waves, do you take the position that the two systems, the two manners of presentation which presently are a broadcast system over the airwaves as opposed to a wire system, are those two systems in your opinion competitive?

Mr. BEISSWENGER. No, sir. I find them not competitive in any way, shape, or form.

Mr. ADAMS. I could ask——

Mr. BEISSWENGER. I wish you would, sir.

Mr. ADAMS (continuing). How you sell your services in competition with a broadcast over the airwave system if you don't think it is better.

Mr. BEISSWENGER. We are competing with the person's own home antenna. That is whom we are competing with. We are not competing with the broadcaster.

Mr. ADAMS. If that were true you would have no objection to not bringing in any signals from outside the immediate area that that antenna could pick up?

Mr. BEISSWENGER. No, sir. I do not agree with that.

Mr. ADAMS. Then you do want to provide something more?

Mr. BEISSWENGER. We want to provide the maximum product that we can to our customers. But that does not put us in competition with the broadcaster. I don't think there is a sequitur.

Mr. ADAMS. If you have in the New York area, as you mentioned, two, three, or four of these airwave producers, whatever number you want to put in, put them in any community, do they or do they not compete with your cable system in the individual home as to what the people will watch overall, whether they will continue to use the airwaves or whether they will hook up with you?

Mr. BEISSWENGER. What we do by providing more channels to a person than he can normally watch in an off-the-air reception, let us suppose he can see three now and we bring in four more, he sees seven. We are not in competition with those broadcasters but we have made it possible now for those broadcasters to compete one with the other for the viewing public.

Mr. ADAMS. Plus an additional number who are outside the area and which the airwave system cannot bring into the area because the

FCC has said you can only have x number of VHF's in a particular area.

Mr. BEISSWENGER. Technically.

Mr. ADAMS. Technically. So the airwave system cannot ever match your system unless you get the UHF system brought in in some fashion. Is that correct?

Mr. BEISSWENGER. That is correct.

Mr. ADAMS. I have no further questions.

Mr. WATSON. May I ask one question?

Since this matter came up it has been brought to my attention that one CATV manufacturer has installed one of these master antenna television systems at the White House and also at the ranch in Texas.

Is it your position——

Mr. BEISSWENGER. Whose ranch in Texas? [Applause.]

Mr. WATSON. To some people in Washington there is only one ranch in Texas. Is it your position that under CATV you would like to provide to the least affluent in Texas and South Carolina a quality and a choice of signals as well as to the individual and his staff and other officials who are more affluent or at least in a position to be the beneficiary of such an elaborate CATV reception outfit?

Mr. BEISSWENGER. Yes, sir.

Mr. WATSON. Thank you.

Mr. BEISSWENGER. Thank you very much.

The CHAIRMAN. Any further questions? If not, Mr. Beisswenger, we appreciate your coming and giving us the benefit of your views. I think you have answered the questions very well and contributed to the record.

Mr. BEISSWENGER. Thank you.

The CHAIRMAN. Our next witness will be Mr. Fred Gregg, president of the LIN Broadcasting Corp., Decatur, Ill.

STATEMENT OF FREDERIC GREGG, JR., PRESIDENT, LIN BROADCASTING CORP.; ACCOMPANIED BY WILLIAM BERNTON, OF MALAGAN & BERNTON

Mr. GREGG. Thank you, Mr. Chairman.

Mr. SPRINGER. Mr. Chairman, I would like to say that Frederic Gregg, Jr., is a newcomer to my district. He has a station in which he has invested $2 million, a UHF station, and a very fine one, in Decatur, Ill., in the heart of my congressional district. In addition to that, he is moving his tower and putting up an investment of a million dollars.

He is a genuine TV man, may I say, and a fellow of considerable reputation in the industry.

Mr. GREGG. Thank you very much, sir. And thank you, Mr. Chairman, for hearing us. This is Mr. William Bernton beside me, a partner of Malagan & Bernton.

The CHAIRMAN. I would like to say this, Mr. Gregg: Since you have a statement, I wish you would put it in the record and summarize it, or however you want to do it. How long is your statement?

Mr. GREGG. It will take approximately 19 minutes, but I can shorten it down.

Mr. CHAIRMAN. Either way.

Mr. GREGG. Since there is some technical information I would like to go quickly through this with you and the members of the committee.

I am Frederic Gregg, Jr., of Nashville, Tenn. I am president of LIN Broadcasting Corp., which owns four radio stations and one television station. We also own several CATV systems and hold CATV franchises. None of our CATV interests are within the same area as our television station.

Our largest single investment is in our television station—UHF station WANI, formerly known as WTVP, in Decatur, Ill. We spent over $2 million to buy the station and have committed about $800,000 more for capital improvements to increase its coverage.

I will show you what this increased coverage will accomplish.

I have been engaged full time as a broadcaster since 1957 and was involved with the broadcast media for 9 years before that. WAMD is the second television station that I, or a company of mine, has owned. The first was the station now known as WKYT–TV at Lexington, Ky. It, like WAND, was a UHF station; and, I believe that I am qualified to present to you the point of view of the UHF broadcaster.

In addition to hearing today from spokesmen for the CATV industry, you will be hearing tomorrow from representatives of the National Association of Broadcasters and the Association of Maximum Service Telecasters.

I assume that these gentlemen will try to persuade you that, in this particular controversy, that they have put aside their own interests and are appealing to you solely in behalf of the public interest in television viewing. I think I know enough about broadcasting and broadcasters to assure you that this is not the case; that every representative of any private interest who appears before you in this proceeding will appear, like myself, for the primary purpose of advancing or protecting whatever private economic interest he represents.

I feel that, in this particular instance, my private interests correspond with the public interest. Some representatives of the other point of view may very well feel the same with respect to theirs. In any event, however, it is our private economic interests that cause us all to speak out in this proceeding.

I am convinced that my private interests as a UHF telecasts will be benefited by the expansion of CATV service within the Decatur area far more than by the imposition of rules such as the Commission has adopted to restrict CATV. I will enlarge on this later.

I also want to demonstrate that, although the Commission tried, in good faith, to resolve what it considered to be a knotty problem, the rules it adopted with respect to CATV are, in many instances, so unworkable that they must be thoroughly overhauled before they are imposed on the CATV industry at large.

Finally, I want to say to you that there is no necessary connection at all between CATV and pay TV—which I understand to be selling the public television entertainment on a program-by-program basis.

I am well aware that much of the opposition to CATV stems from a fear that CATV will lead to pay TV. However, I say to you frankly that the danger of pay TV comes from one quarter alone, and that is the FCC itself.

The Commission has decided that it has jurisdiction to regulate CATV; and, having this jurisdiction, it could as easily forbid pay TV on cable as it adopted the other rules for the operation of CATV. Indeed, the proposed section 331(b) of the Staggers bill would, by itself, insure that no pay TV would be carried on CATV except that which is broadcast as pay TV by the originating station.

The trade press reports, however, that on March 11, only 3 days after the CATV rules were released, a committee of three Commissioners—one vote less than a majority—recommended to the Commission that it consider rules that would establish a national system that would allow every television station in the country to run pay TV programs.

The way to stop pay TV is by a frontal attack on that proposal, where as, when pay TV is fought by placing restrictions on CATV, it is merely a joust with a windmill, that can have no effect whatsoever on the outcome.

Although there are some provisions in the Commission's rules relating to carriage and nonduplication that cause me some trouble, my primary concern is with the rule that, in general, precludes a system located within the grade A contour of any station in one of the so-called top hundred markets from carrying a station that provides a signal of less than grade B intensity over its community.

I would like to have Mr. Bernton show you a map of the so-called Champaign-Decatur-Springfield-Danville market, which is ranked as the 73d market and, therefore, comes within this provision of the rules.

(The map referred to may be found in the committee files.)

Mr. GREGG. This large circle [indicating] is the grade B service contour of WCIA, the only VHF station in the market. These small circles are the grade B contours of two commonly owned UHF stations. The one on the left is the present contour of WICS, Springfield. The one on the right is the proposal that has been submitted for WCHU in Champaign, which presently serves a much smaller area.

This heavy black line is the grade B contour of the improved service which our station WAND plans to provide to the area. According to the Commission, this is all one market, yet this incredible hodgepodge of hatching and cross-hatching shows that, under the Commission's own rules, this is the only area within the entire market where CATV systems would be allowed to carry all of these local stations.

Over here in the west [indicating] a station could not carry our signal or WCIA. Here it could carry us but not carry WCIA. In this area, coming almost all the way to Decatur, a system could not carry the signal of WCHU. All of these stations, mind you, are supposedly part of this market.

Adding insult to injury, the rules would allow the carriage of St. Louis stations and the Peoria stations in these parts of the area where we would be precluded. And, in these areas where there are only two off-the-air signals, a CATV system could not even bring in the third network.

Up here at the top there is an interesting little area which is within the grade A contour of WCIA in Champaigne but outside of the grade B contours of all other stations except WEEK, Peoria, so that the

Commission rules would allow a CATV system there to carry one Peoria station and one Champaign station but no other station in either market.

Moving further to the east we have the area where WICS could not be carried, and here we come to the point [indicating] where carriage of our signal would again be prohibited. Through here, again, there would be only two off-the-air signals, and no more on CATV.

Note, however, that the Indianapolis stations throw grade B signals through part of this area, so that they could be carried here. Note, also, that the Terre Haute stations provide a grade B signal in Danville so they—but not we—even though we are licensed to serve Danville—could be carried in that city, which has a significant CATV system in operation and is supposed to be part of our market.

Indeed, since we are an ABC station, but ABC programing is also carried on the Terre Haute stations, those stations would be entitled to 1-day nonduplication protection over us for network programing, if we were carried there. Thus we, the ABC affiliate in the market that includes Danville, cannot be carried in Danville, and our network programing would be blacked out there even if we were carried. All of this occurs, of course, in what the Commission has said is our market.

A similar situation exists in southern Missouri, which is part of the so-called 87th market, which straddles three States and is made up of the service areas of stations located at Cape Girardeau, Mo.; Paducah, Ky., and Harrisburg, Ill.

Over here in the west [indicating fig. 2] there are areas where the Commission's rules would preclude the Paducah and Harrisburg stations—mind you, these are three VHF stations, there is no "U" involved here—from being carried on CATV systems in their own market, although the St. Louis stations, since they provide a grade B signal there, could be carried.

I am told that well over 10 percent, and perhaps as many as 20 percent of the so-called "top 100 markets" present the same, or a similar, picture.

Before we leave this map, let me call your attention to this little area in southern Illinois, only about 30 miles wide. Its neighbors to the east received four to six signals; and those to the west receive as many as seven. Here, however, they are restricted to three signals off the air, coming from stations located in three different States and, under a strict application of the rules, no more would be allowed on CATV.

All of these evils stem from two basic errors in the Commission's rules: The first is its having arbitrarily adopted, for the highly complex mission of regulating CATV, market groupings that were developed for a wholly unrelated purpose.

Many of these markets lack any kind of homogeneity. They are not recognized by the Census Bureau; they are not recognized by the Bureau of the Budget, and they have no official standing whatsoever. They do not represent communities or groups of communities. They are not based on considerations of distance, or of area, or population, or income. They are merely groupings of stations which the American Research Bureau, one of the companies that makes and sells audience surveys, has placed together for the purpose of making and selling surveys. This group, Springfield and Danville in the same market,

although they are over 100 miles apart, and Springfield is 20 miles closer to St. Louis; and Danville is 20 miles closer to Indianapolis and 55 miles closer to Terre Haute.

The Commission's next error, after recognizing these synthetic markets, was in having arbitrarily adopted the ranking ascribed to them by ARB.

Few people realize that the market's rank under this system is not based on the population of any given areas, is not based on the amount that is spent on advertising in an area.

The rating of a market is based exclusively on the number of homes reached by the strongest station in that market. Evansville, for example, was ranked 88th by virtue of the fact that channel 7 there was viewed by 201,000 households. However, the other 2 stations in which are "U's" in the market averaged only 119,000 homes, which would have ranked them with stations in the 129th market.

The tristate market I showed you on the map, that includes southern Missouri and southern Illinois, is ranked 87th by virtue of the 216,000 homes on which the station in Cape Girardeau, Mo., is viewed, whereas the station in Harrisburg, Ill., is credited with only 147,400 homes, which would rank it with the 105th market.

In southeastern Pennsylvania, to which I will refer later, it is channel 8's 450,000 homes that rank the market as 33d. That is a pretty big city. No other station there is viewed in enough homes to come within the top 100.

It is, of course, when the dominant station in the market has sufficient viewership to pull the whole market into the top hundred that the most stringent rules with respect to CATV apply. And it is no concidence that in these markets, it is generally the operator of the dominant station who opposes CATV and the operators of the lesser stations who are in favor of it.

In situations like this, the VHF station has a multiple advantage:

It is carried on the upper dial, whereas the UHF station may not even be carried on the set.

Its greater grade B contour gives it more off-the-air reception.

Its grade A contour, which sometimes goes out farther than the grade B contours of the competing UHF stations, marks the limit beyond which "distant signals" cannot be carried on CATV.

If, as in Binghamton, N.Y., the 82d market, the grade B contour of the UHF stations fall inside the grade A contour of the VHF station, there will be areas, beyond the grade B contour of the UHF stations, where the weakness of their signals preclude them from being received off the air and the Commission's rules preclude them being carried by cable, even though, in those same areas, the VHF station can be received off the air and the new rules would, therefore, also allow it to be carried on cable [indicating fig. 3].

Although the first consideration is being ameliorated as a result of the all channel bill, the UHF station is still on a different dial from the VHF stations except where it is carried on cable.

And the last consideration may well get worse if, as I am told is likely, the Commission adopts new rules which, while leaving VHF contours substantially as they are, will have the effect of shrining the computed grade B contours of UHF stations and, thereby, the areas in which they can be carried on CATV.

It is for these reasons that, in Decatur, and throughout the entire service area of WAND, I am emphatically and unalterably in favor of the widest possible expansion of CATV as being an important means of further equalizing the competitive disparity between the UHF stations there and the WCIA, Champaign, which is the VHF station in the area.

In this connection, it may also be of significance that Plains Television, the operator of the other UHF stations in this market, owns and operates the CATV system at Danville, at the east end of the market, and sought, although unsuccessfully, to obtain the CATV franchise in Springfield at the western end of the market. By contrast, the owner of WCIA is one of the most vociferous opponents of CATV in the country, as you have heard this morning.

In Binghamton, N.Y., the 82d market, which has one VHF and two UHF stations, I do not know the positions of the operators of all the stations, but the owner of one of the UHF stations there has authorized me to state that he is in favor of CATV as a means of getting his station into homes where, otherwise, the VHF station would be the only Binghamton station viewed.

I might add I have been authorized by several UHF operators to state that they join with me although I have not mentioned in my statement, in southeastern Pennsylvania, which is another of those markets which stretches across five communities and includes a dominant VHF station and four UHF stations, I am informed that all of the UHF stations have consented to have the CATV system in Lancaster extend the grade B signal of channel 5, an independent station in Washington, in order to bring it into the area.

All of these telecasters know, as I know, that a CATV system will normally not be successful unless it can bring in the signal of at least one independent station to carry the sports and movies that the local network stations do not. However, they are apparently convinced, as am I, that the benefits of equal exposure on the cable with the dominant VHF station far outweigh any detriment that will result from having to compete with a distant independent.

The Commission's rules are also grossly inadequate because they close their eyes completely to the differences between the problems of the large, metropolitan markets with four or more local services, and those markets, which, although ranked in the top 100, involve multiple communities receiving three or less off-the-air services, originating in different cities located miles apart.

Other witnesses will explain to you the problems the rules create in the metropolitan markets.

My primary concern is with areas such as central Illinois, the tri-state market, Lancaster and Evansville, where the Commission's rules, in effect say to the viewer: If you get two or three services, that is enough; and you have no right to have a CATV system bring you the additional services that your city cousins enjoy.

I am sure you realize that, where there are only two or three services, those services are almost invariably network services, so that what the Commission's rules are keeping out of these markets are the independent stations, with their emphasis on sports and good movies. In central Illinois, there are no independents. Two of the four stations are NBC. In the Lancaster area, there are no independents—three of the five stations carry CBS.

Actually, of course, the signals of the independents often get into these areas in other ways. In many areas, the individual viewer can pick up a station 60 miles beyond its grade B contour by using a 50 to 60 foot outside antenna which costs him $150 to an average of $250.

In the southern Pennsylvania market, where the CATV system wants to bring in channel 5 from Washington, that grade B contour is only 25 to 30 miles away. In southern Illinois, we want to extend the grade B contours of the St. Louis stations 25 miles at the most. In these situations, it seems less than equitable for the Commission to say to a viewer: We will let your neighbor spend $250 or so for an outdoor antenna that may or may not give him satisfactory service, but we will not let you pay $5 or $6 per month to view the same stations on cable.

These are the major problems that I find with the Commission's new regulations. Whatever their merits may be in other situations, they cannot be made to work in the smaller of the top 100 markets where, because some stations are VHF and others UHF, or for other reasons, there is a significant disparity in service, where the stations may be licensed to different cities, located miles apart, where local stations present only network programs and where the signals of the independent stations are only 25 to 60 miles away and will be brought in anyway by outside antenna if CATV is not allowed to do it.

These problems are so great that they cannot be solved by the Commission on a case-by-case basis.

Moreover, in view of the average length of evidentiary hearings before the Commission, it is manifestly unfair to allow the Commission to attempt to resolve them in this fashion. The only equitable solution lies in a complete reworking of the Commission's rules, which apparently, will only be accomplished if the Congress so orders.

My views with respect to the legislation before you are these:

(1) I believe that reasonable regulation by the FCC can be valuable to the CATV industry to help it grow in an orderly manner and to render a more meaningful service as it expands.

(2) I am not the least bit interested in the origination of any programs on CATV, other than time, weather, and the news teletype, which I believe to be valuable auxiliary services. And we do provide in the CATV systems which we have built and I believe I speak for much, if not most, of the industry in this respect. There is no more reason for the right to originate programs to become an issue with respect to CATV than there is for pay TV to become an issue with CATV. I would be perfectly satisfied to have both of the practices prohibited by congressional legislation or by Commission regulation.

(3) On the other hand, however, it is obvious from the situations that I have described to you, which have arisen as a result of regulations already adopted by the Commission, their regulation can have the effect of damaging both UHF and CATV when it is directed to prohibiting the carriage of signals. When this is done the results are inequitable in the extreme and CATV is deprived of its opportunities to serve—most importantly in the area of helping UHF to grow.

The fact is that there is no reason to deprive any market service if someone is willing to make the investment necessary to provide a

CATV facility. It is also a fact that UHF and CATV have common cause, which is circulation and reach; and that CATV can and should be an important factor in giving the public a greater choice of pictures.

The public will be best protected if the FCC's regulatory authority is confined to the areas of pay-TV origination, carriage, and nonduplication, and if it is precluded from adopting regulations that would exclude any broadcast signal from any CATV system.

Thank you very much, sir.

The CHAIRMAN. Mr. Gregg, I want to thank you for giving us your views.

Mr. Rogers of Texas.

Mr. ROGERS of Texas. Mr. Gregg, I have just one question. I notice you say you paid $2 million for that UHF station.

Mr. GREGG. Yes, sir; I did.

Mr. ROGERS of Texas. Did you realize then when you paid that that the FCC would take the position that all these stations were going to go broke in the next 5 years?

Mr. GREGG. No, sir; I didn't.

Mr. ROGERS of Texas. Would you have invested in that if you thought that the station was going to go broke in 5 years?

Mr. GREGG. No, sir; I would not.

Mr. ROGERS of Texas. Now there is a lot of talk about the fact that things are very good now but they will get worse later on.

How long does it take to recover an investment like that? You don't expect to recover that in a couple of years, do you?

Mr. GREGG. No, sir. I presume it would take approximately 7 years to recover our investment.

Mr. ROGERS of Texas. That is all.

The CHAIRMAN. I meant to state before we started I hope each member will keep his questions very short because we do want to get at least one more person on this program before we finish for the evening.

Mr. Springer.

Mr. SPRINGER. Mr. Gregg, is it your purpose, based on the best legal advice you get from your very able counsel, Mr. Bernton, that the FCC does have the power to regulate CATV?

Mr. GREGG. It was my understanding, Congressman Springer, that this meeting was being or this committee was in session to discuss exactly what the FCC was permitted to do.

My statement is based upon the fact that if this is being studied we would like to have you consider these factors.

Mr. SPRINGER. Now may I just add this question, because it does become important later on.

Suppose that both Houses pass a law and it is turned down at the White House, you still would have nothing. What I am trying to find out in the worst case, do you believe that the FCC does not have the power to regulate CATV?

Mr. GREGG. Congressman, may I answer that, sir? I think it is an extremely close question that can only be resolved by litigation. I think that there are very strong positions that can be taken on both sides. I have advised Mr. Gregg that we have to, for the present at

least, assume that the Commission does in fact have jurisdiction, until the rules that are promulgated have been taken off the books either as a result of action by the Congress or by court action. The rules at present stand. The rules as stated are being enforced effective as of February 15 with respect to carriage in the top hundred markets. So until either Congress acts or a court acts we have to recognized that the Commission has taken jurisdiction, whether in fact it has properly done so or not.

Mr. SPRINGER. In other words, I take it what you are doing is obeying the law on the assumption that this is the law for the present even if it is not the law ultimately when we get through with it and the courts are through with it. Is that correct?

Mr. GREGG. I think that is right.

Mr. SPRINGER. Now, Mr. Gregg, in the "A" areas are you willing for CATV to operate?

Mr. GREGG. Am I willing to do what, sir?

Mr. SPRINGER. For the CATV to operate in the A areas.

Mr. GREGG. Yes, sir. I see no reason why CATV should be restricted.

Mr. SPRINGER. You mean you would allow CATV to go any place?

Mr. GREGG. Yes, sir.

Mr. SPRINGER. Do anything?

Mr. GREGG. Yes, sir.

Mr. SPRINGER. It was my understanding that you used the words that you would allow the FCC to apply reasonable regulations. Could you just review that for me? I am not sure I understood what you meant.

Mr. GREGG. I am referring to origination, carriage and nonduplication, and pay-TV and they would eventually want to set up certain technical rules.

Mr. SPRINGER. Origination, programing——

Mr. GREGG. Origination—it is in my last line here, origination, carriage and nonduplication. In other words, I think there should be protection on the duplication basis.

Mr. SPRINGER. What do you mean by carriage? Do you mean both by microwave and by wire?

Mr. GREGG. I did not understand your question. We are talking about that CATV should be required to carry the local stations and the other stations that are closest to it. That is what I am talking about when I refer to carriage.

Mr. SPRINGER. What you are talking about is in the immediate area they should be required to carry those?

Mr. GREGG. Yes, sir.

Mr. SPRINGER. And in addition they can carry any number of stations they wanted to?

Mr. GREGG. Yes, sir.

Mr. SPRINGER. I will pass now. May I say that your statement is the best I have seen for that position. At least the most concise.

Mr. GREGG. Thank you very much.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. No questions.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. No questions.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have just a question or two.

You mentioned a $2.8 million investment. This is required because you are using the airwave system, is that correct, as opposed to the cable?

Mr. GREGG. This is a television station. We purchased the television station from Metromedia. We paid them $2 million, which included the plant and transmitter tower.

Mr. ADAMS. Does your income come from your advertising?

Mr. GREGG. That is correct.

Mr. ADAMS. This is based upon the number of people that are watching?

Mr. GREGG. That is correct.

Mr. ADAMS. At the present time how many channels do you compete against for your basic audience?

Mr. GREGG. Three other channels.

Mr. ADAMS. Is it your testimony that you believe that your economics would not be harmed by adding, say, 12 channels to compete against directly in the areas opposed to four?

Mr. GREGG. I don't believe it would make any difference, no, sir.

Mr. ADAMS. In other words, you think your advertisers will—I just don't know—tell me the economics. The advertisers will pay the same amount, you will have the same amount of money coming in the front door to pay the bills no matter how many stations are available in the array?

Mr. GREGG. You can't watch all the programs at the same time. The man with the best show is going to get the audience. People will always tend to watch the things that are most familiar to them and are closest to them. They will prefer their local news if it is done well. They will prefer the personalities that they know come from their own area over a period of time. If the presentation is right, it will always command the greater share of audience.

In radio, as an example, we operate four radio stations in four different cities but in those four cities we also have nearly 40 competitors and it does not change any.

Mr. ADAMS. Do you believe you could compete with an all-day feature film of recent movies put out of a major metropolitan area being dropped in your area?

Mr. GREGG. I think so.

Mr. ADAMS. I have no further questions.

The CHAIRMAN. Mr. Gregg, thank you very kindly for coming here.

Mr. GREGG. Thank you, Mr. Chairman and gentlemen.

The CHAIRMAN. At this time I might say we are getting ready to adjourn this committee, but I believe in fairness we should recognize two men to put their statements into the record.

First, I want Mr. Lyle Keys, who has recognized this morning. I will recognize him in a moment, but I would like to have Mr. Druckman. Is he here? Will you come forward. Since you live in the district of our illustrious colleagues over here, Mr. Van Deerlin, I would like Mr. Van Deerlin to take over from this point.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

We heard this morning from a station in San Diego about the encroachment of CATV and Mr. Druckman is one of the fellows that has them worried.

I want to make it clear that there is no question of ethical conduct involved. It is just a matter of the system of operation. Mr. Druckman is one of the busiest, and most successful and most respected businessmen in the San Diego area where he has operated as head of Trans-Video Corp. since 1962. He was the first CATV operator in the land to enter a three-station market. I am again able to say I am very proud to present a representative from my home community, Lee Druckman.

The CHAIRMAN. That is a pretty high recommendation. We will be very glad to hear from you, Mr. Druckman. If you could summarize your statement and put it in the record it will be helpful because after you and Mr. Keys we will end for the day. There has to be a limit. If you can do this, we will appreciate it.

STATEMENT OF H. LEE DRUCKMAN, PRESIDENT, TRANS-VIDEO CORP., EL CAJON, CALIF.

Mr. DRUCKMAN. Thank you, very much.

Mr. Chairman, I have a very brief prepared statement of just a little over four pages, which I am sure will only take a few minutes.

The CHAIRMAN. You may proceed.

Mr. DRUCKMAN. Mr. Chairman, members of the committee, I appreciate this opportunity to present my thoughts, so that the Congress may consider them and judge their merits.

I have been active in the CATV industry for nearly 10 years and am president of CATV companies that operate systems in the San Diego, Calif. metropolitan area. We have been constructing and operating these systems since July 1962.

First, I would like to briefly outline have a CATV system evolves in a typical community. The initial step is a grant of a franchise or license by the local government body upon a fiinding that this service is in the public interest. After receiving this grant, pole attachment contracts from the utility companies must be obtained. The engineering and construction of the system then follows. Upon completion of these steps, subscribers are connected to the system. It often takes in excess of a year to build an average size CATV system.

The installation of the cables and sophisticated electronic equipment that make up a CATV system represents a sizable financial investment. For example, in a city having a population of 100,000 the capital investment would be approximately $1½ million.

In years past, the Federal Communications Commission has stated that it does not have jurisdiction over nonmicrowave CATV systems. Now we find the Commission reversing its position and assuming complete jurisdiction over all CATV systems without waiting for full hearings to be held by your committee.

It is my belief that the primary interest of government regulation of any industry in a free society must be the true interest of the public served. The wide public acceptance of our service is clearly evidenced by the success and rapid growth of our industry.

In San Diego many people are able to watch certain of the Los Angeles television channels off of the air some of the time. This is due to the terrain and the unusually high location of the Los Angeles television transmitters. However, there are equally as many people in this same area who receive little or no television from Los Angeles.

I have some pictures with me which I would like to leave for the record that illustrate the size of typical antennas used by San Diego homeowners to reach far out and bring in the Los Angeles television stations. By subscribing to CATV sevice-homeowners can remove these unsightly and expensive antennas and receive a wider program choice, as well as improved quality reception. There are also included pictures that illustrate new housing areas where all utilities are underground and rooftop antennas are prohibited. Without CATV, these homeowners would only be able to watch whatever limited television signals they could receive by using indoor antennas.

It is my firm belief that, just because a person does not live in the Los Angeles or New York area, he should not be denied full television viewing opportunities.

Our systems carry the signals of all of the San Diego television stations, all of the VHF signals and the signal of the educational television station in Los Angeles. In fact, without our CATV systems, the San Diego area would be without educational television. We have received many letters of appreciation from schools to whom we supply our service free of charge.

This brings me to the UHF situation in San Diego. In his testimony before this committee on March 22, 1966, Chairman Henry stated that UHF stations would be viable in markets where they could have a prime time audience of 15,000 homes. The president of San Diego's new UHF station wrote a letter to the Commission on August 25, 1965, in which he stated the following:

> We feel that local CATV will help us inasmuch as we will be included in the local service (as well as some regional services) and will, therefore, reach more than 15,000 sets now served by the cable.

Not only did our CATV provide the station with a readymade market, but that market grows with every installation we make.

I would like to touch quickly on the pay-TV smokescreen put up by the Commission and various television broadcasters. Generally, throughout our industry, franchises and pole attachment agreements specifically prohibit pay-TV operation by CATV operators. Additionally, even though we use the most up-to-date transistorized electronic equipment, it is not technically geared to pay-TV operations. The pay-TV specter is just one more tactic used by the broadcasters to secure protection from competition. Commissioner Bartley aptly pointed out in his statement to this committee on March 22, 1966, the suppositions and ifs upon which these supposed fears have, for so many years, been based.

CATV is strictly a service-type industry where we constantly strive to provide the best service possible on every channel we carry. The 17,000 customers we have bears out that we do just that.

The commission has historically strived for local television expression for every city and town in the country. A review of television station program logs reveals that they originate only a limited amount

of local, public service programs. CATV systems, on the other hand, do not need advertising dollars to support their operations and can be the voice of local expression so long sought after.

Origination of local sporting events, city council meetings, public notices, educational programs, and other matters of that nature could be carried on CATV systems and done so during prime time. I read with interest in the March 14, 1966, issue of Broadcasting magazine, on page 83, that the CATV system in Winchester, Va., must produce 30 hours a month local public service programing as a requirement of its franchise.

I believe that our success in San Diego has been and will continue to be in direct proportion to our service to the public. This service includes not only bringing more and better service from television stations but, when the opportunity arises, of meeting the needs of the community by the origination of programs which will give the public a greater means for local expression.

We are willing to give local TV stations simultaneous duplication protection and, in fact, offered simultaneous duplication protection long before the Commission adopted any order. We do, however, believe we are entitled to the opportunity to have our place in the open market and provide our service to people who obviously desire it.

We support Congressman Rogers' bill, H.R. 12914, or any other legislation which would preserve our privileges of bringing unlimited television pictures to our subscribers.

If I may, Mr Chairman, I would like to distribute these pictures now and make them part of the record.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Thank you. I belive I have no questions.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. No, think you, Mr. Chairman.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. What is the usual charge arrangement on your system?

Mr. DRUCKMAN. Our system, Congressman Mackay, carries 12 channels. I know that that is far greater than the number of channels carried by most systems. Our charge is $5.50 per month for our service.

Mr. MACKAY. Thank you. I have no further questions.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have no questions.

The CHAIRMAN. Thank you very kindly for coming before us. I am sorry if we appear to be in a hurry tonight, but I will say to the rest of those who are here to testify that we are bound to close these hearings now. I am sorry for those of you who have come some distance. You have the privilege of coming back. I will say, too, that you have the privilege of coming now and presenting anything for the record, which will be considered by the committee as if it were given by you personally.

Are there any on this list who would like to come forward and present their statements for the record?

Mr. EVANSON. Yes, Mr. Chairman.

Mr. CHAIRMAN. I might say this: We are not trying to shut off anybody because you will have an opportunity later to come back to these

hearings and present your statement. I am only doing this for the convenience of those who have traveled a great distance.

Mr. EVANSON. Mr. Chairman, I would like to introduce this in the record. I don't care to read it at this time, or take up any of the committee's time. If I could just have this statement put in the record. My name is Richard Evanson from Seattle, with Total Telecable. I would appreciate it very much.

The CHAIRMAN. It may be inserted in the record.

(Mr. Evanson's prepared statement follows:)

STATEMENT OF RICHARD EVANSON, PRESIDENT, TOTAL TELECABLE, INC.

My name is Richard Evanson. I am president of Total Telecable, Inc., located at 1616 Norton Building, Seattle, Wash. Total Telecable and its wholly owned subsidiaries have over 10 years of CATV experience. We provide CATV service to 9 Washington cities representing over 100,000 people.

I appreciate this opportunity to appear before your committee and to express my company's feelings with regard to one aspect of the proposed CATV legislation now before you. I will limit my comments only to the question of program origination.

I will further limit my comments by excluding any analysis of the merits or demerits of pay TV. As you probably know, program origination takes two forms. A pay TV operation where the customer pays for his television on a per program basis is one form. A second form involves locally originated programs for which no extra payment is made by the subscriber. It is on the second form of program origination that I would like to comment.

Over a year ago, our company came to the conclusion that there were a great many local events in the communities which we served that were not covered by normal television broadcast facilities. The reason for this lack of coverage was obvious—the market is too small. In other words, the costs of broadcast television were larger than any offsetting advertising revenues. After an investigation, we found that the costs of carrying such local events over cable were quite small.

We started our local program origination in Bellingham, Wash. (population 35,000). We have met with a great deal of success both from our subscribers and from the public as a whole. We have or plan in the near future to carry in all of our CATV systems such programing as:

(1) City council meetings.
(2) Local industry training and educational programs.
(3) Local college and high school debates, plays, and sporting events.
(4) Boy Scout live training sessions (same for other local clubs).
(5) March of Dimes auction sale.
(6) Home movies taken and narrated by local residents.

This type of programing—and we have only scratched the surface—is local expression in its highest sense. It is programing that the broadcaster normally does not carry because it is uneconomical. Therefore, we do not compete for programing or advertising with the broadcaster.

We are providing an added service, not a supplementary one. Why should a neighborhood or community, just because it may be small, be denied the right of expression through the medium of television? I have heard that a television station needs 15,000 homes to be economically viable. We don't. With 1,000 homes we can provide local programing.

If the FCC is concerned about pay TV riding in on the back of off-the-air television, our company would support legislation that would allow the FCC at its discretion to restrict pay TV on CATV. But, why should we penalize our type of programing if the real concern is over pay TV? I think some people are confused and are thinking that program origination is analogous to pay TV. This is not the case. The type of local interest programing we do has nothing to do with pay TV. Therefore, we are opposed to any legislation which would grant the FCC power to restrict local-interest-type program origination. We feel that Congress should properly be more definitive in this area and make it clear in whatever legislation it passes that such programing should be nurtured and encouraged.

We are excited and convinced that in addition to a reception of off-the-air transportation service CATV can benefit each community it serves by providing channel facilities and qualified personnel to originate local programing. We have accumulated data which indicates that a sufficient number of homes would purchase our program origination service to make our systems profitable without the carriage of any off-the-air or microwave television signals. We found this interest to exist in large and good reception markets as well as the small and poor reception markets. This leads us to believe that our local program origination service which cannot be economically duplicated by off-the-air broadcast facilities is serving a real public need.

In summary, we are providing a vital community service and contrary to comments made by FCC Chairman William E. Henry, an outlet for local expression. We are filling a television and communications gap that can't economically be satisfied by normal broadcast facilities. The Congress and FCC should, through positive steps, insure that this type of program origination is encouraged.

STATEMENT OF HAROLD DARON, MEMBER OF CITIZENS TV COMMITTEE OF BAKER, OREG.

Mr. DARON. Mr. Chairman, my name is Harold Daron. I am an attorney in private practice in Baker, Oreg. I represent a citizens TV committee.

I regret not being able to have the opportunity at this time to present our views because I will be unable to return. But in answer to a question that Mr. Mackay had, I would like to say that our service, which I have no interest in whatsoever, our rates are $4.10 a month. We receive seven channels and also this was done by the local people to increase those channels, the number we receive based on majority vote of the people so that we can have privileges of being a part of the State of Oregon for our own television coverage.

I present this at this time.

(Mr. Daron's prepared statement follows:)

STATEMENT OF HAROLD DARON, MEMBER OF CITIZENS TV COMMITTEE OF BAKER, OREG.

Mr. Chairman and members of the committee, my name is Harold Daron. I am an attorney in private practice in the town of Baker, Oreg., which has a population of a little over 9,000. I am a member of the Citizens TV Committee of Baker and am appearing before this committee to bring to your attention the problems which will be encountered with respect to the television viewing habits of the people of our town if the FCC is successful in imposing its proposed highly restrictive rules and regulations.

Our CATV system serves approximately 6,000 subscribers, 3,000 in La Grande and Union, of Union County, Oreg., and 2,800 in Baker, of Baker County, Oreg.

We are not one of the top hundred markets, nor are we located within the contour of top 100 market stations. These highly controversial problem areas do not affect us, but other aspects of the rules do present problems and we feel that the small problems and the small viewers tend to get lost in the manipulations prompted by concern over market problems.

Because of the impending application of FCC rules which will seriously disrupt the viewing habits of the people of Baker, Oreg., by depriving them of television reception to which they feel they are entitled, more than 5,000 of the cable system adult viewers in Baker, Oreg., La Grande, and Union, Oreg., signed petitions of protest which were filed with the FCC prior to the second report and order.

It is possible to receive television off the air in Baker from channel 2, Boise (CBS–ABC), and one Spokane station, in addition to the Boise satellite, channel 13, La Grande. We assume the La Grande satellite would be generally received in Baker if high antennas were constructed. Since the satellite (channel 13) is carried on cable channel 13 with no interference or ghosting problem,

we can assume that no satisfactory overall reception is possible in Baker. In fact, no one in Baker, with the exception of two television repairmen, receive television directly off the air because of the excellent quality of picture and service provided by the cable system.

Prior to 1954 it was possible with two antennas to receive in some areas of Baker two channels off the air, one from Boise, Idaho, and one from Spokane, Wash. In 1954 our CATV system got its start with those same channels, but with generally improved reception, although naturally there were problems.

In 1956 the system was expanded to include reception from three Spokane network affiliates, at which time the channel from Boise was eliminated.

Between 1956 and 1963 Baker became almost entirely a cable-served community. However, we were not a part of Oregon in respect to our television viewing, but were an appendage of Washington and Idaho, as we received Washington and Idaho news, Washington and Idaho political coverage, special events, and were governed entirely by Washington time. The State of Washington was on daylight time. We were not.

In 1963 we established our first television link with our State of Oregon. We did this by a majority vote of the subscribers to the cable system in all three communities—authorizing an increase in our monthly rate sufficient to enable the cable system to construct and maintain microwave stations to bring in signals of the Portland stations, three network affiliates and the Portland ETV channel, after which franchises were granted to the cable system in all three communities for this extension of service.

During 1964 KTVR, channel 13, a satellite station of channel 7, KTVB of Boise, Idaho, was licensed and began operations in La Grande, Oreg. Subsequently, the cable system began carrying channel 13, although it meant that channel 6, an NBC affiliate from Spokane, Wash., had to be eliminated.

The following is a listing of the stations whose signals are carried on the cable system indicating affiliation, the channel over which the television stations broadcast and the channel on which the cable viewers in Baker see those signals:

Affiliation	Location and broadcast channel	Cable channel
NBC	Channel 8—Portland	Channel 9.
CBS	Channel 6—Portland	Channel 7.
CBS	Channel 4—Spokane	Channel 4.
ABC	Channel 2—Spokane	Channel 2.
ABC	Channel 2—Portland	Channel 6.
ETV	Channel 10—Portland	Channel 11.
NBC—ABC—IND	Channel 13—La Grande	Channel 13.
IND [1]	Channel 12—Portland	Channel 11.

[1] The ETV station, channel 10, Portland, does not telecast all day. When it is not on the air, the cable system carries channel 12, Portland.

We, the citizens of Baker, feel that we are an integral part of our CATV system which is known as Eastern Oregon TV, Inc. We feel that we have bought and are voluntarily paying for the television which we now enjoy. In fact, through cooperation with the operator of our CATV system, we have over the past 11 years of operation determined the type of cable operation which we feel is in our best interest and have gone to some lengths to establish the best possible television reception we can reasonably obtain.

We have no quarrel with the carriage requirements set forth by the FCC, as we feel that the La Grande station has a place in our TV spectrum. It gives our people in Baker an opportunity to have and to see some Baker events covered by television and for some of us to occasionally get on TV. I think everybody is a ham at heart. I'm sure you have observed the audience at a baseball or football game when the cameras are turned on them.

We do not believe, however, that the La Grande station should be considered a local station with respect to Baker because (1) it is located some 40 miles to the north of Baker and is in a completely separate and distinct valley, and (2) we do not feel that under any circumstances should a satellite station which is merely an extension of a parent station for the purpose of expanding the economic base, ever be considered a "local" station and entitled to such protection as would be given to such a station by the FCC.

Channel 13, the newcomer, has not been content to live peacefully with the established CATV system, but has demanded the complete nonduplication protection as provided for by the FCC rules. If compliance is required in spite of the petition for waiver filed by our CATV system, the result will be a complete disruption of our television service in complete disregard of what our people want, worked and paid for in the way of television viewing. The net effect of the FCC action in this regard is that the FCC is telling the people of Baker what they are going to be permitted to view and at what time, on the premise that the FCC is acting in their best interest.

Our local CATV subscribers resent this intrusion by outsiders, namely, the FCC and Boise, Idaho, television interests, in making us again choose between loss of Oregon relationships or loss of many favorite television programs.

We submit that we are much better qualified to determine what is in our best interest in terms of reception of television service in our area and our circumstance than either the FCC or Boise television interests.

The nonduplication requirement, other than simultaneous, will seriously disrupt established viewing patterns of the people of Baker, will require us to make choices between Oregon programs, news, and special events which we are not now required to make and will seriously curtail the television service which we now receive.

Much of this difficulty arises in our area because the parent station, channel 7 of Boise, Idaho, is located in the mountain time zone and we are in the Pacific time zone.

Some of the programs broadcast by the La Grande station are received by network feed from the East. All other stations receive their programs on the west coast delayed network feed. Programs broadcast by La Grande are, therefore, broadcast 2 hours later by the other stations. This means, for example, that the "Sunday Night Movie" (ABC) is broadcast from La Grande at 7 p.m., Pacific time and is broadcast from Portland and Spokane at 9 p.m., Pacific time.

I would like to give you a few more examples of the channel confusion which will result from the FCC orders.

The "Tuesday Night Movie" is telecast on Tuesday evenings at 6 p.m. by the La Grande station, and is carried, of course, by the cable system. At the same time, channel 8 from Portland telecasts Huntley-Brinkley and thereafter Oregon local news which is carried on the cable system. If same-day nonduplication is required the cable viewers will not be able to see the "Tuesday Night Movie" at a later time that evening when it is telecast by channel 8 from Portland. This means that a 6 p.m. in the evening the viewers have a dilemma in terms of choice of program. At 6:30 p.m. on Monday evening channel 13 carries "Jesse James." At the same time, channel 8 from Portland carries Portland local news and channel 6 from Portland carries Walter Cronkite; those wishing to see either Portland local news or Walter Cronkite must forego "Jesse James" because same-day nonduplication protection will mean that when "Jesse James" is telecast by channel 8 later in the evening it will be blacked out.

One of the ridiculous effects will be to throw a prime time NBC program against another prime time NBC program. "The Virginian" is broadcast over Portland channel 8 from 7:30 to 9 p.m., Wednesday evening. It is immediately followed (9–10) by "Bob Hope." La Grande has demanded nonduplication of the "Bob Hope" program which it broadcasts at 8–9 p.m. The viewer who customarily watches both programs must now give up one or the other, because La Grande does not carry "The Virginian."

With your indulgence I would like to give you two more examples that I will personally be required to contend with in my own household. On Wednesday nights I ordinarily go back to the office for a couple of hours or so. Between the hours of 7 and 11 p.m., I like to watch two programs. "Outdoor Sportsman" is a ½-hour sports program which I avidly watch, originated in Portland in color by a Portland man, sponsored generally by Portland advertisers, covering hunting and fishing trips, etc., in the Northwest, comes over channel 8 Portland at 7 p.m. After I come home from the office at about 10 p.m. I like to watch "I Spy," also in color. After invocation of same-day nonduplication, I will have to choose between "Outdoor Sportsman" at 7 or "I Spy,' being broadcast on channel 13, at 7 p.m. On Thursday night my family likes to watch "Bewitched" which comes over Portland channel 2 at 9 p.m. On channel 13 it is broadcast at 6 p.m., the same time as Huntley-Brinkley and local Oregon news are broadcast over Portland channel 8 which I always watch for my news coverage. Don't you

think I am not going to have an argument with my little girl who can't watch "Witched" as well as the remaining members of my family, who will now have one of their favorite programs coming on at the same time they are doing their school homework.

To give you an idea of the manner in which channel 13 programs as a satellite, the folowing are some scheduling examples of the time of day that you see certain programs:

At 4:30 p.m. channel 13 carries Huntley-Brinkley; 5:30 on Monday, "Hullabaloo"; 5:30 p.m. Tuesday, "My Mother, the Car"; 5:30 p.m. Wednesday, "The Adams Family"; 5:30 p.m. Thursday, "Daniel Boone"; and 5:30 p.m. Friday, "Camp Runamuck." Channel 13 has a news program each weekday at 5 p.m. and 9 p.m.; this local news on Saturday and Sunday is carried at 9 p.m. only.

Channel 13 originates only about 7½ hours of local programing per week. The remainder of its broadcasting is received from its parent station, channel 7, in Boise. The quality of the reception by the satellite and the rebroadcasting is poor resulting in an inferior picture. The quality of its color transmission is extremely poor. By viewing a program received from Portland NBC channel 8 in color, to the same program broadcast by channel 13, La Grande, in color, it is obvious that the quality of the La Grande channel 13 color transmission is not nearly as clear or as bright as the color picture received from the Portland channel nor are the colors true from the La Grande transmission. Many people in our community have invested in color TV sets and many TV dealers have stocked them; however, the dealers are receiving order cancellations because of this impending problem. We feel strongly that we should not be forced to take an inferior color picture after the citizens have made a substantial investment in color TV relying on their belief that they would be able to view good quality color reception from Portland.

Our experience has shown CATV to be more than just a superior antenna service. When trouble develops, the viewer usually has no way of knowing its source. By calling the cable system we can quickly determine whether the trouble is at the station or the head end of the cable system. If it is neither of these, the cable company checks the feed to our set. If the trouble is not located by this point, it is in the set, and we then call our serviceman. This determination has been made without costing us a nickel.

I appreciate the opportunity to convey the concern of the people of Baker to this committee with respect to the pending disruption of our television fare. In conclusion, I submit and strongly urge that the public interest consists of what is best for the people who make up the public. As part of the public, we feel, it is our right to determine when we shall watch the television programs which we have determined should be brought into our area and what television programs we shall watch. Under the conditions and circumstances of our area, we feel the action of the FCC is arbitrary and capricious.

From our experience we feel that no regulation beyond that afforded by our local governments is necessary or desirable.

The CHAIRMAN. Thank you very kindly. I, too, am sorry that we do not have the time. I am not trying to cut anyone off.

Is there anyone else who wishes to present his statement?

Mrs. DUNN. I am Polly Dunn. I am from Columbus, Miss. I operate a small system there. I would like to put my statement in the record.

The CHAIRMAN. We are glad to have it.

(Mrs. Dunn's prepared statement follows:)

STATEMENT OF MRS. M. M. DUNN, COLUMBUS, MISS.

My name is Polly Dunn, and I operate a CATV system, with strictly off-the-air antenna reception, providing five television channels to subscribers in Columbus, Miss.

A local television station was opened there about a year after our system was built, and we have both been there some 12 years. We have operated, I think, as good neighbors during that time, and we have both been assets to our community.

Our system is typical of most of the CATV industry, and was referred to in the testimony of Frederick W. Ford, president of NCTA, as an example of the effects of 15-day before-and-after nonduplication protection on a CATV system during the hearings on H.R. 7715 last summer. For this reason, I was asked to come back today. My NCTA friends located me away from home on a spring vacation trip with my son, so I am a reluctant—though not hostile—witness today. They know I can always talk about my children or community antenna systems.

When you go back home, I know you gentlemen always leave the women a warm glow by inquiring about their children—I have another sure-fire gimmick for your grassroots campaign this year: Inquire about your constituents' television. You will really find intense feelings and vehement loyalty—as maybe some of you have already discovered. At the drop of a hat a man will give you a detailed rundown on his television schedule—just when and why he looks at a certain program at a certain time.

I hope I don't hurt the feelings of CBS, NBC, and ABC by telling this, but I rarely hear the networks mentioned by name in my office. Television viewers become very possessive about their favorite TV programs—instead of saying "An ABC program," they say "My program on Friday night," or "My program every morning."

Recently, one afternoon the phone rang in my office, and a woman said, "Is your TV set working?" "Yes." "I'll be right there." She came scurrying in, pulled up a chair and sat, without a word, for 30 minutes, intent upon her program. Only when it was over did she speak to us, then she said: "I have a roominghouse, and I work hard all day. I get up early and I work late and this is the only time during the day that I can sit down. It helps me all day to know that when the noon dishes are done, and before I have to start supper, I am going to have this break. I look forward to it. Thank you very much. My set wouldn't come on today, and I didn't want to miss my program." I invite any one of you men to come home with me and face her when I cut it off because the local channel carries it earlier.

I know men who count on settling down after supper on Friday night to a good masculine evening of "Hogan's Heroes," and "Wild Wild West," beginning at 8:30.

I'd also like to have some of you there to be the one to suggest to these men that they just plan to come home from work an hour or two earlier so they can be ready to start their evening at 6:30, and see it on the local channel. These same men are going to be quick to say to me "I'm on the cable because I want five channels of television, and I am paying you to be able to see five channels. If you cut off one channel practically all day, and another is gone all morning, are you going to give me 20 percent of my money back?"

Gentlemen, I could not reduce our income by 20 percent and stay in business.

It seems to me that underlying all this discussion about CATV are a number of assumptions that simply are not realistic.

One is that television is strictly entertainment which is chosen at leisure mainly beween 6 and 10 p.m., and all on sets in perfect working order. This may be well and good for the 8-to-5 folks, but it certainly discriminates against the hard-working people whose hours are entirely different. Policemen, firemen, gas station attendants, military personnel, and thousands of other people—the night people—who work in the corner drugstore, the factory, or in any of hundreds of nighttime occupations.

Television has moved out of the sphere of detached entertainment and has moved into the home to visit like a beloved neighbor with Mama, to babysit for the little ones, and to provide the best seat in the house for Dad's sports.

This is particularly noticeable with our newcomers to town. If they are to like Columbus, it is important that they are not cut off from their daily TV personalities, who in a very real sense, are their only familiar friends when they come to a new and lonely place.

People want community antenna television. They want good, sharp signals. They want a variety of programs; and as good patriotic Americans, they think they are entitled to this choice.

When they go visiting with their favorite TV heroes—be they professional football players or Aunt Bea of Mayberry—they want them to look their best.

And like the mailman or the paperboy who comes around the same time each day, TV viewers like their TV friends to be there at the accustomed time—on the

accustomed channel. On one channel alone which we now receive, we would have to black out 90 percent of the programing—some of this programing is on at times different from the local station, some of it is presented simultaneously.

I am appalled by the ease with which these nonduplication rules are tossed around—as if it were easy, and quick, and simple, with money and technical problems no consideration at all. This isn't done by pushing a button at the office, you know. It is done by specially manufactured electronic switching devices which must be preprogramed by the system operator with information as to dates and time and channel numbers which will be affected.

As a matter of fact, it would be impossible for everyone to comply within the presently imposed time limit—there simply is an insufficient supply of nonduplicating switching equipment available now. Some is still on the designing boards and some in the experimental stage. I think this time limit is ridiculous under the circumstances.

Have you ever had a constituent say to you "Why didn't you answer my letter sooner?" "Why didn't you get all that material together and out to all of us in 2 days?" After all, you could have done this—if you had just found and added more trained people to your staff and purchased and installed more and costly office equipment.

Anybody for magic?

If we are going to be asked to curtail our service, antagonize our subscribers, and spend a whole of a lot of money for the privilege, consideration should at least be made for the time element.

Right now, I understand only one manufacturer produces nonduplication equipment and this manufacturer is not geared to mass production. Until manufacturers can design and mass produce these switchers, nonduplication compliance is almost impossible.

Without an automatic electronic device, the switching would have to be done by hand, and it could not be done in comfort at the office. It has to be done at the antenna tower, where the head-end equipment is in a little house not any bigger than a minute. My control house is out in an area subject to floods, so it is on 18-foot stilts, a square little wood box with a roof—no water, no air conditioning (have you ever been in a hot box in Mississippi in the summer?), no sanitary facilities, but scads of mosquitoes.

To have someone on duty from early in the morning until late at night, Saturday and Sunday included, would require several new employees—we couldn't use just anyone either—it would have to be someone intelligent enough to keep up with the complicated schedule, and also technically trained to make the proper electronic changeovers.

I have studied the timing schedules enough that I might qualify there, but I don't believe my head technician would trust me to tamper with his equipment.

I keep reading about these rich CATV operators to whom expense is no object, but I have not met many. In my part of the country, the systems are small and are owned by small businessmen.

The very newness of our business, the high quality of service we must maintain, and the increasing demand for our service keeps us reinvesting in the latest equipment and the very expensive construction necessary to keep up with expanding cities.

The outlay required for either manual or automated nonduplication would be a sizable and unfair burden for must of us to carry.

Anyway, right is right—and wrong is wrong. I simply cannot concede that it is right for me to have to turn off a channel from my subscriber's sets when it is not required of my next door neighbor who can receive the same channel from his rooftop antenna.

I read an FCC Commissioner's individual comment about recent letters sent to Congress, implying that they were not the sincere expression of the constituents. I wish that gentleman had been in my office to face the indignation and resentment that was expressed in no uncertain terms by my subscribers.

People may be somewhat critical of the administration's policy, or mildly concerned about a local bond issue—but you tamper with their television viewing habits and you've hit an explosion. Recently, men came storming into my office, saying they would never watch the local channel if it was responsible for their not being able to watch a program when and where they wanted to. I spent more time calming them down than otherwise. Again and again I explained that the announced rules did not originate with their local broadcaster,

that we both offer worthwhile service, that Columbus needs both of us, that Congress is going to look into this, and hopefully they will think this as unjust as we do. Certainly, we have both been in Columbus for 12 years, and we don't need the FCC to tell us how to get along.

Maybe, like Will Rogers, with that small army of folks ready to do battle for me, I missed a chance for some political office. Most of you are too young to remember the Democratic Convention of 1932—but Will Rogers said that if he had not been asleep when the States each gave their favorite sons a complimentary vote, that surely he could have traded them for an ambassadorship or something.

Gentlemen, the long arm of the Government has been encircling us more and more, but when it reaches into a man's private home and turns off his own television set, he feels that things have gone too far. That's why you heard from so many people. Gentlemen, I appreciate your listening to me—and thank your stars that I didn't get started talking about my children.

Mr. HARRISON. I am John Harrison, owner of CATV community television system, Torrington, Wyo. I would like to submit before this committee my views.

The CHAIRMAN. It will be inserted in the record.

(Mr. Harrison's prepared statement follows:)

STATEMENT OF JOHN C. HARRISON, TORRINGTON, WYO.

My name is John C. Harrison. I am the owner of a CATV system in Torrington, Wyo., serving 272 subscribers.

I appear before you to outline the adverse effects of the same-day nonduplication rule established by the Federal Communications Commission in its second report and order regulating all CATV systems, issued March 8, 1966.

Torrington, Wyo., is a community with a population of approximately 4,300. The only television service in the community is provided by a television station from another State, KSTF, Scottsbluff, Nebr., a satellite station of KFBC, Cheyenne, Wyo. This signal is also receivable in the area, although of poor quality. However, since both stations basically televise the same programing, for all intents and purposes, the Scottsbluff station provides the only television service in the area.

Programing is about identical except for local Nebraska news, sports, and area weather information.

Television station KSTF is affiliated with all three national networks. Therefore, there is no way for Torrington residents to view off the air the full programing offered by all three national television networks.

The Torrington community antenna television system came into being to provide this three-full-network service to the public.

In order to bring this service to the community, it was necessary for one to construct an expensive microwave relay system to bring into Torrington the three closest full-network-affiliated stations, which are located in Denver, Colo.

Moreover, because of the mutual interests of myself, the Torrington City Council, and the Torrington School Board, the signal of the Denver educational television station is also brought in by microwave relay at additional expense to the system and made available to all the schools of Torrington at no charge.

The Torrington system began operations 18 months ago, providing its subscribers with the signals of the Scottsbluff and Cheyenne stations, received off the air, and the four Denver signals brought in by microwave relay.

Inasmuch as Torrington CATV was thus a microwave-served system, we began operations under the FCC's interim 15-day before-and-after nonduplication rule as required under the Commission's then active rulemaking procedure in dockets Nos. 14895 and 15233.

Thus, the Torrington CATV system has had long experience in providing nonduplication protection to the local television station.

Under the new FCC rules set forth in the Commission's second report and order, the 15-day before-and-after nonduplication requirement will be reduced to same-day nonduplication effective April 18.

In its recent order, the FCC states that same-day nonduplication will "minimize any disruption to the CATV subscribers."

I submit that this is not the case. Whether 15-day before-and-after or same-day nonduplication, the CATV subscriber is still considerably inconvenienced in his family's television viewing. Regardless of whether the nonduplication protecton is for 15 minutes or 15 days, the same adverse effects apply. Let me outline for you eight separate and distinct aspects of same-day nonduplication as they affect the cable television subscriber:

(1) The subscriber cannot rely upon television program schedules as published in TV Guide or daily newspapers to inform him of programing available at any given hour.

Obviously, neither TV Guide, published on a wide-area basis, nor the Denver and Cheyenne newspapers—those papers most widely circulated in Torrington—can single out for Torrington's 272 cable television homes those programs from the Denver station which will not be available to Torrington CATV subscribers because of the nonduplication that must be provided to the Scottsbluff station. Although Torrington publishes a weekly newspaper, in which we list only the programing available to subscribers, taking into account the protection we must afford KSTF, residents of Torrington, rely heavily upon TV Guide as their major source of television information, are understandably confused and displeased when they notice programs available on the Denver stations at particular times but which are not presented on the cable system.

(2) Even though we list the complete programing of KSTF—1 week in advance in this weekly newspaper—programs many times are not shown by KSTF as scheduled. We do not know all the reasons for these scheduled program cancellations; however, they do occur and in most instances the station does not announce the program changes in advance. Thus, CATV subscribers are deprived completely from seeing certain network television offerings. This occurs because we have to "black out" the same program shown earlier in the evening on one of the Denver stations, which is scheduled for later the same evening by KSTF.

Thus, if KSTF fails to present the program, it is lost forever to the CATV viewer.

Such occurrences are particularly disturbing to the cable TV audience when the programs involved are episodes in nationally popular programs which appear as continuing series—for example, such programs as "Peyton Place" and "Lost in Space."

(3) Another circumstance—not unique to the Scottsbluff station, but applicable to many stations that broadcast a considerable amount of their programing on a delayed basis—is the practice we call "offsetting" of television shows. For example, a full network station may televise an hour-long program from, say, 6 to 7 p.m. A station affiliated with two of the networks or all three such as KSTF, may delay showing the same hour-long program by half an hour, presenting the show therefore between 6:30 and 7:30 p.m.

Since many network programs are 1 hour in length, a local station operating on a delayed basis can program his station against other television stations available to viewers—whether off the air or on CATV—in such a way that if a viewer elects to watch the local station's program, he will be denied the opportunity to see either full hour programs or half hour programs on other channels during the time period immediately preceeding or following the time of the local program.

For example, program A—an hour-long show—is presented by the local station from 6:30 to 7:30 p.m. The same program is telecast by another more distant station received by Torrington CATV, beginning one-half hour earlier—running from 6 to 7 p.m. This distant station has a half hour show—we'll call it program B—from 7 to 7:30. This particular show—program B—is not carried by the local station or any other station received by the cable system, or available off the air.

Thus, if a viewer wants to see program A, he must see it on the local channel and time, and if he chooses to watch it in its entirety, he forever loses an opportunity to see program B.

This starts a chain reaction throughout the programing for the rest of the evening. Half hour shows as well as hour-length shows are offset against other station offerings.

If it were not for the local station's "offsetting" practices, program A would be available on two outlets at the same time and viewers would not lose program B.

Now, I admit that, to a lesser degree, the networks themselves engage in this offsetting practice in order to attract viewers to their programs. But, given an opportunity to take programs from all three networks, a television station operating with delayed programing can compound this disturbing problem enormously.

(4) Another disturbing factor for Torrington cable viewers is the practice by KSTF of "joining a program in progress," even though the station has previously announced it would carry the program in its entirety.

For example, last fall KSTF announced that it would carry in full the last game of the World Series. One of the Denver stations received on our system was also scheduled to televise the complete game. Under the nonduplication rule we had to "black out" the Denver telecast.

We do this by automatic switching equipment programed in advanced once we have received from KSTF a listing of the particular programs on particular days for which the station requests protection.

Thus, upon notice from KSTF that they would carry in its entirety this most significant of all the world's series games—the last one—we programed our switching equipment to "black out" the Denver signal.

However, on the day of the game, without advance notice, KSTF substituted for the first hour of the game another program, following which the station then cut directly to the remaining portion of the game—in other words, "joined it in progress."

Gentlemen, this is not an isolated case.

(5) A frequent practice of station KSTF is to delay showings of network family-type programs for late-hour viewing, thus forever making these programs unavailable to juvenile members of the family. Such popular programs as "Daktari" and "Hollywood Palace" are current cases in point. These shows are telecast by the Denver stations received on our system during early evening family hours, but are delayed for late showing on KSTF from 10:30 to 11:30 p.m. Therefore, under the same-day nonduplication rule, we are required to "black out" the more appropriate showing times.

On several occasions, KSTF has scheduled for late evening and on a delayed basis programs of educational value which are recommended to students by school teachers and other school officials.

These programs are generally available at earlier, more suitable times on one of the Denver stations. However, because of the requirement to furnish KSTF with program protection, these earlier telecasts from Denver cannot be shown on the cable system.

In effect, this deprives the student of the educational benefit he would otherwise derive from viewing the program—that is, unless his parents permit him to stay up late on a school night—a practice which I as a parent do not condone, nor do most parents I know.

(6) A less important but nevertheless significant point is certain advertising practices of the local station which prevent cable viewers from seeing the entire contents of certain programs not otherwise available because of the nonduplication requirement.

For example, on a recent showing of a nightly network newscast featuring a nationally known television commentator, KSTF inserted a local commercial over the last 5 minutes of the program. This program shown later by one of the Denver stations is, of course, not available to cable viewers due again to the nonduplication rule.

On another popular half hour daytime program, KSTF frequently in the middle of the program during the commercial break inserts its own commercials which run well into the program time, so that when the commercials are concluded, viewers find that the second portion of the program is already in progress.

(7) The FCC, in its second report and order, refers to comments by CATV operators urging the Commission to permit duplication of programs telecast in color when a CATV operator makes a showing that the technical quality of the local signal is "substantially inferior" to another signal.

The Commission then continues, expressing the opinion that most problems in this regard could be resolved by joint "good faith efforts" by the CATV and TV station operators.

As a last resort, the FCC says it would consider any showing of a "substantially inferior" signal on a case-by-case basis.

Gentlemen, we, like other CATV operators who must protect small market TV station, have experienced this problem of inferior local color broadcasts.

We have cooperated in good faith with the station, which, in turn, has cooperated in kind with us. Whenever the quality of their color signal has been questioned by us, they do make attempts to correct it. And for several days their color transmission will be of acceptable quality. Unfortunately, their transmissions soon return to a subtsandard quality, apparently because of inadequate color equipment.

The Torrington CATV system, because of its small size—272 subscribers—could not afford to retain knowledgeable Washington counsel to seek an FCC waiver of the ruling under the provisions of the Second Report and Order.

(8) In its second report and order the FCC said that there may be instances where the programing of stations located within a State would be of greater interest than those of nearer out-of-State stations—that is, coverage of political elections and other public affairs of statewide concern. The Commission said that it recognizes also that there may be instances where out-of-State stations located in another State are of greater community interest than the geographically nearer out-of-State stations because of closer community ties. Considerations of this nature, it said, will be accorded substantial weight as a basis for waiver of the carriage provisions.

Gentlemen, may I point out that this circustance applies to the Torrington, Wyo., system which is required to protect a Nebraska television station whose news and similar programing is oriented toward Nebraska residents, not the people of Wyoming.

Again, the Torrington system, small in size with only 272 subscribers cannot afford to retain Washington counsel to seek an FCC waiver of this particular rule.

Because of the adverse conditions which I have cited for you, it has been extremely difficult for us to add new subscribers to our system. And our current subscribers feel they are being discriminated against. They ask us "Why should our choice of programs be reduced, particularly in the evening, to a selection between only two networks when the people in Denver have a choice of all three?"

The economic impact of these same-day nonduplication rules are having and will continue to have an adverse effect upon our economic viability. We can stay in operation only by retaining satisfied customers and by adding new subscribers to our system. Present subscribers are not satisfied; new subscribers are not being added on—due to these discriminatory nonduplication rules.

Gentlemen, I thank you for this opportunity to appear here before you today.

The CHAIRMAN. Does anyone else have a statement to put in the record? If so, they may proceed to do so. Those of you who are not able to testify today and do want to come back, if you will talk to the clerk of the committee he will give you a date. I believe that will be April 5 when the hearings on this subject will resume again. We have to take up another subject next week.

This committee stands adjourned.

(The following statement was submitted by Mr. Thomas Shelburne:)

STATEMENT OF THOMAS P. SHELBURNE, GENERAL MANAGER, WNEP-TV, SCRANTON, PA.

My name is Thomas P. Shelburne. I am general manager of Taft Broadcasting Co.'s UHF station WNEP-TV in Scranton-Wilkes-Barre, Pa. Taft also owns and operates VHF stations in Cincinnati and Columbus, Ohio; Buffalo, N.Y.; Kansas City, Mo.; and Birmingham, Ala.; and another UHF station in Lexington, Ky.

Scranton-Wilkes-Barre is an all UHF market. It has three full network affiliates on the air and a new educational station now being developed for operation shortly. In addition there are two vacant commercial channels which are available for possible future use.

I am here today representing Taft because, while all of its stations face CATV problems, CATV has been longer established and more widely distributed in the Scranton-Wilkes-Barre area than possibly any other area in the country.

As a television operator, my primary interest is not in the details of the two bills before you, but rather in urging you to approve a bill which will eliminate any doubt that the Commission's new rules are within its power. Prompt legislation will eliminate delays in enforcement of the Commission's orders and, I hope, will encourage it to take even firmer action in the future. H.R. 13286 is such a bill and I therefore support it. The CATV situation is fast getting out of hand because the Commission has not moved forcefully in the past to solve it and I do not think we can afford further delays.

CATV, as we know it today, began in our area of northeast Pennsylvania. The terrain is rugged around Scranton-Wilkes-Barre and, as a result, CATV originally performed a useful function in bringing television reception to people whose homes were blocked from direct reception by mountains.

CATV can and should still perform that function, but it has changed since 1949 and let me speak briefly about the ways in which it has changed and the impact it now has on local broadcasting in our area.

There are today in the Scranton-Wilkes-Barre service area alone about 140,000 television homes which subscribe to CATV. That amounts to about 30 percent of the total potential audience of the Scranton-Wilkes-Barre stations, which is about 450,000 television homes. Of these 140,000 homes, about 118,000—or roughly 85 percent of all the CATV subscribers in our area, receive at least one signal from New York, Philadelphia, or elsewhere which duplicates WNEP–TV. About 66,000 of these, or more than half, cannot watch WNEP–TV at all because the CATV does not carry it. Even in Wilkes-Barre itself there is a CATV which does not carry WNEP–TV. These 66,000 viewers are deprived of local service, and we are deprived of homes we are entitled to serve. That this situation has come to exist is bad; to permit it to be continued would be inexcusable.

Noncarriage is not the only CATV practice which impairs existing service and blocks the development of new service. The more stations that CATV brings into a market, the harder it is for existing stations to survive and the more difficult it is for new stations to begin. There is no city in America today large enough to support 12 or 20 stations. When CATVs bring into our market stations from New York, Philadelphia, and other cities they dilute our audience and they dilute the potential audience of new stations.

When a CATV brings in distant big city stations that carry the same programs we carry and thus duplicate—and in some instances triplicate—our programing, our potential audience is cut to a half or a third. We could not continue to operate WNEP–TV and provide the local public service programing we provide today with only a third or a half of our present audience.

Even when CATVs bring in distant stations which do not duplicate our programing—for example, the New York independents—our audience is further diluted as is the potential audience of a new station in Scranton-Wilkes-Barre.

Not being carried, being duplicated or being triplicated and having distant big city independent stations brought into the Scranton-Wilkes-Barre area is a heavy burden for an existing station. I am convinced it would be an insurmountable barrier to the entry of a new station.

CATV in our market is growing rapidly in the number of systems operating, the size of systems, and the number of channels they carry:

1. During the first 6 months of 1965 there were 90 applications in 54 municipalities, including Scranton and Wilkes-Barre, within our immediate metropolitan area alone, all of which propose to bring in New York stations.

2. There are today more than 90 CATV systems in our area. Already, 29 of them serving 100,000 homes, each carries between 7 and 12 channels. A few years ago a CATV system with more than five channels was rare or nonexistent.

3. Two CATVs in our area—in addition to carrying 10 or more television channels and pay TV programing such as championship fights—now maintain studios, originate their own programs, sell advertising, and originate their own commercials.

In short, in Scranton—Wilkes-Barre, CATV is now moving into cities and towns which have good off-the-air reception, transforming 3 station markets into 12 station markets, originating programing, and combining pay television programing with regular television programing, all without paying for any programs they receive off the air.

If this is not stopped, the public will soon find itself getting exactly the same national programs with exactly the same national advertising as today, but

paying for them rather than getting them free. People in rural areas will have nothing. People who cannot afford pay television will have nothing. And, with the possible exception of New York and Los Angeles, there will be no local stations.

All of the facts I have given about CATV in our area and its impact on us and on potential new stations in Scranton, Wilkes-Barre have nothing to do with whether CATV is microwave fed or off the air. Some may believe that whether or not a CATV is microwave fed is relevant to the Federal Communications Commission's jurisdiction but I can assure you that it is not relevant to the problem of providing effective broadcasting service. In Scranton, Wilkes-Barre, for example, more than 70,000 homes or more than half of all the present CATV homes are served by CATV's which have no microwave service. Nearly every CATV in our area brings in at least some distant signals without microwave. All of the homes in our immediate area for which new franchises are being sought and obtained could if necessary receive all the New York and Philadelphia stations without microwave. For this reason, if there is any question remaining about the Commission's authority to regulate nonmicrowave CATV, I urge you to eliminate it.

The basic point I have tried to make today is that we cannot afford any more delay in effectively regulating CATV if free broadcasting by local stations is to be preserved. The Commission delayed too long in adopting its present rules. Now we are threatened with further delay by court cases, waiver requests, lengthy Commission hearings, and other devices to avoid or invalidate the Commission's rules. I hope that this committee will act to frustrate that delay both by the legislation it adopts and by the steps it takes to encourage the Commission to delay no longer.

(Whereupon, at 5 p.m. the committee was recessed subject to call of the Chair.)

REGULATION OF COMMUNITY ANTENNA TELEVISION

TUESDAY, APRIL 5, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order. This morning the Committee on Interstate and Foreign Commerce is continuing its hearings on CATV legislation. Many witnesses have indicated their intention to testify at these hearings and the committee is most anxious to conclude its hearings this week.

I would, therefore, like to remind the witnesses as well as the members of the committee to do their best to conserve time and not to engage in repetitious testimony or repetitious questioning.

While the Chairman is now most anxious to have as complete a record as possible there is no purpose served in going over the same questions with witness after witness. I believe it is in the best interest of all the parties concerned to secure an early resolution of the issues which are involved in this legislation so that broadcasters, CATV operators, the Commission and the general public no longer have hanging over them the uncertainty with regard to CATV regulations which prevails at the present time.

Today we are living in a fast-changing world in which instant destruction of all civilization can perhaps only be averted by instant communications everywhere. Business, social, and political crises strike with lightning speed these days. Communications must keep pace.

So, we will continue these hearings with the hope that perhaps we can complete them this week but if we can't we will continue them at a future date.

We have with us one of our colleagues from the State of Oregon, the Honorable Al Ullman. Mr. Ullman, will you come up and proceed? We are glad to have you with us representing your great State of Oregon.

STATEMENT OF HON. AL ULLMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. ULLMAN. Thank you very much, Mr. Chairman.

I appreciate this opportunity and I congratulate the committee for holding these hearings. Because I represent one of the large rural areas in the country where this problem is particularly critical, I am

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going to do what I seldom do in committees and that is read a short statement for the committee.

Mr. Chairman and members of the committee, I am not here today as a partisan for any particular form of television transmission or reception. I think there are ample areas of responsibility for all forms—direct broadcast, community antenna systems, and translator systems. I come only to relate to the committee the circumstances that have governed the development of full network television coverage to the people of my congressional district, and to request that the committee take such circumstances into consideration in its evaluation of the complex problems under discussion here.

I am not talking now about one of the "100 major markets." I am talking about an area in Oregon of over 65,000 square miles with a widely dispersed population and with topographical features that severely limit the coverage of line of sight broadcasting.

The area of Oregon east of the Cascade Mountains has only two television broadcasting stations—one located in Klamath Falls, a city of approximately 17,000 people and the other in La Grande, a city of 9,000. The latter station is a satellite of a Boise, Idaho, outlet, and it went into operation in 1964. Neither of the stations in the district are network affiliates, but they serve their viewers with selected programing from the major networks and with local news and features. Both cities are also served by CATV.

The second largest city in the eastern Oregon area is Pendleton, with a population of 15,000. There are several cities in the 10,000 population range, and the balance of the district's citizens live in small communities and rural areas.

Mr. Chairman, many of these areas have served as the cradle for community antenna systems. They pioneered in the development of subscription antenna service because there was no other way. From nearby mountaintops they found and relayed signals from distant cities in the States of Washington and Idaho and from across the Cascade Mountains in Portland.

Many of these communities now have full network coverage as well as an educational television channel. This would have been an economic and physical impossibility without CATV.

The Federal Communications Commission, in imposing its rule on nonduplication, has extended the application of the rule to the grade B contour of the broadcasting station. I would like to cite just one instance where this has posed difficulties and where it has aroused the apprehensions of the people of my district.

The city of Pendleton, which I mentioned earlier as the second largest city in Oregon east of the Cascades, is located in a narrow valley. The people for many years have received network television programing from Spokane, Wash. Recently they have anticipated shifting to Portland, Oreg., so they can receive news and features of their own State as well as the education television channel operated by the State department of education.

Their application for a microwave license has apparently been jeopardized by the controversy that has arisen over the nonduplication ruling, and the feasibility of the expensive change is now in question.

By virtue of the grade B contour forms on the FCC map, Pendleton now finds itself to be in the broadcast area of two television stations that are far out of range of normal home reception systems.

One station is in Pasco, Wash., 50 miles to the north. Its signal does not penetrate the valley in which Pendleton is located. The other station is in La Grande, Oreg., 50 miles east over a 6,000-foot mountain range.

As I mentioned earlier, this latter station is a satellite of Boise, Idaho, with broadcasts originating in a different time zone.

Thus, the ruling has imposed upon this city two so-called local stations with which there is no community of interest, little commercial interchange and no opportunity for true local news and features.

The ruling has not benefited the people of Pendleton. In fact, it has threatened their hope for an improved service. It promises nothing but confusion in programing and schedules, and it has relegated the city to a stepsister relationship with two distant neighbors.

The ruling has also had the effect of extending the coverage of the two broadcast stations into an area far beyond their normal operating range. I suggest that, while this is a worthwhile benefit, it should not be achieved at the cost of sacrificing the citizens of Pendleton to perpetual out-of-State broadcasting and scheduled confusion.

Mr. Chairman, I urge the committee to consider a limitation of the nonduplication ruling outside of the 100 major markets—and here I want to emphasize that these market areas should be treated all together separately—to the actual broadcast areas of the television stations. To go beyond that, it seems to me, serves only to swing the pendulum of FCC authority from the area of regulation to that of economic enhancement of certain segments of the regulated industry.

In the committee's recent sessions on CATV a witness representing the Citizens TV Committee of Baker, Oreg., was scheduled to testify. I regret that he was unable to appear personally and instead filed a written statement with the committee.

Because the statement of the citizens TV committee goes into detail about the problems of that area, I recommend the statement of Mr. Harold Daren, of Baker, Oreg., to the committee—it has already been presented for the record—and urge that full consideration be given to avoid the detrimental impact in the community of the nonduplicating ruling in its present form.

A very comparable situation exists there. Baker is within the grade B contour of La Grande and yet the signal cannot be received directly.

Baker, like Pendleton, is being forced to substitute broadcasts originating in another State and in another time zone for those originating in the State of Oregon and at the accustomed times. I would hope that the problem of time zone differences could be solved by a modification of the nonduplication ruling to make it apply only in the case of simultaneous broadcasting.

In summary, Mr. Chairman, I request that the committee give full consideration to the requirements of continued orderly network broadcasting in those areas of the Nation, outside the 100 major markets where problems of distance, terrain, and limited population have made CATV the vehicle for complete television coverage. We must

continue to permit these communities to seek broadcast sources suitable for their viewing areas.

The zone nonduplication for any TV station should not exceed the limits of the actual broadcast signal of that station. While it may be good policy to require CATV systems to carry broadcasts within the grade B contour, this enhancement should not be further reinforced by limiting the choice and preferences of CATV viewers outside the stations normal broadcast area.

To avoid the confusion in scheduled viewing times that result from time zone differences and from the irregular programing of purchased network shows by nonnetwork broadcasters, the nonduplication ruling should be limited—and this is very important now—I am requesting that the nonduplication ruling should be limited to a nonsimultaneous ruling.

Mr. Chairman, I sincerely appreciate the opportunity to express my concern over this problem and to cite some of the difficulties that present FCC policy has imposed on the people of my district. I realize that you have a difficult national problem to contend with. I only ask that you make adequate provision in your legislative or policy recommendations for communities like those I have mentioned here.

I thank you very much for the opportunity of expressing my views to you.

The CHAIRMAN. Thank you, Congressman Ullman. Mr. Harold Daron could not be here from your State?

Mr. ULLMAN. Mr. Harold Daron could not be here. His testimony has been presented for the record. We have additional copies here which I will be glad to make available to you.

The CHAIRMAN. I might say he has a very able substitute and one who protects the interests of his State. I want to congratulate the people of your State for having you here to protect their interests. I know every citizen who gets CATV is interested in the future of CATV and broadcasting as a whole.

Mr. ULLMAN. I thank the chairman.

Mr. ROGERS of Texas. Mr. Ullman, is it your feeling that the spelling out of guidelines that would help solve the difficulties that you are speaking of should be by the Congress, or should this be determined by writing carte blanche authority to a bureau downdown?

Mr. ULLMAN. The problems I have discussed here today I feel should very definitely be under the scope of congressional action. I would certainly recommend to this committee that they resolve these basic problems here and confine the areas of coverage and of authority by the FCC.

Mr. ROGERS of Texas. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions. Thank you, Mr. Ullman, for a very fine statement.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. I have no questions. I want to compliment my colleague, Mr. Ullman for a very fine statement. I realize that it is a perplexing problem and something will have to be done to correct that.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. Congratulations to you, Mr. Ullman.

As a Congressman and as a policy matter we have before us the question of whether the FCC has authority to regulate antenna CATV under the present act.

Do you think that we should legislate and give the authority to the FCC when there is a court action pending to determine whether or not they have the authority? Should we go ahead and give the authority before we find out from the court whether they have the authority?

Mr. ULLMAN. I certainly would leave that problem to the good judgment of this committee, but it just seems to me that in the various areas of basic policy we in Congress have this responsibility and we should make the basic decisions as to where and when regulating authority should be vested in the FCC.

As to the pending matter before the courts, I would certainly leave it to the judgment of this committee whether we should allow that to prevail or whether we should make the determinations here. I think that if this committee could devise an equitable solution to the problem and could define regulatory guidelines, I would say that I have enough faith in this committee that I would very gladly leave that judgment to the committee and the Congress of the United States.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. I join in complimenting our able colleague, I have only one question.

Do you have any estimate of how manw homes in the 65,000 square miles that you represent are able to ultilize CATV and how many are denied them on account of the distance which would make the lines economically unfeasible?

Mr. ULLMAN. I would say this: The great majority of the people who enjoy TV in this 65,000 square miles enjoy it because of CATV. CATV was a pioneer, it came out of necessity. This is the only way we could get the broadcasts. There are a few relay stations in the smaller rural communities but CATV has made it possible for most of the homes to get television broadcasting.

They pioneered in the field.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Rooney.

Mr. ROONEY. I would like to commend the gentleman from Oregon, Mr. Mr. Ullman, for that very fine statement. If you were here last week, Congressman Ullman, you would have heard the Chairman of the FCC testify that the imposition of this rule was not adversely affecting any community in the United States and your testimony here clearly indicates that the people of your area and the State of Oregon are being denied the right to look at programs that they wish to watch on television. The CATV industry in your area will have a tremendous impact on the expansion of the broadcasting industry.

This is another example, a clear example that you have pointed out where the people of your community are being denied this right.

Thank you very much for your fine statement.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. No questions.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions.

The CHAIRMAN. Mr. Congressman, we thank you very kindly.

Mr. ULLMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Paul Rodgers, general counsel of the National Association of Railroad and Utilities Commissioners. Mr. Rodgers, will you take the stand, please?

If you have a prepared statement you may insert it in the record and summarize it or read it as you wish.

STATEMENT OF PAUL RODGERS, GENERAL COUNSEL, NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

Mr. RODGERS. Mr. Chairman, I have a very short statement. Seven pages. It will not take but a few minutes to read it if you will permit me.

The CHAIRMAN. Fine.

Mr. RODGERS. Mr. Chairman and members of the committee, my name is Paul Rodgers. I am the general counsel for the National Association of Railroad and Utilities Commissioners (NARUC). Commissioner Ben T. Wiggins, who is chairman of the NARUC Committee on Communications Problems and vice chairman of the Georgia Public Service Commission, had intended to present this statement today.

However, he is unable to be present because his wife is seriously ill. Only such extraordinary circumstances would cause him to miss this valuable opportunity of testifying before the committee.

The NARUC was founded in 1889. Within its membership are the governmental bodies of the 50 States and of the District of Columbia and Puerto Rico which regulate carriers and public utilities. The chief objective of the NARUC is to serve the public interest through the advancement of governmental regulation of carriers and utilities.

The members of the NARUC appreciate the opportunity you have given me as their spokesman to make their views known on H.R. 12914 and H.R. 13286 which propose amendments to the Communications Act of 1934 relative to the regulation of community antenna television (CATV) systems.

The NARUC does not favor the enactment of either one of these bills over the other, but rather we seek to add to these bills language which would clarify the responsibility of the States in the regulation of the local aspects of the CATV industry.

The major concern of these bills is with the regulation of the television program market. H.R. 12914 seeks to eliminate the regulation of this program market which was recently instituted by the Federal Communications Commission (FCC), while H.R. 13286 seeks to confirm such regulation.

On the other hand, the interest of the NARUC is focused upon the franchising of CATV systems and the regulation of their rates and services by the State commissions.

Aside from the interstate signal pickup, the business of CATV companies is primarily local in character because of its relatively small number of subscribers and limited service area.

In general, the State commissions possess the willingness, the knowledge, and the manpower necessary to adequately regulate in the public interest the local aspects of CATV.

I am confident that the members of this committee share with me the philosophy that it is best to keep government close to the governed when practicable, and that unnecessary concentrations of power are antagonistic to the public welfare.

The NARUC at its annual convention in New York City, adopted on October 2, 1965, a resolution directing its general counsel to draft a model act providing for the State regulation of CATV.

This resolution noted that "CATV companies are endowed with the monopolistic characteristics of public utilities" because of their cable distribution facilities which are analogous to those of electric and telephone utilities. Both classes of these distribution facilities generally require the use of the public streets and highways.

The resolution further stated that the "television transmission distribution facilities of CATV companies are generally attached to the poles of telephone and electric companies, which poles frequently do not provide sufficient space to accommodate more than one CATV company in any one area."

The resolution also recognized that "State regulation of CATV systems is in the public interest because it would protect viewers from exorbitant charges and degraded service."

In accordance with the resolution, I have drafted a model State CATV act, a copy of which is annexed to this statement.

The model act provides for the regulation of CATV companies as public utilities. It provides for the issuance of certificates of public convenience and necessity for the furnishing of CATV service based on the suitability of the applicant and the public need.

It permits the continued operation of existing systems. It provides for the regulation of rates and services. It prohibits unjust discrimination between subscribers.

Public utility type regulation of CATV companies will guard the public against unreasonable rates and will prevent the uneconomic duplication of distribution facilities which would otherwise burden ratepayers and unnecessarily clutter the public streets and utility rights-of-way.

I believe you will find the model act to be comprehensive in scope and firmly oriented upon the public interest.

The draft of the model act is presently being studied by the NARUC Committee on Communications Problems. I anticipate that this study will be completed by the committee in the near future and that its recommendations thereon will lay the foundation for broad and comprehensive State regulation of the CATV industry on the local level.

As you can see, the Federal and State regulatory objectives relative to CATV are distinct and compatible. The FCC seeks to regulate the television program market, while the State commissions seek to regulate the rates, services and operating territory of CATV companies.

We believe that this represents the proper line of demarcation between Federal and State responsibilities in this matter. The line logically divides the interstate and intrastate phases of regulation.

We understand on the basis of the explanation accompanying the FCC proposal reflected by H.R. 13286, that the FCC shares our views as to the appropriate role of the States in the regulation of the CATV industry.

We particularly appreciate the consideration which the FCC has shown for State responsibility in this matter as evidenced by subsection (c) of section 331 of H.R. 13286. However, we seek clarification of this provision so as to more clearly define State responsibilities.

The Communications Act of 1934, from its inception, has shown a wholesome regard for State action in the handling of local problems. Section 221(b) of the act permits State and local regulation of the charges, classifications, practices, services and facilities in connection with telephone exchange service, "even though a portion of such exchange service constitutes interstate or foreign communication."

This Federal-State partnership in the regulation of the telecommunications industry has served the public well and under this partnership, the telecommunications industry has prospered and grown to be one of the proudest accomplishments of modern day America.

We believe that this Federal-State relationship, which has worked so well in the telecommunications industry, should be extended to the regulation of the CATV industry. However, effective State regulation of the CATV industry requires the addition of language to the bills under consideration which would clarify and strengthen State responsibility in this area.

The key provision of H.R. 13286, which is section 331(a)(1), authorizes the FCC "to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the construction, technical characteristics, and operation of community antenna systems, to the extent necessary to carry out the purposes of this act, with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services."

The breadth of this provision could easily be interpreted to permit the FCC, under different leadership, to totally preempt the regulation of the CATV industry. Therefore, we believe it is very important for the Congress in enacting legislation in this matter to precisely define the regulatory role of the States.

In the case of H.R. 13286, we respectfully request that subsection (c) of section 331 be revised to read as follows:

> Nothing in this act shall be construed to apply, or to give the Commission jurisdiction, with respect to subscribers rates, charges and classifications, franchises, safety of operation and equipment, or location of distribution facilities (but not including the distribution of signals through such facilities) for or in connection with community antenna systems, even though engaged in interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.
>
> Nothing in this act shall preclude or supersede regulation by a State commission or local governmental authority of any other practice, service, facility, or activity of community antenna systems, even though engaged in interstate or foreign communication, except to the extent of direct conflict with the provisions of the act.

The first sentence of our proposed subsection (c) reserves to the States the franchising of CATV companies, and the regulation of their rates, safety of operation, and the location of their distribution facilities in the public streets and elsewhere. These regulatory objectives are purely of a local concern.

The second sentence of our proposal permits the States to regulate other aspects of CATV systems which have not been preempted by FCC regulations under the provisions of the act.

If the committee chooses to report out H.R. 12914, then we respectfully request that our proposed language even be added to it.

We believe that the enactment of our proposal is necessary to effectively regulate CATV companies in the public interest and to maintain the vitality of the State and local institutions in the handling of local problems.

In closing, I wish to invite the members of this committee to call upon me or the other members of the staff of the NARUC whenever you need information concerning State regulations.

Thank you for your attention.

(The document referred to follows:)

MODEL STATE COMMUNITY ANTENNA TELEVISION SYSTEM ACT

(Prepared by Paul Rodgers, General Counsel of the National Association of Railroad and Utilities Commissioners, Washington, D.C.)

AN ACT To provide for the comprehensive regulation of persons and organizations owning, controlling, operating, and managing community antenna television systems[1]

Be it enacted by the legislature of this State.

SECTION 1. SHORT TITLE.—This Act shall be known, and may be cited, as the "State Community Antenna Television System Act."

SEC. 2. DEFINITIONS.—The following words, when used in this Act, shall have the following meanings, unless otherwise clearly apparent from the context:

(a) The word "Commission" shall mean the Public Service Commission of this State;

(b) The words "community antenna television company" or "CATV company" shall mean any person or organization which owns, controls, operates, or manages a community antenna television system; except that such definition shall not include (i) a telephone, telegraph, or electric utility regulated by the Commission in a case where it merely leases or rents to a CATV company wires or cables for the redistribution of television signals to or toward subscribers of such CATV company, or (ii) a telegraph utility regulated by the Commission in a case where it merely provides communication channel service under published tariffs filed with the Commission to a CATV company for the redistribution of television signals to or toward subscribers of such CATV company;

(c) The words "community antenna television system" or "CATV system" shall mean any facility within this State which is constructed in whole or in part in, on, under or over any highway or other public place and which is operated to perform for hire the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable, or other means to members of the public who subscribe to such service; except that such definition shall not include (i) any system which serves fewer than 50 subscribers, or (ii) any system which serves only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of such dwellings.

(d) The word "facility" shall include all real property, antennas, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures, and other personal property used by a CATV company in providing service to its subscribers; and

[1] The title should be completed in such detail as will satisfy the legal requirements of the State involved.

(e) The word "highway" shall include every street, road, alley, thoroughfare, way, or place of any kind used by the public or open to the use of the public as a matter of right for the purpose of vehicular traffic.

SEC. 3. DECLARATION OF PUBLIC POLICY.—Upon investigation, the Legislature of this State has determined that the rates, services, and operations of community antenna television companies are affected with a public interest and it is hereby declared to be the policy of this State to provide fair regulation of CATV companies in the interest of the public, to promote adequate, economical, and efficient CATV system service to citizens and residents of this State, to provide just and reasonable rates and charges for CATV system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, to encourage and promote harmony between CATV companies and their subscribers, to cooperate with other States and with the Federal Government in promoting and coordinating efforts to effectively regulate CATV companies in the public interest, and to these ends, to vest authority in the Commission to regulate CATV companies generally and their rates, services, and operations, in the manner and in accordance with the policies set forth in this Act.

SEC. 4. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; PROVISO; APPLICATION; NOTICE; HEARINGS; ISSUANCE.—(a) No person or organization shall hereafter begin the construction, extension, or operation of a CATV system or acquire ownership or control thereof without first obtaining from the Commission a certificate that the present or future public convenience and necessity require or will require such construction, extension, operation, or acquisition: *Provided, however*, That the Commission may by rule and regulation exempt a CATV company from the above certificate requirement in a case where (i) its temporary acts or operations do not require the issuance of a certificate in the public interest, or (ii) its extensions of or addition to its CATV system are within its certificated territory or an adjacent uncertificated territory and such extensions or additions will promote the prompt availability of such service to prospective subscribers and at the same time prevent unnecessary and uneconomic duplication of CATV facilities as between two or more persons or organizations.

(b) The application for such a certificate of public convenience and necessity shall be in writing, shall include a description of the territory in which the CATV system is proposed to be constructed, extended, operated or acquired, shall contain such other information as the Commission may prescribe from time to time by rules and regulations or orders, and shall be accompanied by a fee of $50.

(c) Upon the filing of such an application and the payment of the fee prescribed, the Commission shall fix the time and place for a hearing thereon and shall cause notice thereof to be given to the chief executive officer of any municipality and to any telephone or telegraph utility or CATV company in the affected territory and to such other parties in interest as the Commission may deem necessary. The Commission shall also cause notice of the application to be published at least fourteen days prior to the hearing in some newspaper of general circulation in the affected territory.

(d) After such hearing, the Commission may issue to the applicant a certificate of public convenience and necessity in a form to be prescribed by it or may refuse to issue the same or may issue it for only partial exercise of the privilege sought, or may attach to the exercise of the right granted by the certificate such terms, limitations, and conditions which it deems the public interest may require. The certificate shall include a description of the territory in which the CATV system is to be constructed, extended, operated or acquired.

(e) In determining whether a certificate shall be issued, the Commission shall take into consideration, among other things, the public need for the proposed service or acquisition, the suitability of the applicant, the financial responsibility of the applicant, and the ability of the applicant to perform efficiently the service for which authority is requested.

SEC. 5. CERTIFICATION OF CATV COMPANIES OPERATING ON EFFECTIVE DATE OF ACT.—The Commission shall issue a certificate of public convenience and necessity to any CATV company lawfully engaged in the construction, extension or operation of its CATV system on the effective date of this Act, for the construction, extension or operation then being conducted, without requiring proof that public convenience and necessity will be served by such construction, extension, or operation and without further proceedings, if application for such certificate is filed with the Commission within ninety days after such date. The application shall contain the information and shall be accompanied by the fee prescribed in

the preceding section. The construction, extension, or operation of such a CATV system may be lawfully continued pending the filing of such an application and the determination of same unless the Commission orders otherwise. An application for such a certificate which is untimely shall be determined in accordance with the procedure prescribed in the preceding section and such certificate shall be issued or refused accordingly.

SEC. 6. TRANSFER OF CERTIFICATE.—No such certificate of public convenience and necessity may be transferred, assigned, or encumbered unless such transaction is first approved by the Commission.

SEC. 7. REVOCATION OR CHANGE OF CERTIFICATE.—The Commission may, after affording the holder an opportunity to be heard, revoke, suspend, or alter any such certificate of public convenience and necessity for the willful violation of any provision of this Act or the rules and regulations or orders of the Commission made under the authority of this Act, or for other reasonable cause.

SEC. 8. GENERAL JURISDICTION OF COMMISSION.—(a) The Commission shall have the power and jurisdiction to supervise and regulate every CATV company operating within this State and its property, easements, property rights, equipment, facilities, contracts, certificates, and franchises so far as may be necessary to carry out the purposes of this Act, and to do all things whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction. Without limiting the generality of the foregoing, the Commission is authorized to adopt and enforce such reasonable rules and regulations and orders as it may deem necessary with respect to rates, charges and classifications, issuance of certificates, territory of operation, abandonment or supension of service, adequacy of service, prevention or elimination of unjust discrimination between subscribers, financial responsibility, insurance covering personal injury and property damage, uniform system of accounts, records, reports, safety of operation and equipment, and to otherwise accomplish the purposes of this Act and to implement its provisions.

(b) The Commission may, after affording an opportunity for hearing, order a CATV company (i) to construct and operate any reasonable extension of its existing CATV system within the certificated territory, or (ii) to make any reasonable repair or improvement of or addition to such system.

(c) The Commission shall from time to time visit the places of business and other premises and examine the records and facilities of all CATV companies to ascertain if all rules and regulations and orders of the Commission have been complied with, and shall have the power to examine all officers, agents, and employees of such CATV companies, and all other persons, under oath, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for administering the provisions of this Act.

(d) The Commission shall have the power and authority to institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce the provisions of this Act or of the rules, regulations, and orders adopted thereunder, or to otherwise accomplish the purposes of this Act.

(e) The Commission or other aggrieved party shall have the right to institute, or to intervene as a party in, any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of this Act or of any rule, regulation, or order adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

SEC. 9. RATES.—The Commission shall prescribe just and reasonable rates, charges and classifications for the services rendered by a CATV company to subscribers, and the tariffs therefor shall be in such form and shall be filed and published in such manner and on such notice as the Commission may prescribe, and shall be subject to change on such notice and in such manner as the Commission may prescribe. The Commission, in the exercise of its power to prescribe such just and reasonable rates, charges, and classifications, may use such standards, formulas, criteria, or methods as the Commission may determine in order to enable the CATV company, under honest, economic, and efficient management, to render the service and derive a reasonable profit therefrom.

SEC. 10. DUTIES OF CATV COMPANIES.—(a) Each CATV company (and other person and organization providing any service, equipment or facilities thereto) shall provide safe and adequate service, equipment and facilities for the operation of its CATV system.

(b) No CATV company shall demand or receive a greater or less or different compensation for providing CATV service than the rates and charges specified in the tariff in effect at the time.

(c) All rates, charges, and classifications for the service rendered by a CATV company shall be just and reasonable, and any such rate, charge, or classification that is unjust or unreasonable is hereby declared to be unlawful. No CATV company shall make any unjust or unreasonable discrimination in rates, charges, classifications, practices, regulations, facilities, or services for or in connection with like service, directly or indirectly, by any means or device, or make or give any undue or unreasonable preference or advantage to any particular person, class of persons or locality, or subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(d) Every CATV company and other person and organization shall obey and comply with every rule and regulation and order adopted by the Commission under the provisions of this Act.

SEC. 11. ABANDONMENT.—No CATV company shall abandon all or any part of its system or other property necessary or useful in the performance of its duties to the public, or discontinue or temporarily suspend all or any part of the service which it is rendering to the public by the use of same, without first obtaining the approval of the Commission. In granting such approval, the Commission may impose such terms, conditions, or requirements as in its judgment are necessary to protect the public interest.

SEC. 12. EMINENT DOMAIN; HIGHWAY USE; POLE ATTACHMENTS; COMMISSION APPROVAL.—(a) Upon obtaining the prior approval of the Commission, a CATV company shall be vested with the power to acquire through eminent domain proceedings the lands, property and rights of any character whatsoever necessary to construct, extend, improve, alter, maintain, or operate its CATV system. Under such circumstances, the CATV company shall be entitled to pursue the same eminent domain procedure which is available for use by the telephone, telegraph, or electric public utilities which are subject to the jurisdiction of the Commission.

(b) Upon obtaining the prior approval of the Commission, a CATV company may construct and maintain the wires and cables necessary to its business upon, under or over any highway, and may erect and maintain the necessary fixtures, including poles and posts, for sustaining such wires and cables: *Provided, however,* That such wires, cables, and fixtures shall not be so placed or constructed as to unreasonably inconvenience present or future public travel on the highway or use thereof by public utilities or other persons or organizations having rights therein.

(c) Whenever the Commission shall find that public convenience and necessity require the use by a public utility of the wires, cables, conduits, poles, or other equipment, or any part thereof, on, over or under any highway belonging to another public utility and that such use will not result in irreparable injury to the owner or other uses of such equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the Commission may order that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is ordered, the public utility to whom the use is permitted shall be liable to the owner or other users of such equipment for such damage as may result therefrom to the property of such owner or other users thereof. The words "public utility" as used in this subsection shall include a CATV company and any public utility subject to the jurisdiction of the Commission.

SEC. 13. LEASE OR RENTAL OF CERTAIN CATV FACILITIES OR PROVISION OF CHANNEL SERVICE.—Upon the prior approval of the Commission, any person or organization may contract to lease or rent facilities to a CATV company or to provide it with communication channel service for the redistribution of television signals to or toward the subscribers of such CATV company. Any such contract which is in effect on the effective date of this Act and which will be in effect for a period of more than ninety days thereafter shall be submitted to the Commission for approval within ninety days after the effective date of this Act, and if such contract is disapproved it shall thereupon become void.

SEC. 14. APPROVAL OF SECURITIES.—(a) No CATV company shall issue any stock, bond, note, or other evidence of debt payable more than twelve months

after issuance without first obtaining the approval of the Commission. In determining whether a proposed issuance of securities shall be approved, the Commission shall take into consideration whether the issuance is reasonably required for the acquisition of property or the construction, extension, or improvement of the applicant's CATV system, or for the improvement or maintenance of its service or for the discharge or refunding of its obligations, or for other purposes consistent with the public interest. Commission approval, when granted, shall be evidenced by a written order authorizing such issue, the principal amount thereof and the purpose and use for which the issue is authorized.

(b) If any agency is empowered by another State or jurisdiction to regulate and control the amount and character of such securities to be issued by a CATV company operating a CATV system both in this State and in such other State or jurisdiction, then the Commission shall have the power to agree with such agency of such other State or jurisdiction on the issue of such securities by such CATV company and shall have the power to approve such issue jointly with such agency.

SEC. 15. APPROVAL OF MERGERS.—No CATV company operating or managing a CATV system shall combine, merge, or consolidate with, or acquire control of, another organization without first obtaining the approval of the Commission, which shall be granted only after an investigation and finding that such proposed combination, merger, consolidation, or acquisition is in the public interest.

SEC. 16. JUDICIAL REVIEW.—Within thirty days after the service of an order or decision reflecting any action of the Commission which is ripe for judicial review, any party aggrieved thereby may appeal to a court of competent jurisdiction for the purpose of having the reasonableness or lawfulness of such action inquired into and determined. Such appeal shall be tried according to the rules governing other civil cases to the extent practicable.

SEC. 17. PENALTY.—Any person or the officer, agent, or employee of any organization who willfully violates any provision of this Act or of any rule, regulation, or order adopted thereunder, or who willfully procures, aids, or abets any violation of such a provision, shall be guilty of a misdemeanor.

SEC. 18. SEVERABILITY.—If any provision of this Act or the application of such provision to any circumstance is held invalid for any reason whatsoever, the remainder of this Act or the application of the provision to other circumstances shall not be affected thereby.

SEC. 19. REPEALS.—All laws and parts of laws in conflict with this Act are hereby repealed.

(*Note on municipal franchises.*—When the State legislature desires to require a CATV company to obtain a municipal franchise prior to using the streets for the erection of CATV transmission facilities, it is recommended that the following subsection be added at the end of section 4 of the above act:)

(f) Notwithstanding any provision herein to the contrary, in any case where a CATV company operates or proposes to operate in a municipality where the use of highways and other public places are essential to such operation, no certificate of public convenience and necessity shall be issued for such operation without a franchise being first granted therefor by the municipality. Such franchise shall not contain any provision conflicting with or repugnant to the exclusive jurisdiction of the Commission to regulate the rates, services, and other matters concerning CATV companies as herein provided. In the event a municipality shall arbitrarily refuse to grant such a franchise to a CATV company within ninety days after application for same is made, then the CATV company may avoid the necessity of first obtaining the franchise by showing to the satisfaction of the Commission that the franchise is being arbitrarily withheld.

The CHAIRMAN. Thank you, Mr. Rodgers.

Mr. Rogers.

Mr. ROGERS of Texas. Mr. Rodgers, I note where you have taken to read my mind. On page 2 you say my bill seeks to eliminate the regulation of this program. Now it would also prohibit certain censorship, would it not?

Mr. RODGERS. Yes, sir.

Mr. ROGERS of Texas. The other question is this. Understand I am not criticizing you for it. I point out that it does not eliminate censorship.

Do I understand that you are for program control by the Federal Communications Commission?

Mr. RODGERS. No; I would not go that far. This matter of program control, if it is to be control, is, we think on the interstate side. The NARUC takes no position on how the programing should be regulated. That is why we say that we would like our amendment tacked on either bill that is reported out. So we take no position on program regulations.

Mr. ROGERS of Texas. Do you feel though that the cities or the States themselves should have a program of their own?

Mr. RODGERS. No, sir; I do not. I think that all that the local government should regulate if they desire to regulate it, should be such things as rates, franchises for use of the streets.

I don't think that the State or the city should try to regulate program control. Not that we take the position as a bad thing but simply because I think that is beyond State regulations.

Mr. ROGERS of Texas. Now the situation that you define with regard to CATV being a public utility, do you feel that broadcasting itself is a public utility?

Mr. RODGERS. No, sir; I don't think so. I think the ingredient which in my mind and in the mind of my association makes CATV a public utility because—is because of the cable distribution facility. In other words, it would be uneconomic to run two cables down the streets.

Mr. ROGERS of Texas. That is physically using the streets?

Mr. RODGERS. That is right.

Mr. ROGERS of Texas. What you have is the difference between then a tangible and intangible object, of course?

Mr. RODGERS. That is right.

Mr. ROGERS of Texas. In other words, the use by broadcasters of the airways is equivalent to the use of the streets by CATV operators except that one is tangible and the other is intangible, is it not?

Mr. RODGERS. We don't have any position on broadcasting but personally I would think that broadcasting would not be a public utility.

Mr. ROGERS of Texas. Why?

Mr. RODGERS. Because the distribution facilities are not tangible as you point out, they travel through the airways.

Mr. ROGERS of Texas. What happens is that the States and cities have not figured out ways to franchise the use of the intangible or the use of the public property by intangible means. That is actually—what it is, is it not?

Mr. RODGERS. That may be.

Mr. ROGERS of Texas. I am not trying to be critical of them but I am merely pointing out actual facts, this is what happened. I presume you are thoroughly familiar with the doctrine of preemption?

Mr. RODGERS. I would not say thoroughly but I understand what the doctrine means.

Mr. ROGERS of Texas. You understand that we in the Congress, at least several of us, not a majority, have been trying for years to pass what is known as H.R. 1, introduced by Judge Smith, of Virginia, providing that where Federal preemption came into the picture, that unless the Congress spelled out in the bill that the doctrine of preemption was going to apply that it would not apply.

Mr. RODGERS. Yes, sir.

Mr. ROGERS of Texas. We have not been able to pass that. One further question. Is it not a fact, Mr. Rodgers, that insofar as the control of the CATV operators themselves is concerned, aside from censorship and programing or limitation of programing, that this whole matter could be controlled, not at the State level so to speak, it could be controlled there but it could actually be controlled at the municipal, corporate entity level; could it not?

Mr. RODGERS. Yes, sir.

Mr. ROGERS of Texas. By restrictions and limitations in the franchise?

Mr. RODGERS. That is right.

Mr. ROGERS of Texas. Thank you very much.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. Mr. Rodgers, in your bill do you discriminate between CATV antenna or a microwave relay CATV?

Mr. RODGERS. No, sir. We make no discrimination because both systems would have to run the cables down the street. That is what we are interested in primarily.

Mr. YOUNGER. You still think that the microwave relay can come under local control?

Mr. RODGERS. No, sir; I would not think so. I would think those signals would be interstate in character. In other words, what we would be interested in regulating is after the signals are picked up by the system and they are distributed throughout by cables, if this was regulated by microwave that should be regulated if at all by the Federal Government.

Mr. YOUNGER. How are you going to discriminate between regulating the antenna reception on a microwave relay and not regulating the original station that picks up the signal and transmits it, again by microwave?

Mr. RODGERS. I think that would be beyond State regulation, generally. What we would be interested in would be to regulate CATV subject itself, no matter how then it picks up the signal, through cable distribution facility.

Mr. YOUNGER. I don't see how you would do that.

Mr. RODGERS. Maybe I don't understand the question.

Mr. YOUNGER. You say that you can just regulate the last station that picks up the relay?

Mr. RODGERS. Yes, sir.

Mr. YOUNGER. And you have no jurisdiction over the other while it is all a combined CATV system?

Mr. RODGERS. You see, we are not interested in trying to regulate the program.

Mr. YOUNGER. I know it, but eliminating the programing, I am talking about rates, coverage, and licenses and so forth.

Mr. RODGERS. Yes, sir. I don't believe that to effectively regulate that that you would have to regulate the station that emanates the signal.

Mr. YOUNGER. Did you read Chairman Henry's testimony before our committee?

Mr. RODGERS. Yes, sir.

Mr. YOUNGER. You do not subscribe to the—totally to his discrimination as to what is under their power and what should be left to the local public utility commission?

Mr. RODGERS. We have had some informal conferences with certain people over in the FCC. Then it appears to me that there is a meeting of minds between the present FCC Commissioners and the State commissioners on this position.

If you will look at the last section of H.R. 12386 in that one sentence it says anything that the FCC does not regulate the State can regulate. That is an open-ended thing. In the years to come the FCC can pick up more and more and the State can lose more and more.

All we seek to do is clarify that in the first sentence of our proposal and tie down certain elements which are reserved for State regulations and the second sentence which is a catchall clause to regulate everything else that is not preempted by the Federal Government.

I think our language here is pretty acceptable by the FCC. As I see it there is no conflict between our position and the FCC's position regarding the local aspect of CATV.

Mr. YOUNGER. I should think that that would be very acceptable to the FCC because there would be nothing left for the States under your theory because you are saying that anything that they regulate is all right.

What they do not regulate is left to the States. You would not have much business left, I assure you.

Mr. RODGERS. That is why we have our amendment set forth on page 6. In the first sentence of our amendment we specify certain areas, such as rates, franchise, safety of operations and equipment which it states would be entitled to regulate and which the FCC cannot disturb.

Now we have a casual clause where the State would regulate everything else. If you would look at the last section of the Staggers bill you will see that they have a one-sentence catchall clause which is, as you point out, just a moment ago, it is an open-ended thing and the State would have no protection.

That is why we want that language clarified so that the States will have some protection.

Mr. YOUNGER. I refer to the catchall clause in the Constitution which says that what is not specifically delegated to the Federal Government is reserved to the States. The States will find now that there is very little reserved to it.

Mr. RODGERS. That is right. I think that is an excellent illustration as to why the FCC language should be clarified.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Rodgers, you made a remark that you had informal discussions with a member or members of the FCC.

Mr. RODGERS. Well, it was with the General Counsel. It was of an informal nature.

Mr. FRIEDEL. Were you ever in a hearing before the FCC?

Mr. RODGERS. No, sir; not on this.

Mr. FRIEDEL. Do you know whether any CATV stations were given a hearing before they came out with rules and regulations?

Mr. RODGERS. No, sir; I am not familiar with that.

Mr. FRIEDEL. Was anyone given a hearing before the Federal Communications Commission on the rules and regulations?

Mr. RODGERS. I am not sure but it is my understanding that no hearings were held but I am not sure about that.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you very much. Mr. Rodgers, you said aside from the CATV pickup the business of the CATV companies is primarily local in character because of the relatively small number of subscribers and service areas.

Let us take some of the fairly large metropolitan areas in this country with their proposed communities on both sides of the State border.

Do you want us to believe that one State regulatory agency can adequately regulate CATV under those circumstances then?

Mr. RODGERS. Yes, sir; I think that it could because there is precedent in the regulations of local telephone exchange service. You see, our language that we propose is analagous to the language which has been in the Communications Act from the beginning.

That is why we put in our provision that even though engaged in interstate or foreign communications so what could be done when the lines are in one State the local authorities could issue the franchise for use of the street and regulate the rates and crossing over the other side the same thing could be done on the other side.

We have a precedent that would illustrate that is a workable program.

Mr. DINGELL. You come from what State, sir?

Mr. RODGERS. Georgia.

Mr. DINGELL. What about programs which, let us say, originate in New York and are transported to Georgia by microwave or by wire for broadcast on CATV channels down there. Would you have us believe that you could adequately control and regulate every phase of that CATV until it hits the border of your State?

Mr. RODGERS. No, sir. If there is to be program regulation that will have to come from the Federal Government.

We take no position on that. All we are concerned about is the local aspect, such as rates and franchise.

Mr. DINGELL. You make no comment with regard to companies which would pick up the signal, let us say, in New York and transport it to Georgia or Michigan or any of the other States of the—that are many hundreds of miles distant?

Mr. RODGERS. That is right. That would be beyond State regulations.

Mr. DINGELL. Clearly, if the public interest were to be protected there would have to be some other agency of the Federal Government that would step in to protect the public interest?

Mr. RODGERS. That is right on an interstate signal.

Mr. DINGELL. Thank you very much, Mr. Chairman.
The CHAIRMAN. Mr. Nelsen.
Mr. NELSEN. No questions.
The CHAIRMAN. Mr. Van Deerlin.
Mr. VAN DEERLIN. No questions.
The CHAIRMAN. Mr. Broyhill.
Mr. Pickle?
Mr. PICKLE. Thank you, Mr. Chairman.

Your association is listed as the National Association of Railroad & Utility Commissioners. Just as a matter of background of your organization, how many States do you represent?

Mr. RODGERS. We represent all 50 States, the regulatory commission in all 50 States. The Texas commission is a member of our association.

Mr. PICKLE. What is that?

Mr. RODGERS. The Texas Railroad Commission.

Mr. PICKLE. Now your resolution represents your thinking?

Mr. RODGERS. Of course they regulate both railroads and motor carriers. They have not gotten involved in CATV. In other words, in our language——

Mr. PICKLE. I am simply asking the scope of this endorsement with respect to my own statement. I have not heard a word from them. Yet you appear as if you speak for my State.

Mr. RODGERS. Yes, sir. This is a position which was first formulated at our national conventional in New York. As I recall, I am not positive, but as I recall the commissioners from the Texas commission were there and I would assume they voted on the resolution because it was passed unanimously.

Mr. PICKLE. Are you saying that by virtue of your resolution and the model act you have drafted that this represents the unanimous feeling of 50 States?

Mr. RODGERS. Yes, sir; that is my impression.

Mr. PICKLE. Has this matter ever been referred to the Governors' conference?

Mr. RODGERS. No, sir; but we have sent copies of our act to the Council of State Governments but it has not been referred to the Governors' conference.

What our language does is that then it simply reserves to the States, however they want to handle it, whether through municipalities or through the State commissions, the right to regulate the local aspects of CATV.

Mr. PICKLE. I was just interested. This was a relatively new approach so far as I am concerned but I have heard nothing from any source about the States' endorsements. Then it gives the impression that the State officials think this ought to be the approach to it. I just make this as an observation but I am wondering if this is not something that an association such as yours has decided to—it ought to be a good thing and you ought to be in on the act?

Mr. RODGERS. It is our position that the local aspect should be regulated locally, which I think is a position which inures to the benefit of every State.

Mr. PICKLE. I thank you.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. No questions.

The CHAIRMAN. Mr. Rooney.

Mr. ROONEY. Mr. Rodgers, your association is concerned about the local consumer with respect to the degradation of service or the amount that the individual will be paying for the service of the CATV companies?

Mr. RODGERS. Yes, sir.

Mr. ROONEY. Those are the two primary reasons?

Mr. RODGERS. Primarily.

Mr. ROONEY. Tell me where in this area and throughout the United States, then, is there such a problem? What areas in the States have overcharge of service and degradation of the signal?

Mr. RODGERS. Well, the reference we have on that is by Commissioner Laughlin of the Connecticut commission. He is chairman of the Connecticut commission. In his speech before the New York convention he cited illustrations of where there was an undue return made by CATV companies.

I do not know.

Mr. ROONEY. Cite an example.

Mr. RODGERS. I will be glad to furnish you a copy of the speech but he cited the illustrations.

What we ask here, our language that we ask be inserted in the bill does not declare it to be a public utility. It does not automatically place them under State regulations. It merely gives the authority to the States if the problems arise to handle the matters locally. So in the State, if the problem does not arise, I assume State regulations will not be forthcoming but if it did arise then the State would be equipped to handle it.

Mr. ROGERS of Texas. Will you yield at that point?

Mr. ROONEY. I will be hapy to.

Mr. RODGERS of Texas. Actually, what it does is limit the Federal Communications Commission to program control, does it not?

Mr. RODGERS. That is right, primarily.

Mr. ROONEY. Don't you believe, Mr. Rodgers, that the local municipalities can better determine the suitability of the applicant and the public need rather than the State organization or State-controlled agency?

Mr. RODGERS. That is why our proposal on page 6 is as broad as it is because we say State commission or by local governmental authority. So that decision I think appropriately addresses itself to the legislature of each State. Of course from my own point of view, and because we represent State commissions, we think it is best handled by State commissions because they—the municipality stops at city lines and we have unincorporated urban areas that might not be adequately protected although it is handled by counties.

Our position is open-ended and it could be turned over to the municipality or county if the State legislature felt that was in the public interest.

Mr. ROONEY. Could you site an example of where the State or municipality might have had a duplication of service to the CATV consumer?

Mr. RODGERS. No, sir. I know of no instance——

Mr. ROONEY. But this is one of the reasons why your association want to step into this field and has made this recommendation?

Mr. RODGERS. I think what could happen, and this is purely hypothetical, I would think that it would be uneconomic to duplicate cable facilities. When you once run cable down the street I don't think another CATV company should come in.

Say a CATV decides we will charge $5 and we will say that is a fair charge. A CATV company might decide later on, "let us try six or seven." You know we have people depending on this thing and you could have a quite a large return. That is purely protecting then and then it might never occur. If it does occur I assume it would be regulated by the States. If it does occur we think the municipalities or States should have the power to handle the problem.

Mr. ROONEY. CATV have been in business for some 16 years. If your association is so much concerned about regulating the industry with hypothetical cases it reminds me of the FCC. They are concerned about the protection of the UHF stations at the same time the Chairman of the FCC testified that the CATV industry itself never bankrupted any UHF stations in the country.

This seems to me the hypothetical situation set up today as another reason to come in and regulate an industry that has been protecting the consumer because it is a very high competitive business and they have to give the very best service for the least amount of money because there are other CATV companies around to do the same thing.

Mr. RODGERS. They would have to run the cable up the same street to do it. I think the CATV industry, so far as I know, has done a good job. As you point out there are going to be abuses by—but primarily they are in the future. One distinction between our position and the FCC is that the FCC has already taken a firm—an affirmative role in regulations. All we ask is a reservation for State regulations and let the State legislature decide what is best in the public interest for the local aspects.

Mr. ROONEY. You do want to usurp some of the authority of the FCC because you want to review the applicant, is that right?

This is part of their rule?

Mr. RODGERS. As I understand it, the FCC, if they get what they want, will regulate the program aspects. But it would be up to the State to determine—assume our bill were to pass—to determine who is suitable to provide CATV service.

Then when they got the franchise for the State they would go into operations, they would automatically be subject to program regulations by the FCC.

Mr. ROONEY. Mr. Chairman, with your permission I would like to ask whether or not the statement made by the gentleman from Connecticut could become part of this record. I would like to read that.

Mr. RODGERS. I will be happy to supply it.

The CHAIRMAN. Can you supply it?

Mr. RODGERS. Yes, sir; we can supply that.

The CHAIRMAN. It will be made a part of the record without objection.

(The document referred to, when supplied, will be found in the committee files.)

Mr. ROONEY. I have no further questions.
The CHAIRMAN. Mr. Murphy.
Mr. MURPHY. No questions.
The CHAIRMAN. Mr. Satterfield.
Mr. SATTERFIELD. No questions.
The CHAIRMAN. Mr. Mackay.
Mr. MACKAY. Thank you, Mr. Chairman.

I am particularly pleased to welcome Mr. Paul Rodgers, a fellow Georgian, before this committee. He is a distinguished former assistant attorney general of our State. I thank him for the statement he had just made.

Mr. RODGERS. Thank you.

Mr. MACKAY. Mr. Rodgers, if CATV is not a utility then the State utilities commissions would not have any jurisdiction over them, would they?

Mr. RODGERS. Well, then before the State of Georgia Public Service Commission could acquire any jurisdiction it would have to be given it by the Legislature of Georgia. If it was decided they would not be regulated as a utility I don't think the Georgia Commission would have any authority over them.

Mr. MACKAY. Citing the Georgia Public Service Commission as an example, it does not have any regulatory power over public utilities?

Mr. RODGERS. That is right.

Mr. MACKAY. At the moment?

Mr. RODGERS. That is right, primarily.

Mr. MACKAY. Now the question of whether or not this is a public utility is in sharp contention.

Mr. RODGERS. That is right.

Mr. MACKAY. I would appreciate any brief and argument that you could submit to the committee in support of the contention that CATV is a utility.

Mr. RODGERS. Yes, sir, I will try to find something. Chairman Gibson of the Vermont commission has written a statement on that which I will be happy to obtain and place in the record.

Mr. MACKAY. I realize you are not going to be able to find much authority because of the simple fact that CATV is a new development. I talked to a lawyer in Georgia interested in this. He remarked that many novel legal questions were presented by this whole controversy. To the extent you could find this information I would like to have it.

Mr. RODGERS. In our proposed language on page 6 we don't say it is a utility or it is not. It is merely just a reservation to the State legislature.

Mr. MACKAY. Do you know of any case in the country where there is now a duplication of facilities?

Mr. RODGERS. No, sir, I am not that familiar with CATV industry but I would doubt that there is any place where there is duplication of facilities.

Mr. MACKAY. Then it is a conclusion to state that it is uneconomical that there be more than one system?

Mr. RODGERS. I would think if they attempted to run two cables down the same street it would be uneconomical. The reason I did not think that there is any duplication, first, I have not heard of any,

and secondly, it is a growth industry so it is relatively new and they have plenty of room to grow.

Mr. MACKAY. As you know, there has been a scramble for franchises in the municipalities right in my district.

Mr. RODGERS. Yes, sir.

Mr. MACKAY. If this law were enacted by the State of Georgia, the legislature, would this withdraw from the municipality any role in the granting of franchise?

Mr. RODGERS. That would depend on what the General Assembly of Georgia wanted to do. If they turned it over to the public service commission, then it would. Or they might turn it completley over to them municipalities, and they might give the municipalities the right to grant the franchise and let the Georgia commission regulate the rates.

Mr. MACKAY. Are you prepared to make any recommendation at this point? Are you that far along in your own deliberations?

Mr. RODGERS. No further than we ask that the amendment specified on page 6 be attached to the bill that is reported out by this committee.

Mr. MACKAY. One final question. As I understand it this is a bill you have drawn up and proposed and is under study and is not recommended to the committee as the judgment of your association at this point?

Mr. RODGERS. That is right. The statute that we have attached is drawn along the lines directed by the resolution in New York and is being studied now by Ben Wiggin and his committee. We hope they will complete action on it in the next several months.

Mr. MACKAY. Thank you, Mr. Chairman.

I have no further questions.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. No questions.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman.

Do you believe that there should be an FCC license as well as a local franchise for each CATV station or company?

Mr. RODGERS. As I understand what the FCC desires to do it would not be necessary to have a license. I am not familiar with the intricacies of their program. But I would think that a license would not be particularly necessary.

Mr. ADAMS. You mean a license by the FCC?

Mr. RODGERS. That is right, because they would have their regulations established and the CATV clearly automatically would come under their regulations.

Mr. ADAMS. As I understood the explanation of the Chairman of the FCC they would contemplate licensing CATV stations or say that they could or could not operate within a particular area, within a particular station area. Are you familiar with that?

Mr. RODGERS. That would be all right if the FCC did that as far as we are concerned. We have no position on that but the licensing would not interfere with our——

Mr. ADAMS. That is my next question. Suppose the FCC should issue a license to company X to operate in this area, would it be your

position that the local government would then refuse a franchise to that company?

Mr. RODGERS. That is right. In other words, in that case you would have to get a license from both sources in order to operate.

Mr. ADAMS. So that the FCC could issue a license but they could still be refused a local franchise?

Mr. RODGERS. That is right, for the use of the streets.

Mr. ADAMS. And the other side of that coin. Suppose you issue a franchise to X company but the FCC has not given them a license, could this be possible for—or would you require an FCC license before somebody came in and asked for a local franchise?

Mr. RODGERS. I would not contemplate there their acquiring an FCC license, as I understand what the FCC wants to do, any CATV company could carry programs of some sort in the top hundred area market or whatever it is. Now the reason the FCC would issue a license would be to expand the number of programs that a CATV company carried. But if they do not get the FCC license I understand they still can carry some programs.

Mr. ADAMS. I don't think I have gotten the answer to the question. What city in Georgia are you from?

Mr. RODGERS. Atlanta.

Mr. ADAMS. Let us say then in the Atlanta area you are covered by three or four possible stations and this could get as you know rather complex in the signal area, B signal area, and so on.

If the FCC has not issued a license to any CATV company but as I understand what they are proposing they would require licensing of new CATV companies in order to control who is carrying what signal in what area, now would you require the FCC license before you would go and let any company come in and apply for a franchise?

Mr. RODGERS. I think there again that would be up to the State commission. I don't think that now one would be contingent upon the other in legal contemplation although the operator might have to have both to operate.

Mr. ADAMS. In other words, you would not say either one would come first. You leave it completely flexible?

Mr. RODGERS. That is right. And that would be left to the States.

Mr. ADAMS. Your proposed statute does the same thing?

Mr. RODGERS. No, we don't make any reference to that, our proposed statute does not. That means that it would be subject to the administration determination or discretion because if a person did not have a license from FCC and someone else did, of course the State could well take that into consideration in granting the franchise.

Mr. ADAMS. They also could grant a franchise to a competing company that did not have an FCC license?

Mr. RODGERS. That is right.

Mr. ADAMS. I have no further questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. No questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman. I think for the purpose of not confusing the record it would be better for Paul Rogers not to question Paul Rodgers.

Thank you.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman. I was a little bit delayed so I have no questions. But I will read Mr. Paul Rodgers' statement, not the Congressman but Mr. Paul Rodgers' statement, with care.

Mr. RODGERS. Thank you.

The CHAIRMAN. Thank you, Mr. Cunningham.

That concludes the questioning. We wish to thank you for coming.

Mr. RODGERS. Thank you very much.

The CHAIRMAN. Before we call the next witness I would like to make an observation.

(Discussion off the record.)

The CHAIRMAN. Our next witness is Mr. Vincent Wasilewski, president of the National Association of Broadcasters. Mr. Wasilewski, will you take the stand?

I would like to say that you may put your statement in the record and summarize it or read it.

Mr. WASILEWSKI. Mr. Chairman, my name is Vincent Wasilewski. I am president of the National Association of Broadcasters. I am accompanied by our general counsel, Douglas Anello. I am unfortunately one of those people who when I summarize find that it takes longer than if I had read initially.

So if it is all right with you, sir, I have a short statement and I would like to read it.

The CHAIRMAN. Very well.

STATEMENT OF VINCENT T. WASILEWSKI, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. WASILEWSKI. Mr. Chairman, I appear here today to present the views of the association in H.R. 12914 and H.R. 13286 and their relationship to the regulation of community antenna television systems (CATV).

The National Association of Broadcasters (NAB) is a nonprofit organization of radio and television broadcasters whose membership included as of April 1, 1966, 2,227 standard broadcast stations, 994 FM broadcast stations, 480 television stations, and all the radio and television nationwide networks.

CATV systems were first developed as a means of extending TV service into communities with no local service during the freeze on the licensing of television stations which was imposed by the FCC from September 1948 to July 1952.

Essentially, a CATV system consists of a receiving antenna located at some high point, as near to the community to be served as possible, where usable television signals can be received. Where the distance from the receiving antenna to the community to be served is great, the signals are relayed through the use of microwave. The signals are generally converted to other channels and distributed to the sub-

scribing homes by cables attached to existing power or telephone poles. The set owner needs no conventional rooftop antenna. As a matter of fact, in order to get direct service off the air from available usable signals in addition to the wired signals brought in by the CATV system, he must install an antenna of his own and will need a switch on the back of his set to permit him to alternate between direct reception and connection to the community antenna. In many cases the rooftop antenna is either dismantled or disconnected when the set is connected to the CATV system. This makes direct off-the-air reception impossible.

Since the costs of wiring a community are such that only the densely populated areas can economically be served, sparsely populated rural and ranch areas can receive no service from CATV systems. This does not mean that farms and ranches would merely "subsist" on their present quantity of off-air television service. It means that to the extent CATV saturation makes a local station a less attractive "buy" for the advertiser, the present quantity and variety of programs received by these rural families must inevitably diminish.

When the freeze was lifted in 1952 it was widely assumed that many systems would disappear. However, the economics of the industry proved such that not only did they not disappear, but have steadily grown to the point where there are some 1,700 systems serving approximately 1.5 million homes with some 2,000 applications for franchises either pending or recently granted. Today it is possible through the use of microwave relay to bring multiple signals from large metropolitan centers over vast distances to widely scattered communities, large and small, leapfrogging, as it were, television stations along the way closer to the area served by the CATV systems than the stations whose signals are relayed. This explosive growth and changing character of CATV poses a serious threat to the national system of free broadcast service. If left unchecked, it will thwart congressional and Commission policies as they have developed over the past 40 years.

Thus it is fair to say that the concern of NAB is not with 90 percent of the CATV systems as they exist today. These are truly supplemental to off-the-air broadcast service and operate to the public benefit. Rather our concern is with the burgeoning complex of what has been termed CATV "unlimited" which proposes multichannel systems in areas already receiving off-the-air service. It is in this context that the pending legislation must be examined.

H.R. 12914 would amend section 326 of the Communications Act to provide "nothing in this act shall be understood or construed to give the Commission the power to control or regulate the reception of radio communications or signals transmitted by any radio station." While this bill speaks in terms of "radio communications" and "radio station" these are words of art used in the Communications Act and include television as well as radio.

While we oppose any censorship of radio communications through the control of reception or otherwise, to the extent that H.R. 12914 would remove from the Commission authority that it has and urgently needs to regulate CATV operations, we are opposed to it.

H.R. 13286, introduced at the request of the FCC, would affirm the authority of the Commission to issue rules and regulations with re-

spect to CATV systems. While it long has been the opinion of the association that the Commission not only has the authority to regulate all CATV operations, but should do so as expeditiously as possible, we believe that congressional guidance is desirable so long as such guidance does not preclude the Commission from the exercise of its expertise and responsibilities in communications matters.

The expressed policy of both Congress through the enactment of the all-channel receiver legislation in 1962 and the Commission through its adoption and administration of the sixth report and order is that television broadcasting be nationwide, competitive, and responsive to local needs. In its deliberations leading up to the establishment of a table of assignments for television, the Commission was of the opinion that as many communities as possible should have locally originated television service.

To this end, the Commission promulgated an overall plan, giving the highest priority to local service, by virtue of which channels are assigned throughout the United States. By relating antenna heights and power limitations to mileage separations, there has evolved a pattern of service areas so that markets are served by local stations familiar with local needs.

The unrestrained expansion of CATV could easily lead to the destruction of this system. At its ultimate the issue could well be whether service will be limited to programs originated in a handful of large cities and distributed by wire to those who can afford to pay the charges, or whether as many communities as possible should have the opportunity of enjoying the advantages that derive from having local outlets that will be responsive to local needs. In our opinion there is no adequate substitute for the kind of local service upon which this country has come to depend.

Local radio and television stations are essential to the cultural, economic and political vitality of every community. They provide outlets for the expression of local opinion on a wide variety of subjects.

Turning now to the specific provisions of H.R. 13286.

1. The definition of CATV as "any facility which, in whole or part, receives directly or indirectly over the air * * * the signals * * * broadcast by one or more broadcast stations and distributes such signals by wire * * * to subscribing members of the public who pay for such service" is broadly inclusive and quite proper. This approach is particularly sound in view of the provisions of section 331 which permits the Commission to exempt certain operations from regulation.

2. Section 331(a)(1) would expressly confer broad comprehensive authority upon the Commission to regulate CATV systems in the public interest. With this we agree. As the branch of the Federal Government charged with overseeing the orderly development of a vigorous competitive communications system, the Commission must assume the responsibility to fit CATV service into the regulatory scheme. This regulation should assure CATV its traditional role as a supplementary and complementary service to our broadcasting system.

In this connection, we would like to advert briefly to the phrase "with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services" con-

tained in the section. We do not view this language as bringing CATV service within the meaning of section 307(b) which provides for "a fair, efficient and equitable distribution of radio service among the several States." Section 307(b) is concerned with the development of a free broadcast service, responsive to the needs and interests of local communities. It was never intended to equate the type of service CATV renders with broadcasting.

3. Section 331(b) deals with the question of program originations by CATV systems. We believe these should be precluded. CATV systems should be limited to their traditional role of the receipt and simultaneous retransmission of programs broadcast by broadcast stations. Indeed spokesmen for the CATV industry have stated before this committee that they are not a subsidiary of the transmission part of broadcasting; they are a part of the reception facilities of the public. We find it difficult to reconcile this view with their insistence that they be permitted to originate programs.

The combination of the distribution of free broadcast signals with the right to originate programs could form a perfect base for the establishment of wired pay TV.

The fact that charges may be made on a monthly rather than a per-program basis does not detract from the pay TV aspects. This lack of distinction between the two methods of operation was recognized by the former chairman of this committee, the Honorable Oren Harris, during the hearings last year on H.R. 7715.

> Now, I think we are kidding ourselves when we try to say that pay TV is limited to dropping a coin in a box and getting a program out of the whirl. I think that is where a lot of us, a lot of people in this country are involved in something that they are going to wake up one of these days and find themselves in the midst of a policy program that they cannot get out of.

4. Finally, we would agree that the question of franchises should be left to local governments provided that the terms of the franchise are not inconsistent with Commission regulations.

We note that the Commission has made no recommendation regarding the application of the rebroadcast provisions of section 325(a) of the Communications Act to CATV. As this committee is aware, this section prevents a broadcasting station from rebroadcasting the "program or any part thereof of another broadcasting station without the express authority of the originating station." Since the principles involved are comparable, we see no reason why section 325(a) should not be applied to both systems of transmission.

This section recognizes the rights of a broadcasting station in its programing. It is aimed at the receipt and retransmission of broadcast signals and we suggest it should apply to all means of retransmission that are subject to Commission authority whether it be wire or wireless.

We would like now to advert to the recently announced (February 15) plan of the FCC to regulate all CATV systems. We believe this was a necessary and encouraging action. We would be less than candid, however, if we were not to state that the Commission's plan as presently announced contains some serious deficiencies, particularly with respect to the distant station problem and the nonduplication rules.

The new rules provide that a CATV system may not import the signal of a TV station beyond its grade B contour into the grade A contour of any TV station in the top 100 markets without an evidentiary hearing in which the burden would be on the CATV operator to demonstrate that such importation of distant signals "would be consistent with the public interest and particularly the establishment and healthy maintenance of UHF television broadcast service." This is as it should be. In this way the Commission will be able to explore in depth the details of the proposed operation and make an informed judgment on the facts of a particular case.

The situation is entirely different, however, with respect to: (1) the grade B contour of stations in the top 100; and (2) the entire service area of stations in markets below the top 100. In neither is there any requirement for prior FCC approval. The only relief lies in the filing of a petition by the affected station with the Commission asking that it restrain the CATV operator from bringing in the distant station. In such a case the burden of showing damage to the structure of free broadcasting in the area will be on the broadcaster.

It is our contention that markets smaller than the top 100 should be subject to the same rules as the larger 100 markets. Applying two sets of rules, one to the top 100 and another to smaller markets, seems to us inconsistent. The rules as applied to the top 100 are intended to establish some limitation on the proliferation of imported signals in those markets. If, however, the smaller markets are subject to no such limitations, will not residents of the larger markets very properly resent the additional CATV-created programs available to their smaller-market counterparts? And will this not, as a result, cause an imbalance which will, in effect, vitiate the rules adopted for the larger communities? We think so. Additionally, of course, the absence of rules equally applicable to the smaller markets will make it much more difficult for new stations to come into being in these markets.

If signals are permitted to be relayed over long distances, an advertiser will soon find that he can secure wider coverage by buying a few stations in large markets. This possibility is dramatically illustrated in an article appearing in the February 14, 1966 issue of Television Age, page 25:

CATV Snared Baseball From Local Stations

The burgeoning CATV industry has caused the New York Mets to drop plans this year for the regional network that has carried their games to upstate New York and Connecticut. In the past a half-dozen local outlets were used in Plattsburgh, Binghamton and other small markets, but with several CATV systems now getting the games directly from New York, there appears to be little audience left for duplicate games on the regular channels.

This proliferation of distant signals can only result in curtailed buying of broadcast advertising in local markets. Why buy Billings if the signals of Seattle also enter the market? Situations such as this will soon exert economic pressure on countless local outlets, radio as well as television, depressing their ability to program locally.

We see no justification for providing one approach for the grade A in the top 100 and a lesser for all others, especially those in markets below the top 100. These are generally the stations located in small communities whose viability is marginal at best.

As to nonduplication, the Commission originally had proposed 15 days before and after showing by the local station. This has now been reduced to same day only and is completely inadequate.

As a matter of fact, "same day protection" for feature film and nonnetwork programs is almost meaningless. This is because such programs are seldom scheduled on the same day by different stations. It would be highly coincidental if they were. Thus protecting the program only under such circumstances is akin to no protection at all. Yet it is here that the local station has its greatest investment. Of what use is an exclusive contract to show feature films if those very films appear on the local CATV system before the station operator has had the opportunity to play them?

As far as network programs are concerned, limiting protection to the "same day" means pressure on affiliates to carry such programs as they are transmitted lest they "lose" the program to the CATV system. This means that they will be reluctant to schedule local programs during network hours.

In conclusion, Mr. Chairman, during the course of testimony on community antenna television much has been said of the "public interest." Where does the interest of the public lie? What is best for all of the people—rural and urban, privileged and poor?

Broadcasters are dedicated to service of the public—the whole public—in their communities. Their programing, whether it be news, entertainment, sports or public service, and whether it be of local or network origin, is supported by advertisers. Advertising, as we all know, is an essential element in the growth and health of our economy. It pays for itself many times over in the expansion of markets, the stimulation of employment, and the development and improvement of new products and services.

In its traditional form the community antenna, as a community antenna, can be beneficial to many people and should be encouraged. But if it is allowed to become a nationwide system of wired television, as it surely will if unchecked by the Congress and the FCC, it will be a thorn in the pocketbook of every workingman in this country. There will be a blackout on the television screen of virtually every farmer.

An interconnected system of wired television would have the purchasing power to buy sports events, new movies, and popular television programs. Those who believe they would thereafter see these events on television without paying are deluding themselves.

We believe the public interest lies in a system of diverse local broadcasting outlets, free of charge and equally available to all—urban and rural, rich and poor alike.

Thus we are gratified that the Commission has assumed jurisdiction over all CATV systems. We recommend that the Congress reaffirm that jurisdiction.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Wasilewski.

Several times in your statement, you made reference to the apprehension that many broadcasters have that CATV ultimately may develop into pay television. Are you familiar with the most recent

action taken by the Federal Communications Commission with regard to pay television?

Mr. WASILEWSKI. I am generally familiar with the proposal which invites comments by September?

The CHAIRMAN. Do you and your attorney believe that under the provisions of the Communications Act the Commission has authority to license broadcasters or interstate wire systems to engage in pay television?

Mr. WASILEWSKI. We have in the past consistently questioned their authority to authorize broadcasters to engage in pay television. This matter was appealed to the courts, sir, and the courts, from my understanding, upheld the authority of the FCC to authorize pay television on the frequencies, but our organization disagreed with the FCC relative to the exercise of that authority.

The CHAIRMAN. Should the committee, then, in this present legislation dealing with CATV make it clear that until the Congress has specifically authorized the Federal Communications Commission to license and regulate broadcasters and interstate wire systems to engage in pay television that the Commission has no authority to grant such licenses for this purpose? Do you think such a provision should be included in this bill?

Mr. WASILEWSKI. My remarks made here have been directed, as the chairman stated, to the development of wired pay TV. I have always believed that it would be contrary to public interest and our organization has always agreed it is contrary to public interest to have pay TV on the frequencies.

The CHAIRMAN. Do you think that ought to be included in this bill?

Mr. WASILEWSKI. This is a matter for the committee to decide. I would agree that this would be a desirable piece of legislation. Whether it should be included in this bill or not, sir, is a matter—does it complicate this particular subject matter more than necessary, would be my only query.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Wasilewski, I notice that on page 4 of your statement you say:

> While we oppose any censorship of radio communications through the control of reception or otherwise, to the extent that H.R. 12914 would remove from the Commission authority that it has and urgently needs to regulate CATV operations, we are opposed to it.

Now would you tell me to what extent you think the FCC now has control of reception?

Mr. WASILEWSKI. I don't believe that they do, sir.

Mr. ROGERS of Texas. You say "to the extent that H.R. 12914 would remove from the Commission the authority it has and urgently needs."

Mr. WASILEWSKI. To regulate CATV operations.

Mr. ROGERS of Texas. All right. If it does not have jurisdiction of reception at the present time, why would that bill, H.R. 12914, change this? It would not give them jurisdiction. It would deny them specifically jurisdiction.

Mr. WASILEWSKI. Because, sir, in my mind CATV operation is not reception per se. It is more than reception. It is retransmission.

Mr. ROGERS of Texas. Then H.R. 12914 would not affect it if we follow your logic, would it?

Mr. WASILEWSKI. I am relying on the statement of the chairman at the opening of this hearing wherein he stated the hearing was based on two bills, one to give them the authority and the other, as I recall, wherein it was stated the H.R. 12914 would deny such authority to the Commission to regulate.

Mr. ROGERS of Texas. Mr. Wasilewski, you are a lawyer and the courts don't go by what the chairman of a committee says. They go by what the bill says.

Mr. WASILEWSKI. They rely in part on the legislative history in clearing up ambiguities.

Mr. ROGERS of Texas. I notice the Chairman of the Federal Communications Commission was most anxious to put words in my mouth in this way. And you are against censorship?

Mr. WASILEWSKI. That is why I was meticulous in the language I used.

Mr. ROGERS of Texas. I noticed that. That is the reason I wanted to find out how much you were serious about the FCC having control of reception. What you are saying, actually, Mr. Wasilewski, is that if the FCC does what it has tried to do and is intending to do by its rule, it has to enter the field of reception, does it not?

Mr. WASILEWSKI. No, sir; not reception in the home. It only enters the means and technology of reception.

Mr. ROGERS of Texas. I said reception.

Mr. WASILEWSKI. There is no reception until it is in the home, for this purpose.

Mr. ROGERS of Texas. No reception until it is in the home? What would you say if you had a co-op formed for this purpose? What would you say if a man who owns a factory and had 500 homes and he ran up an aerial, do you think he ought to be regulated by the Fedral Communications Commission?

Mr. WASILEWSKI. I would say "Yes, the Commission would have the same jurisdiction in that instance as they would have in regard to CATV as we know it"; yes, sir.

Mr. ROGERS of Texas. In other words, your position is that the only time that censorship is involved is when it involves an individual; and until that gets to the individual, then there is no reception?

Mr. WASILEWSKI. I did not say that, either, sir.

Mr. ROGERS of Texas. Let us put it this way. Do you believe that there can be reception by a corporate entity or a partnership, or a co-op or an association?

Mr. WASILEWSKI. Surely.

Mr. ROGERS of Texas. Now that is reception?

Mr. WASILEWSKI. But I was using reception as I thought you were using it, reception in the home as applying to censorship by FCC. In that case, I would say that the FCC has never historically attempted to assert authority over that particular reception.

Mr. ROGERS of Texas. Of course, they never had prior to about 2 years ago undertaken to limit the length or the frequency of commercials, either, had they, Mr. Wasilewski?

Mr. WASILEWSKI. That is correct, sir.

Mr. ROGERS of Texas. And they had never heretofore undertaken to take jurisdiction over straight off-the-air CATV operations, had they?

Mr. WASILEWSKI. Until recently.

Mr. ROGERS of Texas. As a matter of fact, they had said they did not have jurisdiction?

Mr. WASILEWSKI. I believe that is correct. A few years ago they said that.

Mr. ROGERS of Texas. So what we have is a railroad timetable, subject to change without notice. Mr. Henry testified before this committee that what I was talking about, these co-ops and things, did not stand to reason. Now what Mr. Henry's reasoning is may not be what somebody else's reasoning is, which has been definitely proven in the change that has taken place in the expansion of jurisdiction by the Federal Communications Commission, has it not?

Mr. WASILEWSKI. Yes, sir; I would agree with that.

Mr. ROGERS of Texas. Mr. Wasilewski, what the Federal Communications Commission today is doing is expanding its jurisdiction, is it not?

Mr. WASILEWSKI. Of course it would have no authority to expand its jurisdiction. It either has it or does not have it.

Mr. ROGERS of Texas. They realize it too. That is the reason they are doing it this way.

Mr. WASILEWSKI. They are expanding—the scope of their jurisdiction.

Mr. ROGERS of Texas. They undertook to expand their jurisdiction when they had this H.R. 8316 fight.

Mr. WASILEWSKI. They were attempting to do it.

Mr. ROGERS of Texas. They were moving out of the regulation field closely alined to economics.

Mr. WASILEWSKI. Yes, sir.

Mr. ROGERS of Texas. That is exactly what they are doing here, is it not?

Mr. WASILEWSKI. I would say in this particular instance, although there may be some economic overtones, most assuredly what they are attempting to do here is to maintain the allocation structure of broadcasting.

Mr. ROGERS of Texas. One thing on that. There has been a lot of attention paid here to this business of a fair share of the broadcasting. Now Mr. Wasilewski, you are a good lawyer, and you have studied this question. I am asking you if it is not a fact that the entire theory of the Communications Act was based upon the premise that every possible thing that could be made for the people to receive ought to be allocated so that it could be received and that the act was not based upon creating restrictions on what people should sit and receive, but making it possible for them to have the advantage of everything that could be made available to them?

Mr. WASILEWSKI. Local service; yes, sir.

Mr. ROGERS of Texas. There has been a great deal of attention paid here in this testimony to local service. Yet you say that you do not believe the CATV operator ought to be allowed to originate programs. How do you square that?

Mr. WASILEWSKI. How do I square that with——

Mr. ROGERS of Texas. With your statement. You say you believe that the broadcast industry ought to be devoted to local programings, but you say that CATV ought not to be allowed to originate programs, which means local programs.

Mr. WASILEWSKI. When I use the term "local service," I mean local broadcast service. My position relative to program origination by CATV is grounded and based upon my belief that this program origination by CATV, coupled with the expansion of CATV, unless it is regulated will eventually deny local free broadcast service to the public.

Mr. ROGERS of Texas. OK. I want to get into that, too. Now there has been a lot of talk about free TV. Do I understand you that if a local municipality would go in and spend the money to provide for wired connections to everybody's house in that town and they say free cable TV, that would meet your requirement where they could get the cable service free as well as the off-the-air service?

Mr. WASILEWSKI. I would say that would be similarly subject to jurisdiction by the FCC.

Mr. ROGERS of Texas. Why would that be? It is free.

Mr. WASILEWSKI. It would have the same impact, sir, upon the local television station and the service received by the public in the surrounding area as would another type.

Mr. ROGERS of Texas. It is a straight question of economics involving the local broadcaster, is it not?

Mr. WASILEWSKI. I would say it is strictly a question of serving the people in the surrounding area and those who cannot afford to pay for CATV.

Mr. ROGERS of Texas. You say the reason for this is that if this competitive force, or whatever you want to call it, goes along that it will destroy free TV.

Mr. WASILEWSKI. I think that it contains that potential; yes, sir.

Mr. ROGERS of Texas. The so-called free TV is not free at all, because you pay for it in the advertised goods, but it is based upon the sale of advertising, is it not, Mr. Wasilewski?

Mr. WASILEWSKI. Broadcasting as we know it; yes, sir.

Mr. ROGERS of Texas. And if there were no advertising, there would not be any TV unless the taxpayers paid for it through some other source?

Mr. WASILEWSKI. Or until some eleemosynary institution came along.

Mr. ROGERS of Texas. You say it would destroy free TV if cable TV was allowed to come along. Now I want you to tell me how many people in a city, percentagewise, you can get to tie onto a cable TV that costs as much as $5 or $6 or $7 a month?

Mr. WASILEWSKI. I have no way to answer that question, sir. I have no facts.

Mr. ROGERS of Texas. We have had experience in subscription TV and one of them fell flat on its face because the people would not pay that price. Now, Mr. Wasilewski, advertising depends entirely on the number of people you reach to sell your goods to, does it not?

Mr. WASILEWSKI. Yes, sir.

Mr. ROGERS of Texas. Do you mean to tell me that the great masses of the people in this country would tie on to a wired cable TV if they could get free TV by simply turning on their sets to the extent that it would destroy these bargains?

Mr. WASILEWSKI. No, sir. I would say this, that 5 to 10 percent of these great masses, by paying a given amount of money per month to an entity such as this, could outbid all advertising in this country.

Mr. ROGERS of Texas. Five to ten percent?

Mr. WASILEWSKI. Yes, sir.

Mr. ROGERS of Texas. Could outbid all the rest of it?

Mr. WASILEWSKI. Yes, sir.

Mr. ROGERS of Texas. Mr. Wasilewski, I would like to see proof on that. I think—what is this girl's name that predicts stuff in the future?

Mr. WASILEWSKI. Dixon.

Mr. ROGERS of Texas. Have you been talking to her? I would not agree with that at all.

I am sorry, Mr. Chairman, that I have taken so much time. There are many other questions I would like to ask, but I yield back at the present time.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Wasilewski, I have just two or three things. What the FCC—did you hear the FCC testimony?

Mr. WASILEWSKI. I did not hear it all, but I am generally familiar with it.

Mr. SPRINGER. As I understood the chairman and what they were doing—and if this is not correct, I would like you to state wherein I have not stated their position correctly—they felt that there was a place for both of these, and what they were trying to do was to have both of them in operation and serving the public. But in order to do that and to preserve both systems, it was necessary for them to have regulation over CATV. Is that the position of the Commission?

Mr. WASILEWSKI. I could not have stated it better, sir.

Mr. SPRINGER. I want to come back to this question of public interest for just a moment. My distinguished colleague from Texas has mentioned the question of commercials. I assume that it would be possible for pay TV or CATV or radio to go on for half an hour and have nothing but commercials. I am stating the extreme position, am I not? That is true, I suppose they could do that under freedom of broadcasting.

Mr. WASILEWSKI. I would assume so.

Mr. SPRINGER. But somewhere, at some time, at some place, the Commission enters and says that we think the public interest in this shall determine that we shall have at least something to say about how often, how long and how frequently they shall be, and this is in the public interest. Now this is a gray area, I suppose, and you view this in a public interest domain. Now it is in this public interest domain that the Commission has been talking about in this whole general thing of CATV and TV; is that correct?

Mr. WASILEWSKI. Yes, sir.

Mr. SPRINGER. Now this third thing. Could you just cast an opinion here on what you think the future of TV is or will be in the next decade or foreseeable future, which I call 5 years, the next decade being 10 years, if FCC does continue to regulate CATV? What will be the outcome?

Mr. WASILEWSKI. I think that we will have an expanding television broadcast service as we know it, sir, provided that the FCC regulates CATV.

Mr. SPRINGER. Let me ask you this. Will there continue to be an expanding CATV system?

Mr. WASILEWSKI. I would certainly believe so, because we are getting a million new families every year in this country and I think both industries will expand; yes, sir.

Mr. SPRINGER. Now some people—and may I say I think they are some thoughtful people—were in my office yesterday and they made the prediction to me that CATV is dead if these regulations continue.

Mr. WASILEWSKI. I don't believe that, sir. I really don't. In fact, as I pointed out in my statement, 90 percent of the systems that we have today in operation present no problem to either broadcasters or to the FCC. I think that that number will increase.

Mr. SPRINGER. Let us say that we take away the regulation this committee does, and by the action of the House and Senate we wipe out what has already been enacted by the Commission. What is then the future of the free TV and CATV?

Mr. WASILEWSKI. I think you would end up, sir, with a paucity of local televsion stations around the country, especially in the smaller areas. I think you will see the demise of numerous television stations. You will not see the entry into the field of many new UHF broadcasting entities, and you will see, then, maybe, a few television broadcasting stations in the major metropolitan areas serving the vast America by wire.

Mr. SPRINGER. Let me get this clear. Your thought is that if you took away this regulation which the FCC has put into effect—and I am talking about wiping it out, so that you have exactly the situation you had before any regulation was put into effect by the FCC—that most of the broadcasting would initiate from large centers and all the rest of the centers would be served by wire. Is that, in general, your thought?

Mr. WASILEWSKI. In general, that is my thought. As a result, much of the rural area would be getting no service whatsoever. This, I believe, is what will be the long-range result.

Mr. SPRINGER. This is the thought of many of us, not exactly that, but about that, who serve in areas that have largely rural populations. We are wondering about the effect of this. We just want to be sure that those areas will continue to be served. I am talking about outside the corporate limits of those places which are served, we will say, by CATV at the present time. I do not see in the future any feasible way—and insofar as I know the CATV industry has not presented me with any feasible way—of serving the rural areas. I am talking about areas outside the city limits of those towns and cities big enough to handle a CATV system.

I think this is probably why the American Farm Bureau Federation and National Grange and the Illinois Agricultural Station, which is the Illinois Farm Bureau, has given this a great deal of thought. They have talked to me and wondered about what is going to happen.

I thank you for your testimony and your answers to these questions.

Thank you, Mr. Chairman.

Mr. WASILEWSKI. Thank you, sir.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Wasilewski, I want to commend you for a very fine statement this morning. You have made a number of suggestions with regard to points both in the legislation before the committee and also to the proposed regulations now under consideration by the Federal Communications Commission. I would like to query you as to these in the light of the legislation before us. I would like to discuss these matters, particularly, in the light of H.R. 13286, which is the bill authorized by the distinguished chairman of this committee.

You pointed out certain hazards, such as the pitfalls of the pay TV. You have pointed out the possibility of the CATV systems going in and importing the signals from far distant stations. You have pointed out the hazards of the possibility of CATV becoming pay TV from its origination of its own programs, a situation which occurs in regard to the New York Mets baseball situation. You have pointed out also the requirement for protection for broadcasters from origination the same day, you discussed the 15-day rule. You also discussed some other points which I think deserve the attention of this committee.

In the light of those, in order to be brief, could you state to us just what suggestions you have for strengthening H.R. 13286?

Mr. WASILEWSKI. Relative to the matters before the FCC, contained in its rules?

Mr. DINGELL. Relative also to matters involving H.R. 13286 before the committee.

Mr. WASILEWSKI. In one instance I would suggest that CATV be limited to the carrying of the program simultaneously rather than being allowed to tape, for example, and then reoriginate programing, so that they would be truly a continuation of the transmission process.

Relative to the 15 days before and after, I would suggest that this could be incorporated in a report of the committee, pointing out to the Commission the fact that the 1-day protection factor is inadequate and that it should be extended. Now, 15 days, Mr. Dingell, is just a term. It could be 7 days. Fifteen days was developed in the West as a desideratum at that time. I could see in certain cases its being other than 15 days. I am not requesting that there be written into the legislation 15 days per se, but I am requesting that there be written into the report in this authorizing legislation suggestions that the term be lengthened longer than the 1 day.

Mr. DINGELL. How many days, sir?

Mr. WASILEWSKI. Well, 15 days to me is a reasonable period. But on the other hand I can see in some cases, for example, in regard to feature film it probably shoud be longer than 15 days sir, because 15 days as a practical matter in a feature film gives really no protection. I could see this being in the area of administrative discretion to be worked out by the respective parties, namely CATV and the broadcast station and the FCC.

Mr. PICKLE. Will the gentleman yield?

Mr. DINGELL. Yes, I will.

Mr. PICKLE. I would like to pursue that point with the committee. It is a very interesting opinion whether it be 1 to 15 days. What would you think about establishing a limitation on hours, instead of having 1 day, have it 48 hours?

It would be 48 hours from the time the program is broadcast, over a period of time of hours rather than of days?

Mr. WASILEWSKI. I think it gets to the same basic issue, you have to set this somewhere. I don't think 48 hours is sufficient, sir.

Mr. PICKLE. Forty-eight hours would be better than 24 hours?

Mr. WASILEWSKI. Yes, sir. In other words, I think that this is a matter that could be negotiated between CATV and the local broadcasting entity.

Mr. PICKLE. Thank you.

Mr. DINGELL. You made a point, Mr. Wasilewski, about the problem of equal treatment in the proposed rule making before the Federal Communications Commission with regard to the top 100 and then as to other markets in the country. Do you have any suggestions to this committee with regard to that point, particularly as to how this committee might alter or improve H.R. 13286.

Mr. WASILEWSKI. My belief, sir, would be to include it in its report and order.

Mr. DINGELL. You say we should include it in the report rather than include it in the legislation. Why?

Mr. WASILEWSKI. I can see that this is such a dynamic industry as Mr. Springer pointed out, when he was asking me to predict what would happen 10 years from now, none of us sitting here I believe, sir, could predict 10 years ago what this industry would have been and what it is today.

I think this is an area where you have to give to the FCC certain administrative discretion rather than to set a lot of these specifics down into legislative language. It would be to my benefit, momentarily to tie it down to specific language.

Mr. DINGELL. It is clear to you however that the hundred top markets provision is not adequate to protect the interest of the public or protection of the television industry, am I correct?

Mr. WASILEWSKI. That is right.

Mr. DINGELL. It also is not sufficient to protect those particularly weak and developing stations in the UHF and VHF field in the very small markets where they might be operating under a very limited economic capacity, am I correct?

Mr. WASILEWSKI. Absolutely.

Mr. DINGELL. Do you have any other suggestions to this committee with regard to these or any other points?

Mr. WASILEWSKI. I would suggest that section 325 of the Communications Act be amended to encompass the retransmission by CATV, the pick up and retransmission by CATV, to require consent of the CATV operation from the broadcast station in order to carry that signal.

Mr. DINGELL. Do you have any suggestions with regard to the distance from which the programing could be brought in from another community or CATV purposes?

Mr. WASILEWSKI. I think if we follow the basic approach of the FCC relative to this matter that this gives a reasonable compromise solution to the problem.

Mr. DINGELL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman

Mr. Wasilewski, if I properly interpret your position, you are arguing primarily against television that is relayed television, CATV?

Mr. WASILEWSKI. That is the principal part of my concern; yes, sir.

Mr. YOUNGER. Because all the way through you are talking about jumping over mountains and bringing Seattle broadcasts into Billings. That can only be done by microwave.

Mr. WASILEWSKI. That particular example; yes, sir.

Mr. YOUNGER. Has there ever been any question in your mind that the FCC did not have complete regulatory authority over that type of operation?

Mr. WASILEWSKI. No, sir.

Mr. YOUNGER. Why haven't they regulated it before?

Mr. WASILEWSKI. They have, sir, they have been regulating that aspect of the situation, in its first report and order.

Mr. YOUNGER. You mean prior to February?

Mr. WASILEWSKI. Yes, sir.

Mr. YOUNGER. Then why do you feel that this is such a terrible infringement upon the ordinary broadcasting if it has been regulated all the time?

Mr. WASILEWSKI. They have been regulating this aspect of things but they have also been giving 15 days protection before and after to the local station which they have done away with now and made it on the same day.

In other words, I am supporting the Commission, the bill that was submitted, by them.

Mr. YOUNGER. With your tongue in your cheek you are supporting them?

Mr. WASILEWSKI. No, sir.

Mr. YOUNGER. Well, you have recommended certain changes and modifications, have you not?

Mr. WASILEWSKI. Yes, but that does not mean that I don't support the overall——

Mr. YOUNGER. Are the broadcasters you represent wholly satisfied with the bill as introduced by the Commission?

Mr. WASILEWSKI. Not wholly, no, sir.

Mr. YOUNGER. That is what I am getting at. You are advocating with reservations?

Mr. WASILEWSKI. I am advocating it with modifications.

Mr. YOUNGER. That is a reservation, is it not?

Mr. WASILEWSKI. Yes, sir; all right.

I will go along with that.

Mr. YOUNGER. That is what I am trying to get at. Your paper all the way through seems to be attacking the precedent of CATV using microwave. You don't seem to have any particular fear against CATV

that would limit it solely to antenna reception and cable into a community?

Mr. WASILEWSKI. No; that is not entirely my position, Mr. Younger.

Younger. I would also be concerned about the CATV picking up duplicate programs off the air, bringing them from another market.

Mr. YOUNGER. Do you believe fundamentally that the FCC has the authority for regulation of purely antenna CATV?

Mr. WASILEWSKI. Yes, sir. Because it is part of the interstate commerce transmission.

Mr. YOUNGER. How is it? It is all local.

Mr. WASILEWSKI. Well, even a local television station, presumably if it——

Mr. YOUNGER. They don't send any signal out?

Mr. WASILEWSKI. But they receive a signal that is in interstate commerce and retransmit it.

Mr. YOUNGER. So does the apartment house. As I understand a while ago you admitted that if you just have an antenna up on an apartment house to serve the tenant that the FCC did not have authority to regulate that.

Mr. WASILEWSKI. If I said that I did not intend to, sir. I said that they can draw a line of discretion as to where they should exercise their authority or they should not. In this particular instance I don't believe they would exercise any authority.

Mr. YOUNGER. If I get your theory right—and I may have misinterpreted it—you figure that the FCC could extend their authority outside the act so long as then it does not interfere with the broadcasters?

Mr. WASILEWSKI. They, of course, cannot extend their authority outside the act. They don't have the jurisdiction.

Mr. YOUNGER. Then why not wait until the court decides if they have the jurisdiction because the Commission itself is divided as to whether they have it.

Mr. WASILEWSKI. The Commission has indicated they have the authority and are proceeding to exercise it.

Mr. YOUNGER. On a divided basis?

Mr. WASILEWSKI. Yes, sir. That is not unusual, however.

Mr. YOUNGER. That is all, Mr. Chairman.

Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

I have enjoyed your testimony this morning, too. I believe everyone recognizes that CATV and our regular broadcasting setup are both serving a purpose. I think to assume that this committee is going to do away with one or the other is a little absurd. What we do want to do I think in this legislation is to provide adequate protection to both systems.

You say this nonduplication for 1 day is not sufficient.

You make some statement that if you extended the broadcast at the moment it is being broadcast you have no objection to that. What is your comment on that?

Mr. WASILEWSKI. I must have mixed up two different points in my response to Mr. Dingell. When I was talking about the simultaneous

portion of my testimony there I was referring to the fact that the CATV performing its functions should not be allowed to originate programing. That is what I had reference to when I say, "should not be allowed to originate and should only be allowed to pick up the signal and retransmit them simultaneously."

Mr. ROGERS of Florida. You approve of the local station having its program carried by the CATV?

Mr. WASILEWSKI. Yes, sir. Then my other point was that there should be protection given to the local stations' programing and that even if the CATV has the capability to simultaneously pick up that same programing it should be precluded from doing so in order to protect the local station. That was my 15-day suggestion.

Mr. ROGERS of Florida. You just say that 1 day is not sufficient protection?

Mr. WASILEWSKI. Yes, sir.

Mr. ROGERS of Florida. Even though they have had it in that area the day before, people have had the opportunity to see it, you don't think it is sufficient protection.

Mr. WASILEWSKI. You mean if it was on the broadcasting station the day before? No, sir; I don't believe that would be sufficient protection.

Mr. ROGERS of Florida. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, very much, Mr. Chairman.

Mr. Wasilewski, I, too, appreciate your testimony here this morning. You have brought out well some of the things that we are wrestling with, or many of them we are wrestling with in connection with this controversy. Let me pursue a little bit nonduplication rule. It would appear to me that the time before the showing is more important to local broadcasting than the time after.

Mr. WASILEWSKI. I agree with that.

Mr. KORNEGAY. In other words, it seems to me that there is a little problem with how much time after it is carried on a local station the CATV carries this in a local community, with—whether it is 1 day or a hundred days. But I can see before the time the local stations carries the program would have great bearing on the local station.

In other words, of course on network shows I guess there is no particular problem there because you can't get them. Ed Sullivan, or some show of that type, is not going to be shown anywhere until a certain time. But take some documentary or some film or something that could be available or would be available to a distant station at any time prior to the time it had been advertised on the network, has any thought been given to that idea?

Mr. WASILEWSKI. Sir, your premise is well taken that it is more important to the station to be the first one to show that program and that the reasons for protection after that are not as great as they were for before the first showing.

However I would point out that there are some situations where a CATV can pick up in the United States a program and present it to a particular community before it is on the network, for example, within the United States and that occurs in certain situations along

the Canadian-United States border here in certain of our network programs are put on Canadian stations—prior——

Mr. KORNEGAY. Prior to the time they go on the U.S. stations.

Mr. WASILEWSKI. Yes. As a result some of the CATV's in nothern New York as I understand it, perhaps other parts of the country, are able to pick up that program and bring it into a community prior to its broadcasting within the States.

Mr. KORNEGAY. I think in answer to some question you thought it ought to be an agreement between CATV, local broadcasting stations, and of the FCC. How could that be practically carried out?

I am talking about a program-to-program basis.

Mr. WASILEWSKI. On a per program basis it would be next to impossible.

Mr. KORNEGAY. That is the way it would appear to me.

You commented on the fact that the Commission in its nonduplication rule would not apply to color programs. Do you care to make any statement about that?

Mr. WASILEWSKI. We had no disagreement with that as an organization, sir, although some individuals in our organization disagree with our position.

Mr. KORNEGAY. I think there is no need to protect local stations against color shows.

Mr. WASILEWSKI. The protection factor operates—and I assume this is the basis of your question—that if the local station does not carry it in color and the CATV is bringing it in by color, that there is no protection to the local station. We agree with that.

Mr. KORNEGAY. Now in reference to the 100 top markets in the United States, how many stations would not be included in the 100 top markets? How many stations would be affected or left out?

Mr. WASILEWSKI. I am advised by one of my associates that the number would be approximately 140.

Mr. KORNEGAY. 140 stations.

Mr. WASILEWSKI. Yes, sir.

Mr. KORNEGAY. How many stations are there in the entire United States?

Mr. WASILEWSKI. There are 600 stations. Just a moment, let me check. Sir, I did not have this information at hand here but my associate indicates there are another 140 markets.

Mr. KORNEGAY. The station that would not be covered under the top 100 markets serve how many people?

Mr. WASILEWSKI. I am advised it is about 140 markets now and 200 stations involved here that would not be covered.

Mr. KORNEGAY. Approximately how many people?

Mr. WASILEWSKI. Well——

Mr. KORNEGAY. Approximately how many people? What is the coverage of those stations?

Mr. WASILEWSKI. Ours would be a guess, sir.

Mr. KORNEGAY. The reason I brought that up and I don't remember the exact figure but the Chairman of the FCC when he was over here to testify made a statement to the effect that virtually 90 percent of the stations and people—I am not trying to quote him, I can't exactly—would be covered by the ruling.

I was saying in effect this covered most of the country.

Mr. WASILEWSKI. It would occure to me that approximately 200 stations would not be covered. As a pure guess momentarily 15 or 20 percent of the people.

Mr. KORNEGAY. I believe that is all. Thank you very much.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman. I regret, Mr. Chairman, that I have not come to as many of these hearings as I would like. I recognize that it is very significant legislation. I am on another committee that is very time consuming.

As I understand your position there would be no authority for CATV to sort of replay a program within a short period of time after it had been taped and played by another network. Is that right?

Mr. WASILEWSKI. Yes, sir; that would be my desire.

Mr. KEITH. I am trying to find authority in this legislation for public interest programs. Like, for example, city council meetings or the kind of program that the Senate put on the other day?

Mr. WASILEWSKI. This legislation is, as I understand it, sir, as proposed by the FCC, would give to the FCC the authority to make exceptions to allow that.

Mr. KEITH. It would seem to me that there might be a court case if the FCC did make a ruling under the first section of this proposed legislation, the Commission shall, as a public interest where the need requires, have this authority. Certainly it would be in the public interest to view any program put on under the public affairs proviso of the current regulations, is that not so?

Mr. WASILEWSKI. Sir, I am sorry.

Mr. KEITH. My point is that most radio stations, and I believe most television stations, do a lot of programing for which there is no sponsor except the station and the public in effect.

Mr. WASILEWSKI. That is right.

Mr. KEITH. It would seem to me that it would be adverse to the public interest to deny anybody with the equipment available to capture that filming and to relay it to CATV network.

Mr. WASILEWSKI. Sir, according to my understanding of the proposed legislation as introduced by the chairman there are exceptions allowed along that line in 331(b) of the proposed legislation.

In other words, to permit such transmission without additional charge to subscribers under certain limited exceptions.

Mr. KEITH. I am not familiar, I have not read the details and I probably would not have properly interpreted it if I had read it but under section (a) where the public interest is involved you have a built-in protection that would seem to me for CATV showing of any—as a matter of fact, under the Constitution I would think the right of free speech and the right of the public to know as contrasted with, of course, property rights, and under other provisions, but it seems you run into a potential conflict here and it would give certain CATV outlets a lot of programing for free and one where you could not very well prohibit them taking advantage of the tremendous facilities that a large network would have to have in order to do an adequate job.

I just wanted to get this into the record and your response to it as to whether or not in your view this legislation would permit in the public interest a substantial reproduction of programs which the public would have a need to see and the right to see.

Mr. WASILEWSKI. In my opinion this legislation that you are considering, sir, would allow this exception and allow program originations in certain instances by CATV.

Mr. KEITH. Would you care to comment as to the wisdom of that proviso?

Mr. WASILEWSKI. The position of our organization is in opposition to program originations. I believe that this Congress would have the authority to preclude such originations even though I fully realize, sir, that there could be constitutional questions present.

But I think in order to protect the allocations system of television broadcasting this committee and this Congress are so powerful in the area of interstate and foreign commerce regulation that they could preclude origination.

Thus I do not believe that origination, across-the-board origination, by a CATV is in the public interest.

Mr. KEITH. Even an across-the-board authority for public affairs programs and blanket authority on the part of Congress? Don't you think that the Supreme Court would be very quick to jump to the public's defense in a situation of that sort?

Mr. WASILEWSKI. I don't know, sir. I really don't know. I have not given it any real thought.

Mr. KEITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. I like to give as little work as possible to lawyers because they are so expensive, Mr. Wasilewski, but you have again made a number of good suggestions on proposed changes of the bill before the committee, H.R. 13286.

I wonder if you might offer these in the form of amendments that the committee could consider since a number have been submitted by other parties. I think it would be well if you gave us something specific to work on.

Mr. WASILEWSKI. Yes, sir.

I would like to say that Mr. Rogers was overly kind. I should say I used to be a lawyer. I am a lawyer by training and background. But we will do what you say and I will see that it is done.

(The information requested follows:)

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, D.C., May 5, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the recent hearings on H.R. 13286, a bill to amend the Communications Act of 1934 to authorize the FCC to issue rules and regulations with respect to community antenna systems and for other purposes, you asked the National Association of Broadcasters to submit specific language for recommended changes in the bill. The following changes in H.R. 13286 would, in our opinion, be desirable:

"(gg) 'Community antenna system' means any facility which, in whole or in part, receives the signals transmitted by broadcast stations and amplifies or otherwise modifies such signals and transmits same by wire or cable to subscribing members of the public who pay for such service."

Section 331(a)(1):

"to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the construction, technical characteristics, and operation of community antenna systems, to the extent necessary to carry out the purposes of this Act, with due regard to the establishment and maintenance of multiple broadcast services."

Section 331(b): "No community antenna system shall transmit over its system any program or other material other than that which it has received over the air from a broadcast station and simultaneously transmits same."

Add a new section as follows:

"SEC. 332. No CATV system shall transmit over its system the signals of a broadcast station except with the express authority of the station."

These changes are designed to make certain that CATV systems maintain their traditional role as a supplement to regular broadcast service by limiting them to the receipt and simultaneous transmission of broadcast signals without additions or deletions.

It would be appreciated if these comments could be incorporated into the record.

Sincerely,

DOUGLAS A. ANELLO.

Mr. VAN DEERLIN. Mr. Rogers of Texas was overly kind?

Mr. WASILEWSKI. In talking about my abilities as a lawyer.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have one question on a point. You said that CATV could tape and rebroadcast now. They indicated—the CATV representatives—at the time they were here that this would be in violation of the copyright laws. Is that your position or not?

Mr. WASILEWSKI. Sir, I have always been amazed at this position on the part of a CATV. My belief is that they are in violation of the copyright laws whether or not they tape and rebroadcast. Their agreement that requires copyright permission for them to tape and rebroadcast, to me is a distinction without a difference. What I am saying is this, that under present law according to my interpretation and understanding of it, they are as free to tape and rebroadcast as they are to simultaneously transmit.

Mr. ADAMS. That is your interpretation and it is opposed to this?

Mr. WASILEWSKI. Yes, sir.

Mr. ADAMS. The second point was with regard to the local origination which is presently being protected. You have listed on page 5 the premise under which we will—we are presently operating is protection of local originations and you have advocated this be done by broadcasting facilities.

Should we reexamine the origination idea and beyond the networks which are presently protected under the proposed legislation allow CATV systems and the broadcast facilities to compete as to who will better provide the local community, local originations in terms of both scope, efficiency, and as Mr. Keith mentioned, the production of many, many local events which can be carried on multichannel CATV but cannot be carried by most local broadcasters because they have only one channel and have a great commitment as to time?

What are your comments?

Mr. WASILEWSKI. I don't believe that should be allowed because if it is, for example, it will be only a small nucleus of the community that will be served by this origination and if it is allowed to be rather widepsread eventually it will come to the point, I believe, where the local stations will be economically unable to provide any type of local origination of this type and thus the surrounding area will be deprived of any service whatsoever for people who cannot afford CATV.

Mr. ADAMS. We are talking about maintaining protection, about nonduplication and so on for your basic produced programs which are network and the requirement that you carry the local station programs

but in the area beyond that, that is a conflict as to whether or not the local service type program can be better carried by an independent UHF station, giving local effect, spreading the area or a CATV system which can originate local programing.

What I am asking you, is this a new advance in the art and should we let them?

Mr. WASILEWSKI. Sir, I don't believe it is necessarily a new development in the art. I think this has been a potenital technical capability for a long time. I don't think it should be allowed because I think by so doing then it effectively precludes the potentiality and the possibility of added broadcast service in that particular area, for example, a new UHF in many instances. However, I can see the need for exceptions in certain circumstances.

Mr. ADAMS. What I am getting at, we may be perhaps better off, instead of regulating everything beyond this established pattern that we have now, to let the market determine whether or not people want CATV for these other alternate services or another UHF station. If nobody wants to buy the CATV the UHF station gets its share of the broadcast market.

If, on the other hand, the people do not want the UHF and they want to go to a CATV system, should this be allowed as an area of market competition?

Mr. WASILEWSKI. I would say that the CATV should not be allowed to do both; namely, to have off-the-air service, pick up and broadcast signals from afar, as well as to provide this program origination. I think it should be allowed to do one or the other and not both in concert.

Mr. ADAMS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Wasilewski, for coming here and giving us the benefit of your views.

The committee will stand adjourned until 2 o'clock this afternoon. If we can get permission from the House to sit at that time, our witness will be Mr. Lester Lindow, executive director of the Association of Maximum Service Telecasters, Inc.

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Our first witness this afternoon will be Lester W. Lindow, executive director, Maximum Service Telecasters, Inc., Washington, D.C.

Mr. Lindow, would you identify the gentleman who is with you, and then you may proceed. I notice that you have a lengthy statement. If you want to, you might summarize it. The statement will be included in the record in its entirety.

STATEMENT OF LESTER W. LINDOW, EXECUTIVE DIRECTOR, MAXIMUM SERVICE TELECASTERS, INC.; ACCOMPANIED BY ERNEST W. JENNES, LEGAL COUNSEL

Mr. LINDOW. I appreciate that very much, sir, and I have a short summarization and analysis of the problem, which I would like to give at this time.

The CHAIRMAN. All right, thank you.
(The full statement follows:)

TESTIMONY OF LESTER W. LINDOW, EXECUTIVE DIRECTOR, ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC.

My name is Lester W. Lindow. I am the executive director of the Association of Maximum Service Telecasters, consisting of more than 160 commercial and educational television broadcast stations. MST's member stations include both commercial and educational VHF and UHF stations serving a wide variety of large, medium size and small cities throughout the Nation.

Since its organization in 1956, MST has been dedicated to the development, improvement, and expansion of a nationwide system of free, competitive television broadcast services. MST has given full support to efforts to foster the sound growth of UHF television.

I would like to make the following basic points today:

(1) Free, local, and area television broadcast service is vital and its full development has been established by the Congress as the goal of television policy.

(2) If permitted to develop fully, UHF television will bring this goal within reach in the relatively near future.

(3) Current CATV trends endanger the viability of existing stations, both UHF and VHF, and are a particularly grave threat to the development of new stations.

(4) The recent actions of the FCC are an important step in the direction of meeting the threat of unregulated CATV. However, they fall short in significant respects and the FCC should be encouraged to strengthen its new rules.

(5) Although the FCC's exercise of authority to regulate CATV is legally sound, appropriate legislation reaffirming the FCC's broad authority would be reasonable.

I. THE STRUCTURE OF FREE, LOCAL, AND AREA TELEVISION SERVICE AND THE POLICIES OF THE CONGRESS

Importance of local and area television.—Close bonds exist between television stations and the communities and areas they serve. Television stations oriented toward local needs provide unique benefits to the public. They present religious programing oriented to the particular needs of the community and its various religious faiths. They provide outlets of expression for local and area cultural endeavor and present an impressive variety and quality of local and area news, educational, and informational programing. They provide forums for discussion of community problems and outlets for public officials. The local television broadcast station provides invaluable assistance to charitable, educational, and social service organizations. Finally, not to be minimized, is the vital role which the local television station plays as an advertising medium, making an essential contribution to local and area business and the local and area economy.

Television service is particularly important on farms and in other rural areas. Local and area television broadcast stations, with their wide area coverage, are not only invaluable for entertainment, educational, cultural, and vital news program services which they render to rural America and, of course, specialized crop, market, weather, agricultural instruction, and similar programs—they are unique in their ability to bring these services to thinly populated areas—and without charge to the public which depends on these services.

Congressional policy and the FCC mandate.—In enacting the Communications Act of 1934 the Congress made clear the importance of local and area broadcast stations providing service to all persons in cities, towns, and rural areas alike. It directed the Commission to so license broadcast stations and establish the powers at which they operate "as to provide a fair, efficient, and equitable distribution of * * * service * * * among the several States and communities" (sec. 307(b)). In furtherance of this directive the Commission was authorized "to establish areas or zones to be served by any station" (sec. 303(h)).

Responsive to this mandate, the Commission in 1952 established a table of assignments and engineering limitations allocating specific channels to specific communities to serve particular areas. The allocations have since been updated. But the allocations and the limitations on the area a television signal may reach are based on the premise that, although local service and multiple services are both important, it is more important that the opportunity for the development

and expansion of local and area television broadcast stations be maximized than that the number of services be maximized. In so doing, the Commission stated that such an approach "protects the interests of the public residing in smaller cities and rural areas more adequately than any other system for distribution of service and affords the most effective mechanism for providing for noncommercial educational television." (Sixth Report on Television Allocations, 1 R.R. (pt. 3) 91:599, 604 (1952).)

The full realization of a nationwide system of local and area television broadcast stations has in the past been retarded as a result of the failure of UHF television to develop as anticipated. However, this has been largely a result of the scarcity of television sets capable of receiving UHF signals. This obstacle has been overcome with the enactment of the all-channel receiver legislation (Public Law 87-529). Significantly, in enacting this legislation the Congress reemphasized its underlying purpose to be the fuller realization of the goal reflected in the Communications Act of 1934 and the Commission's sixth report and order:

"The goal is thus a commercial television system which will (1) be truly competitive on a national scale by making provision for at least four commercial stations in all large centers of population; (2) provide at least three competitive facilities in all medimum-sized communites; and (3) permit all communities of appreciable size to have at least one television station as an outlet for local self-expression." (H. Rept. 1559, 87th Cong., 2d sess., 3 (1962); see also S. Rept. 1526, 87th Cong., 2d sess., 2-4 (1962).)

UHF development.—Although the all-channel receiver law did not become effective until April 30, 1964, the fruitful results of the law are already evident. More than 9 million television sets equipped to receive UHF are being added to U.S. homes each year. The number of operating commercial and noncommerical educational UHF stations has already increased by almost 50 percent since December 31, 1961. The number of commercial and noncommercial educational UHF authorizations has increased by some 80 percent in the same period and the number of applications pending for commercial and noncommerical educational UHF stations has increased by more than 400 percent. The new growth of television broadcast stations can increase television service in cities which are already served by local and area stations, can bring new local service to communities which, until now, have not enjoyed local television, and can bring new dimensions of diversity, creativity, and public service to free television broadcasting.

The way is now open for a full realization of the policies which have long guided the development of television broadcasting. But the basic goals are now being threatened by new trends in CATV.

II. THE CATV EXPLOSION: AN EMERGING DANGER TO FREE, LOCAL, AND AREA TELEVISION SERVICE

CATV as a supplemental service.—In its historic role as a supplementary facility, which brings service to communities which cannot receive adequate service off the air, CATV performs, and can and should continue to perform, an important public service. As we have repeatedly emphasized, MST does not oppose CATV in this role as a supplementary service.

The CATV explosion.—However, in recent years a new type of CATV has emerged which has disclaimed its historic and proper role. Instead of supplementing local and area television broadcast stations, the new CATV would replace them. Instead of operating within the basic framework of the system of local and area television allocations, the new CATV would destroy this system. Here are some of the chief characteristics of this new CATV.

First to be noted is the shift by CATV to increased channel capacity, enabling a large number of signals to be carried—many of which substantially duplicate the programing of the local stations—and magnifying the harmful impact on local broadcast stations. Until recently the average operating CATV system had no more than five channels. Now virtually every new system has 12 channels and systems of 20 or more channels are being engineered. Incidentally, I might add that, notwithstanding this increased ability to carry multiple cannels, numerous systems have refused to carry the local station. By this unfair practice, they thereby cut off the local station's access to CATV subscribers.

Second to be noted is the new emphasis on the carriage by CATV of distant signals rather than the provision of improved reception of local and area stations.

Indeed, multichannel systems are pulling down all geographical boundaries not only by special receiving antennas advantageously sited for long-range off-the-air pick-up but also by use of microwave relay facilities which can import signals of stations across many hundreds of miles and several states. It is no longer an exaggeration to speak in terms of carirage of New York signals into cities as far away as Dayton, and Los Angeles signals as far away as Texas or Oklahoma. Yet the irony is that most of the outside signals which are being put on or proposed by CATV largely duplicate the programing which is or would be available on local stations. This destroys the program exclusivity bid for and purchased by the local station without adding new programs for the subscriber.

Third, there is the unrestrained effort of CATV to expand into State after State and city after city at an incredible pace. The rush for CATV franchises has been likened to the California gold rush and the chaos in radio in the 1920's which led to the enactment of the Communications Act itself. The FCC's recent second report and order on CATV presents data which indicates the present extent of CATV's explosive growth and demonstrates that, left unchecked, the proliferation of CATV would continue to accelerate. Just to give some idea of the magnitude of the problem, let me mention that, according to estimates prepared by MST as of mid-1965, there were then approximately 1,800 communities with operating CATV systems, some 750 additional communities where CATV systems were franchised and more than 900 communities where applications for CATV franchises were pending. Television Digest data further show that, in just the 10-month period from May 1, 1965, following the release of the FCC's first report and order on CATV, to March 1, 1966, immediately prior to release of the second report and order, more than 700 new franchises were granted; more than 400 CATV systems were placed under construction or had major extensions and more than 100 systems commenced operation.

CATV promoters have predicted that CATV will take over 85 percent of all television homes—over 40 million households within the next decade. Based on the data showing the extent of CATV activity and the accelerated pace at which it has been growing, these predictions of CATV promoters cannot be dismissed, absent effective regulation.

CATV impact: The economics of injury.—In the absence of strong, effective regulation, CATV can jeopardize the economic vitality of local and area stations resulting in impairment of service, if not curtailment of operations altogether. I have already mentioned the unfair competitive practice—and resultant injury to the local station—where the CATV system refuses to carry the local station. But such refusal is only one aspect of the problem. CATV's duplication of the local station's programing is also unfair and harmful, whether or not it occurs at the same time or on the same day of broadcast. And this impact will be increased if CATV is permitted increasingly to import distant signals into areas that have television service.

Our free system of television broadcasting is based upon the capacity of a particular station to use its programs to attract audience which will in turn attract the advertising revenues which are necessary to support the operations of the station. In the case of network programing, the ability of the television network to persuade an advertiser to include a particular station on the network lineup and the compensation which that station receives will inevitably be affected if CATV brings in the network programs over one or more other stations. In the case of nonnetwork programing, the ability of a station to obtain audience, the size of that audience and the amount of revenue that can be obtained from advertisers are all interrelated and directly affected by CATV's importation of the same programs from other stations. Each time a program is viewed, a portion of the audience potential disappears. Thus, when CATV carries a program for which it has paid nothing and which is or would be broadcast by local television stations at considerable expense, the portion of the audience that watches the program over another station on CATV is lost to the local station when it broadcasts the program. The stock in trade of a television station is its programs. When the same programs are imported by CATV from distant stations, it causes the local station's programs to lose their value.

It would be a great mistake, moreover, to conclude that these problems are eliminated by mandatory carriage and conventional nonduplication requirements. Most of the programing of local independent stations and a large portion of the nonnetwork programing of local network-affiliated stations consist of the very same feature films and syndicated programs which are broadcast by the

distant stations which CATV tries to import. Yet they are rarely broadcast on the same day or even within 2 weeks of each other. Nonetheless, audience and revenue is lost together with the exclusivity the local station bargains for. To call this free competition seems to us to be a play on words. It is corrosive and unfair competition. The "new CATV" thus threatens the lifeblood of free, local and area television through the increasing effort to import multiple signals from distant stations into the communities and areas served by local stations. This practice will so fragment the audience of the local television stations as to cause drastic reduction in revenues. Once the erosion of audience and revenues has begun, it feeds upon itself. Less audience means less revenues. Less revenues means less finances to support the purchase of programs to compete for audience against the programs that are imported by CATV.

What is involved here is not only a matter of whether this audience fragmentation will be severe enough to destroy local broadcast operations altogether. Even if local broadcast stations are not ruined by the impact of multiple outside signals, their financial base of operations can be seriously impaired. This serious loss of needed revenues must inevitably lead to a drying up of local programing since a station's economic ability to provide this type of programing is dependent on sound and successful operations.

Adverse CATV impact has already been felt and MST has submitted detailed information on CATV impact to the FCC. But most operating CATV at this time is of the traditional "fill in," supplementary type. It is the change in the nature and scope of CATV that would have profound adverse impact nationwide. And this change would come into being without effective regulation.

There is one further area of injury that is increasingly coming to light as CATV has moved into communities that already have television service. I refer to the mounting evidence of serious degradation of the picture which the CATV subscriber receives when the station carried by CATV has a strong off-the-air signal in the community. This problem exists especially within the principal community contour of a television station and to some extent within its grade A contour. It is ironical that CATV, which wants to be regarded as a "master antenna," "improved reception" system, should degrade the signals of local stations. It is adding insult to injury for CATV to import distant stations and then deliver a better distant station signal than a local station signal. Under such circumstances CATV subscribers tend to watch outside stations in preference to the local stations, and the audience of the local station is further reduced.

Impact on new entry and on UHF development.—The impact of CATV on existing stations tells only part of the story. As documented more fully in pleadings which MST has filed with the FCC and in the FCC's second report and order, apart from the effect of CATV on existing stations, unlimited CATV would jeopardize the establishment and operations of effective new local and area television stations, principally UHF. These stations will need the very programs which CATV would import from distant stations. And they will need the very audience which those distant stations would be fragmenting if they are carried on CATV. CATV has already proved to be an important factor in the decisions of some UHF permittees and licensees not to construct or activate their stations. And CATV is already having the serious, albeit less apparent, effect of deterring interested persons from even seeking a UHF broadcast authorization.

To the extent local television broadcast service is impaired, blacked out or does not come into being, city residents are thus deprived of an essential part of television service. But the effect in rural or outlying areas can be worse since it is not economically feasible for CATV to serve thinly settled populations. Impairment or elimination of television broadcast service means the impairment or elimination of television broadcast service altogether for this segment of the public. Nor should we lose sight of the people who cannot afford to or do not wish to subscribe to CATV, no matter where they live.

Pay TV.—CATV is already pay television of a sort, because CATV charges people to watch television programs. It charges them on a monthly basis, rather than on a per program basis, but it still charges them. If CATV is permitted to originate its own programing, it will become pay TV as that term is generally used. In our view, CATV should not be permitted to originate programing of any other type of material but should be limited to the simultaneous retransmission of broadcasts without insertions or deletions, except as necessary to comply with nonduplication requirements and with copyright and other legal requirements.

Whatever the merits of pay television, pay television should stand or fall on its own merits and not develop through the back door in the guise of something else. A CATV system derives all of its revenues by taking television signals out of the air and carrying them into the homes of subscribers for a fee. It pays nothing to carry those signals or for the programs which it retransmits. It has a free ride on the coattails of the existing free television broadcasting system and the program producers. Moreover, either as a legal or a practical matter, CATV is essentially a monopoly in any particular area where it operates. It would be the height of unfairness for CATV to be permitted to originate its own programing or other material and thus to impair the very broadcast system which provides it with its basic economic support. Similarly, the origination of commercials by CATV is unfair to the stations whose programs CATV carries and inconsistent with CATV's role as an auxiliary and supplementary service.

It has been suggested that CATV systems are incompatible with pay television from an engineering point of view. This is not a new suggestion and MST has filed with the FCC detailed engineering material which demonstates that pay TV (whether on a per program payment or a monthly payment basis) is fully compatible with CATV and that the costs are not excessive.

III. REGULATION OF CATV BY THE FCC

Considering the facts and circumstances which I have reviewed, action by the FCC to regulate CATV was not only justified, it was required in the public interest.

The arguments as to whether the FCC has legal authority to regulate CATV have been sufficiently aired before this committee and the FCC and no useful purpose would be served by further discussion here. Suffice it to say that MST believes that regulation of CATV is authorized by the statute and by persuasive judicial authority.

The FCC's second report and order of March 8 adheres to the principle underlying its first report and order and notice of inquiry and notice of proposed rulemaking, both released in April of last year: CATV should supplement rather than replace or undermine the optimum development of free, local and area broadcast service. Although it reflects primarily a growing concern with recent trends in CATV, the FCC's actions of March 8 represent the culmination of long and active study of the CATV problems, a study going back some 8 years. In view of the prodigious record which has been compiled over the years and especially in the proceedings since last April, we think it is unfair to say, as some CATV interests have claimed, that the FCC acted in haste, without a full and adequate record before it. Among the specific steps taken by the Commission are the following:

1. The FCC revised in part the carriage and nonduplication rules adopted in its first report and order for microwave-served CATV systems, and as revised, has made these rules applicable to all CATV systems, irrespective of whether such systems use microwave facilities.

2. The FCC, mindful that carriage and nonduplication are insufficient to safeguard the growth of UHF and the maintenance and development of free, local broadcast service generally, adopted rules, policies and procedures dealing with importation of the signals of distant stations into markets served by local television stations.

3. The FCC's rules provide for the filing with the Commission of pertinent information concerning ownership of CATV systems and certain aspects of their operations by May 18, 1966.

The Commission deferred action on several important matters including principally the matter of prohibition against the origination of programing or other material by CATV, the establishment of appropriate technical standards to govern the operations of CATV systems and the establishment of a requirement that, on a continuing basis, CATV systems be required to file information as to ownership, control, and management.

We are gratified and encouraged that the FCC has finally acted to regulate CATV, whether or not served by microwave, and to establish rules going beyond carriage and nonduplication. But, while we are enthusiastic that the FCC has acted and believe that the new rules are an imporant step in the right direction, we are apprehensive that they do not go far enough in certain important respects and we believe that the rules should be strengthened. Attached to my

testimony for inclusion in the record is attachment A entitled "Certain Basic Considerations Relating to New Federal Communications Commission CATV Regulations." Let me now just turn to certain of the high points.

1. *Distant station limitations.*—(*a*) One basic deficiency cuts across all of the new distant station rules. In general these rules place heavy and unnecessary burdens on affected stations as well as on the Commission itself. The need to limit sharply the rapidly increasing efforts of CATV interests to import nongrade B stations into areas that have television service is so real and pressing that the Commission could and should have issued a simple regulation prohibiting the carriage of television stations beyond their grade B except in certain very carefully limited and defined situations and upon a specific and compelling showing by the CATV system that this would in no way jeopardize or threaten the establishment and healthy maintenance of television broadcast service in the area. In sum, the basic problem is that the FCC has atomized distant city CATV regulation into an enormous number of individual pleadings and proceedings rather than to provide an effective general limitation with provision for appropriate but limited exceptions and different treatment on a special showing.

(*b*) Given the approach the Commission has taken with respect to CATV within the grade A contours of stations in the top 100 markets, there is no justification for providing a lesser approach within the grade B contours of such stations and in either the grade A or the grade B of stations below the top 100. The grade B service area is extremely important to most television stations, especially those outside the very largest metropolitan area markets, is provided program service by these stations and is vital to the effective operations of these stations. And to give a lesser degree of protection to stations below the top 100 markets is also wholly unjustifiable. These are generally the weaker and less viable stations, even more susceptible to CATV distant station impact than larger market stations. Nor do we see the logic of any distinction between the top 100 markets and those below the top 100 even in terms of the threat to UHF development, which the FCC referred to as a principal reason for different treatment. As for March 15, 1966, there were at least 33 UHF commercial and noncommercial educational stations operating, authorizations outstanding for at least 13 new UHF stations and applications for at least 31 new UHF stations pending in markets below the top 100. Nor are these problems resolved by the FCC's provision for special ad hoc relief upon petition by a local broadcast station. In effect, this requires the local station affirmatively to seek relief in the case of each and every proposal—an intolerable burden. Moreover, even if the station could meet this burden, the FCC's procedures may well prove to be too slow to make relief effective if and when it does arrive.

(*c*) The grandfather provisions as to distant stations are far too generous. In April 1965 the FCC put all then existing and prospective CATV systems on notice that CATV operations might be subject to Commission regulation, including very stringent distant station regulation. The Commission would have been entirely justified in applying the most rigorous distant station rules to CATV systems which became operative since April 1965, and to CATV systems which were in operation at that time but which have substantially expanded their lines or the number of subscribers or have added new distant signals since that date. At the very least, the burden should have been put on the CATV system to show why it should have been permitted to expand its service to new subscribers after February 15, the effective date of the Commission's new order, with no expansion permitted until the Commission found that it should be permitted.

2. *Nonduplication.*—We are also disturbed by the FCC's modification of the nonduplication rules to provide for same day nonduplication rather than 15 days before and 15 days after as prescribed in the first report and order. Same day nonduplication gives no recognition to the large investments made by stations in exclusive feature film and syndicated programs. This type of program is seldom broadcast by any two different stations in different markets on the same day. The previous provision for nonduplication during a period of 15 days before and 15 days after was itself very minimal protection and should have been retained.

3. *"Satellites" and translators.*—The Commission should now move quickly to encourage the expanded use of television station "satellites" and translators in order to make available free television broadcast service on the fullest basis possible. This includes relaxation of the duopoly and other rules of the FCC which

prevent or discourage those most likely to establish supplementary off-the-air broadcast services from doing so. It also means making available additional channels for greatly expanded translator use, subject to appropriate engineering standards, and here, too, the elimination of arbitrary and artificial limitations on the ownership and operation of translators. Such changes will improve, the quality of free fringe service reception off the air, will fill in gaps in service areas of existing stations and will provide free, multiple television broadcast services to the greatest extent feasible.

IV. LEGISLATIVE PROPOSALS

The two bills, H.R. 12914 and H.R. 12386, now pending before this committee reflect diametrically opposed views as to the necessity for strong and effective regulation of CATV in the public interest. Attachment B is an analysis of these two bills. Once more, I will try here to hit certain high points.

H.R. 12914.—H.R. 12914 would amend the Communications Act to provide that "nothing in this Act shall be understood or construed to give the Commission the power to control or regulate the reception of radio communication or signals transmitted by any radio station." To the extent this bill equates CATV regulation with regulation of "the reception of radio communications" thereby prohibiting CATV regulation—and this we understand to be its purpose—it is based upon the premise that CATV is merely an improved reception facility, or "an extension of a home receiver antenna." But to regard CATV in this manner is like saying that the nationwide telephone system is simply an extension of a person's ear or a super hearing aid. CATV is an intricate and sophisticated system for transmitting signals. As the FCC stated in its second report and order: "It cannot seriously be argued that CATV proposals to bring the New York independents to Dayton or the Los Angeles independents to Dallas-Fort Worth represent master TV antenna arrangements."

In any event, the real inquiry is: does the public interest require regulation of CATV? We believe the answer is that strong, effective regulation of CATV is necessary for all the reasons set forth previously.

H.R. 13286.—H.R. 13286 would reaffirm the authority of the FCC to issue rules and regulations with respect to CATV. Although we believe that the FCC has jurisdiction and authority to regulate CATV under the present act, enactment of clarifying legislation is a reasonable course of action so long as it (1) does not reduce or limit existing FCC authority over CATV and (2) does not alter the basic policy which the FCC is applying to CATV.

We believe that H.R. 13286 is sound in its basic approach. I will mention only some of the detailed comments on specific provisions in the bill set forth in attachment B to my testimony.

1. Section 331(a)(1) affirms the FCC's broad authority, in appropriate breadth and scope, to regulate CATV. We note the use of the phrase, "with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services." We do not read this phrase as establishing new public policy or indeed policy which differs from that underlying sections 1, 303(h) or 307(b) of the Communications Act, the all-channel receiver legislation and the sixth report and order on television allocations. We do not read it as equating CATV service with television broadcast service. It would be desirable, however, in order to avoid any possibility of ambiguity, to make clear that this language is not to be construed in a manner which would change, modify or in any way derogate from the long-established policy under which the maintenance and development of free, local and area television broadcast service is given first priority among the aims of regulatory efforts in this area. CATV must be treated as a supplementary and auxiliary service.

2. As phrased, section 331(b), which generally prohibits CATV transmissions of signals other than those received "directly or indirectly" over the air from a broadcast station, is somewhat troublesome.

First, the phrase "received directly or indirectly over the air" might be construed to permit a system to pick up a signal, tape it and transmit it on a delayed basis. This would be tantamount to program originations by the system. Although the FCC's explanation of this provision indicates that the phrase "or indirectly" was added in order to permit microwave relay and not to permit delayed transmission, we believe it would be appropriate to make this point clear.

Second, the provision expecting originations where the Commission authorizes, "by general rule limited exceptions to permit such transmissions without any

additional charge to subscribers," should be eliminated. In our view, CATV systems should be limited to receiving and simultaneously retransmitting broadcasts without insertions or deletions except as necessary to comply with nonduplication requirements and copyright law and other similar legal requirements.

3. Section 331(c) of the bill provides that local or State governments shall not be precluded from regulating CATV matters not directly in conflict with the Federal statute or with the FCC regulations if the individual States or localities wish to do so. This provision is an effort to accommodate Federal and State regulation of CATV.

4. The Commission has made no firm recommendation as to whether CATV systems should be required to obtain the consent of the originating broadcast station before retransmitting its signal although the proposed bill would apparently permit the Commission to establish such a requirement by regulation. A consent provision is entirely appropriate with respect to CATV systems just as regular television stations, satellites and translators may not now under section 325(a) of the Communications Act rebroadcast the program of another station without its express authorization. However, no such requirement goes to the heart of CATV regulation and hence no such requirement should be treated as a substitute for effective comprehensive regulation of CATV by the FCC.

In conclusion, our basic position can perhaps be best stated by setting out the fundamental issues as we see them. The first fundamental issue is not whether the public should have a choice of television service. The real issue here is the nature of the choice. Should the choice largely be among nonlocal, nonarea stations brought to some of the people by CATV for a fee? Or should the choice be among present and future local and area television stations serving all the people in their communities and areas without a fee? The second fundamental issue is whether CATV shall perform the function of providing improved reception service by being limited to the simultaneous reception and retransmission of broadcast signals or whether CATV should be permitted to originate programing and other material and go down the road to out and out pay television, using free television to kill free television?

ATTACHMENT A

CERTAIN BASIC CONSIDERATIONS RELATING TO THE NEW FEDERAL COMMUNICATIONS COMMISSION CATV REGULATIONS

This attachment will set forth certain basic considerations relating to the rules of the FCC dealing with CATV which were issued in the second report and order, March 8, 1966. The new rules are quite detailed and complicated and no effort will be made here to summarize them or to analyze them in detail.

1. *Jurisdiction and authority.*—The FCC has finally exercised jurisdiction with respect to all CATV—whether or not served by microwave. For this it is to be applauded. CATV developments have been moving at such a fast pace that, if the Commission had not acted at this time, the situation would have gotten completely out of hand.

2. *General.*—The carriage and nonduplication rules, the rules with respect to the importation of distant signals and the requirement that CATV systems file full information with respect to CATV ownership and management as well as certain other information are all important steps in the right direction. But there are a number of aspects in which the carriage and nonduplication rules do not go far enough. The approach taken with respect to distant stations is deficient both in basic approach and in particular important aspects. The information filing requirement is a one-time-only requirement. And there are some areas in which the Commission has not yet acted and as to which action is vitally required.

3. *Carriage rules.*—The Commission has maintained the priority established for carriage of television stations by its first report and order of last April:

(1) Stations within whose principal community contours the system operates,

(2) Grade A contour stations, and

(3) Grade B contour stations,

and has added a fourth priority—translator stations with 100 watts or higher power. Mandatory carriage upon request is, of course, essential.

(*a*) The Commission has not altered the provision which, in effect, means that if a station's signal is materially degraded by the CATV system when it is carried on its own channel the only practicable alternative is for the signal to be carried on a different channel. The evidence is mounting that, when a CATV system carries a television station on its own channel where the station has a high off-the-air signal intensity, there can be and often is serious degradation of the picture which the CATV subscriber receives, with the result that the CATV system delivers a better signal for a distant station than for a nearby station. This applies especially within the principal community contour and to some extent within the grade A contour. The alternative of being carried on a different channel to minimize or eliminate the degradation problem is an unsatisfactory alternative because it results in public confusion and because it deprives the station of the channel identity which it promotes and which is extremely valuable to it. A CATV system should be required to carry a local station on its own channel without degradation unless it makes a compelling showing that it is not technically feasible to do so.

(*b*) The addition of 100-watt translators to the priority group for carriage purposes essentially limits the carriage requirement to UHF translators since only a handful of VHF translators are permitted to operate at this power. VHF translators should be subject to compulsory carriage also with the proviso that the CATV system need not carry both the translator and the mother station.

(*c*) The CATV system can refuse to carry more than one station principally affiliated with the same network in favor of more distant, independent and noncommercial educational stations. This rule would in some situations permit a CATV system to exclude a network affiliated station which serves the area in order to bring in distant independent commercial stations and could, therefore, drastically affect the normal competitive pattern of television service available to the CATV community off the air.

4. *Nonduplication.*—Nonduplication treatment is afforded local and area stations according to the same set of priorities as mandatory carriage:

(1) Principal community contour,
(2) Grade A contour,
(3) Grade B contour, and
(4) 100-watt translators.

The 15-day, before-and-after period, has been reduced to same-day, nonduplication treatment. The inclusion of 100-watt translators is new. Educational television stations receive same-day protection in accordance with the same set of priorities.

(*a*) The reduction of nonduplication from 15 days before and after broadcast to same day is a serious deficiency. Even the 15-day provision was a bare minimum. The new same day provision really means that nonduplication as a practical matter applies to network programs only. Same-day nonduplication will have virtually no effect with respect to the unfair competition in the carriage of feature film and syndicated programs which constitute a very large portion of the programing of non-network-affiliated stations and the nonnetwork programing of network affiliated stations. So far as network programs are concerned, same-day nonduplication is insufficient for small one- and two-station market situations where network programs are often carried on a delayed basis. Moreover, it places pressure on all network affiliates to clear the programs of their primary networks simultaneously rather than to exercise the licensee responsibility that they are supposed to exercise under the Communications Act as to whether particular network programs should be taken on a delayed basis so that other programs which the station regards of greater local or area interest may be broadcast.

(*b*) Nonduplication does not apply at all where the program is in color and the local station is not color equipped. Virtually all large market stations are equipped for color. Thus, the principal impact of this exception will be on small and marginal stations.

(*c*) The educational broadcasters are not simultaneously interconnected but rather the bulk of their programing is on tape and film which is bicycled and broadcast on different dates. The educational broadcasters emphasized that even the 15-day, before-and-after provision was insufficient nonduplication treatment. Same-day nonduplication provides them virtually no relief.

5. *Distant station limitations.*—The new rules require the Commission's prior approval after case-by-case evidentiary hearings before any new CATV system can import distant (nongrade B) signals into the grade A contour of any tele-

vision station in the top 100 markets. The CATV system must show that its proposal would be consistent with the public interest and specifically with the establishment and health maintenance of television broadcast service in the area.

The situation is entirely different with respect to the grade B contour of stations in the top 100 markets and anywhere in the service area of stations in markets below the top 100. In neither such situation is there any fixed requirement for prior FCC approval after evidentiary hearings. The burden is on the affected station to petition the FCC for relief within 30 days of receiving notification as to each individual distant station CATV proposal and to make a case in its pleading, supported by affidavits, as to why the Commission should either set the case down for hearing or otherwise act favorably on its petition. Although, if the station files a petition within 30 days, the CATV system may not provide distant signal service while the Commission is considering what to do, once the Commission decides whether and how to act, the CATV system may bring in the distant stations unless the FCC issues a specific temporary or final order directing it not to do so.

Systems in existence as of February 15 within the grade A contours of any station in the top 100 markets may not add new nongrade B signals without an evidentiary hearing. However, within the grade B of top 100 market stations and anywhere in the service area of markets below the top 100, new distant signals may be added, subject only to the same type of petition of an affected station and procedures as is the case with a new system. Moreover, any existing CATV system in the grade A contour of a station in the top 100 markets may extend existing distant-station service to new subscribers by wholesale extension of its lines unless, upon petition of an affected station, the Commission designates the matter for hearing and issues a temporary stay during the hearing. There is no such specific provision dealing with the extension of existing CATV systems within the grade B of a top 100 market station or anywhere within the service area below 100 although a request for special relief may be filed by the station.

(*a*) One basic deficiency cuts across all of the new distant station rules. In general these rules place heavy and unnecessary burdens on affected stations as well as on the Commission itself. The need to limit sharply the rapidly increasing efforts of CATV interests to import nongrade B stations into areas that have television service is so real and pressing that the Commission could and should have issued a simple regulation prohibiting the carriage of television stations beyond their grade B except in certain very carefully limited and defined situations and upon a specific and compelling showing by the CATV system that this would in no way jeopardize or threaten the establishment and healthy maintenance of television broadcast services in the area. Rather than to have provided for hearings as a matter of course in grade A/top 100 market situations (which could involve numerous hearings for any one station), the rule should have required a compelling showing to be made by the CATV system before serious consideration is given to its proposal by the Commission. Similarly, in grade B/top 100 market situations and in all situations below the top 100 markets, rather than to impose a burden on the individual affected station to act within narrow time limits in a very large number of separate situations and to file a petition in each situation supported by affidavits and to be involved in a large number of proceedings, there should have been the same general prohibitory rule with provision for exceptions in very carefully limited and defined situations upon a compelling showing to be made by the CATV system. In sum, the basic problem is that the FCC has atomized distant city CATV regulation into an enormous number of individual pleadings and proceedings rather than to provide an effective general limitation with provision for appropriate but limited exceptions and different treatment on a special showing.

(*b*) Given the approach the Commission has taken with respect to CATV within the grade A contours of stations in the top 100 markets, there is no justification for providing a lesser approach within the grade B contours of such stations and in either the grade A or the grade B of stations below the top 100. The grade B service area is extremely important to most television stations, especially those outside the very largest metropolitan area markets, is provided program services by these stations and is vital to the effective operations of these stations. And to give a lesser degree of protection to stations below the top 100 markets is also wholly unjustifiable. These are generally the weaker and less viable stations, even more susceptible to CATV distant station impact than larger market stations.

(*c*) The grandfather provisions as to distant signals are far too generous. In April 1965 the FCC put all then existing and prospective CATV systems on notice that CATV operations might be subject to Commission regulation, including very stringent distant station regulation. The Commission would have been entirely justified in applying the most rigorous distant station rules to CATV systems which became operative since April 1965, or to CATV systems which were in operation at that time but which have substantially expanded their lines or the number of subscribers or have added new distant signals since that date. At the very least, the burden should have been put on the CATV system to show why it should have been permitted to expand its service to new subscribers after February 15, the effective date of the Commission's new order, with no expansion permitted until the Commission found that it should be permitted.

6. *Matters not yet regulated.*—These include principally the matter of prohibition against the origination of programing or other material by CATV and the establishment of appropriate technical standards to govern the operations of CATV systems as well as the requirement that, on a continuing basis, CATV systems be required to file information as to ownership, control, and management. The Commission has deferred action on all three matters. Although it has required certain information as to ownership and management of CATV systems to be filed by May 18, 1966, this is a one-time filing only and such information should be filed on a regular and continuing basis. As to the origination of programing and other material, the question is not whether pay television should be prohibited but whether CATV systems should be permitted to use free television as a means of insidiously foisting pay television on the American people. As to technical standards, CATV systems should be required to maintain high standards of technical performance.

7. *Encouragement of "satellites" and translators.*—The Commission should now move quickly to encourage the expanded use of television station "satellites" and translators in order to make available free television broadcast service on the fullest basis possible. This includes relaxation of the duopoly and other rules of the FCC which prevent or discourage those most likely to establish supplementary off-the-air broadcast services from doing so. It also means making available additional channels for greatly expanded translator use, subject to appropriate engineering standards, and here, too, the elimination of arbitrary and artificial limitations on the ownership and operation of translators.

ATTACHMENT B

ANALYSIS OF H.R. 12914 AND H.R. 13286

H.R. 12914

H.R. 12914 proposes to amend section 326 of the Communications Act of 1934 to provide: "Nothing in this Act shall be understood or construed to give the Commission the power to control or regulate the reception of radio communication or signals transmitted by an radio station." As a matter of first impression the bill would appear simply to prohibit regulation of ordinary reception with home or apartment house receivers. However, this does not appear to be its purpose. The FCC has never suggested regulatory controls for off-the-air reception by home or apartment house receivers and the like and has never intimated that it construes the act to give the FCC power over ordinary home-reception equipment. The bill is apparently aimed at apparently aimed at preventing regulation of community antenna television under the euphemism of preventing regulation of "the reception of radio communication."

To the extent H.R. 12941 equates regulation of CATV with regulation of "the reception of radio communications," thereby prohibiting CATV regulation, it reflects a serious misunderstanding as to the nature of CATV, i.e., the notion that CATV is merely an improved reception facility, or "an extension of a home receiver antenna." But to regard CATV in this manner is like saying that the nationwide telephone system is simply an extension of a person's ear or a super hearing aid. CATV is an intricate and sophisticated system for transmitting signals. As the FCC stated in its second report and order on CATV: "It cannot seriously be argued that CATV proposals to bring the New York independents to Dayton or the Los Angeles independents to Dallas-Fort Worth represent mas-

ter television antenna arrangements." Yet this appears to be the concept underlying H.R. 12914.

In any event, the real inquiry is: Does the public interest require regulation of CATV facilities? The answer is: The need for strong, effective regulation of CATV in the public interest has been clearly demonstrated. In the absence of such regulation, the unchecked proliferation and expansion of CATV will lead inevitably to the impairment, if not the demise, of the structure of television allocations and the entire system of free, local, and area television broadcast service. This would be contrary to longstanding congressional policy and contrary to the public interest.

H.R. 13286

H.R. 13286 and S. 3017, both introduced at the request of the FCC, would reaffirm the authority of the FCC to issue rules and regulations with respect to CATV. Although the FCC has correctly concluded that it already has jurisdiction and authority to regulate CATV under the present act, it has sought congressional legislation to clarify this authority.

Enactment of clarifying legislation is a reasonable course of action so long as (1) such legislation does not reduce or limit existing FCC authority over CATV and (2) such legislation does not alter the basic policy which the FCC is applying to CATV. The fundamental public policy on which the FCC has based its regulation of CATV, that of insuring the fullest development of free competitive, local, and area television broadcast stations, has been long established. This policy is a reflection of an American tradition which reaches back into the past long before radio or television was a reality. That policy has now been applied by the FCC to CATV, for the Commission has found that CATV should be supplementary and auxiliary to broadcasting and not a substitute for it. There is no occasion for any change in this long-established policy.

In general, H.R. 13286 and S. 3017 are sound in their approach. However, a number of detailed comments on specific provisions seem appropriate:

1. The definition of CATV is, quite rightly, broadly inclusive. Although the definition of CATV would include some operations, such as master antenna services, as to which regulation is not contemplated, section 331(a)(2) of the bill gives the FCC the authority to exempt such operations from regulation. This approach seems better than unduly restricting the statutory definition of CATV which would limit regulatory flexibility.

2. Section 331(a)(1) is sound in affirming the FCC's broad authority, in appropriate breadth and scope, to regulate CATV. We note the use of the phrase "with due regard to both the establishment and maintenance of broadcast services and the provision of multiple-reception services." We do not read this phrase as establishing public policy which is new or indeed which differs from that underlying sections 1, 303(h) or 307(b) of the Communications Act, the all-channel receiver legislation and the sixth report and order on television allocations and thus we do not read it as equating CATV service with television broadcast station service. It would be desirable, however, in order to avoid any possibility of ambiguity to make clear that this language is not to be construed in a manner which would change, modify, or in any way derogate from the long-established policy under which the maintenance and development of free, local, and area television broadcast service is given first priority among the aims of regulatory efforts in this area and CATV must be treated as a supplementary and auxiliary service.

(*a*) The public interest and longstanding national television policy dictate that television broadcast service responsive to the particular needs and interests of the local community and area be given clear priority over service from distant stations which serve the needs and interests of distant unrelated communities and areas. Similarly, public policy dictates that the establishment and maintenance of local and area television broadcast services must be given priority over provision of multiple-reception services. The language "due regard to both the establishment and maintenance of broadcast services" and the provision of multiple reception services should not be construed as being in derogation of these policies.

(*b*) The longstanding policy giving priority to the maintenance and development of free television, as against television programs provided to

the public for a fee (whether by CATV or other form of pay-TV), should not in any way be diminished by the "due regard" language.

3. As phrased, section 331(b), which generally prohibits CATV transmissions of signals other than those received "directly or indirectly" over the air from a broadcast station, is somewhat troublesome.

(*a*) The phrase "received directly or indirectly over the air" might be construed to permit a system to pick up a signal, tape it, and transmit it on a delayed basis. This would be tantamount to program originations by the system. Although the FCC's explanation of this provision indicates that the phrase "or indirectly" was added in order to permit microwave relay and not to permit delayed transmission, it would be appropirate to make this express by modifying this provision to read: "Community antenna transmissions shall be confined to such programs or other material as are received and simultaneously retransmitted by the system."

(*b*) The provision excepting the origination of program and other material where the Commission authorizes "by general rule limited exceptions to permit such transmissions without any additional charge to subscribers," should be eliminated. CATV systems should be limited to receiving and simultaneously retransmitting broadcasts without insertions or deletions except as necessary to comply with non-duplication requirements or copyright law or other similar legal limitations. In any event, the provision is too broad and fails to identify what such "limited exceptions" would be and in what cases they would be authorized. Also, although the exception prohibits additional charges for such limited originations, it does not include a specific prohibition against the system carrying advertising with such originations. If limited originations are allowed, clearly the system should not be allowed to carry advertising when it already receives a subscription fee for its services.

4. Section 331(c) provides that local or State governments shall not be precluded from regulating matters not directly in conflict with the Federal statute or with FCC regulations if the individual States or localities wish to do so. This provision is an effort to accommodate Federal and State regulation of CATV.

5. The Commission has made no firm recommendation as to whether CATV systems should be required to obtain the consent of the originating broadcast station before retransmitting its signal although the proposed bill would apparently permit the Commission to establish such a requirement by regulation. A consent provision is entirely appropriate with respect to CATV systems just as regular television stations, television station satellites and translators may not now under section 325(a) of the Communications Act rebroadcast the program of another station without its express atuhorization. However, no such requirement goes to the heart of CATV regulation and hence no such requirement should be treated as a substitute for effective comprehensive regulation of CATV by the FCC.

(The following are the recommendations of the Association of Maximum Service Telecaster, Inc., for changes in language in H.R. 13286, which they feel would specifically accomplish the suggestions made in the preceding attachment B:)

SUGGESTED CHANGES IN H.R. 13286

[New matter in *italic*; stricken matter in black brackets]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end thereof the following new subsection:

"(gg) 'Community antenna system' means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more broadcast stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service."

SEC. 2. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"COMMUNITY ANTENNA SYSTEMS

"SEC. 331. (a) The Commission shall, as the public interest, convenience or necessity requires, have authority—

"(1) to issue orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the construction, technical characteristics, and operation of community antenna systems, to the extent necessary to carry out the purposes of this Act, with due regard to [both] the establishment and maintenance of *multiple* broadcast services [and the provision of multiple reception services]; and

"(2) to make general rules exempting from regulation, in whole or in part, community antenna systems where it is determined that such regulation is unnecessary because of the [size] *number* or nature of the *subscribers of the* systems so exempted.

"(b) No community antenna system shall transmit over its system any program or other material other than that which it has received directly or indirectly over the air from a broadcast station[,] *and simultaneously transmitted*, [except that the Commission may, upon an express finding that it would serve the public interest, authorize by general rule limited exceptions to permit such transmissions without any additional charge to subscribers.]

"(c) Nothing in this Act or any regulation promulgated hereunder shall preclude or supersede legislation relating to, or regulation of, community antenna systems by or under the authority of any State or territory, the District of Columbia, the Commonwealth of Puerto Rico or any possession of the United States except to the extent of direct conflict with the provisions of this Act or regulations promulgated hereunder."

Mr. LINDOW. My name is Lester W. Lindow, and I am executive director of the Association of Maximum Service Telecasters, an organization of over 160 television stations, UHF and VHF, commercial and educational, located throughout the United States. I have here a lengthy written statement setting forth in detail the views of MST on the issues before this committee. Attachment A is a discussion of certain of the basic considerations relating to the FCC rules on CATV. Attachment B to my written statement is an analysis of two bills that this committee is considering—H.R. 12914 and H.R. 13286. In the interest of saving time I would like to have the statement and attachments appear in the record, and I will try to highlight some of the issues as we see them.

I am accompanied this afternoon by the association's legal counsel, Mr. Ernest W. Jennes, who is here at the table with me.

I fear that in the multitude of words that has been heaped on this committee in these hearings up to now the real issues have become obscured. I should like today briefly to outline what we think are the real issues and suggest some considerations that might bear on this committee's resolution of these issues.

First, let me say that MST is not opposed to CATV. As far as I know, no broadcaster—certainly no broadcaster that has appeared before this committee—is against CATV. We believe, and I think all broadcasters would agree, that CATV can provide a valuable service and that this service helps to extend television to people throughout the country otherwise unable to obtain it because of either remoteness or unusual terrain situations.

While we do not oppose traditional CATV, we do think that a different type of CATV that is rapidly coming into being will increasingly have an adverse effect on the public interest and will undermine national policies unless CATV is subject to reasonable Federal regulation.

There are those who appear to hold that there should be no Federal regulation of CATV. Most of the CATV interests that have appeared before this committee have not supported that view, and I think I can fairly characterize that view as the extreme position.

The CATV interests have attempted to show that CATV is an important and growing element of the television broadcasting system. The FCC regulates that system in general under the mandate of the Congress. Since CATV is engaged in the further transmission and extension of broadcast signals, we think it would be unwise to withdraw CATV from the scope of the Commission's regulatory power.

So, I think this committee should have no difficulty in resolving the first real issue before it—whether the FCC should be stripped of its power to regulate CATV. We are clear that no such pruning of the Commission's regulatory authority can be justified.

The next issue for this committee is the appropriate form of regulation of CATV systems. The FCC has issued its regulations on this subject and has invited this committee to express it views on them.

Among the matters covered by the FCC rules are three matters about which I would like to comment in particular: (1) the rules require that CATV systems carry local stations; (2) they require that the programs of local stations not be duplicated on the day they are shown; and (3) they impose certain limitations on the importation of signals of distant stations by CATV.

1. To go to the first one, I know of no real dispute over the Commission's carriage rules. Most CATV interests agree that it is wrong not to carry the local stations and the majority are now in compliance with this rule. One serious problem relating to carriage is the extent of degredation of the local stations' signals on CATV, which can result in a better picture for the distant station than for the local station on the cable. Some CATV systems meet his problem by carrying the local stations on different channels, but this causes public confusion and impairs the local station's channel identity. The solution is to require CATV systems to carry the local stations on their assigned channels without degredation unless a compelling showing is made of technical unfeasibility.

2. There is fairly general agreement that a prohibition on duplication of local station programs is fair and necessary. There has been debate over whether the rule should be limited to simultaneous nonduplication as urged by some CATV interests or 15 days before and after nonduplication as urged by most broadcasters. The Commission's rule prohibits same-day duplication of local stations' programs. This gives the local stations far less protection than was originally proposed and far less than is necessary to protect their investment in nonnetwork programing. CATV interests can hardly complain about the Commission's compromise rule. The 15-day rule originally proposed by the FCC was a bare minimum and even it did not provide adequate protection for feature film and syndicated programs for which the broadcasters pay dearly.

3. The Commission's rule on importation of distant stations' signals has produced considerable debate and difference of opinion. Again the rule is far less than is necessary to protect local service—the general prior hearing requirement does not apply to markets below 100;

nor does it apply beyond the grade A service area in any size market; it is subject to extremely broad "grandfather" exceptions; and it contemplates waivers of the rule under various circumstances.

These deficiencies are discussed in attachment A to my prepared testimony. I will say here in summary that the Commission's failure to extend its general prior hearing rule to markets below 100 and to the grade B of markets above 100 is a serious failing that leaves the smaller, weaker stations without sufficient protection and substantially restricts the protection to service provided in the top 100 markets. Moreover, the breadth of the grandfather exception threatens to undermine the force of the distant signal rule in many areas. And the hundreds of individual proceedings that will arise under the new rules will place serious burdens on the Commission as well as on the individual stations.

A compelling case has been made that a limit on distant signal importation is essential to the preservation of the free local and area television service. You have heard a wealth of testimony on this subject and I will not add to it.

Let me briefly consider the contentions made by CATV interests to persuade you that a distant signal limitation is not required.

We have heard from CATV interests that local television service is not impaired by the importation of distant signals—particularly where the local stations are carried on the cable. At the same time we also have heard that distant signal importation broadens the choice of stations to watch and thereby promotes diversity for the viewing public.

The CATV interests cannot have it both ways. If importation of distant station signals provides a wider choice of stations to the viewers, it must adversely affect local service by taking away part of the local stations' audience. If there are 10 or 12 stations to watch instead of 3 or 4, the 3 or 4 are going to have less viewers. And the loss of audience by those three or four local stations will mean a reduction in their advertising billings and an impairment of their ability to maintain a high-quality local and area service.

We have also heard that CATV is a boon to UHF stations, particularly those stations whose signals cannot at the moment be received in many homes that lack all-channel receivers. It is no doubt true that in the short run CATV may have this effect in some limited situations. I am thinking of areas where there has not been substantial conversion to all-channel receivers. This would not include many of the middle-sized or small markets that are served exclusively by UHF stations, because the public in those markets is generally able to receive UHF stations off the air.

But whatever help CATV is to UHF stations does not depend on CATV importation of distant signals. And the FCC rules do not stop CATV systems from broadening the markets for UHF stations within their service areas. When distant signals are involved the increase in potential audience for the local UHF station is more than offset by the fragmenting effect of importing many additional stations from far-off cities. The net result is a loss in UHF station audiences.

A few examples have been cited to this committee of areas served by both VHF and UHF stations where the signals of the UHF sta-

tions do not cover the entire market in which they are operating. It is said that the FCC's rules prevent CATV extension of these UHF station signals throughout these markets. One witness, Mr. Beisswenger of Jerrold, even insinuated that the distant signal rule is urged as part of a plot to restrain UHF development.

I do not read the FCC orders as intending to prohibit cable systems from extending UHF station signals throughout the markets in which these stations operate. The FCC purposely has made provision for waiver of its distant signal importation limitations and several of the situations described seem to me to be clear cases for grant of a waiver. The Commission's order says that the concern is not with CATV broadening of a station's audience in its own market area, but the extension of its signal to entirely new markets.

CATV interests also argue that they are merely providing a reception service and are thus not competing with stations who are offering a broadcasting service. But the fact is that cable systems transmit television signals to home viewers. When distant signals are involved they are transmitting signals that the home viewer cannot receive off the air.

I do not think we help analysis of the issues by calling CATV a reception service when it is really a transmission service. And in this respect I cannot help but note that even Mr. Ford of NCTA and Mr. Beisswenger of Jerrold, both of whom argued that CATV is solely a reception service, lapsed into using the term "transmission" in describing CATV operations in their testimony.

Labels aside, the fact is that when cable systems import distant signals that are not available off the air to local viewers, they threaten to disrupt the system of free local and area television. That is why it was not only appropriate but imperative that the FCC act as it did to discharge its responsibilities to preserve the television system established in accordance with the mandate of Congress.

We have heard it said that our fears for the future of the free local and area television system are unfounded because no one has yet been hurt by importation of distant signals by CATV. The premise of the argument is wrong. Adverse CATV impact has already been felt and MST has submitted detailed evidence on this impact to the FCC.

More importantly, the real problem relates to the new and different CATV that is just beginning to gain a foothold, and what will happen if it is not regulated. Until recently distant station carriage had been relatively sparse because cables were able to carry only three or five signals and usually the cable carried the local stations. But this is all changing most rapidly. Twelve-channel cables are rapidly becoming the practice and 20-channel systems are in the offing. The fact that there is not yet a pile of bodies has very little to with whether there will be if effective regulation is not imposed.

CATV interests say "let the marketplace decide" whether CATV is a valuable service. "Don't deprive the public of a service it wants."

The trouble with this argument is that a totally unregulated market could result in service being made available only to those with the money to pay for it and who are located where the service can be economically provided. Persons for whom cable fees are a financial burden, farmers, ranchers, and others living in rural areas not served

by cable, persons who rely on the local station for local news and other local programing—what happens to them if the "market" decides for unliimted distant signal importation at the expense of local stations? Only if we are willing to say to these people that their loss of television is not our concern can we let the "market" alone decide the future of our nationwide television system.

Finally, we are told that Federal restriction of distant city signal importation is inappropriate because local government units have franchised cable systems and these bodies know what is best for the people in their areas. But this, in my opinion, oversimplifies the question. The local bodies' concern has understandably been directed to the identity of the franchise applicant and the amount of the royalty that he will pay the city out of his revenues. Requests for CATV franchises have usually been treated much like applications for right-of-way privileges. Many local bodies when confronted with the argument that franchising a cable system to bring in distant signals will impair local television service have said, "That is not our problem—that is for the FCC to decide." A large number of other local bodies actually deferred passing on franchise applications pending the announcement by the FCC of its rules. Moreover, in a number of States franchising is not required so that CATV's may start operation merely by making a pole lease arrangement with the local telephone company.

In short, the local bodies have normally not attempted to decide issues that the FCC was created to decide, and Federal regulation should not be prohibited on the theory that the local bodies have decided or would decide the issues.

One final issue for this committee to consider is whether CATV systems should be allowed to originate their own material—both programs and advertising. The FCC's bill would prohibit this, but it would allow the Commission to make exceptions by general rule.

In our opinion, the prohibition should be absolute, without a provision for exceptions where the Commission decides to permit CATV originations. We think that if CATV's are allowed to originate material—any kind of material—they will ultimately be bidding against broadcasters for many types of programing with the result that the public will be able to receive much of its program material only by paying for it. And this pay-TV system will have been built on the foundation of free broadcasting signals, which presently form the basis for CATV operations.

The CATV interests say that our fears for pay-TV are unfounded, that they are really interested in local public service programing, such as the high school basketball games, the city council meetings, the local theater groups, that would not be carried on the local television station.

We wonder. We doubt that the large CATV systems that have obtained franchises to wire up entire cities, such as San Diego, Philadelphia, or Atlanta, or the vast aggregations such as Jerrold's 22 systems throughout the country, are really interested in carrying these events that can only be of interest to a few of their subscribers. Moreover, the CATV witnesses, such as Mr. Ford and Mr. Beisswenger, made it perfectly clear that they wanted the unlimited right

to originate material; that a limitation to public service programing was not acceptable to them. So I think I am being fair in saying "I wonder" when I hear the CATV interests talk about their desire to originate public service programing.

Much more could be said about the CATV problems facing this committee. But time is short, and my prepared statement, which contains a more detailed discussion of the problems, has been submitted.

I will close by saying that the fundamental issue is not whether the public should have a choice of television service, but rather what should the nature of the choice be. Should it largely be among a few nonlocal huge superstations located in the New Yorks, Chicagos, or Los Angeleses and brought to some of the people by CATV for a fee? Or should it be among the present and future local and area stations serving all the people without a fee?

The second fundamental issue is whether CATV should continue to perform its traditional supplemental service to help improve reception in areas where reception off the air is difficult, or whether it should be permitted to use free television as a base for building a system of CATV-originated programing, thereby taking us well down the road to pay television and using free television to kill free television.

Mr. Chairman, we tried to keep my oral statement short, and my prepared statement was prepared for submission earlier in these hearings. I would like to request the same permission that Mr. Ford received the other day, that we be permitted to submit a supplementary statement with respect to other points which have arisen or may arise.

The CHAIRMAN. Without objection, it will be accepted, if it is pertinent to the hearing. Yes, Mr. Lindow.

Mr. LINDOW. Thank you, Mr. Chairman.

(The supplemental statements follow:)

MEMORANDUM OF ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC., ON CONSTITUTIONALITY OF FCC DISTANT SIGNAL REGULATIONS

The FCC rule limiting the importation of distant station signals by CATV systems does not conflict with the first amendment guarantees of freedom of speech and press.

At the outset it is useful to state the context in which the constitutionality of the FCC's distant signal limitation might be challenged by a CATV system. A CATV system operates by taking programs broadcast by television stations off the air, without payment for the programs or permission from the broadcaster, and retransmitting them to its customers for a fee. When distant station signals are involved, the CATV system uses these programs, for which it has paid nothing, to fragment the audience of local stations that have to pay the lawful owners of their programs for the right to broadcast them. In this respect, the CATV system is a parasite. It lives entirely off the product of broadcast stations and it uses the product to impair the broadcast capabilities of other stations.

In any event, it is clear that a CATV system has no greater rights under the Constitution to extend the signals of broadcast stations than the stations themselves have. When the FCC determines that a CATV system may not transmit the signals of a television station, it is merely determining where and under what circumstances the signals of those stations may be carried. This is precisely what the Commission does with television stations. It establishes the areas that may be served by television stations by establishment of limitations on the transmitting power and the antenna heights of those stations. When it does so, it is not engaging in a prior restraint, or otherwise violating the first amendment. The FCC is not required to allow the stations in New York to operate satellite television stations throughout the United States for

the purpose of having their signals transmitted nationwide. This is not prior restraint or abridgement of the right of freedom of speech. It is rather a limitation on the area which those television stations may serve by extension of their signals, and that is precisely what the Commission does when it regulates CATV.

"The business of the Associated Press is not immune from regulation because it is an agency of the press" (*Associated Press* v. *NLRB*, 301 U.S. 103, 132 (1937)). Certainly the business of CATV is not immune from regulation when it is not an agency of the press.

COMMENTS OF ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC., ON STUDY OF CATV AND UHF DEVELOPMENT AND POTENTIAL WITH RESPECT TO THE FCC'S "TOP 100 MARKETS" RULE, SUBMITTED BY THE NATIONAL COMMUNITY TELEVISION ASSOCIATION

The NCTA study on CATV and UHF development, submitted as an appendix to the testimony of Frederick W. Ford, draws certain conclusions concerning the impact of CATV on UHF development. Specifically, the study concludes that CATV has not impaired development of UHF stations heretofore, and that CATV will assist UHF development in the future because it will bring exposure to UHF stations in homes not now able to receive UHF stations off the air. The study consists of arrangement and rearrangement of statistics relating to the number of stations in the top 100 markets, whether they are network affiliates or independent, and whether they are UHF or VHF.

The conclusions concerning the past impact of CATV on UHF development are not particularly relevant. Until the very recent past there have been relatively few UHF stations on the air, except in certain all-UHF markets, because the public generally was not equipped with receivers that could receive UHF signals. Moreover, until recently CATV systems have been performing their traditional supplemental role of filling in television service where reception by home receivers is difficut or impossible and certainly have not attempted wide-scale penetration of potential UHF markets with multiple distant signals.

The impact on UHF of the traditional form of CATV is not the issue. The important issue is the impact that the new, burgeoning form of CATV, with its proposed widespread carriage of distant signals, will have on the hundreds of new and potential UHF stations that are now being and hopefully will be established as a result of the success of the all-channel receiver law. A recent report of the Electronic Industries Association discloses that over 30 percent of the television receivers in use as of the beginning of 1966 had UHF capability. This indicates that the rate of conversion to all-channel sets is outpacing the rate predicted at the time the all-channel receiver law was passed in 1962. It means that within a very few years the conversion to all-channel receivers should be substantially completed and that UHF stations should be able to reach the great bulk of the viewing audience.

Moreover, the NCTA study does not come to grips with the all-important question of the impact on UHF stations of CATV systems' importing distant signals into the service areas of the UHF stations.

NCTA points to the fact that there are several markets among the top 100 which have been exclusively or predominantly UHF in nature for some years and yet that non-network-affiliated UHF stations have not come into being in these markets. From these facts, which are unquestionably true, NCTA draws two conclusions. The first is that it is not to be expected that the all-channel receiver law will have any significant effect in bringing into being non-network-affiliated stations in the top 100 markets and, a fortiori, it is even less likely that this will occur in markets below the top 100. NCTA urges that the two principal reasons why UHF has not developed and, presumably, why it will not develop are the lack of network affiliations and the fact that, generally speaking, UHF stations do not have as large service areas as VHF stations.

However, the NCTA analysis is grossly incomplete and, as is true of so much of its approach, it seeks to predict the future on the basis of a past which has nothing to do with the future.

In the first place, it should be noted that there are a number of markets in the top 100 where a UHF station will provide the third network service and an even greater number of markets below the top 100 where UHF will provide the third or even the second and third network service if CATV importation of distant signals is now allowed to impair the viability of such stations.

In the second place, as fourth or fifth UHF stations go on the air in increasing number in markets within the top 100, they, together with the present non-network-affiliated stations in huge metropolitan centers such as New York, Chicago, and Los Angeles, will provide the nucleus for additional network service, for regional networks and for special networks and also a greatly increased market for nonnetwork programing. In other words, if CATV does not obstruct the normal development of UHF stations, the combination of a large number of such stations will provide the basis for the programing which hitherto has not been available for a fourth UHF station in the very small number of markets which have been entirely or predominantly UHF.

In the third place, to the extent that the NCTA "study" suggests that the inhibiting factor in UHF development may be the shorter reach of UHF signals as compared with VHF stations operating in the same market, it again misses the market. Totally equal service areas are not essential to effective television station competition or UHF station viability. Moreover, television station satellites and translators may be used to extend the reach of UHF signals to make their service areas comparable to those of VHF stations operating in the same market. Furthermore, the Commission has provided for waiver of the distant signal rules in appropriate situations. Where the grade B signal of a UHF station does not extend as far as the grade B signals of the VHF stations operating in the same television market, MST believes that CATV would be performing its historic supplementary function by carrying the nongrade B signals of the UHF stations as well as the grade B signals of the VHF stations located in the same market and that this would be an entirely logical and reasonable situation for the grant of a waiver which could be issued on the basis of a simple request, without elaborate pleadings and without an evidentiary hearing. But the limited reach of UHF signals is not a justification for CATV carriage of distant signals from other markets that fragment the market of the local UHF station. To the extent that it imports distant signals, CATV jeopardizes UHF development.

In essence, the question is not whether CATV can help UHF by carrying a UHF station in the city where that station is located, in its normal service area, or in the television market in which it operates. There are doubtless situations where CATV is and would be beneficial to the public served by UHF stations just as it is to the public served by UHF stations by providing a fill-in or a supplementary service. But any such benefit that CATV can provide for any such station will be outweighed many times by the importation of outside distant signals. And in the case of the UHF station struggling for audience and struggling to obtain programing which will produce that audience, the fragmentation that will result from the importation of distant signals and, indeed, the bringing into the UHF station's market of the very same programs, whether or not at the same time, that it must acquire if it is to establish an audience will impair UHF station operations and obstruct the development and the maintenance of UHF television service as well as television broadcast service generally.

STATEMENT OF ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC., CONCERNING PROFITS OF TELEVISION BROADCAST STATIONS

The latest Federal Communications Commission report on television station financial data, covering the year 1964, shows the following for the 536 stations reporting: 17.2 percent (92 stations) reported losses; 24.2 percent (130 stations) reported losses or profits before taxes of less than $25,000; 30.0 percent (161 stations) reported losses or profits before taxes of less than $50,000; 39.5 percent (212 stations) reported losses or profits before taxes of less than $100,000; 53.5 percent (287 stations) reported losses or profits before taxes of less than $200,000; 67.7 percent (363 stations) reported losses or profits before taxes of less than $400,000.

These reports do not include the 15 network-owned stations.

Data for UHF stations only shows the following:

Of 78 UHF stations reporting, 67.9 percent (53 stations) reported profits and 32.1 percent (25 stations) reported losses. The breakdown of the 78 UHF stations reporting profits is as follows: 26.4 percent (14 stations) reported profits before taxes of less than $25,000; 64.1 percent (34 stations) reported profits before taxes of less than $100,000; 100 percent (53 stations) reported profits before taxes of less than $400,000.

None reported profits in excess of $400,000.

The breakdown of 25 UHF stations reporting losses is as follows: 20 percent (5 stations) reported losses of less than $25,000; 68 percent (17 stations) reported losses of less than $100,000; 32 percent (8 stations) reported losses in excess of $100,000.

The CHAIRMAN. Does that finish your statement?

Mr. LINDOW. Yes, sir.

The CHAIRMAN. I want to congratulate you, and say that we appreciate the fact that you have been so concise. I think we could have been here most of the evening. We do want a complete record, and we don't want to shut anyone off who can be helpful.

Mr. Rogers?

Mr. ROGERS of Texas. Mr. Lindow, I was a little surprised at your statement that your idea of the issue is not whether the public should have a choice, but the nature of the choice which the public should have.

Now wouldn't that be censorship?

Mr. LINDOW. No, I don't believe so, sir.

Mr. ROGERS of Texas. Well, don't you think that if a man is told "Now we have got 27 different kinds of nuts over here, but we are going to confine your choice of nuts to English walnuts, pecans, and almonds," don't you think, though, Mr. Lindow, that is carrying it a little bit too far into the area of censorship?

Mr. LINDOW. Well, I think I said, Mr. Chairman, that the fundamental issue is not whether the public should have a choice, but rather the nature of the choice, as you indicated. And the choice, as I outlined it, was whether it should largely be among a few large nonlocal, superstations, located in some of the larger communities, brought in by CATV for a fee, or whether it should be by a free broadcast system of local and area stations serving the local communities.

Mr. ROGERS of Texas. Well, now, confining it to this business without talking about the large station, brought about from some place else, now actually, Mr. Lindow, all these crocodile tears about local service don't amount to much, because the networks are the things that are troubling the situation, in so far as reception is concerned, in every one of those. I mean there are only three, and they come from the big cities you are talking about; don't they?

Mr. LINDOW. The networks do originate from the big cities, but the networks only provide a portion of the local and area program service each day. I would say that as a general rule, about 40 percent of a network affiliated station's programing in the average week, and this is more or less based on the FCC figures, is not network programing.

Mr. ROGERS of Texas. How much do they provide during prime time?

Mr. LINDOW. This will fluctuate from time to time during the year, and from station to station and market to market. And, of course, there are also independent stations, and we hope there are going to be a lot more of those, particularly if UHF is allowed to grow and develop, without the hampering effects of an unlimited type of CATV.

Mr. ROGERS of Texas. You mean the UHF free as a UHF or as a subscription type of television?

Mr. LINDOW. I mean as a free UHF type of service.

Mr. ROGERS of Texas. Do you feel that the subscription type of television service ought to be permitted on the UHF television channels?

Mr. LINDOW. We are opposed to subscription television. Whether it be on UHF or VHF.

Mr. ROGERS of Texas. Either. Now you talk, Mr. Lindow, about the problem of local service, that you feel people ought to be provided with local service. Now how do you square that with the proposition that you are opposed to the origination of a program in a CATV studio, by the CATV people, and put out over a wire?

Mr. LINDOW. Well, we think that they are mixing up apples and oranges. The CATV is a transmission service to bring in television broadcast signals, and retransmit them through their cable to the homes of their subscribers.

Mr. ROGERS of Texas. Well, now, that is your conclusion, that it is a transmission service.

Mr. LINDOW. Yes, sir; this is our opinion.

Mr. ROGERS of Texas. Yes.

Mr. LINDOW. Now we don't think that they should get into the business of originating programs, with this same service.

We think that the origination of programs is the responsibility of the television stations or the radio stations. In some cases, they are going to be starting to carry radio.

Mr. ROGERS of Texas. You mean, if a man did not have a tower, you would have no objection to him setting up a wire operation where he originated programs and put them out over the wires?

Mr. LINDOW. I think if it was entirely a closed wired service, and he was solely originating his own materials, it is entirely a different question than what we are talking about in the case of CATV.

Mr. ROGERS of Texas. But he could not operate a station that was half wired and half reception of radio signals, television signals?

Mr. LINDOW. I assume you mean a service, rather than a station, sir, a CATV service that was half and half. I just wanted to make sure I understand the gentleman correctly.

Mr. ROGERS of Texas. Well, I mean a CATV service or station, whatever you call it. Now as I understand you to say, it isn't a reception service, you are saying it is a transmission service.

Mr. LINDOW. Yes, sir.

Mr. ROGERS of Texas. But it has to go through a studio, actually, where this thing usually does go through a studio where you can switch off the air and put on an originating program, doesn't it?

Mr. LINDOW. I don't think it has to go through a studio in the sense of the word "studio" as we use it in our trade.

Mr. ROGERS of Texas. I believe it does.

Mr. LINDOW. It can come right through the antenna.

Mr. ROGERS of Texas. I understand it can, Mr. Lindow, but what I am talking about is the practice at the present time. There is in almost every CATV operation of any size a studio or a facilities used in connection with them.

Mr. LINDOW. I don't believe so, and I think Mr. Ford and Mr. Beisswenger testified last week that not too many of these CATV systems are originating programs at this time. They are to a certain degree.

Mr. ROGERS of Texas. Why does the origination of programs disturb you so much, if they are not doing it?

Mr. LINDOW. Well, we think that they are going to, by their own terms, and we think that they have indicated and said that they are going to and want to.

Mr. ROGERS of Texas. You are reading the future again, as Mr. Wasilewski was.

Mr. LINDOW. Well, I think we have to recognize the future possibilities before the sad events occur.

Mr. ROGERS of Texas. Mr. Lindow, let me ask you this, now. There has been a lot of talk about this local service thing, of which I think that if the people were getting local service now, I think it would be a fine thing.

I don't think that a lot of them are, but there has been an awful lot of talk about leapfrogging. Now in order to leapfrog, you have to have microwave, don't you?

Mr. LINDOW. Not necessarily; no, sir.

It depends on what you mean by leapfrogging, sir.

Mr. ROGERS of Texas. Well, what I am talking about leapfrogging is bringing in distant stations.

Mr. LINDOW. Distant stations?

Mr. ROGERS of Texas. Yes, sir. Now is that leapfrogging?

Mr. LINDOW. It is sometimes used interchangeably. I think there is a little distinction, but the distant stations can be brought in directly off the air, and are being brought in directly off the air, without benefit of any other intermediate—intermediary between the transmitter of the distant station and the——

Mr. ROGERS of Texas. How far?

Mr. LINDOW. Ninety to one hundred miles.

Mr. ROGERS of Texas. Well, now, that is not distant, Mr. Lindow. I mean, 90 miles, where I come from, is where you go to breakfast. [Laughter.]

Mr. LINDOW. I grant you that out in your part of the State, that is quite true, and in some of the States, but this is quite distant in some places, and we are talking about the whole United States. For example, I think San Diego is quite distant from Los Angeles, as far as being two separate and distinct markets are concerned, and this is an instance where they are bringing in Los Angeles signals without microwave or anything else directly off the air.

Mr. ROGERS of Texas. Into San Diego?

Mr. LINDOW. Into San Diego.

Mr. ROGERS of Texas. Now that is because of the flatness of the ocean, isn't it, that the waves can go over it?

Mr. LINDOW. No, the ocean does not have anything to do with it.

Mr. ROGERS of Texas. It does not have anything to do with it?

Mr. LINDOW. If there were mountains right there, it would make it a little more difficult.

Mr. ROGERS of Texas. I would like to know, because I understand that it was flat, and any time it was flat, that the curvature of the earth did not interfere with it.

Mr. LINDOW. You build a tower tall enough, and you can overcome that curvature of the earth problem.

Mr. ROGERS of Texas. Well, the mountain had something to do with it, and this is, of course, the difficulty in places like West Virginia, cases like that.

Mr. LINDOW. You also have a similar situation which can easily develop in Sacramento, in relationship to San Francisco, where there is a mountain in between and a tower can be put on the mountain.

Mr. YOUNGER. I think the record ought to be corrected on the statement about the ocean down on the California shores. It is not flat.

Mr. ROGERS of Texas. It is not?

Mr. YOUNGER. No, the ocean is also rounded, just like the earth. [Laughter].

Mr. ROGERS of Texas. There is a conflict of views on that, measuring from the beginning of time.

Mr. Lindow, on the situation, though, about the bringing in of distant stations, this seems to be, no matter what you call it, it is a question of bringing in distant stations, and microwave is usually the one that is used in this situation, isn't it?

Mr. LINDOW. It is used frequently, and, of course, when you get into great distances, it is used; that is true.

Mr. ROGERS of Texas. Well, in most instances, 90 miles away is not going to affect any area, would it?

Mr. LINDOW. Oh, I think it would affect a number of areas greatly; yes, sir.

Mr. ROGERS of Texas. Well, as far as beyond the 90 miles, and the use of microwave, you are not disturbed about that situation, are you?

Mr. LINDOW. I beg your pardon, sir. I did not quite hear you.

Mr. ROGERS of Texas. You are not disturbed about that situation, are you, the microwave operations?

Mr. LINDOW. Well, there are some problems there, too, but I am not sure that I understand you, sir.

Mr. ROGERS of Texas. Well, what I am getting at is this, Mr. Lindow. The actual issue here is not microwave at all, and it is not distant stations, because the Federal Communications Commission has jurisdiction of those right now, doesn't it?

Mr. LINDOW. Yes, sir.

Mr. ROGERS of Texas. Under the *Carter Mountain* case?

Mr. LINDOW. Yes, sir.

Mr. ROGERS of Texas. And exercising that jurisdiction, and the courts have not yet upset it, so if it is going to be upset, it is yet to come, so the basic issue involved here is a pure, off-the-air operation, isn't it?

Mr. LINDOW. No; there are several things. One of the things that is involved in this piece of proposed legislation, of course, is the matter of program origination.

Mr. ROGERS of Texas. Well, but that program origination has to do with the off-the-air operator, does not not?

Your question of jurisdiction, the fellow that gets a microwave license, if the Federal Communications Commission tomorrow wanted to issue a microwave license, according to their version of the *Carter Mountain* case, they could say, Mr. X, you are an applicant for a license with microwave and we grant you this on the limitation that you cannot

render service to anybody who originates programing on his CATV, couldn't they?

Mr. LINDOW. I believe so.

Mr. ROGERS of Texas. So I mean effectively, from the standpoint of arrangement of jurisdiction, the FCC under the present assertions of jurisdiction, and backed up by the courts—part of it is not, but the part is backed up by the courts in the *Carter Mountain* case and their interpretation of it, they can do anything they want to as far as limiting the operations of a microwave operation, can't they?

Mr. LINDOW. I believe they have jurisdiction over microwave; yes, sir, and——

Mr. ROGERS of Texas. So there would not be any change in this at all. They have got this jurisdiction now, so the jurisdiction they are seeking is jurisdiction over pure off-the-air operations. And it is that pure off-the-air operations where you would have the origination of a program that they are disturbed about, isn't it?

Mr. LINDOW. Well, the Commission, as I understand it, has broadened their application of the microwave.

Mr. ROGERS of Texas. They did what?

Mr. LINDOW. I believe they broadened their application of the microwave rules in the case of *Carter Mountain*.

Mr. JENNES. *Carter Mountain* dealt with carriage and nonduplication—the carriage and nonduplication conditions. What the Commission has done in the last year, first in part with respect to microwave in April 1965, and then more comprehensively in March 1966, both with respect to microwave and nonmicrowave CATV was to establish a broad, distant station regulation.

Mr. ROGERS of Texas. Well, now, but the point is this, though, and I want to get this perfectly clear. In the *Carter Mountain* case, if it had not been for microwave in the *Carter Mountain* case, there is a chance that the court would not have made the decision that it did, isn't there?

Because it was using microwave as a means of broadcasting was a basis to start from, wasn't it?

Mr. JENNES. Well, the jurisdictional issue that was before the court in *Carter Mountain* was the Commission's power to attach a condition to the grant of a microwave license.

Mr. ROGERS of Texas. That is right.

Mr. JENNES. Then the Commission, in April of last year, went a step further and issued a regulation of a general application to do the same thing.

Mr. ROGERS of Texas. I know, but let's don't get in this confused—there have been too many words in here. If we get this thing into proper context, the microwave part of the thing was the basis of the jurisdiction of the *Carter Mountain* case in the first instance. Now I am not talking about what the Commission did. I know what the Commission did. I am talking about what the courts have done. Now the courts have never made the decision on an off the air television operation, whether it is reception or transmission, have they?

Mr. JENNES. With respect to the Commission's authority, that has not been squarely before them. There have been a couple of indications

from the courts that they believe that the Commission has broader jurisdiction. But it has not yet been squarely held.

Mr. ROGERS of Texas. That has been dicta in the case, and it is not binding at all, and the thing that would surprise me is that it is the dicta that is picked up, where they can make it appear that this is jurisdictional, but all the statements, even by the Commission that have been made, where they said they did not have jurisdiction, everybody pushes that aside and forgets it.

Now this is squarely in issue, isn't it? As to whether this jurisdiction is present.

Mr. JENNES. We think that the Commission has jurisdiction and authority both with respect to micowave and nonmicowave CATV and I would not agree, sir, that the Commission said back in 1958 or 1959 that it did not have jurisdiction. It left open the question as to whether it had had jurisdiction over nonmicrowave CATV.

I know several people have said during these hearings that the Commission said that, but I do not so read that report and order of the Commission.

Mr. ROGERS of Texas. The Commission said that?

Mr. JENNES. The Commission went down and listed a number of bases of jurisdiction that have been advanced to it, and rejected several of them. They said it did not have power with respect to some of them. But then it left open the question as to whether it did have the power to regulate CATV as being involved in interstate transmission services, and I read that earlier decision of the Commission as leaving that open, rather than saying they did not have the power, but in any event, they either have it or they don't, and we think they do.

Mr. ROGERS of Texas. I know you think they do; you said that. But the point of the thing is this: That is, it is a matter that has not not been finally decided by the courts, and the Communications Act itself says all through it that it is having to do with transmission, and not reception. Now you say that CATV operation is not a reception, it is a transmission.

Mr. JENNES. That is right.

Mr. ROGERS of Texas. And why are you against H.R. 12914?

Mr. JENNES. Well, Mr. Rogers, if the Congress were to pass a bill which said that CATV was a reception service, then for purposes of that legislation, it would be, whether or not in common usage it was.

The Congress is free to define any term in any way in which it chooses to do it, and then for the purposes of that legislation, it is whatever the Congress says it is.

Mr. ROGERS of Texas. The bill that I am talking about does not say that CATV is a reception service.

Mr. JENNES. Well, sir. I would say that if the bill that you have introduced were enacted by the Congress, and the committee reports makes clear that this is not intended to apply to CATV, we would have no quarrel with it.

If the report said that CATV is a reception service, then it is a reception service.

Mr. ROGERS of Texas. Well, do you think the FCC ought to have jurisdiction over reception?

Mr. JENNES. Over reception as such?

No, sir.

Mr. ROGERS of Texas. Yes?

Mr. JENNES. No, sir.

Mr. ROGERS of Texas. You don't think they should have?

Mr. JENNES. Over reception as such, no.

Mr. ROGERS of Texas. And you would be willing, so far as the bill H.R. 12914 is concerned, to support that bill, to spell out that they did not have this reception jurisdiction if they would say that CATV is a transmission and not a reception service?

Mr. JENNES. If the legislation were to make clear that the intention is not to prevent the regulation of CATV we have no difficulty with it.

Mr. Justice Frankfurter, he wrote an opinion some years ago. I wish I could give you the citation for it. If you are interested, I will be happy to dig it out, but essentially what he said was that if Congress chooses to say in a piece of legislation that red is green then red is green, so far as that legislation is concerned, even though all—for all other purposes, red is red.

Mr. ROGERS of Texas. But the bill does not say that.

Mr. JENNES. I know that.

Mr. ROGERS of Texas. The bill does not say anything about CATV. It is a lot of people that have grabbed stuff out of the air that is not there.

Mr. JENNES. I guess perhaps one of the reasons for that, sir, is that you have not told us what you intend the bill to mean.

Mr. ROGERS of Texas. Well, it is not what I intend the bill to mean. The bill says very plainly that the Federal Communications Commission shall not have jurisdiction over reception and it is offered as an amendment to that section of the law which says that they cannot indulge in censorship. Now you don't believe in censorship, do you?

Mr. JENNES. Why, of course not, sir.

Mr. ROGERS of Texas. All right. You don't think that the Federal Communications Commission ought to say what programs could be put on by broadcasting organizations, or stations, or what should be left off, do you? Or at what times they should be put on?

Mr. JENNES. That is right, but I don't think that decides the question that is before you.

Mr. ROGERS of Texas. I am not asking you that. Let me ask you the question, Why is it that you think that they ought not to have this power as to broadcasting, but that they ought to have his power as to CATV, even as to the origination of programs?

Mr. JENNES. Well, leaving aside the origination of programs for a moment, because that is a different question, I think the two things are not different. I think they are parallel. To the extent a CATV system is transmitting the signals of other stations, and the Commission regulates that, what the Commission is doing is determining where and under what circumstances the signals can be carried.

Now this is precisely what the FCC does with television and radio stations. It establishes zones and the areas that may be served by television and radio stations. And it is not regulating programs, it is not engaged in program control, when it establishes zones or the area that a television station may serve.

The FCC would not permit the Los Angeles stations or the Chicago stations or the New York stations to have hundreds of translators and satellites, taking their signals and transmitting them throughout the United States.

This is not program control. This is a limitation on the area that may be served by a given television station, and that is precisely what the Commission is doing when it regulates CATV and they are parallel, sir.

Mr. ROGERS of Texas. Then if a service is offered that will make it possible for an individual to get something that is not broadcast right there in that community, it is your position that the FCC ought to be in a position to tell him that he can't buy it.

Mr. JENNES. Well, I think I have stated my position, sir. I don't believe that is the issue. I think the issue is where the signals of the television station may go.

Mr. ROGERS of Texas. Well, I don't understand. Why is it that you want to regulate the fellow in the CATV business, and say that he has got to conduct his business in a certain way, but that this does not apply to the broadcasters?

Mr. JENNES. I believe it does apply to the broadcasters. The broadcasters signal—if I own a television station, in Washington, D.C., I can't have that signal go anyplace I want it.

Mr. ROGERS of Texas. No, but you can put on any program you want at any time, can't you?

Mr. JENNES. I can put it on, within proper limitations, yes, sir.

Mr. ROGERS of Texas. Well, I mean we are all assuming that obscenity does not get into this. I mean, noncensorship, let's call it.

Mr. JENNES. Yes, sir, that is right.

Mr. ROGERS of Texas. You can do that.

Mr. JENNES. But the Commission firmly limits the extent to which I may transmit signals, and that is what we are contending that the Commission should be permitted to do, has done, and should do, with respect to CATV.

Mr. ROGERS of Texas. And you are saying that if that signal is picked up and can be made better that the people who do this ought to be regulated insofar as when and how they put on the programs, but that the fellow that broadcast it in the first instance should not be.

Mr. JENNES. I am saying that the fellow who broadcast it in the first instance is already regulated, and may not do it, sir.

He is already regulated.

Mr. ROGERS of Texas. Actually, that is begging the question, because it is not that at all. It is a situation of trying to say that you cannot originate a program in one place, but you can originate another one in another place, and that people who are willing to buy a service are going to be denied that right to buy that service by a Federal bureau.

And now let me ask you this: Isn't the basic issue involved in this the question of economics?

Mr. JENNES. I think that the question of economics is involved, but it is not the only question that is involved.

Mr. ROGERS of Texas. Well, then you think that the Federal Communications Commission ought to have the power to control any competitive force in the broadcasting industry if economics is involved.

Mr. JENNES. That does not follow.

Mr. ROGERS of Texas. I did not say that. I asked you if you believed that.

Mr. JENNES. No.

Mr. ROGERS of Texas. You don't think then, that they ought to have control from an economic standpoint?

Mr. JENNES. No, I think that there are circumstances in which they have to take into account economics when they do regulate, but this does not mean that they should be able to regulate all economic aspects of broadcasting.

Mr. ROGERS of Texas. Well, why should they be allowed to regulate one but not the others?

Isn't that discrimination?

Mr. JENNES. I do not believe so.

Mr. ROGERS of Texas. Well, what would it be? If you say that you if you are in one type of business, and it is interfering with a business competitivewise, that you are regulated. Otherwise you are not.

Mr. JENNES. I think that basically, the kind of limitation which the Commission has imposed on the CATV carriage of distant signals was the very same kind of regulation, analytically, legally, any way you wish to consider it, that it has imposed on television and radio stations, and that is, a limitation on the zone and area within which those signals may be transmitted.

Mr. ROGERS of Texas. Well, of course, let me say this. This is nothing in the world but begging the question, and the broadcasters are going to get their foot in a trap by begging the question on this, on this issue that they won't be able to get out of. I don't want to press his thing any further, but I want the record to show that to me, this is nothing in the world but begging the question and failing to face the fact.

I am going to yield right now. And I reserve the balance of my time. Because I have some other things I want to go into.

The CHAIRMAN. Mr. Younger.

Mr. ROGERS of Texas. And I think I am entitled to more turns, when here you are under pressure to try to get information that the people of this country need and ought to have.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Lindow, your association is labeled as the Maximum Service Telecasters.

Mr. LINDOW. Yes, sir.

Mr. YOUNGER. What does that mean?

Mr. LINDOW. It means that it is composed of stations who are operating at the maximum power authorized and providing the maximum service that the Commission permits us to give. That is a condition of membership.

Mr. YOUNGER. It does not mean that you are giving maximum service to the listeners, to the viewer. [Laughter.]

Mr. LINDOW. We certainly hope they are, Mr. Younger, and we certainly encourage them to do that.

Mr. YOUNGER. The viewers do not have a maximum organization, do they?

Mr. LINDOW. I don't know. I have heard of a number of viewer organizations.

Mr. YOUNGER. We have not heard them, and it looks to me like you have the maximum service telecasters, that the CATV's ought to be admitted to you, because you admit that they render a service, and how can you get maximum service to the viewers unless you take them in?

Mr. LINDOW. Well, that is very interesting, sir. [Laughter.] Maybe we ought to look into it as a source of revenue.

Mr. YOUNGER. I think you are overlooking a bet, or else you ought to change your name.

In your statement, you mentioned about the new CATV.

Mr. LINDOW. Yes, sir.

Mr. YOUNGER. What is the definition of that?

Mr. LINDOW. Well, CATV in our opinion has taken a very definite turn in recent years. It originally, as has been said so often in these hearings, was designed to provide a service in remote areas without service or in areas normally served by a particular station or stations, where because of physical problems like terrain, it was impossible to receive adequate signals, and it came in there in order to help provide that service and to that extent, this is what we call the traditional type of CATV. But starting several years ago this thing took a new turn, and it started to become a service to import from distant points a multitude of signals into areas where they normally would not be able to be received, because they just don't have that service.

Mr. YOUNGER. Do you know of any CATV that brings in a multiple list of outside stations that do not use the microwave?

Mr. LINDOW. Yes, sir.

Mr. YOUNGER. How is it done?

Mr. LINDOW. Directly off the air. High tower.

Mr. YOUNGER. Just a high tower?

Mr. LINDOW. Yes.

Mr. YOUNGER. All right, then if I had a home at that same distance, and I put up an antenna, and wanted to use it, then I could be under the regulation of the FCC, then, could I? Why?

Mr. LINDOW. Well, I would like to remind you, Mr. Younger, if you recall when the Commission was up before you, they had some illustrations sitting on easels over there.

Mr. YOUNGER. Oh, yes.

Mr. LINDOW. The size of those towers and the complexity of that equipment, and the rather exotic type of installation that this is, I doubt whether this would be something that would be feasible for very many of the people in this United States.

Mr. YOUNGER. Well, we have similar ones. In New York, we have one case where they have an antenna, and it serves 10,000 tenants, and they all pay for it.

Mr. LINDOW. That is a service within the area. We have no objection.

Mr. YOUNGER. What?

Mr. LINDOW. That is a service within the area. We have no objection.

Mr. YOUNGER. But under your definition, though, the FCC could regulate it?

Mr. LINDOW. If you are referring, sir, to the system that is about to be instituted in New York City, and was recently franchised, and I believe several franchises were given, the city was divided up, the condition of that franchise, as I understand it, was that they were to carry all of the New York City stations, and not to bring in any other stations from the outside, and I don't think that the Commission's rules would preclude that. Certainly, we have no objection to that type of system.

Mr. YOUNGER. Well, in the city of New York, what other stations would you want to bring in? Don't they have all three of the networks, and everything else, available?

Mr. LINDOW. I think they have got plenty of stations in New York City. Maybe more than they need, but maybe other people might differ with me. I know Philadelphia can be brought in by CATV.

Mr. YOUNGER. There is no use in prohibiting them from doing something that, let's say, they could not do wisely anyway.

Are you familiar with Mr. Sherrod, the president of Comsat, when he made a speech before the broadcasters recently?

Mr. LINDOW. No, I am not familiar with it.

Mr. YOUNGER. The question was asked, as I understand it, whether or not from Comsat, whether the individual home would ever be able to receive the messages from their satellite, and he said "No," but he said it is possible and they look forward to the time, when they will have a master antenna that will receive the messages, and then they will be piped to the individual homes.

Now are you going to fight Comsat?

Mr. LINDOW. That is a long ways off, as I gather he said, and I guess we are going to have to face that one when we come to it, and see what the situation is.

Mr. YOUNGER. But you just told Mr. Rogers that you are fighting now because while these CATV's were not originating programs, but they might in the future, and you were fighting them because of in the future.

Well, now, why fight something in the future in one instance, and you say you are not going to fight this other in the future?

Mr. LINDOW. Well, what CATV people are talking about in the way of originating programs is not in the distant future, it is actually going on now, and from all the statements that have been made up here at the committee, apparently it is going to be going on to a much greater degree very shortly, and we are not talking about the distant future.

Mr. YOUNGER. I suggest, then, that you correct your testimony when it comes to you, because that is very clearly defined, and you have said it over and over again, that it was future, at the time you were interrogated.

I can hardly understand why you think that I say that this bill would strip the power to regulate, strip the FCC of the power to regulate, and there is an open question as to whether they have the power.

Even the Commissioners themselves are divided on that question, as you know.

And good lawyers are divided on it, and the courts have not ruled.

I was also amused at what you said a while ago that whatever Congress passed, if they said that red was green then the courts would say it was green. Well, they don't do that anymore, as you know. [Laughter.]

Mr. LINDOW. Well, I believe our learned counsel here made that comment, Mr. Younger.

Mr. YOUNGER. He was quoting a Supreme Court judge of the past, not of the present.

Mr. LINDOW. It seems—I think that he said that in that particular context, red would be green.

Mr. YOUNGER. Yes. Well, it seems to me that what you are saying to us if that you are perfectly willing to have the FCC go outside the law and acquire some power, so long as it might be to your advantage, but against somebody else, but you don't want them to go outside of their power to regulate the broadcasters, and neither do I.

I think the FCC ought to stay definitely within the power given to them by Congress, and they should not reach for power, but you feel that they should reach for power, as long as it affects CATV but does not affect you.

That seems to be the tenor of your testimony, and also of Wasilewski. I was rather surprised at it because sooner or later, if you go down the line with them, they are going to get the power pretty soon, and you are going to be surprised at what they will do to you.

That is all, Mr. Chairman.

Mr. LINDOW. No, sir, I don't think that is our position.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Mr. Lindow, I am sorry I was unavoidably detained, and I did not hear your whole statement. Mr. Chairman, I desire to reserve the balance of my time. I think I have a question later, but not just now.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Lindow, there is a great deal of argument about whether or not the Commission has the power to issue regulations at least on this amendment. Now when the Commission was before the committee, what I asked each and every one of the Commissioners who were here, and they were all here except one, was whether or not they thought they had the power.

Now a majority of those said they had the power.

Mr. LINDOW. Yes, sir.

Mr. SPRINGER. I asked the counsel, who advises them, and he says they have the power. There is no doubt about it.

Mr. LINDOW. Yes, sir.

Mr. SPRINGER. Now there seems to be a feeling that because the Commission is split, that this is not authority. I don't know any commission around here, I know of seven of them I am dealing with, and I don't know of very many of them where they all six or seven of them whatever is on the commission, agree.

The said they have the power, their advisers said they have the power. Now it is my understanding that you disagree with some of the findings of the Commission already; is that correct?

Mr. LINDOW. We in the main support the second report and order

Mr. SPRINGER. All right, now you feel it has not gone quite far enough.

Mr. SPRINGER. All right, now you feel it has not gone quite far enough.

The CATV people feel it has gone too far. The committee has not done anything yet, about the entire thing. What would you think the effect would be if you postponed the effect of the order, say, until July 1 or September 1?

Mr. LINDOW. You mean the Commission's order.

Mr. SPRINGER. Yes. Suppose the committee did that.

Mr. LINDOW. I would urge strongly that the committee not do that.

Mr. SPRINGER. Well now, let me ask you—what you urge that—what I am trying to even get out of you, what would be the effect if you did that? What would happen?

Mr. LINDOW. I think it would have very serious effects, sir.

Mr. SPRINGER. Well, can you define that, or can you give us an illustration, or can you give us some reasoning?

Mr. LINDOW. Yes, sir. There are, as I believe I indicated in my statement, a large number of applications pending for franchises.

Mr. SPRINGER. How many? About 10, or 20, or 600?

Mr. LINDOW. Oh, no; according to the figures that we have here here awhile back—and they have not diminished, they have increased, if anything—as of mid-1965, there were some 750 communities where CATV systems were franchised, but had not yet been constructed and more than 900 where applications for franchises were pending.

Now that has increased as time has gone on.

Mr. SPRINGER. That is 1,600 total, then?

Mr. LINDOW. Yes.

Mr. SPRINGER. Where franchises have been granted, but have not gone into effect, or where there is an application for a franchise and no action has been taken?

Mr. LINDOW. Yes, sir.

Mr. SPRINGER. Now, if you were to postpone this until July 1, or September 1, what would happen in those instances?

Mr. LINDOW. Well, some of them would be acted on, and some of them would start into operation, quite a number of them——

Mr. SPRINGER. Have you any estimate of how many of these might get into the action?

Mr. LINDOW. I think a very heavy percentage of them would. We have seen what happened just between April 15 of last year, when the Commission, well, actually, I can point to my testimony here on page 8, where I quote Television Digest.

In a 10-month period from May 1, 1965, shortly after the Commission put out its first report and order, until March 1, of this year, immediately prior to the release of the second, more than 700 new franchises were granted in that 10-month period.

More than 400 CATV systems were placed under construction, or had major extensions to them, and more than a hundred systems had commenced operations. Now I think if anything, the rate of activations would be increased, and certainly not lessened. There would be a substantial increase.

Mr. SPRINGER. Well now, let's go a little bit further. What complications would they present then, for the TV and CATV together?

Mr. LINDOW. Well, this would in effect be undoing what the Commission has already done.

Mr. SPRINGER. What I am trying to find out is what would be the effects of these additional CATV systems on TV?

Mr. LINDOW. I think it would have a very harmful effect on TV.

Mr. SPRINGER. Can you prove or can you show where it would?

Mr. LINDOW. Can we prove or show that it would?

Mr. SPRINGER. Yes.

Mr. LINDOW. Well, it is hard to prove and show those things before they happen. We have had plenty of examples of where things have already happened in the past, and we say that the past is the prelude to the future.

We know that this could happen. We know that these cables could be strung with great rapidity, in order to try to get in and then try to be grandfathered into existence. This would tend to frustrate the whole effort of the Commission to solve a problem that they recognize is very serious, and very urgent in its nature.

Mr. SPRINGER. Well, I don't know that it would do any good, Mr. Lindow, or not, but when we had our hearings last year I issued a statement that was carried on every wire service in this country if—that if any CATV operator had a lick of brains, he would not attempt to string any wire or get any franchise until the Commission acted.

It did not make any difference. They went like racehorses all over this country, to see, if—I don't know, I suppose they were trying to beat the Commission, that is the best I can make of it, but it certainly did not do any good, the statement I made, again that a lot of them would be caught in exactly what they are caught in today, if the Commission acts in a certain way, which the Commission did, and if they had left their original order, they would have been in a lot worse shape, and I think in the second order at least was modified partially, but I did everything I could to at least alleviate the situation, and the people were pouring into my office to talk about their problems, and I issued a statement over 9 months ago, to hold up until the Commission had acted.

Fortunately, in my district, every single city did it, except one, that was added to my district last October, and I presume I did not get the message down to them in time.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Lindow, I want to ask you a sort of simple question. Do you think CATV performs a good service and should be allowed to operate?

Mr. LINDOW. Yes, sir; I think within limitations, it does, and the way in which CATV and most of the CATV now in existence and in operation in this country has been operating, it does perform a good service.

Mr. PICKLE. Well, now, would you briefly—I don't want you to use all my time, but would you just tell me, how do you think that CATV should operate?

Mr. LINDOW. I think it should operate as a fill-in type of service, along the lines I described a few moments ago.

Mr. PICKLE. As supplemental?

Mr. LINDOW. Yes, sir.

Mr. PICKLE. To the regular broadcasting industry?

Mr. LINDOW. Yes, sir.

Mr. PICKLE. But it does have a definite service and you welcome it, within the limitations.

Mr. LINDOW. Oh, yes, sir; within limitations, we do, but we are very concerned about this new direction it has taken.

Mr. PICKLE. Well, by new direction, do you mean the large expansion, or the origination of programs?

Mr. LINDOW. Both. And the importation of distant signals.

Mr. PICKLE. Do you know of any TV station which is taping programs and playing them back now?

Mr. LINDOW. Any CATV?

Mr. PICKLE. Yes.

Mr. LINDOW. I don't personally know of any, although I have heard that there are plans along those lines.

Mr. PICKLE. Well, if I read your testimony, you indicate that you think the language of the bill which the chairman introduced was so broad that someone could pick up off the air, directly or indirectly, these signals and play it back, so I think though they may not be doing it electrically, or mechanically, they could do it, or legally, they could do it.

Mr. LINDOW. It is entirely feasible for them to do it, if they want to.

Mr. PICKLE. Well now, you think that there should be no origination?

Mr. LINDOW. Yes, sir.

Mr. PICKLE. Now some of these CATV people have asked for originations only with respect to public service, and to weather. But you say absolutely none.

Mr. LINDOW. Well, I do, sir; and the problem you have there is Where do you draw the line?

Mr. PICKLE. Well——

Mr. LINDOW. How do you distinguish? Are you going to——

Mr. PICKLE. I think very easily, if you are asking me, now. If you are turning the thing around, I think just writing the law, I think this would be pretty simple, if you just wanted to do it.

Mr. LINDOW. Well, even then, I think it would be pretty difficult to define, sir; you see——

Mr. PICKLE. You object, according to your testimony, to CATV picking up the signals off the air and, as you say, coattailing, or getting a free ride.

Mr. LINDOW. Right.

Mr. PICKLE. And you think they should not do it, should not have that right?

Mr. LINDOW. That is right.

Mr. PICKLE. Now, in order for them to be able to give that service to the American people, and there is a definite place for it, I think we all agree to that, do you think that the CATV people ought to pay for picking up the signal?

Mr. LINDOW. Well, we think that the copyright law ought to be clarified to incorporate CATV, without any doubt, in its provisions.

Mr. PICKLE. Well, are you saying that——

Mr. LINDOW. In the traditional——

Mr. PICKLE. You, the broadcaster, ought to be able to sell them the right?

Mr. LINDOW. In the traditional situation, no, where the CATC system is in a community that is within the service areas of the stations it is carrying, and where it is acting as the type of service fill-in that I talked about, I mentioned a few moments ago; no, I don't think they should be asked to pay in that case.

Mr. PICKLE. Well, are you saying, in effect, that in some instances they ought to pay for that signal and in other instances they should not pay for it?

Mr. LINDOW. Yes, it should depend on the situation.

Mr. PICKLE. Now, that to me seems a little inconsistent. With respect to they ought to have origination or no origination. It seems to me we have not got a position as to what you think is fair and right, but whether that is an individual feeling or not, do you think that the CATV people would pay for this service, or are willing to pay for it, want to pay for the right to broadcast any signal they pick up off the air, without any regulations?

Mr. LINDOW. They have been fighting the idea of anything that they consider a threat of the possibility that they might have to do it, very hard, so I would assume they would be opposed to it.

Mr. PICKLE. You just said you don't think any CATV man would want to pay for picking up these signals and using them. He has been getting them for nothing now, and I rather then imagine most people don't like to start paying for something they have been getting for nothing.

I think it is an intriguing thought, and I don't know, and I have had no discussion on that, and the sense, since these hearings have been underway, is whether you could sell or think you should sell these broadcasts, and then should be able to pay for them in this if we wanted to, and we would not have any squabble.

Mr. LINDOW. I think where the CATV is acting as a fill-in in type of service in the area that the station is normally serving, there is a real question as to whether it would be appropriate.

Mr. SPRINGER. Would the gentleman yield for a question?

Mr. PICKLE. Yes, I will yield.

Mr. SPRINGER. I believe this is true, and I will ask the gentleman if this is not true. That there are now two cases pending in, I believe, the Federal court in the State of New York.

Mr. LINDOW. Yes, sir.

Mr. SPRINGER. Which will determine this question of whether or not a copyright law is in effect?

Mr. LINDOW. Yes, sir.

Mr. SPRINGER. When a signal is taken from another station's antenna and used on CATV, so I assume that within the next year this question will be determined, and we will actually know, then, whether or not they have a right in the nature of a copyright. Is that correct?

Mr. LINDOW. I think that is correct. It may take a little longer than a year before the matter is resolved. There will be appeals.

Mr. SPRINGER. But, it is in the court for determination. It is before the court right now.

Thank you.

Mr. PICKLE. Well, then, if it is in the court, you are not willing to wait for that, for the court to act.

Mr. LINDOW. No, I think this. Before the court acts on this copyright matter, it might well be some time. We are faced with this exploding situation that Mr. Springer and I were just discussing a few moments ago. There is also the possibility of the copyright law being amended ultimately, although hearings have only just begun last summer, on the Senate side, and the matter on the House side is not yet concluded. I think these are things that are some distance off, and meanwhile we are faced with an explosive situation.

This thing is breaking out all over the United States, as evidence has shown.

Mr. PICKLE. Mr. Lindow, I agree with you that it is expanding very rapidly, and otherwise, we would not be having this problem here today.

You refer to CATV though, as a monopoly, and if it was allowed to continue, would be a definite monopoly in the field. By the same token, it you take that as monopoly, would you not say that broadcast is a monopoly?

Mr. LINDOW. No, sir, I don't, because I think it is quite a different thing.

Mr. PICKLE. Well now, you are assigned a certain channel. I was in the radio business once myself. We had a certain frequency assigned to us. We had to put up two towers, so that our signal would be directed. We could broadcast on one band. Nobody else would broadcast, we were protected and nobody could use that signal but us.

Now that is in a sense a monopoly, is it not?

Mr. LINDOW. Well, in the sense that no one else at that same point can broadcast on that same frequency, it is, but in the sense that there are other stations possible in a community or in the area, you don't occupy a monopoly position.

Mr. PICKLE. Well the point I am making is that I think it was fair. you as a broadcaster have got just as much monopoly when you have got an assigned signal or a freguency or a channel as certainly the CATV would have in their particular field, and no matter how you slice it, it is a sort of monopoly on both sides.

Now I want to repeat again what I said earlier, and I am getting a little bit weary of some of these hearings, because the broadcasters, I think, have got to be protected, because they are the mother industry, the originators, and you ought to be kept strong.

But I don't think you ought to try to cut off CATV totally, and leave them where they are just completely dependent on the broadcasters.

Now maybe the law is a little bit vague, and I think the Congress, perhaps, ought to spell it out where we think it is but both of you are not right. The American people are entitled to some protection on this thing, and when you say that the economies or the economics of the situation does not enter into it, of course it does. And I think the Government intended for the economics to be a part of this factor when they made these allotments, and I think the same is true of your CATV.

Mr. LINDOW. Well, I think there is a distinction, getting back to your monopoly point, between a broadcasting situation and a CATV operator. A broadcaster does not occupy this area to the exclusion of

other broadcasters being able to come into that area, provided there are frequencies available to him.

Mr. PICKLE. I thought they do.

Mr. LINDOW. I think what we are talking about in the case of CATV and I believe what the Paul Rodgers from NARUC, who was testifying here this morning was talking about on CATV and its monopolistic aspects is that generally speaking, you are not going to run two cables down the same block to service customers in the same block.

In other words, you are subscribing to one cable system, and that is the one that is available to you, and there are no others. Now there are a number of radio and television stations that you can receive, and they vary in number, depending upon your location and all sorts of things, and conditions.

So I think there is a distinction there, and that is why I beg to differ with you, sir, in your statement that there is not a difference.

Mr. PICKLE. Well, there might be a difference, but you have got to look at it mighty close to note it, I would think.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

I am interested, frankly, in two things, and your observation about two things that this bill, H.R. 13286, that we are considering, would do.

One, I understand it is your position that the FCC should have authority for these systems, because they are in the business of broadcasting, and that is a matter of definition, is it not?

Mr. LINDOW. Well, I don't think they or we say that CATV is in the business of broadcasting. I may be picking at a term there.

Mr. SATTERFIELD. Let's put it another way. I think you stated that the transmission of signals over a CATV system was broadcasting.

Mr. LINDOW. We say that it is a transmission service, and they are transmitting this information over their facilities.

Mr. SATTERFIELD. Do you confine that to the transmission of signals that are taken off the air?

Mr. LINDOW. Yes, sir.

Mr. SATTERFIELD. How about signals that are not taken off the air?

Mr. LINDOW. On a closed circuit matter?

Mr. SATTERFIELD. Yes, sir.

Mr. LIDOW. I don't believe that H.R. 13286 considers that question.

Mr. SATTERFIELD. I think it does, because if you read it, and I don't think it is subject to any other interpretation, but any system like this, in the first instance that it takes the signal off the air loses its right to originate any programs without the prior approval of the FCC.

Mr. LINDOW. I think we are getting into a legal area. I would like to call on our counsel, who is better qualified to answer that for you.

Mr. SATTERFIELD. All right.

Mr. JENNES. I understood your question to Mr. Lindow to relate to a closed circuit system that did nothing but operate closed circuit, did not take signals off the air.

Mr. SATTERFIELD. Let's take a closed circuit one, now.

Mr. JENNES. Well, the statutory basis for the Commission's regulation lies in the fact that the act applies to interstate and foreign communications by wire or radio, and when you look at the definition of interstate communications by wire or radio, CATV comes within that definition.

Mr. SATTERFIELD. If it moves by wire interstate?

Mr. JENNES. That is right. Whether or not the system itself is located in one locality is not pertinent, but it is part of the interstate flow of interstate communications by wire.

Mr. SATTERFIELD. Let's take a closed circuit system that is located wholly within a State, that originates all its programs. Do you admit the FCC has no jurisdiction over this?

Mr. JENNES. I think it is very doubtful that the Commission has jurisdiction over that; yes, sir.

Mr. SATTERFIELD. Well, I notice that the definition of broadcasting in the Communications Act of 1934 relates to dissemination of radio communications.

I take it, then, that when you again consider the CATV is broadcasting, that we are talking about a change in that definition.

Mr. JENNES. No; I don't regard CATV as broadcasting. It is a facility which is engaged in the interstate communications by wire on radio but not broadcasting.

Mr. SATTERFIELD. Well, how about when—I must have misunderstood the statement which was made earlier, because I understood that there had been a statement made.

Let us pass that for the moment, but I am interested in the next step in this thing. On what basis do we justify giving to the FCC the right to say that you cannot originate any programs on CATV system when it does not have the right as far as an open broadcast station?

Mr. JENNES. Well, the justification, I think, lies in what I would regard as a reasonable classification. Now the CATV system is engaged in the process of taking television signals off the air, transmitting them, and its entire existence depends upon the availability of the television signals which it picks up.

Now it is one thing to talk about a closed wire television system, such as was proposed in California, and which was outlawed by referendum, and then the Supreme Court of California reversed on that, where it was standing on its own feet.

The great trouble with CATV origination programing is that CATV used the signals of television stations to get subscribers, to expand subscribers, then has a large audience base, to which it is providing a number of signals which it obtains for free from the television stations, and then with the large base of subscribers, is in a position to start feeding in program originations, and then be in a position to take from the very television broadcast services on which it feeds the programs which it would then sell to the recipients.

Mr. SATTERFIELD. And you feel that is a constitutional justification for giving the FCC the power to prohibit those originations?

Mr. JENNES. Yes. I think that this is a constitutional justification, and there is nothing in this California decision which has been referred to by some of the earlier witnesses which would say the contrary.

Mr. SATTERFIELD. Well, I think perhaps what you are really saying is that this is necessary to achieve a desired result, rather than a firm constitutional basis for giving this jurisdiction.

Mr. JENNES. No; not really. I am saying two things. That in the first place, where you don't have a total prohibition, and this is not a total prohibition, this is a prohibition against one kind of——

Mr. SATTERFIELD. It is a total prohibition against originating programs.

Mr. JENNES. By CATV, but only by CATV. That it is proper, when you consider such a prohibition, or limitation, to take into account the public-interest considerations which lie on both sides.

In the Associated Press case, the Supreme Court said some time ago, freedom of the press under the first amendment does not sanction repression of that freedom by private interests.

What I am suggesting is that when and if Congress finds in enacting legislation that the effect of program origination by CATV would be to adversely affect local and area television and that there would be a repression of freedom of press by CATV, itself, by doing away with local and area television services, this would be a proper thing for the Congress to balance.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Farnsley.

Mr. FARNSLEY. Thank you, Mr. Chairman and Mr. Witness.

This study proves that public street lights and highway lights would cut street violence and juvenile delinquency in this country, and automobile accidents, by a third. I realize that your people get a lot of mail. I do, too. I sent this at Government expense, and you ought to do something about it. Either I have wasted money, or you have wasted Government money. I am going to say after the hearings, that if they start interrupting "Batman" to say that the Library of Congress says that street lights would cut street violence, juvenile delinquency, and automobile accidents, I am going to be very much impressed with CATV.

That is not a question. That is just a joke, sir.

[Laughter.]

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. When CATV people testified, and I am trying to get down to the specific area we may be left within terms of final debates as to where we go, they agreed pretty much to the protection as to simultaneous nonduplication; agreed pretty much to carry the local stations; they agreed that to tape was a violation of copyright laws, or should not be done, indicating they would accept a limitation of not taping a program like a movie, and reshowing it on a CATV.

But it seems to me, then, that——

Mr. LINDOW. That was off the air, I believe, wasn't it?

Mr. ADAMS. Yes; correct, off the air. In other words, taking someone else's program and taping it.

Now it seems to me that we are left, then, with a significant amount of agreement in protection of existing local stations, with a significant amount of protection for broadcasters as far as network programs are concerned.

In other words, the established areas that are doing this now.

Isn't there left, and this follows from Mr. Pickle's question, isn't there left an area of economic regulation which will have to be determined, where perhaps origination by local CATV stations of local interest is more efficient and more competitive and more in the public interest than building an additional complete broadcast facility, which is, one, more expensive, and second, can't carry the significant additional number of local services that a local CATV could for those who wanted to tie up?

Mr. LINDOW. Well, Mr. Adams, first of all in the areas of agreement, there is the problem of distant stations, which——

Mr. ADAMS. Well, now, as I understand, they are willing to agree that they would not duplicate through distant stations the local stations that are carrying those programs.

In other words, they would not bring in Philadelphia, for example, into the Washington, D.C., area, and throw a Philadelphia signal against Washington, D.C., signal.

Mr. LINDOW. Well, now, insofar as network programs are concerned, under certain conditions, the nonduplication rules would apply. But you have other programs besides network.

Mr. ADAMS. Well, no, that they agreed they would not put in a program against a local station and duplicate it. I understand that, and maybe I am wrong, but I thought they pretty well agreed to that.

Mr. LINDOW. At the same time, simultaneously.

Mr. ADAMS. Right; simultaneously.

Mr. LINDOW. Of course the Commission's rule says same day.

Mr. ADAMS. OK. Now that is an area of flexibility. They generally agreed to that.

All right, and the second was that they would carry a local station. Now you have this area of general protection to the present broadcasting airwaves system. Now is it your position that we should go or the FCC, whichever ends up with this, all the way and protect all possible new airway facilities like UHF, or should we, in an area that is coming into the future, allow this economic competition? This was an originations, basically.

Mr. LINDOW. Well, we worked hard, and the Congress in its wisdom saw fit to pass an all-channel bill, so we tried to help in that effort, because we felt it was the right thing to do. We thought it was necessary to provide an opportunity—

Mr. ADAMS. Agreed; a very legitimate decision.

Mr. LINDOW. I think that this is a very worthy objective, and I think it is an objective that can be realized, and history has shown, since the all-channel bill has gone into effect, that it is starting to be realized, but I think through an encouragement of new UHF stations, but I think that new UHF stations either that have come into operation, or are about to come into operation, or in the case of people who are considering going in and applying for a UHF grant, may be seriously jeopardized and threatened.

Mr. ADAMS. I agree, no question about it. The CATV threat to this group is direct, and it is a direct economic competition. Now should we prevent that?

Mr. LINDOW. I think we have got several questions here. You have referred to originations, and you have referred to distant stations.

Mr. ADAMS. We are aiming now right at the originations. We can arrive at a point of agreement that the distant stations will not be brought in in duplicate. Now they may be brought in to compete by placing an independent from elsewhere into the area that would fractionate an audience, I agree, for a UHF station.

Mr. LINDOW. And this kills the UHF; that is correct.

Mr. ADAMS. Well, not necessarily agreeing to that, but is it your position that we should prevent this, not only as to the existing station, but as to all potential UHF stations coming into an area?

Mr. LINDOW. Yes.

Mr. ADAMS. In other words, that we should make a decision that the system will be an airwave system, no matter what.

Mr. LINDOW. I feel this is the big question.

Mr. ADAMS. It is.

Mr. LINDOW. A system of free broadcasting in this country, or are we going to have a wired-up system that is going to be bringing signals from large metropolitan centers some distance away by means of wire or cable.

Mr. ADAMS. All right. What I am asking you is, should we leave some of this to the marketplace to be determined, or do you think it should all be handled by regulation?

Mr. LINDOW. I think it is pretty hard to leave it up to the marketplace. I think that has to be handled by regulation.

Mr. ADAMS. We are talking you know, just about this last area, UHF.

I have no further questions.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

I would like to thank the witness for the length and analytical structure of his testimony, because those of us who are not in the field find it even more confusing than some who are in it.

Would be good enough by letter or memorandum to react to the NCTA–CATV bill which I introduced? I don't know whether you have read it. Mr. Ford testified that he had a number of amendments. I suggested it would be more orderly if it could be put in the form of a bill, and it is before the committee.

What I am asking is this: Would you give a critique of that bill, and in what respects do you feel that it falls short?

Mr. LINDOW. We would be very happy to supply that for the record, Mr. Mackay.

(The information requested follows:)

STATEMENT OF ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC., ON H.R. 14201

H.R. 14201, the bill proposed by NCTA, would not meet the basic problems posed by CATV and the threat to the continued maintenance and full development of a free nationwide television system in the public interest. Although the bill is written in the form of conferring jurisdiction on the FCC to regulate CATV, the bill would deprive the FCC of power to regulate CATV systems effectively. Thus, H.R. 14201 is in no sense a "compromise" between the "no regulation" position inherent in H.R. 12914 and the position of the FCC represented by H.R. 13286, the bill introduced by the chairman of the committee. H.R. 14201 is merely a more elaborate method for achieving nonregulation.

H.R. 14201, while in form permitting the FCC to regulate CATV systems as defined in the bill, would outlaw practically all of the meaningful regulations

recently adopted by the FCC specifically: (*a*) H.R. 14201 would prohibit the FCC from requiring that CATV systems carry stations that serve the community in which the CATV system operates.

The bill arbitrarily shrinks the service areas of local stations and would permit the FCC to require carriage only if the CATV system is located within 30 miles of the local station's transmitter. But the service areas of local stations extend well beyond 30 miles of their transmitters.

As is shown by the attached statement of Mr. Howard Head, an expert consulting radio engineer, stations normally provide satisfactory or better service throughout their grade A and grade B service areas (which can extend as far as 70 or 80 miles from their transmitters). Under H.R. 14201 the FCC would be powerless to prevent a CATV system from carrying stations hundreds of miles distant while at the same time not carrying the local stations whose transmitter sites might be 31 miles away from the community served by the CATV system. If this practice were to become widespread the loss of audience beyond 30 miles of the transmitter site would greatly impair the service capabilities of local stations. Most television stations are area stations that serve and rely heavily on the audiences throughout their service areas. Indeed, stations located in predominantly rural sections vitally need the towns and villages throughout their service areas for economic support and they would be particularly hard hit. It is this type of injury to local station's service capabilities that the FCC's rules were designed to prevent. Under H.R. 14201 the FCC could not adopt effective rules to prevent this injury.

(*b*) H.R. 14201 would prevent the FCC from requiring that CATV systems provide same-day nonduplication protection to local stations.

The need for stronger than same-day nonduplication treatment has been clearly established. In the face of this evidence H.R. 14201 would deprive the FCC of power to enact any rule save a simultaneous nonduplication rule that at most would protect only those local stations whose transmitters were within 30 miles of the area served by the CATV system.

(*c*) H.R. 14201 would prohibit the FCC from limiting CATV importation of distant signals into areas adequately served by local stations, even though the importation of such distant signals by CATV would adversely affect existing stations and would foreclose the establishment of new UHF stations in the local area and would leave allocated channels unused.

The FCC has sought in its rules to avoid impairment of existing local and area television broadcast service and to encourage the future use of valuable frequency space and the development of diverse television service that would be blocked or impaired by widespread CATV importation of distant signals. H.R. 14201 would foreclose the FCC from adopting any limitations on distant signal importation and would therefore discourage the establishment of new UHF stations and would result in waste of valuable channel space.

(*d*) H.R. 14201 would prohibit the FCC from requiring that CATV systems carry satellite stations (those that originate less than 10 hours of programing per week) or any station that duplicates more than 75 percent of the programs of another station carried by the system.

In the first place, it should be noted that, in seeking a mandatory statutory exemption from a CATV system's being required to carry the signal of a station in proposed section 331(a)(3), NCTA uses the term "duplication" while in seeking a mandatory statutory exemption from nonduplication treatment for CATV in section 331(a)(4), it uses the term "simultaneous duplication." Since most syndicated program series and feature film programs are duplicated over stations in different markets but not simultaneously, the 75-percent duplication provision for exemption from carriage would appear virtually to make all carriage requirements substantially meaningless. Even if the 75-percent carriage exemption were modified to apply to simultaneous duplication, it would still not be satisfactory since it would mean that a CATV system could bypass a local station (even if its transmitter is located within 30 miles of the system) in favor of a more distant station which simultaneously duplicated 75 percent of its programing. A new UHF station, for example, might rely relatively heavily on network programing at the outset and could be especially injured by such a statutory prohibition against the Commission's requiring a CATV system to carry that station.

In any event, this restriction and the restriction which would permit a CATV system to bypass satellite stations and translators enirely are unjusified.

Local satellite stations and stations that substantially duplicate the programs of other stations are often marginal operations that will eventually stand on their own feet only if they are able to obtain and develop the widest possible audience to permit them to originate a steadily increasing volume of programing. By allowing CATV systems to bypass these stations, the chances that they will be able to do so would be greatly reduced.

So far as translators are concerned, the Commission found that the public interest is served by encouraging expanded use of translators to bring free off-the-air television service to persons in rural areas and in communities not now receiving adequate television broadcast service and that, if CATV systems did not carry translators, this could well destroy the incentive to establish translators to serve nonsubscribers in the community and persons in the surrounding areas and that, for the same reason, nonduplication treatment should be given to translators.

In short, H.R. 14201 would require, for all intents and purposes, an abdication by the FCC of effective CATV regulation. Indeed, to the extent that it would limit the FCC's power to condition microwave licenses involving CATV systems (we are not sure that it would so limit the FCC) it would appear to go further to curtail the FCC's regulatory power than would H.R. 12914.

For these reasons, MST respectfully urges that the committee not give favorable consideration to H.R. 14201, the bill proposed by NCTA.

ATTACHMENT TO COMMENTS OF ASSOCIATION OF MAXIMUM SERVICE TELECASTERS ON H.R. 14201

Grade A and grade B service

The "Glossary of Terms" supplied to the Committee on Interstate and Foreign Commerce contains definitions of predicted grade A and grade B service which warrant explanation and amplification.

The predicted grade A contour is defined in the glossary as the calculated line surrounding an area in which a good picture is normally available for at least 90 percent of the time at the best 70 percent of the receiver locations. At the outset, it should be observed that the definition, as stated, applies only at the grade A contour itself (the outer limit of grade A service) rather than to the entire area within the contour. The field strengths at locations within the contour are ordinarily higher than at the periphery, with the result that the definition represents only a minimum quality of service at the outer grade A limit, with increasingly superior service as one moves closer to the transmitter.

There are further observations to be made regarding the definition. For one thing, studies of the Commission's various technical documents underlying the definition of grades of service show that on the VHF channels the Commission, after making the necessary calculations to arrive at field strengths required for service for 90 percent of the time at 70 percent of the locations, actually set the field strength figures for grade A service at values several decibels higher than given by the calculations. The field strength values are set high enough to do two things: first, to overcome urban noise and, second, to provide a minimum grade of service in the presence of rural noise for time and location percentages significantly in excess of the 90-percent and 70-percent values, even at the outer limit of grade A service bounded by the grade A contour.

With regard to grade B service, the grade B contour is defined in the glossary as the calculated line surrounding an area in which a good picture is normally available for at least 90 percent of the time at the best 50 percent of the receiving locations. Again, as in the case of grade A service, it should be noted that this stated definition is applicable only at the grade B contour itself (the outer limit of grade B service) rather than throughout the entire area within the contour. Thus, here, too, the field strengths at locations within the contour are ordinarily higher than at the periphery, and thus the grade B definition given represents only a minimum quality of service at the grade B contour, with increasingly superior service as one moves closer to the transmitter.

The definitions of grade A and grade B service in the glossary, in terms of percentages of time and location, are essentially what might be called the official definitions (with the reservations discussed above) of grades of service at the grade A and grade B periphery, as established by the Commission's technical standards and underlying reports. As a practical matter, however, more than a decade of experience with the concepts of grade A and grade B service

has given the terms practical and useful meanings extending well beyond those conveyed by statistical descriptions in numerical terms. These meanings can be phrased in a variety of ways, but, generally speaking, the terms mean to the average user that, except under abnormal or atypical conditions, essentially everyone within the grade A contour gets good or very good service and that most people within the grade B contour get satisfactory service. These essentially lay descriptions are entirely consistent with the discussion above, and reflect various factors which produce such consistency of service within the two contours.

The foregoing description of grade B service is also consistent with and supported by the statement of Chairman Henry of the Commission to the committee:

"* * * the grade B signal is generally considered as putting a satisfactory signal over the area encompassed by the grade B. It is a measurement that is commonly accepted now in the industry as providing a satisfactory signal * * *." (Typewritten report of hearings, Mar. 23, 1966, p. 108.)

HOWARD T. HEAD,
A. D. Ring & Associates, Consulting Engineers.

Mr. MACKAY. The other question I have is regarding the greatest point of confusion, so far, in trying to balance the issue between the protection of the broadcaster who has made a heavy investment and the right of the viewer. The main thrust of your argument as I have understood it, is that there are heavy investments, there are good markets, and a CATV poses an economic threat. That is the main thrust of the argument, as I have heard it, and that this is unfair; that there is the element of unjust enrichment, that people are getting something that really was created by the sweat of the brow of somebody else, and selling it.

On the other hand, it seems to me that the right of the consumer may be frustrated by your approach, in that it does seem to me that it cuts down what I will call the freedom of information, because it seems to me that the country is big enough and the talent in this country is extensive enough that if you can do it technologically, there ought to be almost an infinite variety of programs available to the American people. We find this true in magazines, we find it true in newspapers. In movies, in books, we don't all have the same tastes, and the idea that there can be these extensive choices appeals to me a great deal. I wonder if these two values are really compatible.

Now I wasn't even interested enough in television to have a set up here in Washington, because of the mediocrity of the fare I have encountered. I don't have many hours to look at TV across the day, so this may not be fair to television. I don't have much time to look at it now. But the bête noire of this whole discussion is that pay TV is really a bad idea. I don't think it is free, now, because one reason that I don't have a set is that I just would have to spend a hundred dollars to get one, or $150, or whatever it takes, just have to fit it into my budget. It takes money to watch television, and I would be glad to pay three times what I have budgeted in my Atlanta home, where I have two TV sets, to get a higher quality of television programing.

Now I want you to address yourself just a moment to why pay television is such a monster. I mean, what is the real threat of pay television? Because we don't get anything in this world that we don't have to pay for except sunshine and moonlight. What is wrong with pay television?

Mr. LINDOW. Well, there are quite a number of things wrong with pay television, I think. We have set up in this country a system of free

broadcasting to the people. I am afraid I must take issue with this question of whether it is free or not. People do have to pay for a receiver in order to receive a signal. They have to pay for that whether it be pay television or free television. Television is supported by advertising. Advertising, I think, plays a very important role in this whole matter of our economy, in the encouragement of mass production, and all of the benefits to the public that have flowed from that.

I think that the costs of many items have been reduced over the years, because of the benefits of our economic system. I question whether advertising has literally added much, if anything, to the cost, when you take it on a balance with what it would be—what the manufacturer would have to charge—if he were not able to merchandise and advertise to the public at large, in a mass media way.

Pay television has a problem, too, because it is fine for the person who wishes to pay for it, and has the means, such as you do, to be able to pay for it, but what about the chap who can't afford to pay for it?

Mr. MACKAY. Well, what I am trying to say is: Are pay television and free television incompatible in our society?

Mr. LINDOW. No, it takes away the basis for the programing sources from free television, and would undoubtedly cause freee television to slip considerably as to the quality of its performance, and secondly, I think that you have tended to overlook in your statement the public service aspects of broadcasting.

Broadcasters not only carry commercial programs, but they carry noncommercial programs, and many times some of the programs, although they are sponsored, do not produce enough revenue to pay for the program itself.

I feel relatively sure that the broadcasts that have been conducted, and that many millions of people have enjoyed, from Cape Kennedy, and from the Space Center down in Houston, as our astronauts have traveled around the globe, are not entirely compensated for by the advertising carried in those programs, so there are many types of public service programs that are provided by television, which would be jeopardized or, in fact, would have to be, if not entirely eliminated, at least seriously cut back, and the public would stand to lose as a result of it.

Now you have, in the case of CATV, the problem of service to the rural communities, where it is not economically feasible to bring in CATV service, and those people would tend to lose service or their service would be cut down. The quality and caliber of their service would be cut down.

Mr. MACKAY. Well, on the point, as I think you said, you are dealing with a bona fide concern at this point, and I want any information that you can furnish along that line, but there has been a premise here that pay TV is just wrong.

Mr. LINDOW. Well, I think people, generally speaking, like the system of television that we have in this country that has grown tremendously over a period of the last 15 years or so.

Mr. MACKAY. I come out of a university community. There is acute displeasure with the character of television in my community. This is often the subject of PTA programs and discussions, but that is really not relevant to our discussion here. Maybe we are going to

have to ration the number of hours in the daytime to upgrade it, but I will welcome any information that you can furnish.

Mr. LINDOW. I am sure in any set of programs there are programs that some people prefer, and other people detest, and I guess you can't satisfy everybody.

Mr. MACKAY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. There are lot of things more that I would like to ask, and I think it is highly important in view of the fact that these people are from the industry, and I think that the record ought to be complete on it.

Now we will confine ourselves to three at the moment.

As I understand you, the testimony is that the CATV system is a transmission of a broadcast radio signal, which is a continuing and therefore an interstate operation.

Mr. LINDOW. That is right.

Mr. ROGERS of Texas. Now, is it not a fact that if this definition is true, the courts could hold that under the doctrine of preemption, any effort by a local municipality or a State to put any burden at all on this sort of situation would be an undue burden on interstate commerce, and could not be tolerated?

Mr. JENNES. This is possible. This is why I understand the Commission has done two things in their own action. They have said that there are certain areas which they intend in effect to reserve for the States—franchising and the matter of rates, and so forth, and in the legislation that they have made——

Mr. ROGERS of Texas. I just wanted to make the point. I know what the Commission has done. The Commission has made every concession they think they can get away with in order to get this basic power, but the point is that the courts could hold this, and in some cases will hold it, and in some cases already have, with regard to the transportation of oil in matters of interstate commerce.

Mr. JENNES. The issue is as always: Is there a complete or a partial preemption.

Mr. ROGERS of Texas. Now I believe the question, I believe you said, Mr. Lindow, that you did not think this could be on a local basis, because of the possibility that the local groups or the local governing bodies might be influenced by the chance of getting additional revenue. The fact is that this entire matter and all you have complained about could be handled by limitations and restrictions in a franchise by a municipal corporation; couldn't it?

Mr. LINDOW. Well, I think it would be very difficult to do that, Mr. Rogers.

Mr. ROGERS of Texas. Why would it be difficult?

Mr. LINDOW. Well, in one station's service area, one television station's service area, you might well be talking about 10 and 12 or maybe 20 different communities.

Mr. ROGERS of Texas. Well, each one of the communities would have the right, and you believe in local self-government, do you not, Mr. Lindow?

Mr. LINDOW. Indeed I do.

Mr. ROGERS of Texas. But you are willing to sacrifice that local self-government in order to put this whole thing under the Federal Communications Commission.

Mr. LINDOW. Well, I think in this instance, of these 10, 12, or 20 different communities who would be exercising this authority that you are talking about, no one of these should have the power of making the decision for the others, and that is in effect what they would be doing.

Mr. ROGERS of Texas. Why would they be doing that?

Mr. LINDOW. Then we are going to get into the whole question of carriage, nonduplication, all of these things that are encompassed in the Commission's rules.

Mr. ROGERS of Texas. It would be a matter for the people to have to go before each city commission in the local self-government, would it not, Mr. Lindow?

Mr. LINDOW. Yes, sir.

Mr. ROGERS of Texas. And it has been said here that these people might be influenced by the chance of getting more revenue for the city, and I understand that that is what you said in your statement.

Mr. LINDOW. Yes, sir.

Mr. ROGERS of Texas. Now what you are saying to me is that there is a chance of a city commission being bought but no chance of a Federal Communications Commission being bought.

Mr. LINDOW. I don't think I said that there is a chance of a city commission being bought.

Mr. ROGERS of Texas. You said they would be influenced by revenue. I am not talking about bribery. I am talking about the siutation of being influenced to get more money for the city, and this is one of the problems in this whole picture, is it not, Mr. Lindow?

Mr. LINDOW. Well, I think that it would be very difficult for a large number of individual communities to try and arrive at a policy for one station's service area, or for a number of stations' service areas, independently. I think there are too many lines crossed.

Mr. ROGERS of Texas. In other words, you do not think the local people ought to have control of whether or not this comes in, but it ought to be left to the Federal Communications Commission, a Federal bureau.

Mr. LINDOW. I think the local people might well have control of who gets the franchise, and the conditions under which they operate, and what rates are to be charged, and things of that sort. I have no quarrel with that at all. I am not suggesting that the Commission do it.

Mr. ROGERS of Texas. Let's go on to the next question, about the free television thing, and I think you said that the reason you believe this is going to be bad is because if you permit CATV they will outbid the broadcasters for talent.

Mr. LINDOW. I think they can well get to that position.

Mr. ROGERS of Texas. Do you understand that to mean, Mr. Lindow, that you don't think the broadcasters ought to be bid against, for talent?

Mr. LINDOW. They are bidding against each other intensively every day of the week, sir.

Mr. ROGERS of Texas. How much is a 1936 movie going for now?

Mr. LINDOW. I don't really know what it is right now.

Mr. ROGERS of Texas. Well, there are a lot of those things that are going on television right today that people don't want to watch, as Mr. Mackay pointed out. Isn't that right? And is it your position that they ought not to be allowed to buy what they want, if it is available, and can be made available to them?

Mr. LINDOW. I think our position was that they are using the facilities which they have gained, through the appeal of the programs of free television, to establish a base from which they can then turn around and, using the resources, once these things are locked together, which would be tremendous, in order to outbid free television for those features we need.

Mr. ROGERS of Texas. Without assuming they would outbid them, Mr. Lindow, let me ask you this question: How many people do you think in the entire market that you could get to tie onto a wired communications system for a certain stipend per month, percentagewise, of our whole listening audience?

Mr. LINDOW. This is absent one that is carrying broadcast signals? This is strictly a wired service?

Mr. ROGERS of Texas. No, a CATV service.

Mr. LINDOW. Oh, a CATV service. I don't know, but according to the CATV, they anticipate that within the next decade they will have 85 percent of the United States wired up, and I believe they said that in a hearing just recently.

Mr. ROGERS of Texas. Why did Mr. Walewski say that he thought 5 to 10 percent this morning?

Mr. LINDOW. I don't know.

Mr. ROGERS of Texas. And I have had a number of people tell me that 15 to 20 percent would be outside. You don't think, Mr. Lindow, that if you go into a city like, say, Dallas, Tex., or New Orleans, La., that you would be able to sell any great percentage of the people a wired communication if they could get free TV, do you?

Mr. LINDOW. I have great confidence in the sales ability of the CATV operators. They are able to do a good job.

Mr. ROGERS of Texas. That is not an answer to the question. I mean, let's be practical. Hasn't it been tried? There has been subscription television tried, hasn't there?

Mr. LINDOW. This is not necessarily subscription television we are talking about. I understood we were talking about CATV.

Mr. ROGERS of Texas. You say pay TV, said it was pay TV, one and the same thing.

Mr. LINDOW. I say it is a form of pay TV. Yes, sir.

Mr. ROGERS of Texas. All right, now there has been a subscription, let's say, there has been pay TV tried. And it has failed, hasn't it?

Mr. LINDOW. Yes, I feel it has failed.

Mr. ROGERS of Texas. Because they couldn't get enough people to buy it. Now you say it depends on advertising. If you couldn't get—let's give 20 percent. If you took 20 percent of the people away and put them on wired TV, but they still had access to the free TV, are you telling this committee that that would destroy free TV?

Mr. LINDOW. I don't know what percent they would be able to wire up in a community. I only can go by what the entrepreneurs of CATV who are willing to back up their guesses with millions of dollars say

they can do and the degree to which they have been doing it in some of these markets where they are intensively operating, and they claim that they are going to be able to wire up 85 percent of the Unietd States within the next decade.

Mr. ROGERS of Texas. I am not talking about what they claim, Mr. Lindow, or what anyone claims. I am asking about actual realities and facts. When people are required to pay a stipend per month.

Mr. LINDOW. I think that a very large part of this question would be determined by whether or not, to go back to your example of Dallas, Tex., whether or not the CATV system in Dallas is bringing in seven Los Angeles stations and some Chicago stations, and a few more things from distant points, in addition to the local Dallas stations.

Mr. ROGERS of Texas. Now the FCC has control of that, right now. They can prevent that right now, can they not?

Mr. LINDOW. Yes, sir.

Mr. ROGERS of Texas. Well, why do we keep going back to something they have already got jurisdiction of? Dallas is not within 90 miles of anyplace except Fort Worth. [Laughter.]

Mr. ROGERS of Texas. And they are operating a joint station.

Mr. LINDOW. Yes. Well, I think we addressed ourselves to that question just a moment ago. We can repeat.

Mr. JENNES. I just did a little quick arithmetic, which may be wrong, but using the 20-percent assumption that you made, 20 percent of the total homes in the United States is roughly 10 million. At even $60 a year, that is $600 million, sir, and that is an awful lot of money, when you get your programs off the air for free, to turn around and start bidding in the market, using what you have gotten for free to get yourself hooked up, and then bid in the market for programs, and for whatever else. It is a great deal of money.

Mr. ROGERS of Texas. No, because of the economics involved, which is the basic issue, now, is it not? You want to make it so that the 5 or 10 or 15 or 20 percent, or even 5 percent, if they don't like what the broadcasters are putting on, they have no place else to go. They have got to take what the masses get, or they don't get anything.

Mr. LINDOW. Oh, but the other side of that coin is that with this $600 million, the CATV originating programs, takes football and takes baseball and takes feature film and all the rest, 80 percent of the people won't have it. It is the other side of the coin.

Mr. ROGERS of Texas. That is a guess on your part, 80 percent of the people don't like football.

Mr. LINDOW. Well, I was just using your figures, sir.

Mr. ROGERS of Texas. I know you were, and I am using your, too. Eighty percent of the people don't like football and baseball. If they did, you wouldn't have any trouble filling this stadium down here, whether you brought it back in or not.

Mr. LINDOW. They do pretty well with professional football.

The CHAIRMAN. Anyone else have any questions?

Mr. KORNEGAY. Mr. Chairman, let me ask just one question.

The CHAIRMAN. Yes. All right, Mr. Kornegay.

Mr. KORNEGAY. H.R. 13286, the bill introduced by the chairman, says that a community antenna system, "Is one that receives directly or indirectly over the air and amplifies—or otherwise modifies the signal."

Now my question is this: Are there systems of CATV which by the erection of a large tower can satisfactorily transmit that signal without amplification or otherwise modifying it?

Mr. LINDOW. No, sir; I don't believe there are.

Mr. KORNEGAY. Now these large apartment houses that have a common antenna on the top of them, do they have amplifiers?

Mr. LINDOW. Well, of course the Commission has excluded apartment houses of that sort, but I think even in those instances, depending upon the size of the apartment house, there is almost always an amplifier.

Mr. KORNEGAY. I felt that I knew the answer to it, but I thought it ought to be correct.

In other words, without the amplifier, or some means of, other means of strengthening the signal, you could not project that signal over the wire and into your home with any degree of satisfaction.

It has got to be pumped through that cable.

Mr. KORNEGAY. Sort of like an electrical system.

Mr. LINDOW. Yes, sir.

Mr. KORNEGAY. Where you have to have your transformers all up and down the line.

Mr. LINDOW. Yes, sir.

Mr. KORNEGAY. All right, thank you, Mr. Chairman. That is all I have.

The CHAIRMAN. Are there any other questions by a member of the committee?

If not, we wish to thank you, Mr. Lindow, you and your associate, for coming here and giving us the benefit of your views.

Is Mr. Pengra in the audience?

Mr. PENGRA. Yes.

The CHAIRMAN. Would you come forward, sir, and take the witness chair?

I might explain that Mr. Marshall H. Pengra is the vice president and general manager of KLTV in Tyler, Tex.

Mr. Pengra, I understand you have a statement and would like to present it at this time.

STATEMENT OF MARSHALL PENGRA, REPRESENTING KLTV CHANNEL 7, TYLER, TEX.; KTRE–TV, LUFKIN, TEX., AND VUMORE OF LUFKIN, CATV SYSTEM

Mr. PENGRA. Thank you, Mr. Chairman. I will try to be brief part of this. I have heard a lot of discussion here today, and a good many of my points have been covered.

My name is Marshall Pengra. I am 20 percent owner of KLTV channel 7, which is the only television station in Tyler, Tex., and I am 14 percent owner in Forest Capital Communications Corp. in Lufkin, Tex., which operates KTRE–TV, the only television station in Lufkin, also operates KTRE radio, one of two stations in Lufkin. Forest Capital also owns 50 percent interest in Vumore of Lufkin, the only CATV system operating in that city.

Our operations are unique since we are in the position of operating a TV station in Tyler, Tex., in direct, separate ownership competition

with a Tyler CATV system, and operating in Lufkin as a 50 percent owner of a CATV system which competes with our wholly owned TV station.

So in this testimony when I refer to CATV, that includes us, as well.

I am not here as an official or a designated representative of the NAB, or the MST, although I have discussed the CATV situation with both groups. I will try to summarize now.

We came on the air in Tyler in 1954. The CATV system in Tyler started operation in 1952. When the original application was made in our city for a CATV system, we called in RCA, because we thought if this kind of a business was going to begin, we had better look into it. Our TV station application was in the freeze at the time.

RCA told us in 1951 that CATV would never be practical in Tyler, and that it would fold up when our station eventually came on the air. Well, of course, it is obvious since we don't own the Tyler CATV system, that we should have been talking to Milt Shapp and the Jerrold people then. We were just talking to the wrong guys.

I did at that time write to Congressman Beckworth from our District, also the President of the NAB and to the Chairman of the FCC, back in 1951 and I urged them to take note of this CATV development, and I pointed out some of the problems which have since come to light, and are now extant in this business today.

I asked them then that a study be made and that reasonable, fair and competitive ground rules be established to insure an orderly integration of this supplementary TV service, and that was back in 1951, and I was assured that this matter would indeed be given careful consideration, and you know now the history of CATV to date.

I don't know—Mr. Rogers, do any of the members of this committee live in home residence in an area where there is a station and a CATV competing in the same community? Do any of the members of this committee happen to live in such an area?

Mr. ROGERS of Texas (presiding). Mr. Pengra, I don't know but I have an idea that there probably is.

Mr. MACKAY. WSB–TV has CATV. They have both.

Mr. PENGRA. In Atlanta?

Mr. MACKAY. Yes, they are not competing. One company.

Mr. PENGRA. No, I mean competing in the same community. They don't operate a CATV system in Atlanta, do they?

Mr. MACKAY. Yes.

Mr. PENGRA. They do? I wasn't aware of that. How large a one do they have?

Mr. MACKAY. They are planning now very extensive operations for CATV.

Mr. PENGRA. No, I mean is it operating right now in the Atlanta area? Do you have CATV service in Atlanta now?

Mr. MACKAY. No, but they have the franchise and they have announced they were going right ahead with it.

Mr. PENGRA. But up to now it is not actually in operation, it is a plan.

Mr. MACKAY. That is right.

Mr. PENGRA. Are there any other members——

Mr. ROGERS of Texas. I think probably there are. All of the members are not here, Mr. Pengra.

Mr. PENGRA. Well, I just wondered if you knew whether there was somebody who was living in a community like that.

Mr. ROGERS of Texas. I think Mr. Jake Pickle does. He lives in Austin.

Mr. PENGRA. That is true. He may be the only one. Is he still here?

Mr. ROGERS of Texas. No; he has gone.

Mr. PENGRA. But not forgotten. I would just like to say, Mr. Rogers, that no matter what technical definition some elements of the CATV industry choose to adopt to characterize their function, and that includes us, CATV is a transmission system. We know. We own half of one, and we know how it operates. We are far more than a simple master antenna. We use transmitting equipment, microwave, to bring in some of the signals for this Lufkin system, and we then transmit by wire to the homes on our system to get the programs there or they couldn't get there. They wouldn't just run down a wire and get there.

Mr. ROGERS of Texas. Then you wouldn't be afraid of putting it into law that the FCC has no jurisdiction over reception, would you, Mr. Pengra?

Mr. PENGRA. No, sir; I want the FCC to have jurisdiction over the CATV systems. They are a part of the television industry and they need to be regulated, just like we are. I don't know whether that was the question you asked me, but that is how I feel. [Laughter].

Mr. ROGERS of Texas. The question I asked you, Mr. Pengra, was that in view of the statement whether or not you would think that it would be dangerous if it was put into law that the FCC does not have jurisdiction over reception.

Mr. PENGRA. I do. I think that it should be in the law that the FCC has the jurisdiction, and I think it is long, long past the time they should have been using it.

Mr. ROGERS of Texas. You mean over reception?

Mr. PENGRA. I am talking about the transmission that goes on in a CATV system.

Mr. ROGERS of Texas. That is not the question I asked you. I asked you about reception.

Mr. PENGRA. You have to receive it in order to transmit it to the home. Yes. You receive it and you transmit it.

Mr. ROGERS of Texas. I will withdraw the question.

Mr. PENGRA. In Lufkin, we believe that the day will come when our CATV system will negotiate reasonable contracts with the networks, with the music licensing groups, and others whose property we use on our system to make a profit. We think we will negotiate contracts essentially to pay for those services. I am not certain that the Vumore Co., which manages our Lufkin system, really shares that philosophy. Bob Clarke is here, but I have told him that the day must and should come in the not to distant future when we will have to pay for these things, and we should.

The experienced broadcaster in radio and TV today, who has operated under the FCC-administered system of licensing and regulations, pays for the program material that he uses. The majority of the broadcasters in this country today, I believe, regard the majority

of the CATV operators as opportunists, willing and anxious to use the program product of the stations and the networks for private gain, but to date, almost completely ignoring and, in fact, in some cases resisting any obligation or responsibility to the TV stations or networks which produce the programs, which make their supplementary service possible, and I submit that if for no other reason than that alone, the free use of product paid for by others, that the CATV industry and that includes us, is suspect morally, and should be, under FCC regulation and supervision.

We believe that the presently proposed FCC rules for CATV are proper. We think they are broad enough to provide a reasonable framework for the solution of many of the problems that exist today, and may arise in the future.

The very provisions in the present broad proposals by the FCC provide for appeals, and for case-by-case judgments, and it seems to us to adequately provide the means for working out a lot of the special problems that are going to come. That's the reason there is so much controversy in this hearing, because of the degree of interest that is represented by both stations and CATV operators, and how much they both may be affected economically now and in the future.

But the broad regulation that the FCC proposes now, after 12 years experience in our two markets, seems to us the best framework to help solve the major portion of these problems, because it does allow for appeals in special problem cases.

I came here to testify in order to give you some factual information on our two markets, and you will recall that I said previously that the majority of the broadcasters are suspicious of the majority of the CATV operators. But it doesn't have to be that way. In Tyler we came on the air 2 years after the CATV system was in operation. We immediately, without any ground rules of any kind, got right into controversy. There were rough words and rugged charges, and countercharges, and back in 1954, when we came on the air, our relationship was bad. We wanted them to carry us on their system. They only had three channels, and they refused to carry us. If your set is on the CATV system, and you don't have an outside antenna, you can't pick up the local station very clearly, so this was affecting our ability to reach the audience that currently was on the CATV system.

I am not going to go into this thing with every detail of the early problem we had, but suffice it to say that it took us 11 years to finally work out a series of private agreements that now embody three of the very basic elements that the FCC proposes now. But it took us 11 years to do it, with no referee in the ring.

Let me tell you what we finally got together on, and how it happened. When the Tyler CATV applied for a microwave license, and they wanted to increase the number of stations they carried on their systems from three to five, they had to go to the Commission to get the microwave license. We protested the grant of the microwave, and the conditions were that we wanted to be carried, we wanted to be carried on a low band end of the channel, and we wanted nonduplication. Simultaneous nonduplication. We finally avoided the hearing by sitting down just at the last minute, saved a few legal fees, and agreed that they would carry us on the system, and they wouldn't simul-

taneously duplicate our programs in black and white, nor in color, provided we met industry standards in our transmission. We reached this agreement in 1960. It went into effect in 1961.

Right off the bat, without any other ground rules, we had a problem again. They said our color wasn't adequate, and we said they were degrading our signal. Here we are: Nobody to referee this thing out, again, no ground rules. So 2 more years pass, but finally in 1965 we get that cleared up. Last fall, that made the 11th year, we finally came up with this. They carry us—this is today in Tyler—they carry us, they don't degrade us, they are not duplicating us on a simultaneous basis.

Now this was a big gain for us, way back in 1960. We have been living with this simultaneous nonduplication, and we find that things are coming along pretty well. We are constantly checking, they don't degrade us, even though we are converted from our allocated 7-channel down to position 3 on the system. We are satisfied under the present conditions that they are faithfully executing the nonduplication agreement with minor exceptions. I would, however, feel just a little bit better if I had a little more CATV regulation back there to turn to. True, this is not an agreement that provides us a full day's protection on nonduplication, as is set forth in the present FCC proposal, but we are sure glad to have it. It has been a big help.

The Tyler CATV system and the Lufkin system are furnishing excellent supplementary TV service in those cities. They are both five-channel systems. This includes one independent on the Tyler system, but no independent on the Lufkin system.

We believe those systems should remain supplementary—the one we operate as well as the one we compete with. We don't believe that either of these two CATV systems should be permitted to originate programs of any kind. But we think that sometime in the future it may be possible that our Lufkin TV station might elect to originate specific local programs, which we would produce, and telecast on one of the channels of the Lufkin CATV system.

We are talking primarily about such things as city council meetings. Presentations of this type, we know, if put on the air, would lose far more audience than we would gain, but we could serve a limited audience on CATV. We think the TV station should be the entity to originate programs, and as long as we have 50-percent ownership in that Lufkin CATV system, that is the kind of thing we are going to vote for.

Now if the CATV system is to originate anything other than possibly a weather scan, and possibly news, then I want them to be limited to one channel of service, like I am, because I compete with this system. Whether I own it or not. We ought to have the same ground rules for that competition, if he is to originate. We believe that this area of origination needs exploration, and that it will require some special ground rules by the FCC, but under their present proposals, the right of appeal is there. This does not mean to me a flat across-the-board rule that nobody can originate anything on a CATV system. I don't think that is the meaning of the proposal right now, and I think that, way off in the hills somewhere, a fellow is running a CATV system with very little possibility of a UHF opera-

tion in there, he certainly shouldn't be restricted from attempting to serve that community to some degree with local programs, and he certainly can petition the Commission for that permission.

And if he does originate local programing, I am certain that he will begin to sell some advertising to support it. He isn't going to do it just for the fun of it.

This is how we feel about this origination regulation. We think it can be taken care of by petition to the FCC.

Now I want to say that in the light of our experience to date, and it has been pretty rugged in certain respects, we are reasonably well satisfied that both the CATV systems and our TV stations can continue to coexist, if we maintain the status quo. Remember, we are operating under private agreement down there. We are carried, we are not degraded, and it is simultaneous nonduplication.

Neither system has done any originating up to now, so we haven't met that one. We don't want to meet it. We don't think we want that to happen unless we have some control over the originations, in both cities, but at any rate, the conditions as we have them right now haven't been too bad.

Let me tell you what has happened to the CATV system and to us in terms of income. I think it might be interesting for you to see what the effect, each on the other, has been under this nonduplication arrangement. The Tyler CATV system, under this nonduplication agreement, and no degrading, and so on, during the years of 1963, 1964, and 1965, had an increase of 20 percent in gross income. This is in the 3 years 1963, 1964, and 1965. Their gross income from rentals to subscribers increased 20 percent, and they didn't take a rate increase, and the largest portion of that increase came in 1965.

Now I don't read their mail or have access to their income tax returns. I can go down to the city council and see what they paid as 2 percent of their gross receipts, and do a little backward arithmetic, and there you have the gross. This information is open in most cities, whether it is under a contract or a permit where the city specifies a certain percent is paid on gross receipts. This information is readily available.

Now during this same period, our Tyler station, from 1963 through 1965, showed an increase in gross income of approximately 26 percent. The largest increase was in the year of 1964, which was a presidential election year, and when we deduct the political revenue from what normally would be the income, we dropped back down to a 21-percent increase, and this, strangely enough, show these two operations running almost the same, as far as a gain was concerned.

Now let's take a look at how well you can do it if you own it yourself, or own half of it, and I want to tell you what happened in Lufkin.

This is a town of about 25,000 whereas Tyler is a town of around 65,000. In 1963, 1964, and 1965, our records on the Lufkin CATV system showed a gross dollar income gain of 37 percent. Now this is a system that is a total of 6 years old. Still growing. The Lufkin TV station, during that same period, 1963, 1964, and 1965, had an increase in gross dollar income of 23 percent.

We are persuaded by this kind of an experience that nonduplication, with no degrading, and with neither CATV system originating

anything or introducing any new factors or bringing in powerful stations from Los Angeles or New York or elsewhere, that we can both live with it. We are concerned, however, in this area that if the total number of subscribers on the CATV systems in either of these markets reaches a maximum, the advertiser network, national or regional, or even local, can say, "Well, I don't need that Tyler market any more, because I have enough penetration from the Dallas-Fort Worth stations in Tyler, or the Houston stations in the Lufkin area. I can now bypass that station, and I don't have to buy advertising on it." This is a problem that we do face.

I could name to you a half dozen to 10 national and regional accounts that no longer use our station—once did, who are leaning on the CATV penetration crutch in the Tyler market, for coverage and are not buying our station.

Now if I were certain that our business loss would be limited to that, I think I could make it up. I can find that much business elsewhere. Half a dozen accounts aren't going to cripple me. But if that penetration gets so high that it becomes a real factor, the first sign that I get of it will be loss of more advertising. Then we are going to be asked why our rates are so high, because we are not an efficient advertising buy. I think, Mr. Rogers, you understand that situation, and others do. You buy advertising.

Mr. ROGERS of Texas. Mr. Pengra, wouldn't your problem be settled, if we were simply to prevent the CATV from carrying commercials?

Mr. PENGRA. I don't see how you could bring about a thing like that. If you had that as an idea, I would be delighted to entertain it.

Mr. ROGERS of Texas. There have been a lot of complaints here saying that they are putting on these programs and not carrying the commercials.

Mr. PENGRA. I hadn't heard any of those. I was just here today.

Mr. ROGERS of Texas. Well, that is one of the big complaints. You ought to read this report on that. They say that this is one of the troubles with CATV.

Mr. PENGRA. Who says this?

Mr. ROGERS of Texas. Half-dozen witnesses.

Mr. PENGRA. Have said that the CATV's do not carry the commercial?

Mr. ROGERS of Texas. That they cut the commercials out, and only put on the shows, and that's what a lot of people want, because they are tired of commercials. They say that is cutting into the market, going to ruin the television.

Mr. PENGRA. Are there any specific cases where they have proved they have cut out the commercials? What did they put in in place of it?

Mr. ROGERS of Texas. Don't put in anything, just leave it blank.

Mr. PENGRA. That is an interesting idea.

Mr. ROGERS of Texas. Yes, it is. Or put in local commercials.

Mr. PENGRA. That would be a great help to us in Tyler, Congressman. I can tell you that. That would help me sell advertising on our station if they were taking outside commercials off. That would help.

Mr. ROGERS of Texas. That would help you, would it not?

Mr. PENGRA. It sure would, although it is quite impossible, obviously.

Mr. ROGERS of Texas. Impossible?

Mr. PENGRA. Sure.

Mr. ROGERS of Texas. Well——

Mr. PENGRA. I would like to see that done, but a little wholesale effort along that line and the CATV would be out of business in my opinion.

I just want to say, gentlemen, and I am sorry that my voice is so bad—today I have picked up the same bug that goes around here. Everybody in Washington talks so much that you soon run out of voice—but I just want to say that we have had quite a little experience with CATV. We think there is good service in both of our communities. The CATV does not have to strive to be all things to all people. These CATV people that are saying they are going to bring all this extra programing from across the country, and referring to the constitutional right of people to view, and this type of argument, are certainly mixing this thing backward and forward with an allocations table. Some kind of rights of service, and some kind of economic consideration that makes sense, should be provided because we need both live TV and CATV. The CATV service alone leaves much to be desired. It has filled in many of the blanks that the allocations table never could and never will. UHF, at this late date, may be able to rescue some of those areas with local service, but it will be most difficult. TV stations and CATV can live together, and live together well, but you can't have stations operating in the television business with restrictions, such as duopoly rules and a limit of 1 channel, and right alongside of it have to compete with a CATV system that can run 20 channels. CATV is a part of this industry. They require reasonable regulation, and in my opinion the FCC-proposed regulations are adequate, and they are broad, because they allow for appeals to cover problems and situations on a case-by-case basis. I would like to see the Federal Communications Commission backed up on what it presently proposes.

(Mr. Pengra's prepared statement follows:)

STATEMENT OF MARSHALL H. PENGRA, COOWNER AND GENERAL MANAGER, KLTV, TYLER, TEX., VICE PRESIDENT AND DIRECTOR, FOREST CAPITAL COMMUNICATIONS CORP., OWNERS KTRE–TV, KTRE RADIO, 50-PERCENT OWNERSHIP CATV SYSTEM LUFKIN, TEX.

Mr. Chairman and members of the committee, my name is Marshall Pengra. I am a 20-percent owner of KLTV, channel 7, the only television station in Tyler, Tex., and I am a 14-percent owner in Forest Capital Communications Corp. in Lufkin, Tex., which operates KTRE–TV, the only television station in Lufkin, also operates KTRE radio, one of two stations in Lufkin. Forest Capital also owns a 50-percent interest in Vumore of Lufkin, the only CATV system operating in that city.

Our operations are unique since we are in the position of operating a TV station in Tyler, Tex., in direct, separate ownership competition with a Tyler CATV system, and operating in Lufkin as a 50-percent owner of a CATV system which competes with our wholly owned TV station.

I am not here as an official or designated representative of the NAB, or the MST, although I have discussed the CATV situation with both groups. I came primarily because I was urged by several members of the TV industry who operate stations in markets similar to mine, and who were aware of our long record of experience with the problem.

Back in 1951 when our application for channel 7 in Tyler was still in the "freeze," a firm from Fort Worth applied to the Tyler City Commission for a permit to build a CATV system. At that time we called in RCA engineers for advice and counsel to determine whether or not we should apply. RCA said CATV would never be practical in Tyler and would fold up when our station came on the air. It is obvious, I think, since we don't own the Tyler CATV system today that we should have called Milt Shapp and the Jerrold engineers. Back in 1951, we were talking to the wrong guys.

I did, however, write to Congressman Lindley Beckworth from our district, also the president of the NAB and to the Chairman of the FCC urging that note be taken of this development and pointing out some of the problems which would occur. That was in 1951. I asked then that a study be made and reasonable, fair, and competitive ground rules be established to insure an orderly integration of this supplementary TV service. I was assured that the matter would, indeed, be given careful consideration. You all know the history of CATV from then to date.

Do any of you committee members have home residence in a city where a CATV system and a local TV station operate in competition?

No matter what technical definition some elements of the CATV industry choose to adopt to characterize their function, CATV is a transmission system. We know—we own half of a system in Lufkin, Tex. We are far more than a simple master antenna. We use transmitting equipment—microwave—to receive some of the signals that we then transmit by wire to the homes on our system.

In Lufkin we believe that the day will come when our CATV system will negotiate reasonable contracts with the networks and music licensing groups, and others whose property we use on our system to make a profit. I am not certain that the Vumore Co. which manages our Lufkin system shares that philosophy, but I have told them that the day must and should come in the not-too-distant future.

The experienced broadcaster in radio and TV today who has operated under the FCC administered system of licensing and regulation, pays for the programing materials he uses. The majority of the broadcasters in this country today, I believe, regard the majority of the CATV operators as opportunists, willing and anxious to use the program product of the stations and networks for private gain, but to date completely ignoring, in fact resisting, any obligation or responsibility to the TV stations or networks which produce the programs which makes their supplementary service possible. I submit that if for no other reason than that alone, the free use of product paid for by others, the CATV industry is suspect morally, and should be under FCC supervision and regulation.

We believe that the presently proposed FCC rules for CATV are proper. They are broad enough to provide a reasonable framework for the solution of many of the problems that exist today and may arise in the future. The provision for appeals and case-by-case judgments, it seems to us, adequately provides the means for working out special problems.

We have had 12 years' experience in competition with a CATV system in Tyler, Tex., and 4 years in Lufkin, Tex.

I came here to testify in order to give you some factual information on what has happened in these two markets so that you may better judge other testimony that may be primarily based on opinion and conjecture rather than experience.

You will recall that I said previously that the majority of the broadcasters are suspicious of the majority of the CATV operators.

In the early days of our competitive situation in Tyler there were rough words and rugged charges and countercharges between my organization and the Tyler CATV operator. Lacking any ground rules by the FCC back in 1954 when we came on the air with a TV station, our relationship went from bad to worse to impossible and there it remained from 1954 until 1958 when the CATV system in Tyler applied for a microwave license and announced plans for a five-channel system to replace the original three-channel operation. We protested the grant and the FCC set the case for hearing.

That hearing was never held. We finally got together and worked what I believe to be the first nonduplication agreement in the country. Frankly, it was done, in my retrospective judgment, upon the realization by both parties that certain basic rules should be observed, and that after years of continuous strife

and bickering, we could best serve ourselves and our community by agreeing that—

1. The Tyler CATV system should carry the programs of the local station which it had not done while it was operating its three channel system, and
2. The Tyler CATV system would not simultaneously duplicate the programs of our station in black and white or color provided our color transmission met industry standards.

This agreement was reached in November of 1960, and went into effect in September of 1961 when the microwave installation for the CATV system was completed.

Almost immediately another dispute between us arose over the quality of our color transmission and the ability of their system to carry us without degrading. We finally achieved a full simultaneous nonduplication arrangement on all programs—black and white and in color 2 years later in the fall of 1965. I am purposely skipping over many of the rugged sessions between ourselves and the CATV system owners—the legal exchanges between our lawyers and the involvement of the FCC in our problem. Those recriminations serve no purpose in these hearings, but it is important, I think, that you should know that a rough relationship existed for a period of almost 11 years. There were no enforcible ground rules whatsoever, governing rights and privileges of CATV systems and TV stations competing in the same city.

The most disturbing consideration here—to me as a broadcaster who has been in this business for 30 years—is the fact that during disputes and long-drawn-out controversies, the public itself is likely to suffer.

I recite this history as a background to illustrate the need for FCC regulation in this field. It took us 11 years to forge out our private agreement which covers, in essence, three of the basic provisions which the FCC now proposes for CATV systems.

Today in Tyler, the local CATV system carries our station. We are satisfied by constant checking that their system is being maintained in such condition that our signal is not degraded although we are converted from our allocated channel 7 to dial position 3 on the CATV system. We are satisfied under present conditions that they are faithfully executing the nonduplication agreement with minor exceptions. True, it is not an agreement that provides us a full day's protection on nonduplication as set forth in the present FCC proposal, but we needed some relief long before now, and to get simultaneous nonduplication back in 1960, was a great step forward for us.

The Tyler CATV system and the Lufkin CATV system are furnishing an excellent supplementary TV service in those cities. We believe that those systems should remain supplementary. We do not believe that either of these two systems should be permitted to originate programs of any kind, but we think that some time in the future it may be possible that our Lufkin TV station elect to originate specific local programs which we will produce and telecast on one of the channels of the Lufkin CATV system. We have not discussed this possibility with the owners of the Tyler CATV system, but we intend to. We believe that this is an area that needs exploration and study and will require some ground rules by the FCC.

We would protest any attempt on the part of the Tyler CATV system to use microwave to bring in additional metropolitan independent stations. We see no corresponding extension of our own service to the community unless duopoly regulations could be relaxed. We have already had indications that three network stations and one independent from the Dallas-Fort Worth area on the Tyler CATV system is about all the competition we can stand in our market.

In the light of our experience to date under the terms of our limited private agreements, we are reasonably well satisfied that both the CATV system and our TV station can continue to coexist if we maintain the status quo, but if the local CATV system moves into the area of program origination and local advertising, and extends its system to carry additional metro stations which will further fragmentize the total local audience available to us, we have ample indication already of serious problems ahead.

As I said at the outset, we support the broad general outlines of regulation as proposed by the FCC. In Tyler and Lufkin at present those regulations, for all practical purposes, are actually in effect although arrived at largely by private agreement.

The Tyler CATV system, under the nonduplication agreement, has prospered adequately, I think. Figures from the city clerk's office show that during the 3

years of 1963, 1964, and 1965 their gross income from rentals to subscribers increased almost 20 percent without a rate increase, and the largest portion of that increase came in 1965. Remember that this system started operation in 1952—2 years prior to the time our station went on the air.

During the same 3-year period from 1963 through 1965 our Tyler station showed an increase in gross income of approximately 26 percent. The largest increase coming in 1964, a presidential election year. If we deduct the political business from the year of 1964, our percentage gain for the 3 years was about 21 percent. I won't attempt to belabor the details here as to which operation shows the greater profit to its owners, nor which, under present rules of operation, or lack of them, carries the greater responsibility to its area and its community. Suffice it to say then that as of right now, operating under an agreement with the Tyler CATV system which closely parallels a basic portion of those now being proposed by the FCC, both corporations are still showing revenue growth.

If the Commission's rules as proposed were put into full effect for Tyler, Tex., present competitive conditions would be maintained, and I believe our respective futures would be pleasant and prosperous, but there is one other factual circumstance which must be related to our present situation.

I am certain that you members of this committee are fully aware that advertising is purchased on television stations based primarily on the delivered homes which they show when measured by the American Research Bureau and the A. C. Nielsen Co., and the cost per thousand which is computed by those measurements.

Approximately 60 percent of our total revenue in both the Tyler and Lufkin markets comes from networks and regional and national spot advertisers. If the total number of CATV homes grows large enough—not only in Tyler but in the eight other systems located in nearby towns in our viewing area—we stand to lose substantial revenue. I note with concern that loss of readers and advertisers causes newspapers to go out of business. At least in New York they salvage something through mergers. The single station in the small market has little prospect in that area. To this date the coverage of the Tyler market from the Dallas-Fort Worth TV stations through the CATV systems in our area has produced no serious effect dollarwise, but our total delivered audience is lower according to ARB than it was in 1962. We can definitely name a dozen important regional and national advertisers who will not set up advertising budgets in our market because they believe that coverage from the Dallas-Fort Worth stations through the CATV systems in Tyler and other areas of east Texas are providing their clients with advertising coverage. Therefore, the Tyler market gets no ad budget.

Now let's look at Lufkin. In the town of Lufkin, Tex., with a population of approximately 25,000, we own and operate the only TV station, and we own 50 percent of the CATV system. The other 50 percent is owned by the Vumore Co. of Oklahoma and they operate the system on a management contract. The programs on our Lufkin station are protected on a simultaneous nonduplication basis, the same as in Tyler. The CATV system is partially fed by microwave. The system does not degrade our signal and is properly maintained. In Lufkin our 50 percent of the ownership will vote against the importation of distant metropolitan independent stations with the possible exception eventually of perhaps one from the nearest metro area of either Dallas or Houston.

The CATV system in Lufkin is actually 6½ years old, but has only been under our 50-percent ownership the past 4 years. For the past 3 years, 1963, 1964, and 1965, our records show an increase in gross dollars income of approximately 37 percent.

During those same 3 years our Lufkin TV station has shown an increase of gross dollars income of approximately 23 percent. Our Lufkin TV station has shown some loss of audience in national rating measurements, but to date that loss has not been numerically or percentagewise as great as it has been in the Tyler market.

Today in the television industry there is a wide divergence of opinion as to the precise rules which should be applied to CATV. The small market broadcaster who must compete with it in his own market and coverage area is in the toughest spot unless he was foresighted enough to own part or all the CATV system.

Right now it's the small market TV station that is competing with CATV that really needs those broad general rules that the FCC proposes. Those

rules, as of this date, in the light of our experience over the past 12 years in two markets, appear to be broad enough to permit both CATV and the local station to coexist in the same community. In Lufkin, if advertising revenues drop, we have a hedge against that with CATV income. In Tyler, maybe we try to rent some channels on the CATV system and start over. We have talked merger with the Tyler CATV system, but nothing has happened to date.

We believe that in Tyler and Lufkin, both the TV stations and the CATV systems will best serve their communities and areas if CATV remains a supplementary service.

The FCC regulations as proposed assure the citizens in Lufkin and Tyler—as far as our experience shows us to date—a reasonable choice of programs and a live local TV station. Regulations to insure this overall level of service are obviously in the public interest, convenience, and necessity.

The record of growth for both CATV and the local TV station in these two markets under their existing private agreements has been healthy. Hopefully, it will continue that way.

The real problem, as I said before, is the threat that maximum CATV penetration in our home cities and adjacent coverage area could cause networks and national advertisers to either ask for reduced rates from us or eliminate us from the buying list.

We can't guess our way through that possibility. We'll just have to live through it and find out.

We think the proposed FCC regulations for CATV are fair, extremely reasonable, and vitally necessary. They will insure, in the main, that CATV will take its proper place within the TV industry—a responsible, and eventually respected supplementary service for the distribution of television programs.

The CHAIRMAN. Just a moment.

Further questions?

Mr. ROGERS of Texas. Thank you, Mr. Pengra. I have no questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Pengra, that is an interesting piece of testimony. Apparently you are in both businesses.

Mr. PENGRA. That is right.

Mr. SPRINGER. Maybe there has been somebody else here who is in both businesses, but I haven't heard any witness bring out both sides of it, except you.

Now you own 50 percent in Lufkin. You do not own anything in Tyler? Is that correct?

Mr. PENGRA. Well, we own the TV station. That is something, Congressman. [Laughter.]

But I understand what you mean. No, we have no ownership in the CATV system.

Mr. SPRINGER. You don't own anything of the CATV system, but you own the station?

Mr. PENGRA. Right.

Mr. SPRINGER. Well, this is a problem, I think, that the Commission was trying to bring before this committee. I wish that more of them had been here today to hear this presentation which you have made, by a man who owns one of the channels, and also owns a CATV system and who has very frankly put before you the percentage of earnings that have been made in three different parts.

Mr. PENGRA. Those were increases in gross dollar income over a 3-year period.

Mr. SPRINGER. I have heard of a station, I think it was in the State of Nebraska, the Congressman came to see me, who now had gone off the air, as I understand it, between the hours of 1 o'clock in the afternoon and 5:30 in the evening, because his large accounts—and he had

two of them in the districts—were being covered by CATV; and they were bringing them in from some distances, and he was off the air, because currently, as I understood it, those advertisers had found that they could do the job in the towns that they wanted in the big areas, and had absorbed the advertising business with the result that the people out in the country, during that 4½-hour period, were not receiving anything.

Now you are the only other person I have talked to who has brought this problem home to the committee in the way in which you have, and that is, in certain circumstances, the advertiser will use the crutch and go with it, and cut out the TV station, and live with the CATV, and this may be an answer to the advertiser, but this is again back to the same problem that the American Farm Bureau Federation has raised over and over again: What are you going to do about these people who don't have any CATV, but have to receive it through free TV? Now this is one of the problems that is being raised, and I think this is what the Commission was talking about the other day, when they said they were trying to balance the public interest, and for that reason, they felt they had to be able to regulate both arms of this industry, in order to make it work.

I may be wrong about this, but your presentation here certainly has brought forward in a very vivid light a situation where you are living with both systems, and trying to explain what the problems are connected with free TV, and with CATV, and I think it is about as good as I have heard thus far.

Mr. PENGRA. You see, this covers only these two secondary markets in which we have had experience, Congressman Springer, and we have no way of knowing, in the Tyler market, where now the penetration is getting pretty high, and we are right between Dallas and Shreveport. We are about a hundred miles each way. If we have reached maximum penetration in CATV in Tyler, then we are going to be all right. In the county, it is up around—according to the surveys, it is up around 37 percent.

Now that is pretty high for the county. In the city, it is going to be higher than that. I came to Chicago last week to attend a special seminar on CATV the day before our convention, actually opened, and for the first time we heard two advertisers take part in a forum on CATV.

Mr. Seymour Banks, who is the research director for Leo Burkett, a very large TV user, and Mr. Heinerfeld, I think his name was, who is the director of advertising for Pepsi-Cola, and he places a great deal of TV spot advertising on a local basis. Both of these men complained that CATV penetration today was doing what they called blurring their market areas. They couldn't get an accurate measurement anymore to determine exactly what they were doing in a given market situation.

This is one of the complaints that they had. They said, or the Pepsi-Cola man said, we have 150 different methods of packaging our product. Maybe the Dallas distributor decides he wants the 12-pack throwaway for his feature, and he puts it on TV in Dallas. It gets to the Tyler market thru the CATV system. The Tyler bottler, who is buying the spot from us, wants to advertise the six-pack returnable bottle. They set up the budget and CATV brings in the Dallas ad, and double-crosses the Tyler bottler. This is one of the problems.

These advertising men said "We don't have the data. We have got to know what our penetration is in these markets from CATV, because we have to know whether that local station is still an efficient advertising buy."

Now I can't quarrel with an advertiser who determines that he is going to buy his advertising on my station based on efficiency. If my efficiency gets too low as a result of CATV penetration in my market, I am going to lose advertisers.

I don't expect to be bombed out overnight, if it goes that far. I may have to proceed through the expedient of some reduction in rates. Maybe I will have to cut back my hours of operation, like the station you were mentioning, Mr. Springer. Maybe fewer hours of operation would be part of the answer. I certainly am not going to blow away overnight if I can help it. But if we can maintain the present conditions in Tyler, and if we have reached maximum CATV penetration, I think we are going to be all right, because we are still showing increases, but believe me, 60 percent of the business on our television station in a secondary market like ours is made up of network income, national and regional advertising.

If these advertisers get the idea that they can cover us from Fort Worth and Dallas stations by that CATV coverage, we would never know what hit us, because the rug would go like that. Sixty percent of our business would be affected over a period of 6 to 8 months. If 60 percent of our income were cut in half, as an example, we would be in a pretty rough position.

Now as I say, the only way we are going to know what is going to happen in Tyler is to live it out. We just haven't come to the end of the line. But we want assurance that these CATV operators who are in our business and using our product are regulated reasonably along with us.

Mr. SPRINGER. Thank you, Mr. Chairman. That is all.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. No questions, thank you.

The CHAIRMAN. Mr. Farnsley.

Mr. FARNSLEY. Several witnesses have mentioned a thing called a translator. I don't know what that means. Do you know? In the CATV.

Mr. PENGRA. Yes; there are two kinds of translators. There are the VHF and UHF translators, and the purpose for the use of the translator now is to extend coverage of individual stations by locating these translators at advantageous points, feeding from a television station to an area without TV service. The TV programs picked up, are then translated to another channel, and then transmitted down to a pocket area for a small town or area that has no off-air TV service.

A translator is a satellite or repeater operation to a TV station. You can't be on the same channel. It translates the signal from the station that it picks up to a UHF channel, or another VHF channel, and then retransmits to hit some pocket area that is not getting direct reception. This is CATV, the free way.

Mr. FARNSLEY. Some of the witnesses, you included, have talked about degradation, I believe, of signals. Is that accidental, or on purpose, or sometimes one or the other, or what?

Mr. PENGRA. It seems to be a characteristic of some of the systems. I am not aware of serious degradation in either of our two systems. Maybe we are fortunate that we have the right equipment, and it is well maintained.

I have heard that there is degrading in some systems, where a signal may overload, as it comes into the head end of the CATV system, and they can't get the ghosts out. There is also the possibility, always, that the cable that comes, or the leadline, that comes from the pole to your house in a CATV system will act somewhat as an antenna. Inside of that line is your regular signal, if you are carried, so you have got two sources of pickup—I am not an engineer, but it has been explained to me that way—and can produce the ghost effect, whereas the outside distant station is so far away that actually this leadline can't act as an antenna, so it is coming in with a clearer picture.

Mr. FARNSLEY. There is no idea that some people do this on purpose, is there?

Mr. PENGRA. Oh, I have heard statements made to that effect, and I believe that at one time it was proved, some bitter way, way out in Montana, where a whole dollar and a half was at stake, but I never knew, and we just heard that thing, that is all.

Mr. FARNSLEY. I see.

Mr. PENGRA. I can't believe that CATV people would dream of doing the thing deliberately. They have nothing to gain. Most CATV systems are carrying our local TV signal now, anyway.

Mr. FARNSLEY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Pengra, for giving us the benefit of your views.

Is there anyone else in the room who would like to speak?

This will conclude our hearings for this evening, and I was just wondering if there is someone from any distance who would like to present his statement for the record this evening. We are going to continue again tomorrow morning, but if there is anybody who might have to go home he may present his testimony for the record at this time.

If not, the committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4:35 p.m., the committee was recessed, to be reconvened at 10 a.m., Wednesday, April 6, 1966.)

REGULATION OF COMMUNITY ANTENNA TELEVISION

WEDNESDAY, APRIL 6, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The commiteee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. We will come to order. We will resume on hearings on H.R. 13286 and H.R. 13914 and H.R. 14209 this morning. I see with us one of our distinguished colleagues from the State of Arizona.

We will have him come with his witness to the witness stand here and will you introduce your guest? I might say to Mr. Merrill that Mr. Udall is one of the busiest men in the Congress.

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. UDALL. Thank you, Mr. Chairman.

If I can have 1 minute I will go to another important hearing. I will leave you with a man who I think is one of the outstanding authorities in this field the committee is considering.

Mr. Bruce Merrill is the president of Ameco, Inc. He is a native Arizonan. He has been in this business as long as anyone in the country. He has had 14 years' experience and he has constructed 130 CATV systems.

He has developed a microwave common carrier company to provide relay service. He represents a TV system. He operates a broadcasting company in Yuma, which is in my district. He is president and board chairman of Ameco and principal stockholder of two other important operations in the CATV industry:

First, the American Cable Television which owns and operates CATV systems in Arizona, California, Texas, Louisiana, Alabama, Kentucky, and Indiana, Florida, Georgia, New York, serving 40,000 homes in 47 towns and cities.

In addition he is the president of the manufacturing company I mentioned and this firm produces equpiment for CATV systems. In addition to all of this he is a very fine gentleman and very articulate gentleman. I think he can help enlighten this honorable and fine committee in the difficult consideration of legislation it has before it.

I am most grateful for the opportunity to present him to your committee, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Udall.

62-610—66——29

Now, Mr. Merrill, with this fine introduction we will expect a great deal from you. You may take the chair and proceed to enlighten us a bit.

We are glad to have you. You may present your statement for the record, summarize, it, or read it in its entirety, as you see fit.

STATEMENT OF BRUCE MERRILL, PRESIDENT, AMECO, INC.

Mr. MERRILL. Thank you, Mr. Chairman, I appreciate those kind words. I will try to live up to them. I would like to summarize my statement to a certain extent.

I have included some history in it which Congressman Udall very kindly covered for me so I will skip that part and start with the body of what I intend to tell you.

I am here today to try to provide the committee with information derived from our experience in the CATV field and with the public which supports this industry's position.

The genesis of CATV is the public interest. Recently, when we informed the public we serve that we honestly felt that their inherent freedom-of-broadcast reception was in jeopardy over two-thirds of them responded in some overt manner. From the date of its inception, to this date, I know of no place where an exposed public has rejected the concept of CATV.

CATV is a broadcast reception concept which the public wants and needs. A CATV system is attached to TV sets which are owned by members of the public and is, in actuality, an extension of these sets.

A television set is not a television receiver until some sort of receiving device or antenna has been attached to it. These devices range from the common "rabbit ears" we have all seen, to elaborate systems involving towers, rotors, and multiple antenna arrays. The most reliable and versatile device of all is the community antenna system.

Well over 2 million homes representing at least 7 million of the Nation's television viewers, have rid themselves of the burden of an obsolete receiving device attached to their television sets. They no longer worry over the maintenance of these devices or the inadequacies inherent in them and the broadcast system for which they reach out.

These enlightened and unburdened homeowners are the customers of the Nation's 2,000 CATV operators. They pay a small monthly fee for an expert service which seeks out and receives for them the television signals which they want to watch.

The American homeowner is a restless and demanding customer. He wants the products and services he buys constantly improved and expanded. It is this ceaselessness of change in the American scene and the American marketplace that has made our country the industrial giant of the world.

The American public is not satisfied with the quantity or quality of TV signals which they can receive.

In an article in the March 26 issue of TV Digest, on page 10, you will find an interesting comment. I quote:

> All the while to some extent in half organized protest, largely unconsciously, the metro American is using his supreme weapon. He is getting up and clicking off the TV set. The most striking finding in the Harris poll is that commercial TV is losing viewers—and to an appreciable extent—among the new Americans.

CATV offers a public service which the public is looking for to solve its TV viewing deficiencies.

To date, almost 5 percent of the Nation's television viewers have seen and liked what community antenna television can do for them and have bought it. Their numbers are being joined by over 50,000 homeowners each month, the new customers being added currently to the Nation's CATV systems.

It is this trend which the FCC hopes to stop or reverse.

Let us analyze what the public is buying when it buys CATV and evaluate the interest or the necessity involved in the factors which motivate this buying.

The public is always interested in more channels to watch; this is a primary motivation in turning to CATV.

The public always wants better signals to watch, and they get these through CATV. They get convenience, reliability, consistency, dependability, and safety, plus better color signals.

Many are glad to relieve their homes of the unsightly rooftop or backyard towers that support inadequate antennas.

In some instances, via CATV facilities, the public is served with information that could be brought to them in no other way. Such facilities as continual time, weather, and news service can be and are being received by the public through CATV systems. This type of origination is a variation from CATV, but certainly appears to be in the public interest.

It can be provided to the public in no other way. It has great public acceptance. It is obvious that, left to its own choice, the public will in greater and greater number turn to this new concept in television reception—CATV.

But it is now proposed by the Federal Communications Commission that the public should not have its free choice of the method it chooses to receive the television signals it wishes to watch.

This is not the Commission's original position, as I will point out later.

There has been violent, almost hysterical opposition raised to the free growth of CATV facilities. This has come from two sources: the Nation's antenna manufacturers and some of the Nation's TV broadcast operations.

The opposition from the former is perfectly understandable. Community antennas replace rooftop antennas. In so doing they pose a threat to profits being realized by manufacturers of rooftop antennas, and their reaction to this competition resulted in an organization called TAME.

We meet them often. They spread false information in towns and cities where permission to provide CATV service is being sought.

They are the epitome of the negative hard sell. They can find nothing wrong with the service that CATV provides, so they attempt to overcome this by screaming that CATV must pay more tribute to cities for franchise rights; must have the amount of reception service it can provide circumscribed; must be burdened with needless regulation which will restrict its ability to serve its customers.

They have been or will be, before you. I do not envy them their task. It is very difficult to equate the sale of rooftop antennas to the public interest.

It is more difficult to understand why some broadcast groups are so violently opposed to further development of CATV. Their position is in many ways a paradox. If it prevails it will result in considerable future damage to the structure of the broadcast industry.

On the surface, there is no apparent reason for controversy. Broadcasters send out TV signals, CATV systems help viewers receive them. What could be more compatible?

Futher, CATV systems depend on signals broadcast for the public to receive. Without them there is no reason for CATV to exist. Anything that injures broadcasting as an industry is not good for CATV.

CATV is accussed of competing with broadcasters and competing unfairly. The FCC, in the volumes it has published on the matter, devotes a good deal of time to the subject.

There has been a concentrated effort by certain broadcast groups and others to create the universal misconception that CATV somehow competes with broadcasting.

This is not so. CATV does not compete with broadcasters for the same dollars or the same attention from the public. It makes no difference to a CATV operator to which channel his customers may be tuned.

CATV does make it possible for broadcasters to compete with each other on a broader base.

Let us examine for a moment what a broadcaster is and how he reaches the public. A broadcaster transmits TV signals on certain frequencies allotted to him by license from the Federal Government.

The process used to get the program to the broadcaster's audience is the transducing of light and sound into electromagnetic energy and disseminating this energy from a transmitting antenna with the intent that it be received by the public and converted back into sight and sound on their receiving sets.

In order to make his signals available to the viewing public, he must use a considerable space out of one of our most valuable natural resources, the spectrum of electromagnetic frequencies. The broadcaster has exclusive use of the frequency space which has been allotted to him. This allotment scheme was necessary to maintain order in the use of radio frequencies.

Broadcasters receive, by virtue of circumstance, not intent, a monopoly on the access to the public's television sets through a specified channel within a given area. As the acceptance of the television medium has increased, the value of these monopolistic positions has also increased tremendously.

But, we must remember one thing, this monopoly has value to the public only insofar as the preservation of order in the use of the allowed radio airwaves is concerned. The value inherent in being allowed sole access on certain channels to certain of the public's TV sets accrues only to the private interest of the broadcaster. This value is tremendous. This represents up to 90 percent of the total value of some TV properties. The Federal Government, through its frequency-allotment plan, has inadvertently created a monopolistic wall for each broadcaster around a group of the public's TV sets.

CATV provides a tool which the public can use to reach through these monopolistic walls. It breaks down the barriers to reception

created by the nature of broadcasting and the frequency-allotment program that was imposed to police the use of the Nation's airwaves. CATV uses cable, not the Nation's radio airwaves, thus it takes nothing from the Nation's natural resources of available radio frequencies. Its only use of radio frequencies is incidental in the service it buys from microwave common carriers.

TV signals are broadcast for public viewing. CATV provides a reception facility. The Nation's viewers receive many more signals with it than they can without it.

This is the capability that certain broadcasters fear. They love to have more viewers have access to their signals, but they do not want their viewers to have access to other signals.

They fear that this capability on the part of the viewing public may reduce the value of their monopolistic poistions. In fact, the most horrible prospect of all is that it might free all of their captive viewers and force broadcasters to compete against each other for the public attention, strictly on the merits of the program material they offer.

They fear that local stations may be forced to maintain dominance in their markets by virtue of the fact that they are the local station and provide local news, local sports, local advertising, and local educational and public affairs presentations. Few broadcasters have had to hold their viewers strictly on the merits of what they have to offer. Those who have, know it can be done, and I know this from experience.

For the first 10 years of the past 15 years while CATV was developing its concept and earning public acceptance, the Federal Communications Commission largely ignored this seedling revolution in television reception technology; in fact, as the record shows, the Commisson looked in depth at the subject back in the late fifties, said it liked what it saw and saw no reason or legal basis for attempting to control or curtail the growth of this new industry.

Shortly thereafter, however, the hue and cry of alarmed broadcasters who feared the erosion of their monopolistic position, seemed to capture the imagination of the FCC, particularly at the staff level and they began, through manipulation of the control vested in them over the Nation's microwave common carrier operations, to tamper with and impede the growth of CATV facilities.

This process was challenged and resulted in the obscure and nebulous doctrine set forth by the courts in the *Carter Mountain* case.

In this case, the Commission successfully maintained that threatened economic impact of an improved CATV would result in the demise of a small TV station. No impact was ever proven. An investigation now of the present circumstances existing with the parties involved would lead any reasonable man to conclude that the threat was completely imaginary.

This case provided a rather tenuous springboard from which the Commission has gone upward and onward into, first, a set of purely arbitrary rules governing the use of microwave service by CATV customers, and then its first and second reports and orders circumscribing the operation of the CATV industry and its future growth.

It would appear that the Commission has acquired its alleged knowledge, wisdom and expertise in this field largely through the process of osmosis.

It has not created a CATV bureau within its structure, nor has it sought funds for this purpose.

It has conducted no inquiry with its own personnel into the facts relating to CATV and its impact, if any, on broadcasting. It has apparently not even used information available to it from its own files and confidential records.

It has not conducted evidentiary hearings to get testimony under oath and face to face discussion with knowledgeable people in this field.

It has merely invited comments. This has resulted in an outpouring of a mass of paper, most of it from people who know nothing about CATV. These comments contain volumes of false accusations, suppositions, false premises leading to false conclusions and result in nothing of any real value or meaning. The most commonly used word in them is "If."

Few of the Commissioners and their staff have ever viewed more than one CATV operation, and this one only briefly. They cannot really understand the basic nature of CATV or its relationship to the public.

From this background of ignorance and bad information the Commission has now come forth with rules for the construction and operation of CATV facilities.

It is our opinion that it is the intent of the Commission staff to use these rules, not to constructively promote the benefits that expanded CATV operaions can provide to the public (the Commission has never done anything constructive toward CATV), but rather to choke off any future growth of the industry and to harass the existing operations.

It proposes to fence off 90 percent of the Nation's TV homes, beyond the reach of CATV facilities while it ponders two peculiar questions.

It is obvious from the text of their second report and order that the Commission has already decided that further growth of CATV will inhibit the future development of new UHF broadcast facilities in the Nation's major cities. They have also, in the same document through a reasoning process not understandable by any normal person I have yet to encounter, determined that CATV will eventually result in pay TV systems in our major cities.

I submit that there is not one iota of proof that either of these conclusions has any validity. The broadcasters who support these conclusions do so with tongue in cheek. They shed their crocodile tears over UHF development, but their true concern is the dilution of their monopolistic positions.

Many of them have already made plans to enter pay TV via broadcasting over the very UHF stations that CATV is supposed to endanger.

It is my firm belief that if the Congress does not act in protection of the public interest to define what CATV is and the Commission's responsibility in the public interest to allow it to develop, that if the Commission's current position and direction is left unchanged, that the CATV industry has had the garrote placed around its throat which will be gradually tightened until the life's breath is gone. For surely an industry which has lost its capacity to grow cannot survive.

To allow this to happen would be unthinkable. We have great confidence that Congressional wisdom will prevail. We support and we urge your support of the NCTA recommendations. An aroused public would certainly demand that their freedom of reception be protected.

Assume that someone had invented a TV receiver which would allow its owner to receive signals broadcast from any place in the United States. I am sure that the public would think this was great and that such a device would be in great demand. Would you consider seriously a proposal that we outlaw the manufacture and distribution of such a device? I think not.

But that is what you are essentially being asked to do by the FCC today.

Finally, I would like to direct a few brief remarks to the matter of State public utility regulation of community antennas. In section 331(c) of the Commission's proposed bill, it is suggested that Congress make clear that its legislation is not intended to preclude State regulation except to the extent of direct conflict with the Communications Act or regulations promulgated thereunder.

In his testimony the Chairman of the Commission went on to say that he felt that community antennas have many of the attributes of public utilities and that the FCC did not intend to interfere with State regulation of those aspects of CATV.

Omitting for the moment, the complete failure of the Chairman to indicate any factual conditions or abuses which would justify subjecting the community antenna industry to public utility type regulation, it is discouraging to find either the Commission or its Chairman in effect soliciting State regulation of the services of community antennas.

It is discouraging because I would like to believe that the Commission sincerely intends to promote the orderly development of CATV as a component of our national television service and that it is genuinely concerned about protecting the public interest in CATV as well as in the healthy operation of broadcast stations.

However, it is incomprehensible to me that the Commission really believes that the receiving public would be benefited by a dual system of regulation with the Federal Communications Commission acting on the one hand, and 50 States, each with its own pattern of regulation, regulating on the other hand.

The line between public utility regulation and nonutility regulation cannot be that finely drawn. The regulation contemplates service regulation as well. Moreover, rate regulation, which is inherent in public utility regulation, is so directly involved in and related to service, that they cannot be separated.

It seems obvious, under the circumstances, that conflicting policies and objectives, as between the several States and the commission, are inevitable, as a hodgepodge of differing regulatory patterns from State to State.

If television reception is to be regulated by Government, it should be by a single agency empowered both to establish uniform standards and policies with respect to both transmission and reception. The public is entitled to protection against the confusion and uncertainties which would surely flow from such a regulatory scheme as that pro-

posed by the Commission. Unlike telephone service, to which the chairman referred, as an example of joint regulations by both the Federal Communications Commission and the State commissions, there is no logical division between local or intrastate CATV service and interstate CATV service, to provide a rational basis for joint regulation or a dividing line betwen the two jurisdictions.

It is my understanding that Congress concentrated control over communications in the Federal Communications Commission for the purpose of achieving a uniform national communications service with an equitable distribution of frequencies, facilities, and services among the several States.

Broadcasting is useless without reception. It is wholly illogical on the one hand to establish responsibility for regulation of broadcast transmission in a Federal agency charged with achieving overall public interest in television and authorize on the other hand 50 independent legislative or regulatory bodies to regulate reception.

If reception must be regulated at all, it seems elementary that such regulation should be entirely by the Federal agency charged with achieving the public interest in television.

I would suggest that the FCC might take a much more efficient and forthright approach to the alleged problem of controlling reception. If it were indeed in the public interest to deny the public the right to receive TV signals broadcast by a distant station—in order to protect the monopolistic position of a local station, then this might better be done by controlling the reception capability of the public's TV sets.

For example, if the people of San Diego are to be denied the right to view signals broadcast in Los Angeles, this cannot be done efficiently or effectively by eliminating CATV in San Diego. Thousands of homes in San Diego are equipped to receive Los Angeles signals without benefit of CATV service.

Therefore, the objective could only be accomplished by denying to the San Diego viewers the right to own sets equipped to receive Los Angeles frequencies. This, of course, would be as unreasonable as forbidding the sale on San Diego newstands of the Los Angeles papers.

Curtailment of the CATV growth will mean loss of employment of thousands in the CATV industry. It will mean a substantial loss by investors who have, in good faith, put up millions of dollars in capital to support this new concept in TV reception. But worst of all, and most important of all, it would mean that the public would lose access to untold new windows through which it might look further out on the wonders of this country in which we live.

I am confident that Congress will protect the public interest in this matter.

Thank you very much for the opportunity to give you our views.

The CHAIRMAN. Thank you, Mr. Merrill. Are there any questions?

Mr. ROGERS of Texas. I will reserve my time, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. I do want to compliment Mr. Merrill for a very understandable presentation for a layman.

I was wondering how would a CATV get into an apartment house that is already built?

How is that handled?

Mr. MERRILL. It would depend to a large extent on the facilities that were already built. If they were compatible with the service being offered by the CATV it would simply be a matter of attaching the CATV drop line, carrying signals ordinarily available on the CATV system, attaching that line to the line leading to the master antenna which had been serving the apartment.

Mr. YOUNGER. They could just connect with the cable to the antenna and feed it into all the apartments the same as the master antenna that is on the apartment.

Mr. MERRILL. Take out the antenna serving the apartment and attach that line to the CATV system.

Mr. YOUNGER. You would have to take the other antenna out?

Mr. MERRILL. You could not have both simultaneously. You could leave the other antenna there and switch back and forth.

Mr. YOUNGER. I was just wondering. I can see how they might build a new apartment and put the facilities in for a cable and use either one, but for buildings that were already erected I was wondering how that system would fit in.

Thank you very much.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. I am very much interested in your statement, Mr. Merrill. I have only one question to ask. You say on page 10, when you are speaking of the TV systems, many of them have already made plans to enter pay TV through broadcasting over the TV UHF stations that consider a TV is supposed to endanger. Do you have any proof of that or do you know of any specific cases where this will happen.

Mr. MERRILL. It is my understanding that the Kaiser people who have several of the UHF stations have a petition on file for authority to operate pay TV on part time or a full-time basis, and I am not sure which, over some of these stations.

They are UHF stations. One I know particularly is in Los Angeles.

Mr. FRIEDEL. An application is already in for pay TV?

Mr. MERRILL. That is my understanding, sir.

Mr. FRIEDEL. Were you given a chance to appear before the FCC for a hearing and reviewing all these remarks that you have made today?

Mr. MERRILL. No; we have never had anything other than informal conferences with various members of the commission.

I have never appeared as an individual nor representing the association of which I am immediate past chairman before the full FCC.

Mr. FRIEDEL. You met with some of the members of the FCC, not the staff?

Mr. MERRILL. I have met with individual members of the FCC and the staff.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I wish to join my colleagues in thanking you for a very fine statement. I read part of your testimony prior to the hearing today. I came in a little late today as I am sure you noticed. You have a TV broadcasting station, which you own, do you not?

Mr. MERRILL. That is right.

Mr. NELSEN. Do you also have a cable TV in the same city where the broadcast station is located?

Mr. MERRILL. Yes, sir; our station KIVA in Yuma, Ariz., serves the Yuma county areas and I also own the CATV system which serves those same areas.

Mr. NELSEN. As a matter of practice in the operation of your system if, for example, there is a major program being shown on your broadcasting station in this location, would you at the same time take your cable signal from a competing broadcasting system showing the same program or would you take it from your own at that time?

I am thinking of the duplication of programing. How would you handle it in this particular case?

Mr. MERRILL. If the programs are being shown simultaneously we carry only the programs that are on our own stations. If they are being shown at different times which they are in some instances in that area because we straddle time zones, then we carry both stations.

We carry ours at its regular time and the other NBC stations at its regular time.

Mr. NELSEN. In the hearing the other day I asked a few questions concerning a small broadcasting station in my district, in Mankato, KEYC–TV. It seems to me that the practice you pursue is a logical one and certainly a fair one. It is also my understanding that the CATV system people recognize that there should not be duplication of a major program and some regulations should be provided.

Now under the proposed bill that is before us the regulation of simultaneous programing would be placed in the hands of the Commission. The Commission claims the authority for the rulemaking. Do I understand your position to be that you do not object to some regulations that would forbid duplication of programing?

Mr. MERRILL. Mr. Nelsen, we have had extensive negotiations on an informal basis with the FCC that date back almost 4 years. From the inception of these negotiations we have made it abundantly clear to these people we have no objection to their having regulatory powers as long as these powers are not exercised in such a manner as to interfere to the public's right to reception.

We agree that the protection of a local station through the elimination of simultaneously duplication of the programing takes nothing away from the public so that you in effect perform a benefit to the public by assisting the local station in this regard.

We have been willing to do this from the beginning.

Mr. NELSEN. That is a very fair position I think. Now as to the origination of programs, it is not clear to me what the CATV people as a group wish to do.

In the event that the CATV people were to engage in program origination, would you feel that there should be some regulatory powers vested in the Commission to regulate this activity?

Mr. MERRILL. Mr. Nelsen, I am here primarily because I feel that the public's freedom to receive broadcast television signals freely is in jeopardy. I do not wish to dilute that position with a plea for protection of CATV's right to originate programs.

As strongly as I might feel about the freedom of speech and freedom of the press and freedom of expression and freedom to assemble elec-

tronically and the right to disseminate any legal information by any legal means, I don't believe that this is really germane to the issue of the freedom of reception.

As far as I am concerned anything that this committee in its wisdom wishes to do concerning regulations of originations of programs on CATV systems is fine with me. I think it is fine with most of the industry.

Mr. NELSEN. It seems to me that your statement would indicate a recognition of the need for protection to a TV broadcasting station. At the same time you do not wish to deny the public the availability of a wide range of programing.

I hope we can work it out so that the small struggling broadcasting station back home is not in any way jeopardized, without at the same time denying the people in my area the right to view a wide range of programs. I think we should be able to find some middle road in this whole controversy.

Thank you for a very fine statement. I understand you have with your company a former Minnesotan. I congratulate you on your selection of our State for good material to work with you.

Thank you very much.

Mr. MERRILL. We love the people of Minnesota. Thank you, Mr. Nelsen. I like to add I know the feeling of being a struggling TV station. I am one, myself.

I am No. 212. I don't know what Mankato is.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Chairman, I must admit to a little bit of disquiet in attempting to ask questions because I regard your statement, Mr. Merrill, as an extreme example of over simplification of an extremely complex problem. I think you had the opportunity to give us any information which might have been far more helpful than merely finding that everyone who disagrees with you is improperly motivated.

That is the conclusion which I find inherent in your statement. Is this in fact just a simple extension of the antenna I might have on top of my home?

Mr. MERRILL. As far as your ability to receive signals I see very little difference.

Mr. Moss. Is it more nearly a transportation system that gathers and brings to my home with virtually no limitations on the distance that it can haul or transport for my convenience if I want to pay for it?

Mr. MERRILL. The transmission line that runs from your rooftop antenna to your set does this and the CATV system simply extends this line. It extends for major distances in some systems.

Mr. Moss. And looking ahead with the new and exciting technology in communications, with satellites and other things we may not yet envision but which we certainly could develop in the comparatively near future, are we justified in just dismissing them as something that can grow and expand without some means of regulation and some determination of the questions inherent in this transportation function?

I am concerned about some property rights that may be involved. I think it might have been helpful if you had told us of some of the directions of State utility commissions. You feel that there would be

an error made on the part of the Government if then it adopts a proposal of the commission to give them a regulatory authority and then share it with the States. Why do you feel that is the case? Because of diversity or because there are specific directions now evident?

Mr. MERRILL. Mr. Moss, in preparing a paper of this type you have to make a decision as to just what you are going to try to cover. There has been extensive testimony given on some of these subjects but as far as the utility question which I raised is concerned I do have a brief of some substance here that was prepared by counsel. I would like to submit for the record——

Mr. Moss. Mr. Chairman, I ask that it be accepted for the record at this point.

(The document referred to appears on p. 473.)

Mr. MERRILL. It goes into a great deal of detail with regard to what has happened in the various States and before the various groups and the various legislatures and contains all of the background that counsel here could put together on the subject of whether or not CATV is a public utility and should be regulated as such by the States.

Mr. Moss. I think many of us in the Congress, as I assume many in the Commission, and the staff of the Commission, are motivated by a concern for the public interest, and are motivated by a desire to seek a balance permitting the maximum coverage of the Nation with television programs, at the same time mindful of the economic problems of those already licensed in the public interest to serve given areas of the Nation.

Don't you think these are appropriate matters of concern and can be dealt with without having wrong motivation, without seeking selfishly to destroy or injure someone else?

Mr. MERRILL. I would certainly think so, Mr. Moss. But the position that we find ourselves in in this industry is one of the battling for survival. When you get into that position you simply have to take the position that whoever has forced you into that spot wants to eliminate you and that is the position that we find ourselves in as an industry.

As we analyze the obstacles and hurdles that are placed before us by the Commission's second report and order and the rules that they promulgated thereunder, there seems in my mind no doubt but what they still will stop the growth of this industry completely and they will do it most effectively.

It is a very clever document which will do the damage the most effectively by casting a cloud of doubt over the industry, drying up our sources of capital and other credits. When you do that to a business you simply cut off its lifeblood, that is all.

Mr. Moss. I came into politics from a selling background and I was told very early if I wanted to succeed in politics I should do what I thought was best and not be too concerned about my competitor, but try very clearly to set forth the merits of whatever I stood for and I would urge that upon you and your industry; if you have a case, let us have the benefit of it.

I think we can all make the judgments here as to whether the antenna manufacturers or broadcasters are acting in good faith and we hear them all, we are accustomed to evaluating these pitches, but we are desperately seeking facts.

Really that is——

Thank you, Mr. Chairman.

The CHAIRMAN. Dr. Carter.

Mr. CARTER. Certainly I appreciate your explanation of this rather difficult problem. As it happens, I represent a rural district of more than 17,000 people. Much of that area is mountainous and to get good reception of programs from all over our country it is necessary for us to have CATV. Certainly we appreciate this; we realize you render us a service.

Furthermore it seems to me that when you pick up signals and retransmit them that you are increasing the use of the station which first gives these signals.

Whether that initial station can claim property rights on those signals that have been issued or not is certainly a moot question. To me and it seems in turn that you are actually rendering them a service. I certainly would hate to see anything done that would hurt the CATV industry in our area. It gives us good service.

Thank you, sir.

Mr. MERRILL. Thank you, Mr. Carter.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Merrill, you state that you have constructed 130 CATV systems in towns and cities throughout the country and I want to ask you if any of these locations, or in the locations in which you have constructed systems for CATV where the 3 networks were readily available on ordinary receiving equipment, what the result was in the CATV systems?

Mr. MERRILL. We have done this in a few places. One that comes most readily to mind where we have constructed a CATV system in the grade A contour three networks stations is Decatur, Ala. The system there was built about 3 years ago and was put into operation about two and a half years ago. At the present time about 50 percent of the homes in Decatur subscribe to this service.

We protect the local stations on their network programing. We offer our subscribers, in addition to the signals that could be received off the air if we were not there and could be received easily, reception of signals from Birmingham and Nashville, not the network portion of the programs but the other portions, the other signals that those stations transmit which do not duplicate the Decatur and Huntsville signals.

The acceptance of the service has been very gratifying. I think the people are very grateful for it. There are others that follow the same pattern.

Mr. KORNEGAY. In Decatur—how many channels are you carrying on CATV?

Mr. MERRILL. We carry a total of nine channels.

Mr. KORNEGAY. You have three in grade A contour; that is, the three networks and you bring in Nashville and Birmingham?

Mr. MERRILL. And Chattanooga.

Mr. KORNEGAY. Are they within the grade B contour?

Mr. MERRILL. No. Decatur is beyond the grade B contour of all those places.

Mr. KORNEGAY. What has been the relationship with the broadcasters or the three stations in grade A?

Mr. MERRILL. It has been one of guarded friendliness I would call it as long as we recognize that they provide an important local service and do everything that we can to protect their network programing and simply provide the people of Decatur with the additional exposure to signals that come from other stations.

Mr. YOUNGER. Will the gentleman yield for one question?

Mr. KORNEGAY. Yes, I will be happy to.

Mr. YOUNGER. Are those signals brought in by microwave or just by antenna on a high hill?

Mr. MERRILL. By microwave.

Mr. KORNEGAY. I would gather from what you say you are getting along all right with the broadcasting companies?

Mr. MERRILL. We don't have any trouble.

Mr. KORNEGAY. You watch them and they watch you?

Mr. MERRILL. They would just as soon we were not there but we are not doing any damage that is measurable.

Mr. KORNEGAY. That is one of the areas in this whole thing that has been a big question mark to me. That is the response you get in the community which is able to get three networks.

I know, I live in one. Within 30 miles you have three networks and with an ordinary set with "rabbit ears" you can get all three channels.

So, the question has arisen in my mind, why would anybody under those circumstances pay $5 or $6 a month, or whatever the charges are, to hook up. It is true you get more stations but you can't look at but one at a time. Most people are interested in what is going on in their own community as far as the news or local programs are concerned.

So, I must say I am somewhat surprised to hear that you have been as successful as you have in getting 50 percent of the homes in a market to sign up for a CATV system.

Now this whole thing appears to me to be a matter of degree. You start in with the CATV and sort of run form zero to infinity. It was suggested, as Mr. Moss said, for all we know in the very near future we may be able to hook up when we get the synchronous satellite system working and have a worldwide hookup.

The problem is: Where do we draw the line, or where does the regulation come into it? Let me ask what you think of this idea. And that is, to forbid any CATV from carrying any station which is beyond the grade B contour, or the location of the CATV system.

Mr. MERRILL. You eliminate to a large extent the necessity for any CATV.

Mr. KORNEGAY. I did not hear you.

Mr. MERRILL. You would eliminate to a large extent the necessity for a CATV in many areas. The only thing we have asked for as an industry is that the burden of proof be placed on the broadcaster who feels he is being damaged to the extent that the public interest is involved.

Mr. KORNEGAY. Now, there are very few sets that will pick up stations in the extreme limits of the grade B contour that are really worth looking at. If you could bring those stations in loud and clear

within the range of 75 to 90 miles, wouldn't that be a substantial service to the viewer?

Mr. MERRILL. In some areas it will be a beneficial service if that is all they can receive and that would be one narrow function that CATV could provide under this pattern. But its is capable of providing a much broader type of reception service.

We have seen no compelling arugment to restrict its activities to just this. It certainly would accomplish the purpose of stifling the growth of the industry.

Mr. KORNEGAY. I have gotten the impression through some of the testimony here that some of the biggest fields, the major fields of broadcasters is bringing in distant signals. It was testified yesterday in response to a question asked by one of the members of the committee that if nothing was done in any way to control CATV, that ultimately we would end up with only a few stations in the metropolitan areas of the country and everybody would be looking at them.

I don't know whether that is right or not. I am just trying to get your views on what you think would happen. I think we would all agree that that would not be good, that it would not be in the public interest.

Mr. MERRILL. There would be no argument on that point at all, sir. The point I would like to make and that I tried to make in my testimony is that this case has not been proven. In Yuma, Ariz., where I operate a small TV station, we bring into that area and provide by reception service to about 50 percent of the total TV homes in the area, all of the independent signals broadcast by the Los Angeles stations, the independent signals broadcast by the Phoenix stations, and the Mexican language stations from Mexicali, Mexico, plus two education stations, one from each State, and we do not find that there has been any significant dilution in our revenue-producing capability. We find that we lose some audience certainly but not enough to significantly affect the revenue of the station.

After all, you will find in the city of Los Angeles, which I think has probably more television available off the air than any other city in the United States, that during prime time hours, the combined maximum penetration of all of the nonnetwork stations into the market is 16 percent.

Certainly in a CATV area the penetration is going to be substantially less than that if every city had the same type of exposure. So I don't see where the case has been made for the type of development that has been thrown up here as the horrible that is going to happen if CATV is allowed to continue on uncontrolled growth.

We have had regulations all the time. We have always had to face city councils, assemblies, and county officials in the areas in which we operate, convince them that what we are doing is in the public interest, is not going to damage anyone. They are as interested in local television as anyone else. In the past 10 years we have used extensively microwave common carriers service and the use of that service has been directly controlled by the FCC and since the *Carter Mountain* case, had to accept any conditions they wanted to impose on the use of that facility.

Mr. KORNEGAY. Once you get your franchise you are pretty much on your own then.

Mr. MERRILL. Not necessarily. The franchise in most areas is subject to review and cancellation for cause or for abuse.

Mr. KORNEGAY. How long have you operated your CATV system in Yuma?

Mr. MERRILL. Five years.

Mr. KORNEGAY. Of course, when you got your franchise from the city of Yuma it was for what length of period?

Mr. MERRILL. Ten years. It is nonexclusive, too, I might add.

Mr. KORNEGAY. Have you had any significant lowering of your revenues of your station at Yuma?

Mr. MERRILL. Actually our revenues are higher than they were 5 years ago. There has been some growth in the area. I don't think there has been any measurable change in our revenue-producing capability.

Mr. KORNEGAY. I think that is all, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Merrill, without revealing any trade secrets, could you tell the committee whether the orders that the Commission has thus far issued have been—have had any effect on your planning?

Mr. MERRILL. I don't mind telling this committee that in my principal business, Ameco, Inc., where I am responsible to 3,000 stockholders and about 1,500 employees, that since the publication of the second report and order, we have had stopped or canceled over $3 million worth of work and have had to lay off more than a hundred people.

I think this is just a harbinger of the things to come, and the main reason for this occurring has been the cancellation of the capital requirements and the credit requirements for the people who contemplated these facilities because of the cloud which has been cast over the future of their operations.

Mr. VAN DEERLIN. It has discouraged investors in this line of activity?

Mr. MERRILL. Certainly it has. Most everyone who has had any exposure to the operations of the FCC knows that a comparative hearing, and that is where any CATV development anywhere can be thrown, with the burden of proof on the CATV operator, will last anywhere from 3 to 5 years.

We took one such individual who had had his financial base pulled out from under him over to the Commission yesterday afternoon. We found out that their complete staff set up to date for handling this thing consists of two part-time employees up in the attic.

They are going to have 400 or 500 of these requests for waiver and all sorts of hearings that they are going to have to have of one sort or another.

It will be a complete logjam.

Mr. VAN DEERLIN. So that even if each case were decided favorably to the industry, delays would be such that you would suffer decline both immediately and over the long haul in revenue?

Mr. MERRILL. I think so.

Mr. VAN DEERLIN. Do you feel that you cannot live with the regulations that have thus far been announced by the FCC?

Mr. MERRILL. It is my personal opinion, I was taken to task for this for—but it is still my opinion, that the controlling staff members at

the FCC who have promulgated these rules do not have the constructive control of CATV in mind.

I have been embittered perhaps by at least 5 years of struggling with them for what growth we have had. With these tools to work against us, in my opinion, it is going to be impossible. Now maybe I am being a prophet of doom, I don't know, but I am merely expressing my own personal opinion.

Mr. VAN DEERLIN. My colleague is interested in knowing what the FCC has done for the last 5 years that has impinged upon the development of the CATV industry?

Mr. MERRILL. Well, most of the growth in the CATV industry is dependent to a large extent on receiving grants for microwave common carriers to provide relay service. Since the inauguration of the *Carter Mountain* case which was at least 5 years ago the Commission attitude toward the use of microwave by our industry has been openly hostile.

There have been delays of up to 3 years in waiting for grants. Every administrative roadblock that you can conceive of has been thrown in the way of issuing these grants. It has been a very disillusioning experience for many of us in the industry. I realize that some of this may sound extreme but one of the principal things they have done which has done more to stifle the use of microwave by the industry than anything else is the promulgation of the so-called 50–50 rule governing the use of microwave.

Through this rule they have precluded the use of microwave common carrier to extend service in the area unless at least 50 percent of the service to be extended was to go to a nonaffiliated customer.

This has made it virtually impossible to open up what we would call virgin territory because you don't go into these things except on a speculative basis.

Nobody knows whether the market is there except the entrepreneur who is going to go in to make the attempt. If he is the only one going in then it is virtually impossible to meet this 50–50 rule. Now there is no reason in logic or law that I can see for this rule, but it has been imposed. We have had so many court fights to take care of that we simply have not challenged it in court.

That is one example. There have been many administrative procedures imposed on us that we feel are necessary. I can see no reason for them from my point of view, I had a hearing, for example, counsel reminds me, where we again were accused of being in violation of the 50–50 concept. We did not meet it, and consequently they had a full hearing which was extremely expensive, it cost in excess of $50,000.

After the hearing was concluded it was 2 years before a decision was handed down, which was adverse to us, I might add.

Mr. VAN DEERLIN. I yield to Mr. Moss.

Mr. Moss. Mr. Merrill, then it sounds to me as though you are trying to convey the impression here of an industry frustrated by regulatory excesses. Isn't it a fact that during this 5-year period you speak of that this is an industry which has had spectacular growth?

Mr. MERRILL. This industry has had growth. I think the term explosive, spectacular, all the things that have been used to try to create the connotation that it is a wild, uncontrolled sort of thing are a little bit over——

Mr. Moss. Can't you be spectacular without being wild and uncontrolled?

Mr. MERRILL. I think so but apparently there are others who don't.

Mr. Moss. Why don't we take a more orthodox definition? I was not intending to convey—I could have used the terms wild and uncontrolled but I carefully selected spectacular. It has been significant?

Mr. MERRILL. It has been significant. The industry has about doubled in the last 5 years.

Mr. Moss. What is the picture of frustration?

Mr. MERRILL. Well, when you double from a 2-percent saturation of your market to a 4-percent saturation of your market you certainly are not frustrated but you certainly are not talking about what I think any substantial——

Mr. Moss. Have you any idea how many applications are pending before the city councils, other governmental agencies and entities for franchise to expand this business?

Mr. MERRILL. No, I have no ideas.

Mr. Moss. Yes.

Mr. MERRILL. They are in the record. I don't have the figures available immediately.

Mr. Moss. A very large number, is it not?

Mr. MERRILL. Large numbers.

Mr. Moss. Take the city of Sacramento. There is very likely competition.

Mr. MERRILL. I am aware of that.

Mr. Moss. There does not seem to be a lack of confidence that once given the franchise by the city that there will be any absence of investment capital or risk capital for the setting up of a system of community antenna television.

Mr. YOUNGER. Will the gentleman yield?

Mr. Moss. I can't yield because the gentleman from California, Mr. Van Deerlin, has the floor and has kindly yielded to me. But I will stop asking questions in the hope that he will yield to you.

The CHAIRMAN. Will the gentleman yield to Mr. Younger?

Mr. VAN DEERLIN. I will yield.

Mr. YOUNGER. I gather from your testimony, Mr. Merrill, that your difficulty arose in the microwave field, not just on the plain antenna field of CATV. Is that really true?

Mr. MERRILL. The difficulty in the past has been in that field.

Mr. YOUNGER. During the 5 years of your frustration you are talking about arose in those cases where you were using microwave?

Mr. MERRILL. I did not use the term frustration, I don't believe. We have had considerable difficulty in obtaining microwave facilities that we have felt we legitimately required in the past 5 years.

Mr. YOUNGER. I mean it was in the microwave field, not in the plain antenna field.

Mr. MERRILL. That is right.

Mr. YOUNGER. That is what I wanted for the record.

Mr. Moss. Will you yield further, Mr. Van Deerlin?

Mr. VAN DEERLIN. With the Chair's permission.

Mr. Moss. On that matter of microwave, how many applications have been granted in this period of time? How many applications have been filed? These are the things you have to look at if the implication of a deliberate dragging of the feet on the part of the

Commission is to be supported. I recall back in the subcommittee—the Oversight Subcommittee—days here in this committee where we had complaints from broadcasters that they were faced with inordinate delays because of the workload on the Commission.

Do you feel that these matters of time in processing applications would reflect a deliberate foot-dragging on the part of the Commission or a heavy load on the Commission?

Mr. MERRILL. In our case I feel it is deliberate. Mr. Moss, ordinarily common carrier microwave applications were being processed in a period of 30 to 90 days before this——

Mr. Moss. I would ask at this point that the Commission staff be requested to bring in—to supply us with pertinent figures as to the number of applications, the number granted, the number pending, and the average period of time. I would like to have the same information on the processing of television broadcast applications in 1952 and 1953 so that we will have some meaningful comparisons as a part of this record.

Mr. MERRILL. We will be glad to prepare that ourselves if you don't want to burden the Commission with it.

Mr. Moss. I would much prefer they do it. I want to see if they drag their feet with me.

Mr. MERRILL. I would hate to see that done.

(The information requested follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., April 15, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: During the hearings of your committee on community antenna television, Congressman John E. Moss on April 6, 1966 (transcript, vol. 5, pp. 770–771) requested that we furnish your committee pertinent information on the processing, during the past 5 years, of applications for microwave facilities to serve community antenna television systems. His request is for statistical data on the number of such applications that have been filed, the number granted, the number pending, and the average period of processing time. Congressman Moss also asked for the same information on the processing of television broadcast applications in 1952 and 1953 for the purposes of comparison.

The request for information arose out of a colloquy which had concerned itself essentially with the granting of applications for construction permit for common carrier microwave authorizations to serve CATV systems (transcript of Apr. 6, 1966 hearings, vol. 5, pp. 768–771). As you know, this Commission has granted microwave authorizations to serve CATV systems in two services—in the common carrier service and the business radio authorizations in the safety and special radio service. We submit information pertinent to both services.

The following statistical information relates to individual applications for construction permit for common carrier microwave authorizations to serve CATV systems during the past 5 years:

Year	Number filed	Number granted	Number dismissed	Average processing time in months
1961	149	111	13	4.9
1962	170	133	16	4.5
1963	195	107	18	7.4
1964	190	118	47	6.3
1965	274	184	83	11.4
1966, 3 months	85	21	16	14.6
Total	1,063	674	193	7.5

There are now pending 271 applications for construction permit in this service. It should be noted that the statistics include action on applications which were filed prior to 1961. Thus, of the 867 applications upon which action was taken, 75 of the applications were filed prior to January 1, 1961. Not included above are applications which the Commission designated for adjudicatory hearing.

The delays in processing of the common carrier applications are attributable generally to three factors. First, the number of applications for microwave authorizations for all purposes has tripled in the past 5 years. Secondly, the Commission has been unable to obtain adequate manpower for the processing of the applications. In this connection, the staff handling these applications has increased only from four to six persons in the last 5 years. The third factor is the increasing complexities in the processing of CATV applications, arising principally from the Commission's rulemaking proceedings relating to CATV matters since 1963, and from the additional processing required in the past 2 years because of frequency sharing with the communications satellite services. During the past 4 or 5 months there has been little activity looking to a grant of applications, first because the Commission in February 1966 issued its second report and order regulating all CATV systems and the effective date for the rules adopted there become generally effective on April 18, 1966. We anticipate that a considerable number of grants will be made shortly after that date.

The following statistical information concerns the individual applications for construction permit for safety and special services microwave authorizations to serve CATV systems during the past 5 years:

Year	Number filed	Number granted	Number dismissed	Average processing time in months
1961	7			
1962	18	3		6.0
1963	25	25	2	6.2
1964	38	19		6.9
1965	75	40	8	6.1
1966	1	3	4	4.0
Total	164	90	14	6.2

Sixty applications are now pending in this service, a considerable number of which will be granted after the effective date of the new rules as noted above, April 18, 1966.

Two of the Commission's rulemaking proceedings had a definite impact on processing. In December 1962 in docket No. 14895, and on December 13, 1963, the Commission, in a notice of proposed rulemaking in docket No. 15233, announced that microwave authorizations would be granted only to applicants who accepted such grants conditioned on proposed rules relating to notice to, and carriage and non-duplication of, certain television stations. Many applicants refused to accept grants so conditioned. The applications in the safety and special services that were dismissed in 1965 and 1966 resulted from refusal to accept conditioned grants. This provision also resulted in many petitions to deny being filed by television stations requesting that the applications be granted only in compliance with the proposed rules, or requested other relief. This general situation resulted in action being deferred on a number of applications and increased materially the processing time in specific instances and in the overall processing picture in both services.

On August 3, 1964, the Commission issued a notice of proposed rulemaking in docket No. 15586 in order to amend certain sections of the Commission's rules concerning licensing of microwave authorizations to serve CATV systems. The Commission proposed to place noncommon carrier microwave relay facilities serving CATV systems in a new class of service to be known as Community Antenna Relay Service (CARS). (In the order in this docket, it was determined that no applications for microwave facilities to serve CATV systems would be accepted in the safety and special services after November 22, 1965.) At the same time, it proposed a new rule for like service by common carriers. The proposed rule required applicants for common carrier microwave radio to show that at least 50 percent of the customers on the microwave system were un-

related to and unaffiliated with the applicant, and that the proposed usage by such customers, in terms of hours of use and channels delivered, constituted at least 50 percent of the usage of the system. The rule provided that such applicants must initially establish a "public need" for proposed common carrier service. All pending applications and all new applications for construction permits were carefully reviewed to determine whether particular proposals were for genuine common carrier service. The resulting correspondence and amendments submitted with respect to a substantial number of applications on file, account in some part for the additional processing time required in 1964 and in 1965.

With respect to the request by Congressman Moss to have supplied the same statistical information on the processing of television broadcast applications in 1952 and 1953, it is regretted that this information is no longer available. But in any event, the comparison of that processing with the processing of microwave applications would not likely be of significance, for the Commission had substantially larger numbers of personnel involved in the television application processing.

I believe that the foregoing information is fully responsive to the request of Congressman Moss to whom I am sending a copy of this letter.

If we can be of further assistance, please let us know.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

Mr. ROGERS of Texas. Would the gentleman yield to me for one question?

Mr. VAN DEERLIN. Yes, I have to be consistent.

Mr. ROGERS of Texas. Mr. Merrill, has it become un-American for business to grow fast in this country to provide the product that the people of this country want to buy and are willing to pay for?

Mr. MERRILL. I certainly hope not.

Mr. MOSS. Would the gentleman yield to me to join in expressing that hope?

Mr. VAN DEERLIN. I have one further question of my own, Mr. Chairman.

Mr. Merrill, have you considered what the possible effect on the industry might be of an adverse court judgment in regard to copyright as they apply to CATV, and might this not make the FCC action in this field somewhat academic?

Mr. MERRILL. We have always had to consider what the effect would be if the copyright case turned out adversely. In my opinion the holders of copyrights are seeking revenue. That is the reason for having the protection they have. We have to assume that whatever charges they are going to make for the use of these copyrights—if they are held to be applicable to our operations then will be something that the structure of our industry can bear and something that we would have to adjust to but certainly nothing that would be destructive to the industry.

Otherwise the suits would be meaningless if all they wanted to do was to eliminate our capability. I think their purpose is to turn our capability into revenue for them. If they do so we will have to adjust to it.

Mr. VAN DEERLIN. It will make a new ball game though, will it not?

Mr. MERRILL. It could have some very interesting side effects. If we had to pay for the copyrights on the program material that is carried on the signals we receive this could probably give us some proprietary rights in them and relieve us of the responsibility for carrying commercials which the broadcaster has attached to them, this sort of thing.

It would be an interesting adjustment. I would presume not destructively expensive.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rooney.

Mr. ROONEY Mr. Merrill, at the present time how many microwave applications do you have pending now before the Commission?

Mr. MERRILL. I have it here someplace, Mr. Rooney.

Mr. ROONEY. I was not here for the early part of your statement.

Mr. MERRILL. I did not read the first part of this. We have on file for permission to provide microwave service to 20 cities. I don't know the exact number of channels involved. My guess would be that this would be 80 channels of service to 20 cities which would probably represent in excess of 150 to 200 channel hops.

Mr. ROONEY. You spoke of a 3-year waiting period for the granting of a microwave license, I believe. Is that right?

Mr. MERRILL. That would be unusual but there have been some that have gone that long or longer. Ordinarily, a year to 18 months.

Mr. ROONEY. In following up letters and requests to the Commission, what excuse would they give you? Were they overburdened with work or were they looking into the reality of whether or not they should grant microwave in that particular area?

Mr. MERRILL. The most common reason given for delay, of course, is overwork. This will be augmented by a process sometimes referred to as nitpicking which would mean they pick out some minor point in the application which ordinarily they would not pay any particular attention to and ask for further information on it, whether the information is really required or not, just to give you something to do and make the situation where further delay is necessary.

Mr. ROONEY. Mr. Merrill, I believe you stated that you believe that the FCC should have the right to regulate the CATV industry. Is that right?

Mr. MERRILL. We as an industry have taken this position for the last 3 or 4 years.

Mr. ROONEY. For the last 3 or 4 years? You are not here fighting the FCC rules and regulations but you would rather see the Congress enact the rules and regulations that guide your industry?

Mr. MERRILL. We feel there should be some guidelines set by Congress under which these rules would be promulgated.

Mr. ROONEY. Mr. Merrill, I would like to commend you on your excellent statement. I think you are a great tribute to the CATV industry. I am very happy to have listened to you this morning.

Mr. KORNEGAY. Would the gentleman yield?

Mr. ROONEY. I will be happy to yield.

Mr. KORNEGAY. Is it necessary to use microwave in order to bring in a station which lies within the grade B contour?

Mr. MERRILL. Not ordinarily but there are instances where it is required, where you have natural obstructions, mountains, that sort of thing.

Mr. KORNEGAY. Well, where you have some natural obstruction you can pick up stations within the grade B contour?

Mr. MERRILL. Yes.

Mr. KORNEGAY. You amplify the signal and get good results in the receivers?

Mr. MERRILL. Yes, sir.

Mr. KORNEGAY. If then, it is beyond the grade B contour, it is necessary to use microwave in order to bring the signal in?

Mr. MERRILL. Yes. It is when we get into situations where in order to make our service viable we must offer more signals than there are available within the grade B contours and you have to go outside for them. We have to use microwave if we are going to have a service that will be salable to the public.

Mr. KORNEGAY. In the operation of all of your CATV systems do you bring in all of the signals within the grade B contour?

Mr. MERRILL. I can think of no exceptions offhand. I am sure we do.

Mr. KORNEGAY. Thank you very much. Thank you for yielding, Mr. Rooney.

The CHAIRMAN. Mr. Murphy.

Mr. MURPHY. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. No questions.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Mr. Chairman, I have one or two questions for Mr. Merrill. I think his statement is quite clear but I want to be sure I understand the full implications of it.

Mr. Merrill, you have some rather severe things to say about monopoly in the broadcast industry today. Isn't the whole system of regulation of broadcasting in this country based on the idea of monopoly or "exclusivity," if that is a word?

Mr. MERRILL. Yes, there is no question about that. The point I was trying to make is that this, in my opinion, was never intended as an economic monopoly. I can see nothing in the Communications Act, or rules, so far as that is concerned, which indicated the intent of the Congress or the Commission to give to broadcasters the only access to certain of the public's TV sets.

Mr. GILLIGAN. In your operations you generally, I take it, get franchises from local governmental agencies to install a CATV system. Are these franchises exclusive franchises?

Mr. MERRILL. They are generally not exclusive.

Mr. GILLIGAN. Is there any limit so far as you can see to the number of franchises that could be given in an area and still make your operation economically viable?

Is there a point of diminishing returns beyond which you could not tolerate further competition?

Mr. MERRILL. I don't know that I exactly understand the question. Ordinarily there is only 1 CATV system in a community although there are some 30 or 40 communities where there is more than 1.

Our competition comes from primarily the customer getting the reception service they seek from some other sources rather than from some other system.

Mr. GILLIGAN. What does that mean?

Mr. MERRILL. That means we are competing against off-the-air reception, in some cases against translators. There are other means of extending the public's reception capability.

Mr. GILLIGAN. I thought you said in your statement that you do not regard yourself as a competitor for the broadcasting dollar?

Mr. MERRILL. Not for the dollar, no. Nor do we seek the same attention from the viewer.

Mr. GILLIGAN. But you say your competition comes not from other CATV systems but from other means of receiving?

Mr. MERRILL. I should have said perhaps our competition comes from rooftop antennas.

Mr. GILLIGAN. Do you support the national policy of developing UHF stations throughout the country?

Mr. MERRILL. Insofar as it is proper for me to support it.

The more broadcast stations that there are the more potential there is for CATV operations. There is no reason for CATV to want to throttle the growth of the broadcasting industry. We seek to carry more signals to more people, not to prevent stations from coming into being.

Mr. GILLIGAN. If you had a chance to invest some money in a proposed UHF station, in a market area, not in the first hundred, in a community served by CATV, would you do so?

Mr. MERRILL. Well, that would depend on a lot of other circumstances, sir.

Mr. GILLIGAN. Would the presence of CATV in the area have any influence on your decision as to whether or not this would be a good investment?

Mr. MERRILL. It would probably make me look on it as a favorable investment if CATV were there.

Mr. GILLIGAN. You mean you would feel better about investing some money in a UHF station, knowing that there was CATV there than if there were not any CATV?

Mr. MERRILL. I would indeed. One of the things that CATV does is provide reception capability for UHF stations that is not there without it.

It has a great leveling influence on the area that can be covered, eliminating the discrepancy between the area that can be covered by a VHF station and UHF station.

Mr. GILLIGAN. Would the presence of CATV in the area have any influence on your decision as to what kind of audience you could command with your station and what kind of revenues you could anticipate from local advertising?

Mr. MERRILL. Insofar as the CATV system being in the area would mean that I would have a more ready access to the viewers of the area I would expect that these would be higher if CATV was not there.

Mr. GILLIGAN. This, curiously, seems to run counter to your earlier statement, if I understood it, that the broadcasters object to CATV because then it breaks down their monopoly position. You are saying, if I understand you, that if you were investing in a UHF station you would have no concern about whether you would have a monopoly position or not, that CATV would be more attractive to you, although it is not more attractive to the normal man who is investing in broadcasting.

Mr. MERRILL. When I said broadcasters object to the fact that CATV breaks down the barriers to reception and allows the public to reach out further for signal, I was thinking of the posture of broad-

casters who are in business. I also made the statement that broadcasters love to have people, want more people to watch their signals, that they get a proprietary attitude toward the viewer and they don't want to have more signals available to their viewers.

They look on this thing from two different points of view. When they want more viewers they love CATV but they don't want CATV to allow other stations made available for recepiton in their area because they think that there is a substantial dilution of their viewing audience.

I don't happen to agree.

Mr. GILLIGAN. Then you don't believe, if I understand you, that CATV represents any threat to the economic stability of small local broadcasters?

Mr. MERRILL. I know of no case where a broadcaster has been put out of business or hurt substantially which has been proven in an evidentiary hearing.

Mr. GILLIGAN. That is not quite the answer to the question. In your judgment do you think that CATV represents a threat to the economic stability of broadcasters in a given area, whether it has been proven or not in an evidentiary hearing?

Mr. MERRILL. No, sir; I don't.

Mr. GILLIGAN. Do you believe that any regulation whatever by the FCC or any other organization is desirable in the CATV field?

Mr. MERRILL. Yes, sir. Mr. Gilligan, I have spent a good deal of time in the past 4 years trying to work out a form of regulation with both the broadcasters organizations and the Commission, itself. We firmly believe that this is an area in which the Federal Government should regulate.

So we simply ask for reasonable grounds.

Mr. GILLIGAN. Your statement, as I read it, contained no positive suggestions as to the nature of the regulation you thought desirable. You said you did not think that there should be dual regulations with the States and the FCC in it.

If there were to be regulations the FCC should be the administrative agency for it. Unless I missed the idea I did not see any proposal for the type of regulations that you thought might be beneficial.

Mr. MERRILL. I did not wish to take the committee's time to go into any great detail but at the bottom of page 10 in the copy of my testimony I say we support and we urge your support of the NCTA recommendations.

My understanding is that the NCTA has recommended specific legislation and that this form of legislation has been introduced.

Mr. GILLIGAN. The recommendations of NCTA would be virtually those that you would propose for the consideration of this committee?

Mr. MERRILL. Yes, sir.

Mr. GILLIGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers of Texas.

Mr. ROGERS of Texas. Mr. Merrill, I have one or two very short questions. You were questioned at length with regard to microwave.

Now microwave operations are presently under the jurisdiction of the Federal Communications Commission, are they not?

Mr. MERRILL. They certainly are.

Mr. ROGERS of Texas. And they took jurisdiction of that and expanded that jurisdiction, using the *Carter Mountain* case as the basis; have they not?

Mr. MERRILL. That is right, sir.

Mr. ROGERS of Texas. And that the case simply held that if there was any possibility or probability of adverse impact on a local station that they could put any kind of limitation in the world to suppress information going into that area, didn't it?

Mr. MERRILL. It seems to me that is about what this did, yes.

Mr. ROGERS of Texas. With regard to these other situations where you have CATV and broadcasting in the average community, how many signals can the average American get? Without CATV at all, just broadcasts.

Mr. MERRILL. He can get signals of stations within those grade A contour he lives and perhaps within parts of the grade B contour. Then it depends on how elaborate an antenna he has.

Mr. ROGERS of Texas. Would Washington be a good example of it, where you have four channels, 4, 5, 7, and 9?

Mr. MERRILL. Those would be the signals readily available. If he wanted to go to an elaborate housetop or backyard antenna I think you can receive Baltimore.

Mr. ROGERS of Texas. You believe there is a UHF station here, maybe two, which have been doing a very good job. Now if you bring CATV into an area that we say has two signals, how many more signals will be available to that person in that area?

Mr. MERRILL. Whatever the CATV system can bring in, either off its master antenna or through the use of microwave, whatever it is feasible, economically, to provide.

Mr. ROGERS of Texas. Can they bring in four, five, six or seven?

Mr. MERRILL. It is possible until the economics catches up with you.

Mr. ROGERS of Texas. I have sat here and watched these things since the hearings began and watched the big fight between the giants in this country. Everybody seems to have forgotten John Q. Public does not want to watch a program on one of these stations, either put out by one of the networks or being produced by the local station owner and put on, determined by his discretion alone, then he does not have anyplace to get the information, does he?

Mr. MERRILL. No. He usually turns his TV set off in that case.

Mr. ROGERS of Texas. That is right. Thank you very much, Mr. Merrill.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions. May I state to the gentleman who is testifying that he came in and discussed the problem with me first. I think I have a good understanding of what his problem is.

The CHAIRMAN. Thank you.

Mr. Merrill, I would like to ask one or two questions now——

Mr. DINGELL. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Dingell.

Mr. DINGELL. Mr. Merrill throughout his comment this morning indicated to the committee he had no objection to the regulation of CATV. I was wondering if Mr. Merrill could advise the committee what form of regulation he suggests is in the public interest in regard to CATV?

Mr. MERRILL. If the chairman would like to have me take the time I will be happy to do so.

Mr. DINGELL. It would help me if you could do it very briefly.

Mr. MERRILL. We believe that the regulations should only require us to carry the local signals with a reasonable definition of what is local, and certainly a station that is 90 miles away is not local further to protect local station from simultaneous duplication of their signal. These are the two primary things that we feel gives the station all of the protection it needs and takes nothing away from the public.

Mr. DINGELL. Do you think that the CATV should be permitted—to use the words of one of my staff members—should be permitted to carry New York signals into White Bird, Idaho?

Mr. MERRILL. Why not, if the people in White Bird, Idaho, want to watch them? They are broadcast for the public to view.

Mr. DINGELL. You said 90 miles was not a local signal?

Mr. MERRILL. I don't think they would be viewing a local signal in White Bird, Idaho, if they are viewing WPIX.

Mr. DINGELL. Then you think CATV should bring in signals from New York, to White Bird, Idaho?

Mr. MERRILL. I see no reason why they could not bring them in from New York as well as bring them into Binghampton. Once you get outside the station's normal grade B area, if you are going to take them anyplace at all, I think you could take them anyplace you wanted to, whether you take them 200 miles or 2,000 miles farther.

That is the point I tried to make by the illustration with San Diego. If you are going to try to keep people from watching signals beyond a certain territory the thing to do is disable the sets.

This can be done easily and more economically and more efficiently than trying to do it through regulation of CATV.

Mr. DINGELL. Do you think there should be the right for CATV entrepreneurs to enter a market in a particular area?

Mr. MERRILL. No, sir. The CATV entrepreneur, of course, is subject to the police powers of the municipality in which he seeks to operate.

Mr. DINGELL. Do you think there should be an unlimited right to enter into this area?

Mr. MERRILL. Subject to those police powers and the other parts of the regulatory scheme that we propose; yes, sir.

Mr. DINGELL. Do you think that these police powers adequately protect the rights of the viewers in the area and these police powers of the community will adequately protect the other CATV operators, also the other TV operators in the area?

Mr. MERRILL. I have seen nothing to indicate the contrary.

Mr. DINGELL. Let us take a community in Michigan. Without mentioning any particular one. Let us take a community of 30,000 along the Detroit River in the district I represent, which has a potential budget deficit this year of about $170,000, which has no previous experience at all in regulating utilities of any type, which has no panel of experts and no panel of persons experienced with either radio or rates.

Are you going to tell us that such a community can adequately regulate and control the entrance of CATV or the rates charged by CATV for the protection of the citizens of the community?

Mr. MERRILL. I would only point out that in about 2,000 towns—more than that, it is close to 2,500 communities in the United States—under almost similar circumstances or almost under identical circumstances, this has been done, Mr. Dingell. I see nothing harmful as a result.

Mr. DINGELL. Are you going to tell me that the city council in this area composed of part-time public servants, are fully able to protect the public interest. Can they protect CATV operators and television stations in the area from the entrance of an excessive number of stations or from the entrance of persons who are not qualified, or who might be perhaps not suited by character, temperament, and business motives, or even by a record of criminal misconduct in business from entering this particular kind of endeavor?

Mr. MERRILL. Mr. Dingell, I don't know of anybody better qualified to do this than the local officials with whom we have to deal when we seek the franchise. They know the area, they know its problems, they know the people better than anyone else.

Mr. DINGELL. I confess I must disagree with you. Let us suppose in this community there are 5,000 television sets and let us operate on the assumption that there is a market in this area for, let us say, 4 television stations. How many CATV sets or how many CATV operators could come into this area?

Mr. MERRILL. How many came in of course would be subject to the decision of the city council or whatever body they establish to make this decision. If there are only 5,000 TV sets and there are 4 TV stations you would have a very unusual set of circumstances.

Mr. DINGELL. This is in a metropolitan area.

Mr. MERRILL. I did not understand the premise then.

Mr. DINGELL. It is part of the metropolitan area, part of the Detroit metropolitan area.

Mr. MERRILL. I imagine the four TV stations have an audience or a net weekly circulation of close to a half million homes. The 5,000 homes in this community that are going to have a CATV system available to them represent a minute part of the coverage of these four TV stations.

Mr. DINGELL. How is that minute part going to regulate the CATV operation in the whole metropolitan area? Remember, this is a city council with no experience and no staff?

They have their own city government and they are proud of their heritage, but how are they going to regulate the CATV operators who are going to enter the area?

Mr. MERRILL. I see no necessity for them to do so outside of their own city. CATV is a local affair.

Mr. DINGELL. What will happen is that the CATV operators will go into the city of Detroit and get a license, franchise, from the city of Detroit and then they will carry this to every community and say here we have a license from the city of Detroit and we wish to serve your community.

The community will be faced by a decision from Detroit and will be presented with a fait accompli. The citizens will not have had a chance to decide whether they wish to participate in CATV or not, city council will vote a franchise for CATV operator and the CATV

operator will enter without any relationship to the community whatsoever simply on the sayso of the city of Detroit. Isn't that the situation?

Mr. MERRILL. I fail to see why the mere fact that the city of Detroit has issued a franchise to a group of people would have any impression whatsoever on the city officials in your town of 5,000 homes.

Mr. DINGELL. This is a community immediately adjacent to Detroit. Now you will concede that none of the communities in my district has a body of experts in the field of rates. Indeed no community in Michigan has a body of experts in the field of telephone or wire communications, and these are representative of communities all across the country are they not?

Mr. MERRILL. I would submit in the great sovereign State of Texas the cities do this for telephone, for power, and all of the control is vested at the city level. So it is not without precedent.

Mr. DINGELL. This is not so however in the State of Michigan.

Mr. MERRILL. I am not aware of that.

Mr. DINGELL. I am sure this is not so in the State of California.

Mr. MERRILL. There is however legislation in California vesting in the city the right to grant franchises to TV.

Mr. DINGELL. What you are doing is you are essentially telling us that you really do not want anything resembling effective regulations in the CATV fiield; am I correct?

Mr. MERRILL. No, sir. I am telling you that we have effective regulation of entry in the CATV field at the municipal level.

Mr. DINGELL. Would you name one instance of effective control of entrance into the CATV field by a municipality?

Mr. MERRILL. Any place that has CATV and let us take Decatur, Ala.; we have already talked about that.

Mr. DINGELL. I did not hear you.

Mr. MERRILL. I don't know that I understood your question.

Mr. DINGELL. I am asking you to cite one effective regulation of the entry in the CATV field by a municipality in the whole country.

Mr. MERRILL. There are many instances; I could cite them by the dozens if you want me to look them up, where request for CATV entry into a municipality has been denied.

Mr. DINGELL. I asked for an instance of effective regulation of entry by a municipality in this country into the CATV field.

Mr. MERRILL. You would have to give me a better criterion of what you mean by effective regulation of entry.

It is difficult to answer the question if you don't understand exactly what the question is. I would think that any city that has granted a CATV license or franchise to an applicant has effectively exercised that portion of the regulation over their operations. That is the entry of the field into the city. This has been done in about 2,500 cities and towns throughout the United States today.

Mr. DINGELL. How many of those 2,500 cities and towns have a panel or body which is charged with the control of CATV; have an appropriate panel of experts which has conducted hearings to afford full opportunity to persons and experts in the area to express their views on the subject?

Mr. MERRILL. They all do.

Mr. DINGELL. They have all?

Mr. MERRILL. Sure, city councils themselves.

Mr. DINGELL. They all have experts in rates?

Mr. MERRILL. They all tell me they are experts?

Mr. DINGELL. They all have experts on wire services of different kinds?

Mr. MERRILL. In my opinion they have all the expertise that is required, sir.

Mr. DINGELL. What you are saying then is that if the city council votes in a license for CATV to a particular entrepreneur, without any counsel, without any advice, without any in-house panel of experts such as you would find in the utilities commission or as you would find in the Federal Communications Commission or other Federal agencies, that by that fact alone they have demonstrated an adequacy of hearing, an adequacy of expertise and adequacy of exercise and regulatory and police power for the protection of their citizens and for the protection of the whole television industry for the country as a whole; am I correct?

Mr. MERRILL. I don't know of any circumstances that fit your premise, Mr. Dingell.

Mr. DINGELL. I am just asking you. Is this an adequacy of regulation?

Mr. MERRILL. I can't answer the question because I have never seen the situation.

Mr. DINGELL. Now you tell me one city council which has a regulatory body as its official body for the control of licensing, telephone, television, or water or gas or electricity or any other type of municipal service? Can you name one?

Mr. MERRILL. Take any major city in Texas.

Mr. DINGELL. Let us take Texas. Outside of Texas can you name one?

Mr. MERRILL. They have, what they consider, groups that do this job adequately wherever it is required.

Mr. DINGELL. Inside Texas?

Mr. MERRILL. No, outside Texas, where it is required.

Mr. DINGELL. Can you name one in Michigan?

Mr. MERRILL. No, I can't name one in Michigan.

Mr. DINGELL. As a matter of fact, in Michigan they have none. As a matter of fact in most of the other States of the Union they have none.

Mr. MERRILL. We have one in the city of Los Angeles I know of. I have dealt with that one. They have one in the city of San Francisco. I have dealt with that one. Then it may be true that they do not have them in Michigan.

Mr. DINGELL. Can you name one municipal regulatory agency in the State of Michigan?

Mr. MERRILL. I don't have any operations in Michigan. All we have done in Michigan is contract work for others. I have not had any opportunity to deal at the municipal level in Michigan.

Mr. DINGELL. You have asserted some expertise to this body in San Francisco, also this body in Los Angeles.

Have you observed the size panel of experts that they happen to have out there in San Francisco and Los Angeles for the handling of these regulatory problems?

Mr. MERRILL. I could not give you an exact number but it is a fairly large department particularly in the city of Los Angeles.

Mr. DINGELL. As a matter of fact, however, the regulatory problems of that State are conducted by the State public service commission and not by the cities, is that right?

Mr. MERRILL. That is true but the city has a regulatory body.

Mr. DINGELL. As a matter of fact, their regulatory body serves the same function as the Wayne County prosecutor's staff reaching the—representing the city on matters involving rate cases rather than handling any regulatory functions itself, am I correct?

Mr. MERRILL. I don't know whether you are correct or not.

Mr. DINGELL. Does the agency in those cities conduct regulatory proceedings in its own name independently?

Mr. MERRILL. Yes.

Mr. DINGELL. On what matters?

Mr. MERRILL. The only matters I have dealt with specifically have been on CATV.

Mr. DINGELL. The only thing this has done is regulate CATV. That is the only thing you know of, is that right?

Mr. MERRILL. To my certain knowledge that is the only thing I know; that is right.

Mr. DINGELL. As a matter of fact, this is the only area where there has been this kind of regulation. Am I correct?

Mr. MERRILL. I do not know, sir.

Mr. DINGELL. That you know of.

Mr. MERRILL. Outside Texas.

Mr. DINGELL. The only reason that they asserted their function in this area is because the State has not chosen to enter into regulations.

Mr. MERRILL. No, I don't know that that is correct. So far as CATV is concerned there have been many other groups effectively in many other places in the United States.

Mr. DINGELL. Where else? You have told me about California. You have not told us that they have had any particular degree of regulatory experience, nor have you indicated they had experience beyond CATV?

Mr. MERRILL. If you would like to have this information we will be happy to compile it for you.

Mr. DINGELL. I think it would be useful to have it.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Merrill, I am sorry I did not get here to hear you when you made your full statement but I have been reading it here. I must say that you have given a very clear statement and certainly state your position well. I did not get to hear the gentleman from Tyler, Tex., yesterday but I am advised that he made the position that we have definite need for both CATV, and that the regulations as issued by the Commission were somewhere near the realm of what we are striving for and he as a CATV operator and the TV broadcaster had no real objection, in effect saying they were reasonably fair.

Are you saying you disagree with that in general?

Mr. MERRILL. I am not saying that we want no regulations. I disagree with that gentleman in saying that the Commission's second

report and order and the rules they promulgate thereunder are fair.

Mr. PICKLE. Then I have misread or not read enough of your statement. I thought you were saying you wanted no regulation.

Mr. MERRILL. No. We support the recommendations made by the NCTA. They have been covered in some detail in other testimony. They are in the record. That is the position we would like to support.

Mr. PICKLE. Do you think you should have the right to originate broadcasts?

Mr. MERRILL. Not necessarily. As I said earlier I am here because I strongly feel that the public has the right to receive any broadcast television signal that it wishes to receive.

I do not want to dilute my defense of that position by going into some constitutional principle I might have about freedom of the press and freedom to disseminate information. Origination is not something which the CATV industry is largely interested in. We engage in none except on an experimental basis. As I said earlier, if this committee after they review all the testimony which has been presented wishes to preclude the CATV operators from origination I would certainly not object to that position.

Mr. PICKLE. Do you say that once a signal is broadcast that anybody can pick it up, there should be no other restriction beyond that point?

Mr. MERRILL. Any member of the public can pick it up for enjoyment in his own home.

Mr. PICKLE. But before the public can pick it up somebody has to be that middleman to build the antennas and make it possible for him to receive it. So they just don't reach up in the air, snap their finger and say, I want to see this; someone makes it possible for him.

You said in your statement that CATV was not in competition at all with the broadcasters. I don't take a side whether there is or is not, but I am amazed you say there is no competition there. How can you say that?

Mr. MERRILL. To compete you both have to want the same thing. We don't seek the same dollar from the community that the broadcaster seeks. We don't seek the same attention from the public. We don't care what channel the TV set in our customer's house is tuned to. As a matter of fact, we don't even care or know whether the set is on, whereas the broadcaster is interested in advertising revenue and in order to get the maximum advertising revenue he has to have exposure.

He is vitally concerned with what channel that set is tuned to. I view those two positions as being noncompetitive.

Mr. PICKLE. Your position generally is that you are willing to have limited jurisdiction.

Mr. MERRILL. Certainly. We have had that position consistently for a number of years. I speak of we as an industry.

Mr. PICKLE. I would add this. With respect to rates the gentleman from Michigan asked the question about the regulatory aspect. I don't know that the FCC tries to regulate rates that the advertiser charges for radio and TV.

I thank the gentleman, Mr. Chairman. That is all.

The CHAIRMAN. Mr. Merrill, we want to thank you very kindly for giving us the benefit of your views.

Mr. MERRILL. Thank you, Mr. Chairman.

The CHAIRMAN. The document entitled "Legal Status of Community Antenna Television Systems Under Federal and State Regulatory Statutes" will be placed in the record at this time.

(The document referred to follows:)

LEGAL STATUS OF COMMUNITY ANTENNA TELEVISION SYSTEMS UNDER FEDERAL AND STATE REGULATORY STATUTES

(By E. Stratford Smith and Robert F. Corazzini, Washington, D.C.)

(November 15, 1965)

SUMMARY OF POSITION

The community antenna industry through its national trade association, the National Community Television Association, and the 20 associated regional and State community antenna associations has uniformly taken the position that community antenna systems are not public utilities under common law concepts. Furthermore, that State public utility statutes cannot constitutionally be applied to convert such systems to public utility status since the controlling economic and legal attributes of the industry are those historically and currently identified with private business enterprises. The industry has also taken the position that community antenna systems are included for regulatory purposes, within the broad field of radio and television, which has been fully occupied by the Federal Government under the commerce clause of the Federal Constitution through enactment of the Communications Act of 1934, as amended.

Under the Communications Act of the Federal Government has preempted the field to the exclusion of any regulation by individual States, other than of an incidental nature which would clearly involve no burden upon interstate commerce. This is not to argue that municipalities may not as a matter of contract with community antennas, for valid consideration such as a grant of permission to use municipal rights-of-way, impose reasonable conditions upon CATV operations not in conflict with Federal policy.

The industry recognizes and has never denied the authority of the U.S. Congress to provide for just and reasonable regulations of community antennas as such systems may affect the public interest in achieving a national television service. The industry has presented appropriate committees of the Congress affirmative recommendations to this end.

The community antenna industry adheres to the position that any regulation of the industry must be purusant to legislative policies established by Congress. Considering that in 1960 the Congress considered and refused to adopt legislation providing for regulation of community antennas, and the fact that the Congress is currently considering specific legislation which would determine basic regulatory policies for the industry, it is clearly the current posture of Congress that: (1) community antennas are free enterprise, private businesses in interstate commerce in the field of television and, (2) that community antennas are subject to such future regulation as the Congress may constitutionally enact, or that which may now be clearly provided for in the Communications Act.

The following summary of the historical background and status of the industry under State and Federal regulatory statutes and judicial rulings elaborates upon this position. This position paper is not intended as an exhaustive analysis of all of the authorities or of the cases cited; however, all significant decisions have been cited and summarized. The conclusions represent, in the opinion of the researchers, the overwhelming weight of legal authority.

HISTORICAL BACKGROUND AND DESCRIPTION OF CATV

The community antenna television industry, popularly known as CATV, is of recent origin, having served the televiewing public for approximately 15 years. Its birth and growth were stimulated by the desire of the public in rural and so-called "fringe" television reception areas to enjoy the advantages of this new and dynamic medium of mass communication. The first community antenna television system in the country is believed to have been one installed on an experimental basis at Astoria, Oreg., in 1949. The first commercial system is

thought to be the one still operating at Lansford, Pa., which celebrated its 15th anniversary in October 1965. From this modest beginning, the industry has grown to in excess of 1,500 commercial antenna companies providing master antenna television reception service to approximately 1,600,000 homes, thus making possible either a first, supplementary, or improved television reception service for more than 5 million people.

The community antenna industry actually does not constitute a large segment of the television economy in that CATV in fact serves only about 3 percent of the television homes in America.

A community antenna television system is a facility utilizing a receiving antenna or antennas, connecting wire, cable, or relay facilities and associated equipment, for the reception by subscribing members of the public of the signals of one or more broadcast stations.

A community antenna is, as the term implies, a master television receiving antenna erected and designed to service a community, or such part thereof as is practical to serve, or as may have a requirement for the service. It is technically and functionally analogous to the master antenna systems installed in apartment houses and hotels to permit service to part or all of the apartments, rooms, or suites by means of a single antenna system. Generally, community antennas are found in areas where, because of the interaction of topographic or geographic or structural conditions, and technological and economic factors, reception of television signals by conventional antennas is either: (1) nonexistent, (2) of unsatisfactory quality, or (3) possible only with the aid of costly, tall and sometimes unsightly rooftop antennas or by means of antennas placed on high elevations or other suitable locations. For example, distance from originating stations, intervening obstacles such as mountains or high buildings, poor ground conductivity or seasonal and other changes in atmospheric conditions can often impair or make impossible good television reception. Where such conditions prevail a master community antenna is erected at a suitable location, usually on a high elevation or the top of a very tall tower erected for that purpose, where reception of the signals of the desired stations is available in sufficient field strength to produce good quality pictures.

A coaxial cable or other type of antenna lead or run extends from the antenna to the area of community to be served [1] where connection is made with coaxial or other wire distribution lines which, in turn, serve the individual subscriber "house drops." The antenna lead and distribution cable facilities are generally supported on electric power or telephone utility poles for which rentals are paid under contract with those companies. In a few cases these facilities are placed underground or on privately owned poles. Easements and rights-of-way to use streets and alleys are generally obtained from the municipal governments. In a limited number of cases these are exclusive rights, but for the most part are not.

Describing the technical function of a community antenna system generally, the signals received from the distant stations, as well as from local stations in many instances, are received at the master antenna and passed through amplifying equipment at that point and at appropriate locations along the antenna run and distribution trunks. This procedure is employed to maintain adequate signal strength for the signals to pass through the system to the television receivers in the home, and to produce acceptable or better pictures on those receivers. It should be noted that signals received via community antennas cannot produce a better quality picture at the home receiver on the subscribers' premises than would be produced on the same receiver if located at the master antenna site. In other words, community antennas do not "rejuvenate" a dissipated or weak video signal as popularly supposed. It does amplify the "carrier" signal in the same manner as is done in all television receivers.

The charges to the subscribers for service from a community antenna will vary among the different systems. It has been usual to require a small initial payment at the time of connection to the system, referred to as a connection or installation charge. In addition, a moderate monthly charge to cover operating expenses including compensation to the operator is collected from the subscribers. Currently, however, many systems require no initial payment. In any event, charges

[1] In exceptional cases where longer distances are involved between the master antenna and the area to be served, a point-to-point microwave television relay service obtained from communications common carriers licensed by the Federal Communications Commission is utilized between the antenna and a specified receiving terminal in the service area. From the receiving terminal of the relay system, the signals enter the cable.

are never related to the programs viewed or available, or to the amount of time the subscriber operates his receiver. The monthly charge is a flat charge applicable whether or not the subscriber's receiver is operated during the month. Services are almost universally furnished pursuant to contract with the individual subscribers cancelable on short notice by either party.

Community antennas are capable of receiving the signals of more than one station simultaneously. As a general rule, antenna sites are selected where the maximum number of nonduplicating and noninterfering television channels can be received in sufficient strength and quality to produce acceptable pictures. The antennas are designed and oriented, when installed, to receive the desired signals and to reject, to the extent possible, the undesired channels. Electrical interference can be caused by the channels on the cable radiating outside of the confines of the cable into the same or adjacent channels which are being received directly off the air. In order to minimize such interference and permit the compatible operation of CATV systems with direct off-the-air reception, the Federal Communications Commission has promulgated specific rules and regulations applicable to community antenna television systems to limit such "incidental radiation." Thus, by order adopted July 11, 1956, the Commission adopted subpart D of part 15 of its Rules and Regulations applicable to "Incidental and Restricted Radiation Devices," entitled "Community Antenna Television Systems."

The master antenna performs essentially the same function as is performed when a homeowner purchases and erects a rooftop antenna which has been designed and manufactured to give optimum reception on the channels he desires to receive and oriented on the rooftop or a tower on his premises so as to receive the desired channels and reject signals of stations which might duplicate or interfere with those he prefers.

Community antenna operators do not alter, delete, or in any manner change the broadcast intelligence on the channels which they receive; nor do they provide for sponsorship of programs received on the community antenna or sell time for commercial announcements as in the case of broadcasters. In no instance does, or can, a CATV system contract to bring particular programs to its subscribers, nor can the subscribers order from the CATV operator the reception of specific programs or channels. The CATV system has no voice whatsoever in the selection of the programs which are broadcast by the stations it receives.

FEDERAL REGULATION

The community antenna television industry is an adjunct to the broad field of television broadcasting. Although community antennas do not originate broadcast programs or alter, change, or delete broadcast intelligence, such operations nevertheless are closely allied with television broadcasting and are a vital adjunct of such service, extending television broadcast reception to "fringe" reception areas. The community antenna has become an important instrumentality, as have more recently the television translator stations authorized under Rules and Regulations of the Federal Communications Commission,[2] for achieving the goal of the Commission of providing a truly nationwide television service by making an only, improved, or supplemental reception available where it otherwise might not be available. As has been previously noted, the Commission has promulgated specific rules and regulations applicable to community antenna television systems establishing certain technical standards in relation to the problem of "incidental radiation."

From even the most cursory examination of the operation of a CATV system, its relationship to broadcasting as an aid in reception cannot reasonably be denied. Certainly the Commission's recent important action concerning community antennas which took place on April 22, 1965,[3] clearly indicates that the FCC considers as very significant that interrelationship between CATV and television broadcasting.

FEDERAL REGULATION OF RADIO AND TELEVISION BROADCASTING

There can be no doubt that the regulation of television broadcasting was, in the contemplation of Congress, embraced within the authority of the Federal

[2] 21 F.R. 3680, 25 F.R. 7317, 1 Pike & Fischer RR 54.141.

[3] In the Matter of Amendment of parts 21, 74 (proposed subpart J), and 91 to adopt rules and regulations relating to the distribution of television broadcast signals by community antenna television systems, and related matters, docket No. 15971, FCC 65-334 (mimeo No. 66173), Apr. 23, 1965.

Communications Commission by the Communications Act of 1934, as amended.[4] In addition to the legislative history and the breadth of the sections defining the act's purpose and scope of application, the comprehensive definition of radio communications in the act and the act's administrative history are conclusive on the question.[5] To understand why Congress would want to invest exclusive jurisdiction over radio and television in the Federal Communications Commission it is helpful to have a knowledge of the basic underlying philosophy of the Radio Act of 1927 and the Communications Act of 1934. That philosophy is a fundamental and extremely important one. The legislative history of the Federal Radio Act and the Communications Act clearly establishes this philosophy, and such was probably best voiced in the final recommendation to the Secretary of Commerce by the Third and Fourth National Radio Conferences in which it was stated that:

"The conference has been impressed with the necessity of placing broadcasting upon such a basis that it may be of continued service at all times of the year and all times of the day, its signals reaching with proper intensity and clarity to all classes of people. We must have at all times a special thought for the owner of small sets and for those whose homes are far from great centers of population. The true mission of broadcasting will not be realized until its service is available to each one of them at all times as it is now available in our larger cities."[6]

Thus, the avowed purpose of this and later legislation was to make available, as far as possible to all the people of the United States, radio and television reception regardless of where the receiver may be located.[7] It was clear to the legislators that such far-reaching objectives could be achieved only through uniform regulation vested in one administrative body. Thus, the concept of an integrated and exclusive Federal policy over radio and television communications evolved. The declared purpose of the Communications Act of 1934, as amended, is to control all channels of interstate radio and television transmission and make available to all the people of the United States a nationwide communications service. Thus, Congress envisioned a policy to promote the "public interest" through the enjoyment of maximum service. Congress certainly did not intend that its exclusive policy be freighted with, or subject to, the "eroding process" of varied and perhaps conflicting provisions of State enactments and policies. Neither the States nor the courts can place obstacles in the path of the accomplishment and execution of the "full purpose and objectives" of Congress.[8] It is interesting to note that the basic concept of CATV is the fulfillment of the above-quoted recommendation of the Third National Radio Conference.

The courts have long ago affirmed that regulation of the field of radio and television lies exclusively with the Federal Government. The U.S. Court of Appeals for the Third Circuit in construing certain sections of the Communications Act has held that the States are precluded from any regulation of television because "the language [of the act] is so all inclusive as to leave no doubt that it was the intention of Congress *to occupy the television broadcasting field in its entirety.*"[9] The court in that case concluded its opinion by stating:

"We think it is clear that Congress has occupied fully the field of television regulation, and that the field is no longer open to the States, Congress possessing the constitutional authority to effect the result."

In another case involving booster stations[10] still another Court of Appeals stated:

"We are satisfied from a reading of the section (47 U.S.C. 301) as a whole that the Congress intended to assert control by the Federal Government of 'all the channels of interstate * * * radio transmission,' and that the sweep of the Commission's authority includes the booster stations here involved."[11]

Therefore it is abundantly clear that since Congress intended to occupy the field of television regulation in its entirety, and since community antennas are

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[4] 47 U.S.C., sec. 151, et seq.
[5] See, e.g., S. Rept. 781, 73d Cong., p. 1 (1934), and see also, secs. 2(a), 3, and 301 of the Communications Act.
[6] Third National Radio Conference, Oct. 6–10, 1924, pp. 13, 14.
[7] See sec. 1 of the Communications Act of 1934.
[8] *Hill* v. *State of Florida, ex. rel. Watson*, 325 U.S. 538 (1945).
[9] *Allen B. DuMont Laboratories, Inc.* v. *Carroll*, 3d Cir. 1950, 184 F. 2d 153, cert. den., 340 U.S. 490, emphasis supplied.
[10] *C.J. Community Services, Inc.* v. *Federal Communications Commission*, D.C. Cir. 1957, 246 F. 2d 660.
[11] Id. at p. 663.

an adjunct in aid of television reception within the television broadcasting field, that State regulation of community antennas has been precluded by the Communications Act.

The fact that the Congress, although it has studied the matter at length, has not legislated, specifically with respect to community antennas and that the Federal Communications Commission has ruled that it has no jurisdiction over community antennas as "common carriers" under title II of the Communications Act of 1934, as amended, and that it cannot regulate community antennas as broadcasting stations under title III of the act [12] does not mean that the States have not been excluded from the exercise of general regulatory authority in the field. As more fully discussed in the following subsection, the authorities are clear that Congress has fully occupied the field of radio and television and that if Congress has not provided for regulation there can be none. Notwithstanding the fact that the States are excluded from regulating CATV because of Federal occupation of the field, it is not contended here that municipal or State authorities may not impose reasonable use or permit taxes on CATV, and reasonable conditions governing the use of streets and alleys, etc.

As a matter of fact, it may be realistically expected that the Federal Communications Commission will exercise general regulatory jurisdiction over community antennas in the near future. Representative Oren Harris, chairman of the House Commerce Committee, on April 28, 1965, introduced a bill before the House of Representatives which would authorize the Federal Communications Commission to regulate community antenna television systems.[13] Hearings were later held before a Subcommittee on Communications. Further, the FCC on April 22, 1965, released a notice of inquiry and notice of proposed rulemaking to adopt rules and regulations relative to community antenna television systems.

STATE REGULATION

Joint Federal and State regulation in this field is not permissible. This is one of the fields in which Congress has decided that any State regulation would be an obstacle to the full accomplishment and execution of the national legislative policy and is, therefore, not permitted. *Hill* v. *State of Florida, ex rel. Watson*, (1945), 325 U.S. 538; reh. den., 326 U.S. 804; *Hines* v. *Davidowitz*, (1941), 312 U.S. 52. Additionally, the *DuMont* case supra, makes it clear that even when the Congress has not acted to authorize regulation, in the absence of a specified reservation to the States the States may not make regulations affecting television.

In an application of this principle to community antennas, the Wisconsin Public Service Commission has held that it lacks jurisdiction to consider an application for authority to erect a community antenna to receive television signals for the reason that "Congress has so completely occupied the field of television regulation as to preclude any parallel State regulation." *In re Edwin Francis Bennett*, CCH State Utilities Reporter, paragraph 16, 168, 7 RR Pike & Fischer 2054. The Wisconsin Commission cited *Allen B. DuMont Laboratories, Inc.*, v. *Carroll*, as authority for its ruling.

Additionally, even though community antennas are located solely within the confines of a State they are by the nature of their activity in interstate commerce for the purpose of inclusion in the broad field of radio and television. In its report and order in docket No. 12443, supra, the Federal Communications Commission has held that community antennas are engaged in interstate commerce, since regardless of where the station's transmitter is located, the signal often originates, via network, in New York or elsewhere. The Commission has reaffirmed this position in its recent notice of inquiry and notice of proposed rulemaking of April 22, 1965, referred to previously. Likewise, the District Court for the First Judicial District for the State of Wyoming has held that the Public Service Commission of Wyoming did not have jurisdiction over a community antenna operation because, "* * * by reason of their operations [community antenna systems] are (1) not public utilities and (2) are engaged in interstate commerce." *Community Television Systems of Wyoming*, 17 Pike & Fischer, RR 2135, Wyoming District Court.

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[12] Report and order of Federal Communications Commission in docket No. 12443, p. 7.
[13] H.R. 7715.

CURRENT CONTROVERSY—IS CATV A PUBLIC UTILITY?

Notwithstanding all of the broad constitutional questions which have been heretofore discussed, the interest of the State legislatures and courts regarding community antennas has been focused almost exclusively on the public utility issue. This issue has taken numerous forms within the States. Are community antennas public utilities? Does the State public utility commission have jurisdiction over community antennas? Can a State legislature constitutionally declare CATV's to be public utilities? However put, all of these issues must be answered in the negative because of one basic fact concerning CATV. Community antenna television systems do not have the essential jurisdictional elements of public utilities. Community antenna television systems do not provide a public utility type service and State legislatures are precluded by the due-process clauses of the Federal and State Constitutions from regulating such systems as public utilities.

It would seem axiomatic that a State legislature should not enact legislation classifying a community antenna as a public utility unless the community antenna can be properly and legally so classified. Before discussing constitutional limitations which are a complete prohibition against the classifying and regulation of CATV systems as public utiilties, some of the obvious reasons why a community antenna system is not a public utility should be considered.

The criterion for determining whether or not a business or property is a public utility has variously been stated in the following language:

(*a*) Whether it is, or has been, devoted to a "public use of its service."

(*b*) Whether the public has a legal right to the use of its facilities, or

(*c*) Whether the public has a legal right to the use, "which cannot be gainsaid, or denied, or withdrawn, at the pleasure of the owner." [14]

It would seem clear that a community antenna system is a private business and not a public utility under any of the above-mentioned tests. Certainly it cannot be seriously contended that a multiple unit master antenna system for an apartment building, hotel, or hospital, for which service charges are made, is a public utility whether such a system is for the purpose of providing television reception of a superior quality, or improving the appearance of the property, or because of a desire to reduce installation cost and servicing problems. Following the same reasoning, a community antenna system, which is simply an enlargement or adaptation of the same type system to deliver signals to residents in an area or community, cannot be said to be a public utility.

From a general point of view it is clear that the reception service rendered by a community antenna system is incidental to television broadcast service and is not in any way a "necessity" type service. A community antenna system can render no greater service so far as the public convenience, interest and necessity is concerned than the television station or stations whose signals are received. A television station is not a public utility as has been clearly established by section 3(h) of the Communications Act of 1934, as amended, and by various court decisions.[15] Radio broadcasting and television broadcasting have always been regulated as free enterprises and not as public utilities. The U.S. Supreme Court in the case of *Commission* v. *Sanders Brothers Radio Station* [16] recognized the distinction between the field of broadcasting and that of public utilities in saying:

"In contradistinction to communications by telephone and telegraph, which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulation of rail and other carriers by the Interstate Commerce Commission, the act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus, the act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted."

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[14] Illustrative cases where these criteria have been used are cited in pp. 18–21 of this memorandum.

[15] See e.g., *Sanders Brothers Radio Station* v. *Federal Communications Commission*, 1939, 70 App. D.C. 297, 106 F. 2d 321 reversed on other grounds, 309 U.S. 470.

[16] 309 U.S. 470.

Merely because an industry is regulated to an extent by the Federal Government such as the television industry is, does not mean that such industry is a public utility. Quite to the contrary, the Supreme Court recognized this when it held:

"While the television industry is also a regulated industry, it is regulated in a very different way. That difference is controlling. Radio broadcasters, including television broadcasters * * * are not included in a definition of common carriers in section 3 of the Communications Act, 47 U.S.C. 153(h) as are telephone and telegraph companies. Thus, the extensive controls, including rate regulation, of title II of the Communications Act, 47 U.S.C. 201–222, do not apply. Television broadcasters remain free to set their own advertising rates." [17]

It is well recognized that the services of the television broadcast stations and of facilities incidental to broadcasting, which would logically also extend to reception, are not essential services in the sense in which railroad, waterworks, gasworks and telephone and telegraph systems provide essential public utility services. This distinction, as well as the fact that the right of the public to the use and enjoyment of the facilities of a privately owned radio or television station is of a much more limited character, was clearly enunciated by the U.S. Court of Appeals for the District of Columbia in *Pulitzer Publishing Company* v. *Federal Communications Commission* (1937), 94 F. 2d 249, 251, where it was said:

"But we have never said that a radio broadcasting station is a public utility in a sense which a railroad is a public utility. Generally speaking the term comprehends any facility employed in rendering quasi public services, such as waterworks, gasworks, railroads, telephones, telegraph, etc. The use and enjoyment of such facilities the public has the legal right to demand, but its right to the use and enjoyment of the facilities of a privately owned radio station is of a much more limited character."

The Federal Communications Commission has no more than one occasion rejected arguments to the effect that CATV systems are common carriers or public utilities. The Commission's decisions were that CATV operations did not constitute a common carrier endeavor within the meaning of the Communications Act, and that consequently the Commission was without title II jurisdiction over the CATV systems.[18]

The distinction between the services of broadcast stations and those of "public utilities" was recognized as equally valid by the Supreme Court of California as between the services of community antennas compared to those of "public utilities." In holding that a community antenna was not a telephone corporation or any other type of public utility (including "common carrier") under the public utilities code of that State,[19] the court recognized that while television and telephony have some common aspects, they are essentially different. The court went on to say that:

"Furthermore, the service by television as well as radio is more akin to that of music halls, theaters, and newspapers than it is to that of either telephone or telegraph corporations."

Thus, broadcast stations, theaters, and newspaper serve the public, which has an important interest in their continued operation; however, they are not public utilities in the legal sense.[20] Community antenna systems benefit and accommodate the public and enable the public to enjoy the entertainment and educational services of television stations but they do not provide so-called essential services. Community antennas do provide a service to the public but as in the cases of the other services mentioned above this fact does not con-

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[17] *United States* v. *Radio Corporation of America and National Broadcasting Company, Inc.*, 1959, 358 U.S. 334.

[18] *WSTV, Inc.* v. *Fortnightly Corporation*, 23 Pike & Fischer RR 184 (1962); Frontier Broadcasting Company, 24 FCC 251, 16 Pike & Fischer RR 1005; see also the report and order of the Federal Communications Commission in docket No. 12443, 18 Pike & Fischer RR 1573. This issue has recently again been raised in the pending case of *Philadelphia Television Broadcasting Co., et al.* v. *Federal Communications Commission, et al.*, case No. 19,577, U.S. App. D.C.

[19] *Television Transmission, Inc.* v. *Public Utilities Commission of State of California*, 1956, 301 P. 2d 862.

[20] For authority that a theater is not a public utility, see *Tyson & Bros. United Theaters Ticket Offices, Inc.* v. *Banton*, 1927, 273 U.S. 418; that a newspaper is not a public utility, *In re Louis Wohl, Inc.*, D.C., Mich., 1939, 50 F. 2d 254; *Chronical & Gazette Publ. Co.* v. *Attorney General*, 94 N.H. 148, 48 A. 2d 478.

stitute the community antenna a "public utility." A business is not affected with a "public interest" merely because the public derives benefit, accommodation, ease, or enjoyment from the existence or operation of the business. *Tyson & Bros. United Theater Ticket Offices, Inc.* v. *Banton*, supra.

Since a television station can discontinue service at will merely by notifying the Commission and surrending its licenses, the Community antenna system must logically be in the same position. The accommodation to the "public interest" in community antenna operation can be no greater than that inherent in television station operation. In other words a community antenna is not the type of business which has dedicated its property to the public service in such a manner that it cannot be withdrawn at will. It is a private business and the Federal Communications Commission has so ruled in stating, "Community antenna systems are private business activities that may be varied or discontinued at will * * *."[21]

One of the main reasons for the consistent position taken by the Commission and the courts that community antennas are not public utilities is due to the recognition of the type of service that the antennas afford. The late Chief Justice John J. Parker, of the U.S. Circuit Court for the Fourth Circuit, in *Lilly* v. *United States*, 238 F. 2d 584, in holding that certain excise taxes imposed on "wire and equipment" services by the Internal Revenue Code were not applicable to community antennas, said that, "A community antenna system merely furnished an attachment to a TV receiving set which enables a set disadvantageously located to operate like an ordinary set * * *." In other words, it is merely an adjunct of a television receiver. A similar conclusion was reached by the U.S. Court of Appeals for the Third Circuit in the decision rendered in the case of *Pahoulis* v. *United States* (1957), 242 F. 2d 345, where it stated that:

"The service [of a community antenna system] is supplied as an aid in reception only. The wire and equipment have nothing to do with the origin or the electronic signal which occurs at a television station many miles away and wholly separate from the service supplied by the community antenna company."

Likewise, the California Supreme Court in the *Television Transmission* case supra, recognized that the sole function of community antenna was "simply to enable subscribers to receive television broadcasts that might otherwise be inaccessible to them."

Thus, a community antenna system is not any more devoted to the public use or service than is any other television equipment manufactured or distributed for use to the general public. It would be just as logical to regulate the distributor of conventional antennas as to regulate a community antenna system as a public utility; or, for that matter, the renting of television sets might just as reasonably be declared to be a public utility service.

Even if there were common characteristics in which a community antenna system is similar to a particular public utility, this fact alone would not make a system a public utility because it has not dedicated its property to the public use. In addition to the foregoing indication that a community antenna system is not a public-utility-type business, the industry has characteristics of high competition and risk which make it totally unlike a public utility. Actually there is no degree of certainty as to the future of the community antenna business by reason of the changes and improvements in broadcasting techniques which are being developed daily. UHF and VHF translater broadcast services and TV satellite stations[22] provide an effective form of competition to community antennas and have as their basic purpose the provision of extended coverage for regularly authorized television broadcast stations. Very often, of course, a community antenna system is in "competition" with the conventional home antenna. There are many cases where local television stations have been placed in operation subsequent to the establishment of the community antenna system in the same community. Also, it is common to install such systems in areas which also enjoy reception of one or more stations without the aid of a community antenna. While public utilities are not necessarily entitled to

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[21] *In re application of Ohio Valley Broadcasting Corporation*, 1954, 10 Pike & Fischer RR 969, reversed on other grounds; *Clarksburg Publishing Co.* v. *Federal Communications Commission*, D.C. Cir. 225 F. 2d 511.

[22] Such stations are not to be confused with earth-orbiting communication satellites. Reference here is made to television stations operating in small towns which have no studio facilities or network connection and rebroadcast all of the programs of a "mother" station located in a larger city and under common ownership with the satellite.

freedom from competition in exchange for the public exercising control over their properties, they must be reasonably protected from unlimited competition.[23] No State legislature can give to community antenna systems the traditional protections to which a public utility must necessarily be entiled. Due to the Federal Government preemption of the field the States are completely without authority over the competing methods of extending television reception to rural areas.

Finally, although certainly by no means of any lesser importance is the constitutional limitation which precludes the States from imposing public utility regulation or status upon community antenna systems. As has been said, a community antenna system is a private business lacking the essential jurisdictional features of a public utility. Under the due process clauses of the Constitution of the United States and of the several States, private property may not be converted into a public utility by legislative or administrative fiat. Thus, even assuming that a community antenna system technically comes within the general meaning of a definition of "public utility" in a State public utility code, as a private enterprise it may not be transformed into a public utility without just compensation being paid to its owners. This proposition has been held to be "not open to doubt" and is universally accepted. *Frost* v. *Railroad Commisison of State of California*, 1926, 271 U.S. 583; *Michigan Public Utilities Commisison* v. *Duke*, 1925, 266 U.S. 570; *Producers Transportation Company* v. *Railroad Commission of the State of California*, 1920, 251 U.S. 228; *State ex rel. Public Utilities Commission of Utah* v. *Nelson*, 65 Utah 457, 238, P. 237; *Allen* v. *State R. Commission*, 1918, 179 Cal. 68, 175 P. 466; *Chippewa Power Co.* v. *Railroad Commission*, 1925, 188 Wis. 246, 205 N.W. 900; *Inland Empire Rural Electrification* v. *Department of Public Service of Washington*, 1939, 199, Wash. 527, 92 P. 2d 258; *Humbird Lumber Co.* v. *Public Utilities Commission of the State of Idaho*, 1924, 39 Idaho 505, 228 P. 271.

These then are the incontrovertible legal arguments. It seems clear as a matter of law that community antenna systems are not and cannot be made public utilities. However, as previously stated this issue is not merely an academic one but is one which has been very much alive within these States since the inception of community antenna service. The question then becomes, has the outcome in the courts and commissions been consistent with the principles of law heretofore discussed. The answer is most definitely yes. Of the commissions and courts which have dealt with this problem the overwhelming majority have agreed for some or all of the reasons stated, that the community antenna industry is not a public utility.

In a significant and far-reaching decision the Federal Communications Commission has ruled that community antennas are not "common carriers." *Frontier Broadcasting Company, et al.* v. *Laramie Community TV Company, et al.*, 1958, 16 Pike & Fischer RR 1005.[24] Among the States, the Supreme Court of California in the case of *Television Transmission, Inc.* v. *Public Utilities Commission of California*, supra has held that the Public Utilities Commission of California under the constitution and Public Utilities Code of that State does not have jurisdiction over community antenna systems since the latter do not come within the definition of public utility in that code which definition included common carriers. The court specifically held that CATV was not a telephone corporation.

In a case captioned *In the Matter of: Community Television Systems of Wyoming, Inc.*, (17 Pike & Fischer RR 2135, Wyoming District Court), the District Court for the First Judicial District of Wyoming on appeal from a decision of the Public Service Commission of Wyoming reversed the commisson and held that community antennas, (1) are not public utilities, and (2) are engaged in interstate commerce. The significant aspect of this decision is that the court was interpreting a statute which included within the term "public utility" any "plant, property, or facility for the transmission of intelligence by electricity."[25] This was clearly recognition that notwithstanding broad, general language in the statute defining the term public utility, a community antenna lacked the basic

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[23] *Brady Transfer and Storage Co.* v. *United States*, D.C., Iowa, 80 F. Supp. 110, aff'd 335 U.S. 875; *Chicago Ry. Co.* v. *Commerce Commission*, 336 Ill. 51, 167 N.E. 840.

[24] See also *WSTV, Inc.* v. *Fortnightly Corporation*, 23 Pike & Fischer RR 184 (1962) and *Report and Order*, Docket No. 12443, 26 FCC 403, 427–28; this issue is now before a court in the pending case of *Philadelphia Television Broadcasting Co., et al.* v. *Federal Communications Commission, et al.*, case No. 19,577, U.S. App. D.C.

[25] Sec. 64–101, Wyoming Compiled Statutes 1945.

jurisdictional characteristics of a public utility, and for this reason could not be so considered.

The Public Service Commission of Utah on December 18, 1956, in a case captioned, *Vetere Perfect TV, Inc.* (Case No. 4172), 14 Pike & Fischer FF 2064, dismissed an application for a certificate of public convenience and necessity filed by Vetere for authority to operate a community antenna in the State of Utah as a public utility. This action was based on an opinion (No. 56–129, 14 RR 2063) of the attorney general of Utah issued on November 8, 1956, that community antennas are not "subject to control by the public service commission as a public utility."

Attorneys general in several other States have also been called upon to render opinions as to the status of community antenna television systems under the public utilities code of their respective States. The attorney general of the State of Arizona in an opinion (No. 55–206, 12 Pike & Fischer RR 2094) issued October 18, 1955, interpreting article 15, section 2, of the Arizona constitution, ruled that a community antenna is not a "public service corporation" within the contemplation of that constitutional provision which referred to companies engaged in transmitting messages, etc. An opinion of the attorney general of the State of New Mexico (No. 5942, 10 Pike & Fischer RR 2058) issued April 19, 1954, holds that a community antenna need not secure a certificate of public convenience and necessity from the State. An opinion of the attorney general of Colorado has been cited which follows the view that the States cannot enact legislation pertaining to CATV systems because television regulation has been preempted by the Federal Government.[26]

Another holding of particular significance is that of the attorney general for the State of Washington (AGO–53–55, No. 346, 14 Pike & Fischer RR 2059) issued November 22, 1954, that the Washington Public Service Commission does not have jurisdiction over community antennas under the public service laws of that State. Another similar attorney general's opinion and one of the most recent was that of the attorney general of the State of Kentucky (1964). The local commissions in Ohio, Pennsylvania, and Wisconsin themselves initially held that they lacked regulatory jurisdiction over community antennas,[27] although the Pennsylvania commission has recently voted to reexamine the question.[28] To date only the Public Service Commission of Nevada and the Connecticut Legislature have ruled differently, however both such rulings are as yet untested in the courts. Additionally, the commission and court in New York have recognized the non-public-utility nature of the CATV operation.[29] Finally, the most recent case is a decision by the Public Utilities Commission of Maine issued September 10, 1965, wherein it was acknowledged that a community antenna system was not a public utility. The Maine commission stated:

"CATV operators, who may utilize this service, are not public utilities, and, therefore, their practices are not subject to the jurisdiction of this commission." [30]

CONCLUSION

History has shown that the community antenna industry is a unique American business success story. It has been of enormous benefit to the televiewing public in the United States and yet could only have come into being in a democratic free enterprise society such as ours. It was born out of the desire by millions of nonurban people in this country to be afforded the benefits of this great new medium that were then available in quantity and quality only to metropolitan area dwellers. It was nurtured through the courage and foresight of that vanish-

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[26] The Colorado opinion is mentioned in the opinion of the Wyoming Public Service Commission, *In the Matter of Cokeville Radio & Electric Company*, 6 PUR 3d 129, CCH State Utilities Reporter, par. 16746.

[27] *Seneca Radio Corp.*, 57 PUR 3d 67 (Ohio Public Utility Commission); *Jurisdiction and power to regulate television cable service*, 2 Pike & Fischer RR 2d 2036 (Pennsylvania Public Utilities Commission 1964); *In Re Application of Edwin Francis Bennett*, 89 PUR (N.S.) 149 (Wisconsin Public Service Commission, 1951).

[28] Pennsylvania Public Utilities Commission order dated Apr. 5, 1965, vacating 1964 order and reopening investigation.

[29] *Re New York Telephone Co.*, 34 PUR 3d 115 (1960), N.Y. Public Service Commission, case No. 19906 and *Ceracche Television Corp.* v. *New York Public Service Commission*, 36 PUR 3d 278 (1960).

[30] Re: Rates and regulations of television transmission service (CATV), F.C. No. 1721—Reopened, State of Maine, Public Utilities Commission, Sept. 10, 1965.

ing breed, the small independent businessman. Though great financial risks were involved due to the uncertainty of this new type endeavor, the business became a success and was developed to its maturity primarily through technological ingenuity and quality of performance generated by free competition. Now that the community antenna business is a going concern the individual proprietors are justly fighting for the independence of their industry and against what they consider to be the unjust and unwarranted intrusion into their business by the States—in the latter's attempt to declare CATV a public utility. On one point all agree—the community antenna industry has been of great benefit to the American public.

Aside from their own moral convictions that they are not a public utility business, the community antenna system operators have the great weight of legal authority in support of their position. This is a field of interstate commerce which has been completely occupied by the Federal Government thereby precluding the States from enacting regulation. But even if the States were not so precluded, community antennas do not provide a public utility type service and State legislatures are prohibited by the due process clauses of the Federal and State constitutions from regulating such systems as public utilities. The community antenna television industry has been and will continue to be of the greatest benefit to the American public as an independent enterprise.

The CHAIRMAN. Our next witness this morning will be Mr. Benjamin J. Conroy, Jr., chairman of the National Community Television Association, Washington, D.C.

Mr. Conroy, you may either present your statement for inclusion in the record and summarize it or read it in its entirety, whatever you desire.

STATEMENT OF BENJAMIN J. CONROY, JR., CHAIRMAN, NATIONAL COMMUNITY TELEVISION ASSOCIATION

Mr. CONROY. The nature of the material I have will require me to go on through it, sir.

The CHAIRMAN. Go right ahead, sir.

Mr. SPRINGER. Mr. Conroy, would it be possible for you to add anything to what has already been gone into? Mr. Ford has covered this. I am very much interested in this. I would like to have any new information. I have glanced through your statement here, trying to find out some points, some new views or additional views on this thing.

It would be extremely helpful if you could enlighten the committee either in plainer terms or on new things, it would be helpful to this committee if you could do that.

I don't know that it can be done.

Mr. CONROY. The purpose of my testimony is to cover some matters which were touched on only slightly by Mr. Ford, but which have been covered in detail by witnesses since Mr. Ford appeared.

Mr. Springer, there might be a point of contention. You may have an earlier version of the statement which was prepared for the last session of hearings. I have a newer statement here this morning.

Mr. SPRINGER. I see.

I have the 13 page statement.

Mr. CONROY. I believe you have the correct one, sir.

I am fully cognizant of the time problem we have here. But there are two areas which we feel deserve some exposure here.

The CHAIRMAN. You may proceed.

Mr. CONROY. Mr. Chairman, members of the committee, my name is Benjamin J. Conroy, Jr. I am the chairman of the board of the

National Community Television Association. Accompanying me are the general counsel of the association, Robert D. L'Heureux, and E. Stratford Smith, special counsel to the association.

I am personally the operator of small community antenna systems at Uvalde, Tex., and Effingham, Ill., and have permits to operate in other communities in Texas. At the outset, I would state that the board of directors of the Association fully supports the testimony of our president, Frederick W. Ford, in which he stressed our agreement on certain legislative principles which have since been set forth in H.R. 14201, introduced by Representative Mackay.

My statement will be supplementary to that of Mr. Ford and will stress certain matters which have been emphasized by witnesses before the committee testifying after Mr. Ford.

The chairman of the FCC has indicated to this committee his belief that community antenna systems have many of the attributes of public utilities. He explained subsection (c) of section 331 of H.R. 13286 as being intended to make it clear that nothing in the Communications Act or his proposed amendments are intended to preclude State or local agencies from regulating public utility aspects of community antenna systems, except to the extent that such State legislation or regulations directly conflict with the Communications Act or regulations adopted pursuant thereto.

Thus, the Commission and the Chairman would appear to be asking Congress to provide for a dual system of regulations which contemplates action by the FCC of the nonutility aspects of community antenna operation and concurrent regulation by up to 50 individual State public service commissions as to the utility aspects.

I consider it extremely unfortunate that the Chairman of the Commission, which has the responsibility for regulating the largest public utility in the world, the American Telephone & Telegraph Co., has expressed the view that community antennas are public utilities, without inviting attention to the fact that the vast weight of legal authority on the subject is to the contrary.

Mr. PICKLE. Mr. Chairman, I may have missed something. Are you reading from a prepared script, or are you summarizing?

Mr. CONROY. I am reading from the prepared script, Mr. Pickle.

Mr. PICKLE. I have the right one now. Go ahead.

Mr. CONROY. Several State courts and public utility commissions have ruled that community antennas are not public utilities under the laws of those States. Attorney generals of several additional States have also uniformly ruled that community antenna systems are not public utilities. In addition, a number of State legislatures and State legislative committees have refused to approve legislation which would define community antennas as public utilities. Only one State has passed legislation defining CATV as a utility. This State, Connecticut, has as yet no CATV system, and the legislation has not yet been tested in court. Nevada is the only other State which asserts that it has authority to regulate CATV. The statute under which it would purport to exercise this authoriy is, I am told, almost identical to the Wyoming Public Utility Code, which a Wyoming court has held does not give the commission control over CATV.

In our opinion, concurrent jurisdiction in the States and the Federal Communications Commission would seriously impair the Com-

mission's ability to promote the public interest in community antenna service. The Commission asked this committee for an extraordinarily broad grant of authority to adopt any rules or regulations necessary to carry out the purposes of the act, with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services. Obviously, such an open-ended grant of authority contemplates regulation by the Commission of the services furnished by the community antenna systems. Public utility regulation likewise contemplates regulation of the services as well as the rates of community antenna systems.

Since the jurisdictional line between regulation by the FCC and by the State public service commissions under section 331(c) as proposed by the Commission would be the line of direct conflict between the legislation and the regulations of the Commission as against those of the States, what the Commission is saying is that it is willing for the States to do anything that the Commission does not do. Implicit in this situation is the capacity of the FCC to enlarge or decrease the permissible areas of State regulation simply by increasing or decreasing the areas in which it chooses to regulate under the broad grant of authority which it requests. Such a situation can create nothing but chaos in the community antenna field, leaving neither the States, the community antenna system owners, nor the public with any realistic knowledge as to what are their rights and privileges at any given moment.

The Chairman seeks to justify this hydraheaded regulatory melange by drawing an analogy between joint Federal-State regulation of the community antennas with joint State and Federal regulation of telephone service by the FCC and the States. He points out that the States regulate intrastate or local telephone service and that the Commission regulates interstate service. There is, however, an essential difference between telephone service and community antenna service, in that the telephone service can reasonably be divided between what is essentially local service and what is national and interstate service; whereas, community antennas are not engaged in providing local services and national services which can logically be subdivided for the purposes of regulation.

I might interject a note here that we made a survey in the association. During the 15 years during which our industry has been in existence we found that the general level of rates has risen about 4 percent. This is 4 percent in 15 years. Under regulation by the States as public utilities, telephone rates—and the telephone business is a regulated industry—have gone up by an average of 35 to 45 percent during the same period.

Mr. Moss. Would the gentleman yield at that point? Is that a valid comparison?

Mr. Conroy. The comparison, sir, was made to question the need of rate regulation of community antenna systems.

Mr. Moss. Is it valid in that sense?

Mr. Conroy. I believe it is, yes.

Mr. Moss. How can it be? The initial rate of the telephone charge was established under criteria clearly set forth over many years of regulatory practice, permitting certain considerations to go into the

rate base. So, at all times it was a valid rate, reflecting return on investment and many other things. Now the rate you start with never was subjected to that evaluation. It could be very excessive to the needs of the operator for capital to continue to operate. It could reflect a very high rate of return on total investment, contrary to the telephone rate.

Now in each step-up the telephone company had to go before a regulatory commission and it had to prove the validity of the increase and it had to relate this to certain fixed factors utilized in regulation of the rates of a utility.

Under those conditions, how can you compare? If the gentleman in the striped tie would prefer to answer, I would be very happy to have him speak. It seems to me the gentleman has made the statement and should be able to answer it without assistance. If this is a teamplay, I would like to have the rest of the members introduced so that we can have the benefit of who they are.

Mr. CONROY. I did introduce them at the beginning of my statement, sir. This is Mr. L'Heureux, who is the general counsel of the association. This is Mr. Smith, who is the special counsel.

Mr. Moss. Is this your statement, or is this a team statement?

Mr. CONROY. This is my statement, sir.

Mr. Moss. I would just like to have your opinion. Mr. L'Heureux's opinion, I might seek later.

The CHAIRMAN. I think he has the right to consult with his counsel, Mr. Moss.

Mr. Moss. Mr. Chairman, first let me say, to get to the matter of right, that is governed by the rules of the House. I would not deny him counsel, whether or not he has the right. But I would leave the question of right hanging fire at the moment, because that we can discuss later. If he is not able to answer a statement reflecting upon an opinion expressed by him without counsel, that is why I——

Mr. CONROY. I would like to answer. In many city councils there are comparative hearings held, particularly where there are multiple applicants, based on the type of service to be proposed; whether or not microwave is used, whether or not you are happy to set your own poles. In many respects, it does depend upon what you are investing and the return you expect to make.

Mr. Moss. The overall rate is not set on the standards imposed upon utilities.

Mr. CONROY. Neither should it be, sir, because they are not a utility.

Mr. Moss. I am not debating that. You used a comparison and cited certain statistics as a basis for a conclusion. I challenge the validity of those. I don't think in your response you have again dealt with the point I raised, but are rather going around it.

I will defer, until after his statement, any further examination.

The CHAIRMAN. You may proceed.

Mr. CONROY. Also, both the Federal Communications Commission and the State commissions regulate the telephone industry as common carriers of communications or as public utilities and, thus, reasonably comparable regulatory principles are applied by both, within their respective areas. However, the chairman proposes two theoretically distinct types of regulation for community antennas; that is, non-

utility at the Federal level and utility at the State level. Practically, however, the services and facilities are identical and there is no logical line of demarcation between the two forms of regulation. Such a pattern of regulation will result in nothing but conflicting regulatory policies and objectives.

I would like to comment with regard to certain other remarks of the chairman concerning the utility aspects of community antennas. He has indicated that a community antenna system is a monopoly but that a broadcaster is not. Without question, the broadcaster has a monopoly of the use of a channel assigned to him by the Government and there is such a limited number of television channels available in terms of the public need and desire for television broadcast service that the broadcaster or his channel has a very effective monopoly. The community antenna does not have an exclusive franchise. As a practical matter, he is in some communities confronted with competition from other systems. In the future, he may also be confronted with competing community antenna systems installed by the telephone company under tariffs which are now effective in a large number of States. Any person wishing to operate a community antenna system in any city, served by these telephone companies, is entitled by law to have the telephone company construct a complete community antenna system on the telephone company's poles, whether or not they are occupied by a privately owned community antenna system. All such a person requires legally is authorization from the municipality to operate a community antenna, and some telephone companies are contending that even this authorization is not required.

It seems somewhat inconsistent to me for the Commission in the second report and order to take the position that community antennas compete with television broadcast stations and at the same time for the Chairman to contend, as he did before this committee, that community antennas are monopolies. Community antennas not only do not have the essential characteristics of a monopoly in the sense that they are subject to competition from other community antennas, but, in addition, if we accept the Commission's definition of competition, community antennas has no monopoly because they must compete with off-the-air television reception. Thus, there are almost always alternate means for the public to obtain television, such as from satellite stations and translator stations, as well as from the regularly authorized television stations. This points up one of the basic reasons why a community antenna does not have the characteristics of a public utility, and why public utility regulation by the States would be destructive to CATV.

One of the basic attributes of public utility status is the right of the utility to be protected against unreasonable competition in order that the utility may have a reasonable opportunity to earn a fair rate of return upon its invested capital. The public utility is required to give up a substantial element of control over the economic operation of its business in exchange for this privileged status. Yet, if a community antenna is a competitor of television broadcast stations, satellites, translator stations and boosters, no State public service commission has the authority or power to give one iota of protection to a community antenna against the licensing of satellite stations, translator sta-

tions or regular television broadcast stations. Community antennas as private businesses do not ask for such protection.

The Chairman said that community antennas are a necessity type service which is a characteristic of a public utility. To support this broad assertion, he referred to the thousands of letters to Congress and the Commission which have been written by persons who believe that the Commission will deprive them of part of their service.

If this were the test of public necessity, almost any popular service enjoyed by the public which the public stood to lose would be a public utility. The members of this committee can imagine the volume of mail Congress would receive if the National Football League decided to remove all of its televised games from so-called free television, and place it on subscription television that the Commission is now considering authorizing. I doubt, however, that the Chairman would classify professional football teams as public utilities because of public complaints over the imminent loss of football over free television.

Popularity is not the test of necessity. A business enterprise becomes a public utility, the courts have said, when the property used in furnishing service has become so impressed with the public use that it cannot be withdrawn from public service at the will of the owner.

I submit that it cannot reasonably be contended that the property used in furnishing community antenna service has become so impressed with the public use that it cannot be withdrawn from service at the will of the owner if, in fact, the property used in furnishing television broadcast service, upon whose very existence the community antenna depends, is not so impressed with the public use. A television broadcast station may discontinue service at will, simply by notifying the Commission that it intends to do so and by surrendering its license. It is difficult to see how the public need for community antennas can be any greater than the public need or necessity for television stations, which the Chairman and the courts have said are not public utilities.

Finally, I submit that if there is any need for governmental regulation of any phase of television reception, that regulation should be solely in the hands of a single agency vested with the necessary authority to provide for and enforce a uniform national policy. We do not believe that there is any need for public utility type regulation of community antennas. We are not aware that this committee or the Commission has received significant complaints about the rates and charges of such systems.

One will search the Chairman's statement in vain for any actual information tending to show a need for public utility regulation of the industry; and I venture to submit that the Commission in fact, has no information of probative value which would justify it in openly soliciting such regulation of this industry by the States. The FCC has not, to our knowledge, conducted any studies or called for or obtained any factual information which would show that the rates or conditions of service of community antenna systems are unjust and unreasonable, or that points to any local aspects of CATV where the public convenience and necessity has been so abused as to require the intervention of public service commissions.

The testimony of the NARUC witness yesterday likewise contained absolutely no examples or discussions of factual conditions warranting public service regulation. As one member of this committee

stated yesterday, it appears that the NARUC merely wants to get into the act.

It should be borne in mind that because alternate means of obtaining television reception are available to the public through direct reception of television stations, satellites, translator stations and boosters, community antennas must work constantly to provide more and better service at reasonable charges or they cannot survive.

I would also like to remind the committee and the Commission that the control of municipalities over terms of ordinances authorizing community antenna operation, some of which prohibit rate increases without municipal authority, is a strong and effective force assuring that rates remain at a fair and reasonable level.

I am not a lawyer and have not attempted a complete legal refutation of the argument that community antennas are public utilities. NCTA's general counsel has prepared detailed briefs on this subject and I ask the chairman to accept a copy of one such brief and ask that it be printed as part of this record.

The CHAIRMAN. Without objection, that may be done.

(The document referred to follows:)

A CATV SYSTEM IS NOT OF A PUBLIC UTILITY NATURE

(A discussion, analysis and refutation of the arguments presented at the Fall of 1965 National Association of Railroad & Utilities Commissioners Convention in New York City)

The National Association of Railroad & Utility Commissioners (NARUC), at a meeting in New York in September 1965, adopted a resolution which provides for the drafting of legislation to regulate community antenna (CATV) systems as public utilities.

When a powerful organization like NARUC attempts to transfer a private business into one whose property is devoted to the public by force of law, it becomes important to understand just what a CATV ssytem is and whether it lends itself to regulation as a public utility. What, then, is a CATV?

THE NATURE, HISTORY, AND DEVELOPMENT OF CATV

A community antenna television system means a facility utilizing a receiving antenna or antennas, connecting wire, cable, or relay facilities and associated equipment for the reception by subscribing members of the public of the signals of one or more broadcast stations.

This is the same definition contained in the bylaws of the National Community Television Association (NCTA), the national trade association for CATV operators. Also, this is substantially the same definition which was agreed to between NCTA and the FCC staff and the NCTA panel and a panel of the National Association of Broadcasters in discussion with those groups.

ACATV system is a superior television reception service, with no technical difference between it and a home antenna, such as built-in-antenna, rabbit-ear, or roof-top antenna. It receives its television and radio signals off the air. Each homeowner, if he could afford the cost, could erect a very high tower in his backyard or on a nearby hill or mountain and avail himself of the same reception service.

It is equally important for you to know what a CATV system is not. It is not a broadcast service, such as a television station; nor a common carrier service, such as a telephone company. It is not a broadcast service, because a CATV system does not make use of the airwaves; it does not broadcast—period. It is not a common carrier service, because it is not of a public utility nature, i.e., it is not a "necessity." It does not furnish the essential necessities of life, such as power, light, and telephone services.

Furthermore CATV is not pay TV. In pay TV, a subscriber is expected to purchase programs individually on a pay-as-you-see basis. In CATV, a subscriber pays for the convenience of having his set connected to a fully equipped

master antenna. A subscriber may select a television channel at will from any of the channels of TV service provided by the CATV system. His monthly service charge remains constant regardless of the number of viewing hours he may enjoy. Clearly, CATV is not an individual program service as is pay TV.

In short, the CATV operator's business is to provide a superior master antenna receiving service, not a program service.

CATV—HOW AND WHY IT CAME INTO BEING

When television started, stations developed first in big cities where they reached a large population. The great majority of people, however, lived in communities which did not have their own local TV station. These thousands of towns were not—and most are still not—large enough to provide income for a local television station. Without a local station, a TV set owner had to get his TV viewing from a station in some nearby large city. But many communities were in mountain valleys or far away from a TV station and set owners could get only poor reception or none at all. It was to these communities that CATV first came.

During 1949, the initial steps were undertaken to bring television to a town located far from a television station. Eager to bring the benefits of TV to Astoria, Oreg., a group of engineers found the solution: a communitywide master antenna television system.

In the following year commercial CATV was born—in Lansford, Pa. CATV systems grew out of a real need on the part of the public for good television reception. From Lansford, Pa., CATV spread to nearly every State in the United States. It soon became apparent, just as neither sleet nor rain could hold back the postman, that neither mountains nor tall buildings could prevent TV signals from getting into homes of people living in an area where television reception was difficult.

Today there are more than 1,650 CATV systems in the United States serving more than 5 million people. Besides, we know of about 1,900 additional permits for CATV which have been filed before city councils and are in the process of being granted or awaiting an early grant.

CATV—A PUBLIC SERVICE

The CATV operator is engaged in performing a truly helpful service to subscribing members of the public: clear reception and a wider choice of television signals. He provides the lowest cost method by which a television set owner can enjoy the highest quality reception from a variety of television stations. In short, he offers the set owner a way to obtain maximum value from his television receiver.

The usual pattern for providing CATV service to a community is for the system to receive first the local or nearby channels, and then to bring in the distant channels from neighboring cities. Signals too distant to be received at the head end of a CATV system can also be brought into a community by microwave service.

Both UHF and VHF television stations can be received on a CATV system. UHF channels are easily converted to unused VHF channels. A CATV operator adds substantially to a local UHF station's viewing audience by receiving the channel on his system. In this way, he helps both the station and the community it serves.

CATV systems also make available in the community the signals of television stations which broadcast in color. Good quality of color via CATV reception is generally unsurpassed.

Although the CATV business exists primarily to bring to a community a choice of television channels of high quality, this does not mean that it can only furnish a television reception service to subscribers.

Many CATV systems cooperate with local schools, making it possible for them to receive educational television signals which they could not receive except through CATV service.

In some localities, CATV systems also make use of unused channel capacity to provide a time and weather information service. Other types of originations attempted by CATV operators have been exclusively or largely experimental. In areas where there is no local television station, for example, some CATV operators have experimented with providing viewers with television coverage on

public affairs issues such as a meeting of the town council, or local interest events such as a local basketball game, teenage dance, etc.

Many CATV systems also offer their subscribers a choice of FM radio signals.

In addition to providing a fine television and FM radio reception service for subscribing members of the public, a CATV system is in many ways a boon to the local economy. By making more television channels available, the advent of a CATV system usually creates a demand for more television sets, and thus creates a wider base for the servicing of sets.

When local residents become CATV subscribers, they are frequently so pleased with the service that they will buy second or third TV sets. In many communities they buy more color television sets because, with CATV, improved color reception is available, or receivable for the first time. This means more sales and more service work for television set dealers and repairmen. Quite often the sale of FM radio and stereo will increase when, for the first time, people are able to receive a number of FM stations. Television dealers and service men in in CATV-served communities have written many testimonial letters to local CATV operators extolling the quality of television reception on CATV and praising what is has done for their businesses.

CATV operators themselves are seldom engaged in the sale or maintenance of television sets. In the past that took place only when the CATV operator was formerly a set salesman or television maintenance man who branched out into the CATV business. It is not generally considered advisable for CATV operators to engage in these other types of business, except of course, in the rare instance where repair service would otherwise not be available.

The great bulk of CATV systems are relatively small in size. Most of them have 800 to 1,200 subscribers, and most are local businesses. As a local business, a CATV system pumps new economic life blood into the community: CATV operators pay income taxes, property taxes, business taxes, and salaries which are of great benefit to the community. The CATV system also has operating expenses for local services such as electricity, stationery, water, fuel, gasoline, tires, insurance, advertising, etc., amounting to many thousands of dollars annually. In addition, CATV operators have been in the forefront of joining civic organizations and charity drives, and otherwise contributing to the progress of their city or town.

THE GRANT OF PERMITS TO CATV SYSTEMS

Today there are CATV systems in every State. Only a few States have enacted legislation pertaining to them. Only one, the State of Connecticut, has lodged in the Public Utilities Commission the right to grant franchises and has declared CATV systems to be public utilities. The CATV industry believes this is a deplorable development. CATV systems are a normal, good business, but it does not enjoy a monopoly in the true sense of the word. If anyone is dissatisfied with the service he receives from his CATV system, he can discontinue receiving service at the end of any month. He can revert to receiving signals of television stations via a rooftop antenna or rabbit-ear antenna. Furthermore, he can organize a group to obtain a license for a translator from the Federal Communications Commission. It is true that CATV systems normally give better television reception and offer a wider variety of television fare than these other methods, but no one is compelled to attach to the cable. Furthermore, CATV systems are a high risk business. While they enjoy one of the lowest failure rates of any business in this country, they are a technological improvement over other types of reception service and no one ever knows whether improved technology will put them out of business. For instance, General Sarnoff of RCA has stated publicly, some time ago, that it will be possible to broadcast directly into the homes in about 10 years. This is a development that could possibly displace CATV systems. There is no good reason for making public utilities out of CATV systems. They are part and parcel of the television industry. They are merely an improved television reception service. There is no more reason to convert them into public utilities than there is to transform radio broadcast stations and television stations into public utilities. The Congress has refused to do this and we believe the Connecticut law is in conflict with Federal law on this matter. There is a paper entitled "Legal Aspects of CATV Systems" which has been distributed among you. This gives you the legal citations which establish that a CATV system is not of a public utility nature and should not be regulated as such.

CITY COUNCILS AND OTHER LOCAL GOVERNMENTAL BODIES GRANT PERMITS TO CATV SYSTEMS

Except in Connecticut, the municipalities have granted permits to do business to CATV systems. Sometimes these are popularly referred to as "franchises." The term "franchise" is not a technically accurate one. A franchise is normally granted to a public utility and we have already pointed out that a CATV system is not of this nature. Cities have done a very good job of granting to CATV systems permits to do business. They do this under their general authority.

Normally, CATV systems use utility poles under a rental contract with the local utilities. However, cities normally grant to CATV systems the right to install their own poles in case the local utility or telephone company refuses to grant pole attachment rights to CATV systems or imposes unreasonable pole rental rates upon them.

When a municipality thus grants to a CATV system the right to install its own poles, in order to take care of these unusual conditions and, also, in the event that an occasional pole is needed in an area where the utility is not in operation or where it does not have a need for poles and it is not willing to install them for the use of the CATV system, the municipality does not grant to the CATV system the delegated right of eminent domain. In the case of utilities, it is generally the practice to allow them to condemn land in order to put in a necessary service, such as the telephone service, electricity, gas, water, etc. Because a CATV system is not of a public utility nature and does not deal with those types of essentials which are characteristic of public utilities, States and municipalities do not grant to CATV systems the right to enter on private property or to string cable over such property without their obtaining the consent of private landowners.

THE ORIGIN OF DEMAND TO REGULATE CATV SYSTEMS AS PUBLIC UTILITIES

Initially, a few years after CATV systems originated, a small number of television broadcasters, several of whom had a monopoly or quasi-monopoly of television broadcasting in their particular area, hit upon the idea that they effectively could regulate their competition for the television viewing audience out of existence by having CATV systems declared to be public utilities.

These broadcasters knew that a CATV system is in the field of television reception and that it definitely is engaged in interstate commerce. They were aware that title II of the Federal Communications Act of 1934 was the provision in which the Congress of the United States had given to the Federal Communications Commission authority over public utilities in the communications field. Public utilities which were engaged as common carriers in the communications industry were directly regulated as common carriers under title II of that act.

Accordingly, those broadcasters filed a petition before the Federal Communications Commission, requesting the Commission to rule that CATV systems were common carriers and of a public utility nature and that, therefore, they must file their charges, classifications, and rates with the Commission and obtain a license to do business from the Commission. The Commission ruled that a CATV system is not of a common carrier nature, that this is not the type of a public utility which the Congress had intended to regulate under title II of the Commission's act (*Frontier Broadcasting Co.*, v. *Laramie Community TV Co.*, Memorandum Opinion and Order FCC 58–311, 24 F.C.C. 151, 16 Pike & Fischer Radio Reg. 1006 in 1958). Upon three other occasions, a similar attempt was made by other broadcasters and antenna manufacturers and salesmen, but the Commission ruled in the same way each time. The last time was on August 2, 1965, in the matter of the petition of *Philadelphia Television Broadcasting Co.; TAME, Inc.; et al.* on August 2, 1965.

When these various interests, which were primarily desirous of hamstringing their competition, did not succeed before the Federal Communications Commission, they turned their attention to the State public utilities commissions and State legislatures in an attempt to saddle CATV systems with public utility type regulations. The plan was a very cunning one, because they know that the communications field contained many pitfalls, that new electronic discoveries could displace a successful method of television reception at any time and that transforming a CATV system in a public utility would soon dry up the financing which was a necessary lifeblood of the CATV industry, if it was to continue to develop.

Thus, although the first commercial CATV system was constructed in 1950, we find an opinion of the attorney general of the State of New Mexico, issued April 19, 1954, a similar opinion of the attorney general of the State of Washington on November 22, 1954, another opinion of the attorney general of Arizona on October 18, 1955, all ruling that CATV systems are not public utilities. The Public Service Commission of Utah on December 18, 1956, ruled likewise. The Wyoming Public Service Commission assumed jurisdiction over CATV systems, claiming that the Federal Communications Commission had not preempted the field of CATV, but the District Court for the First Judicial District of the State of Wyoming, in a case decided in October 1958, on appeal from an order of the Public Service Commission of Wyoming, reversed the latter PSC's decision that the CATV system was a public utility. The court ruled that CATV systems were not public utilities and that they were engaged in interstate commerce (Community Television Systems of Wyoming, Inc., 17 Pike & Fischer Radio Reg. 2135, Wyoming District Court).

The Supreme Court of California had to reverse its own Public Service Commission, which had ruled that CATV systems were public utilities. The Supreme Court of California ruled that a CATV system is not a type of public utility nor a common carrier. The court stated:

"Furthermore, the service by television as well as radio is more akin to that of music halls, theaters, and newspapers than it is to that of either telephone or telegraph corporations. Thus, under the Communications Act of 1934 those engaged in the telephone or telegraph business are regulated as common carriers, whereas television and radio broadcasting is recognized as a field of free competition." (*FCC* v. *Sanders Bros.*, 309 U.S. 470, 474–475.) Footnotes omitted. (*Television Transmission, Inc.*, v. *Public Utilities Commission of State of California*, 1956, 301 P. 2d 862.)

There have been many State public utilities commissions which have ruled since then that they do not have jurisdiction over CATV systems. The most recent ones are those of Pennsylvania (1963) and Ohio (1964).

When the opponents of CATV systems found their efforts thwarted at both the Federal and the State levels, they turned to the Congress of the United States for a remedy. Several bills were introduced in the Congress of the United States in 1960, and a bill (S. 2653) was reported favorably to the Senate of the United States by the Senate Committee on Interstate and Foreign Commerce, which would have strictly regulated CATV systems, but the Congress of the United States decided to leave the field of CATV strictly in the domain of private enterprise whose charges and methods of doing business are not as strictly regulated, such as the field of radio and television. The Senate of the United States refused to enact the measure. There can be no doubt that the Senate of the United States did not want regulation of television reception via CATV systems. The Honorable Senator Mike Monroney, of Oklahoma, one of the strongest opponents of S. 2653, gave the following reason why the bill should be defeated:

"Let me state the best illustration: All of us know that the mightiest force in television, which controls 90 percent of all television programs received by viewers in the United States, are the networks. They are not subject to regulation, and very few Members of Congress would want them to be regulated. Why? Because the concept of the Federal Communications Act is that the networks themselves are not putting anything on the air. They use cables to carry the signals to the local stations. So they are not regulated.

"So we do not regulate—and I do not think we should—the mighty giant of television which supplies the television diet of 50 million television sets by carrying the television programs signals by cable to the viewers.

"But if the quite similar CATV systems are to be regulated by means of this bill, we shall be establishing a precedent; and in that event I do not see how we can properly regulate the smallest midget in the industry, but fail to give some consideration to regulating the mighty networks which are carrying signals by means of a similar system, and also without using the airways." (Congressional Record Daily of May 18, 1960, p. 9781.)

Several bills to regulate strictly CATV systems have been filed since 1960, but the appropriate committees of the Senate and House did not take action upon them until May of 1965. In May and June 1965, the Subcommittee on Power and Communications of the Committee on Interstate and Foreign Commissions of the House of Representatives of the United States held hearings on a bill

introduced by the Honorable Oren Harris, chairman of the House committee (H.R. 7715). The whole matter of whether CATV systems should be regulated by either the Federal or the State regulations is presently being studied by that committee.

It is not surprising that when the opponents of CATV were unable to accomplish their purpose of having CATV systems regulated as public utilities by the FCC, by the State PSC's, and by the Congress of the United States, that they turned their attention to State legislatures.

PUC LEGISLATION IN STATES

Commercial CATV began in Lansford, Pa. CATV was a mere fledgling, a little more than 2 years of age when a bill H.B. 1456) was introduced in the Pennsylvania Legislature to declare systems in that State public utilities and to place them under the authority of the PUC in Pennsylvania. The bill became a perennial one, supported by only a few sponsors and it was never enacted into law.

In 1955, similar bills were introduced again in Pennsylvania (H.B. 835) and in West Virginia (H.B. 397). In 1957, the same type of legislation was introduced in Arizona (H.C.R. 12), Montana (S.B. 184), Pennsylvania (H.B. 91), and in Washington (S.B. 425)

Perhaps because hearings were being held on CATV legislation before the Subcommittee on Communications of the Senate Committee on Interstate and Foreign Commerce in 1959, and because the Federal Communications Commission was conducting a thorough study of CATV systems and their effect upon television broadcasting,[1] there was practically no effort made before State legislatures to control CATV systems as public utilities during the year 1959. Back then, incidentally, both the Congress of the United States and the Federal Communications Commission, after thorough studies of the CATV industry, decided not to regulate CATV systems, except to the extent that they were already controlled with respect to the prescribing of limits of radiation by the FCC[2] and with respect to the power of the Commission (i.e., the FCC) to deny applications for microwave designed to serve a CATV system.[3] The Congress of the United States was fully aware that municipalities, towns, and villages and county governments were granting CATV permits to do business (sometimes popularly referred to as franchises), and that the Federal Communications Commission and the National Association of Radio and Television Broadcasters had advocated that the Congress authorize the Federal Communications Commission to issue licenses to CATV systems, but the Congress decided not to change the status quo.

In 1961, efforts to control CATV systems as public utilities were made again before State legislatures. Bills designed to accomplish this were introduced in Maryland (H.B. 186 and H.B. 459) Mississippi, New Hampshire (H.B. 268), Oregon (H.B. 1564), and Vermont.

In 1963, PUC type bills affecting CATV systems were introduced in Arkansas (H.B. 309), California (A. 2743), Oklahoma (H.B. 914), and Utah (H. 914).

By 1965, two well-financed groups had determined to bring about strict control of CATV systems by the Federal or State governments. These were the theater owner group and the Television Antenna and Equipment Manufacturers (TAME). These groups began to appear before city councils, requesting that CATV systems be denied licenses to do business or that they be strictly controlled with respect to rates, conditions of service, etc. They, or groups which they organized, such as television sets salesmen or television repairmen, began to urge State legislatures to place CATV systems under the jurisdiction of the various PUC's and control them strictly as public utilities. A few broadcasters at times took part in these efforts, particularly if they wanted to be the sole source of television in a particular area. Largely due to the sweeping accusations which these various groups leveled at CATV system operators, various articles began to appear in newspapers and magazines which exaggerated the

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[1] FCC Docket No. 12443; Report and Order No. FCC 59-292, 24 Fed. Reg. 3004, 18 Pike & Fischer Radio Reg. 1573, Par. 10.

[2] FCC order, effective on July 11, 1956, subpart D of part 15 of FCC Rules and Regulations, "Incidental and Restricted Radiation Devices", Second Report and Order, Docket No. 9288, 21 Fed. Reg. 5366, 13 Pike & Fischer Radio Reg. 1546a.

[3] Carter Mountain Transmission Corp. v. F.C.C. 321 F. 2d 359 (C.A.D.C.), cert. den., 375 U.S. 951 (1963).

profits of CATV systems, conjured up a number of "horribles" which might develop in the future unless CATV systems were strictly controlled and gave the impression that CATV systems were disregarding the wishes of their subscribers and operated their business purely for the purpose of gain, without Federal, State, or local supervision. Because of these various factors, several well-intentioned legislators were persuaded to introduce legislation to place CATV systems under the jurisdiction of a PUC and to transform their private enterprise into one which is devoted to the public use.

Thus, in 1965, bills of this nature were introduced in Connecticut (H. 3860), Maine (H. 32 and S. 304), Minnesota, Missouri (H. 699), New Jersey (S. 206), New York (A. 1944), Ohio (S. 172), Oregon (H. 1543 and S. 395), Rhode Island (H. 1356 and H. 1756), Vermont (H. 32), and West Virginia (H. 678).

All of these bills which have been introduced since 1953 were considered by the various committees or went to debate in the legislatures, but they were defeated except the bill in Connecticut. In the State of Montana, the bill was passed by both chambers of the legislature but it was vetoed by the Governor, reportedly upon the advice of the Attorney General of the State because, the Federal Government had preempted the field of television including television reception; CATV systems, like other private businesses, were doing an excellent job of serving their subscribers without strict regulation; they are not of a public nature and transforming them into an enterprise that is devoted to the public use, raised grave constitutional questions. Presumably, the various legislatures and their committees did not find that CATV systems were guilty of the various excesses with which they have been charged, because they did not pass the legislation.

THE CONNECTICUT EXPERIENCE

Connecticut has been a very discouraging State for CATV systems. If it were not for the very great need for CATV service in that State, it is quite likely that there would be no application filed to render this service.

From the very beginning of CATV, licenses to do business as a CATV system were applied for in many Connecticut cities and towns. Over 40 municipalities in Connecticut granted such licenses (at times referred to as franchises) but to no avail. The Southern New England Telephone Co. refused to allow attachments to its poles. Instead, that company offered to furnish CATV service to CATV systems under a tariff at prohibitive rates.

There are only two CATV systems in Connecticut, in New Haven and in West Port. However, they do not attach their cable to utility poles, as most other CATV systems do. They serve largely apartment houses and string their cable from one apartment house to the other, because Southern New England Telephone Co. (SNET) has never allowed any CATV operator to make attachments to its poles.

SNET continuously has refused pole attachments upon the grounds that its old franchise does not allow it to enter into pole attachment agreements. Although telephone companies in over 40 States had similar old franchises, interpreted them differently and allowed CATV operators to attach to their poles under a contract, SNET stubbornly refused to permit such attachments.

Complaints were made to the PUC in Connecticut by CATV operators and would-be operators, claiming that SNET was being arbitrary and that the telephone company's failure to allow remunerative pole rentals unduly caused the telephone users to pay the whole cost of maintaining the poles, but they obtained no relief.

Several bills were introduced at the request of CATV operators from time to time in the Connecticut Assembly, seeking to obtain a law that would compel telephone companies to permit pole attachments, and the matter came to a head in 1963, when the Connecticut Assembly enacted a law which lodged the power of granting franchises in the PUC (secs. 16–330 through 16–333, ch. 289 of the General Statutes of Connecticut). The explanation was given that Connecticut did not favor home rule and that the PUC, because it had jurisdiction over the telephone company and other utilities, was in the best position of any central agency of the Connecticut government to compel the utilities to enter into pole attachment contracts. At long last, after 13 years, it seemed that the logjam on CATV development in Connecticut, caused by SNET's stubborn refusal to allow attachment to its poles, was about to be broken. However, more than 3 years have elapsed and not one single CATV franchise has been granted by the PUC. In their vain hopes and expectations, the CATV operators had not figured on the

crucial factor; viz, that a PUC is not suited by its background, experience, training, or temperament to supervise and properly regulate a business, such as a television reception service, which is not of a public utility nature.

It was not until more than 1 year had lapsed, on July 13, 1964, before the PUC issued its initial notice of hearing on applications for authority to operate CATV systems, and it was not until October 5, 1964, that the PUC actually began to hold its hearings on these competing applications.

More than 2 years have gone by since the Connecticut Assembly passed the law and more than 1 year has come and gone since the PUC started its hearings. The PUC still has to grant its first application. It may well be many months more before it gets down to doing that.

Contrast those 15 years of bungling in Connecticut since CATV was born with the experience of any other State and you will find that the public has had a free choice of subscribing to CATV service or not in all those other States within a few weeks, or at most within a few months, after the first application was made for a permit for CATV to a city council, the selectmen of a town or village or a county government. Is this the allegedly "wonderful example" which the PUC chairman in Connecticut was holding out as an incentive to the membership of NARUC in September 1965?

The Connecticut experience proves another important point. Although some bills which were introduced in the Connecticut Assembly in 1963 would have made public utilities out of CATV systems in Connecticut, the committee reported favorably to the assembly the bill which simply lodged the granting of CATV franchises in the Connecticut PUC with the power to issue appropriate regulations.

During the hearings, members of the PUC and, particularly, its chairman, Eugene S. Loughlin, started to "make noises" as though they were going to control CATV systems as public utilities. This was quite understandable, although contrary to law, because public utility regulation was all they were schooled in or familiar with. When the National Community Television Association, the trade association for the CATV industry, objected to this development and filed a brief with the Connecticut PUC on December 1, 1964, explaining that this was contrary to the General Statutes of Connecticut, efforts were made to lay the groundwork for a statute which would transform the CATV business in Connecticut from a private enterprise type of business to one whose property is devoted to the public. This is somewhat akin to the new medical doctor who threw all his patients alternately in a tub of scalding and then ice-cold water in order to give them convulsions, because he had much experience and was quite expert at curing convulsions.

Inflammatory statements by PUC members started being carried in the press as to the allegedly high profits which were expected to be made by applicants for CATV franchises before the PUC. The members of the PUC did not understand the necessary difference, from a business viewpoint, between the profits of a high-risk business, which can be completely displaced by a simple new electronic discovery at any time, and a stable telephone company, which can count as surely as day follows night, upon an ever-increasing number of telephone users and profits for the indeterminate future. Furthermore, the lack of training of PUC members in this new type of high-risk business enterprise caused them to misunderstand and, therefore, not report accurately to the press the projected earnings of CATV systems, which are almost always and understandably figured quite liberally and on the "high side," in order to impress the financial institutions from which they will have to borrow capital.

Be the reasons what they may, the PUC convinced a Connecticut Assembly Committee in 1965 that CATV system should be considered public utilities in Connecticut and regulated strictly as such. Representatives of the CATV industry were heard briefly in opposition, including the national trade association for CATV, the National Community Television Association, whose representative was given 15 minutes to explain the intricate problems which the legislation raised. A law was passed to convert CATV system in Connecticut into public service companies, whose property is devoted to the public use. (Modified House bill 3860, Connecticut Public Act No. 175–1965.) The CATV industry in Connecticut is expected to challenge the validity and constitutionality of this law at an appropriate time. To no one's surprise, a bill was passed at the same session, providing for a gross earnings tax of 6 percent on the operations of CATV systems, as compared to the 4½ percent tax on the gross earnings

of telegraph and cable companies, and no gross earnings tax on television or radio broadcast stations (House bill 4849. Public Act 169–1965).

That is the "model legislation" which Eugene S. Loughlin chairman of the Connecticut PUC, and a power in NARUC, in a strategic spot to recommend to NARUC members in September 1965, in New York, N.Y. As chairman of a CATV panel at the New England Conference of Public Utilities Commissioners, on June 21, 1965, at the Chatham Bar Inn, Chatham, Mass., on Cape Cod, Chairman Loughlin made exaggerated statements of alleged 400 projected returns intended to be made on investments by CATV operators in Connecticut (he didn't say whether those percentages of returns applied within 1 year or 40 years, but the impression conveyed was that they expected to make 400-percent return on their investment in 1 year), if CATV systems were not controlled as public utilities. He stated that commercial television broadcast stations should be similarly regulated because of their equally high or greater profits, and that the only reason they had not been thus regulated up to the present was because so many Members of the U.S. Congress were licensees or owners of TV broadcast stations. This is the individual who reportedly spearheaded the drive for a resolution which would produce a so-called model act (presumably one identical with the Connecticut statutes discussed above) at the NARUC meeting in New York City in September 1965. The other point or lesson to be learned from the Connecticut experience is to never lodge a simple power to grant CATV permits in a PUC, unless you want it to regulate CATV systems as public utilities.

Municipalities generally grant a CATV permit in a few weeks. The Connecticut experience has already produced almost three additional years of confused and inexcusable delays in the grant of CATV franchises. The public in Connecticut does not yet have a choice of subscribing to CATV service except in a small section of New Haven and West Port.* The subscribing members of the public almost everywhere else can select from 5 to 12 clear channels of television. Those are the consequences of the Connecticut experience. The deadly arm of the PUC can only stifle, delay, or reduce the service to the public rendered by CATV.

THE BASIS FOR THE NARUC RESOLUTION

When a reputable organization like NARUC recommends that a private enterprise, such as CATV, be brought under public utility type regulation, it becomes important to determine what facts or considerations its members had presented to them as a basis for approving the recommendation of their executive committee.

Surprisingly and unfortunately, NARUC had not previously authorized a study of the operations of CATV systems in a number of States in order to arrive at a sound judgment, based upon the facts, with respect to whether a PUC-type of legislation or another kind of legislation was necessary, suitable, or desirable in the public interest. Instead, members of NARUC who had already made up their minds to bring CATV systems under PUC regulation were called upon to explain the proposed resolution to the members.

Eugene S. Loughlin, chairman of the Connecticut PUC, extolled the merits of the PUC bill pertaining to CATV in his State. His views and pronouncements and the Connecticut experience have already been commented upon sufficiently.

Another spokesman who touched upon all the points made by the proponents of the resolution was the young chairman of the Vermont Public Service Board, Ernest W. Gibson III, in a speech entitled "The Case for Regulation of CATV."

As do most of the antagonists of CATV systems, Mr. Gibson paid a high tribute to the valuable service rendered by CATV systems. After stating that there has been no lessening in the desire for CATV service on the part of the consumer as the system continue to grow and expand, he added: "On the contrary, the public has indicated that the availability of adequate TV reception provided by the medium of cable television is indeed a service which the CATV consumer does not wish to be without."

Further on, Mr. Gibson stated: "In the State of Vermont there are presently about 17 CATV systems which are of great benefit to their subscribers * * *."

Mr. Gibson then proceeds to argue that a CATV system, though not public at the inception of the CATV industry, "may fairly be said to have risen to be such and have become subject, in consequence, to some Government regulation." To

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*And those were not authorized by the PUC.

establish this, Mr. Gibson relies upon a discussion of the case of *Munn* v. *Illinois*.[4] He points out that this case dealt with a monopoly position of grain storage elevators. He quotes Chief Justice Waite as asserting that the grain storage elevators "stand in the very gateway of commerce and take a toll from all who pass. Their business most certainly tends to a common charge and is become a thing of public interest and use." Mr. Gibson adds that Chief Justice Waite further stated that when one "devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

If Mr. Gibson had consulted the Federal Communications Commission or persons who are experienced in the conduct of the CATV business, he would have learned that the CATV industry certainly does not "stand in the very gateway of commerce and take toll from all who pass." CATV systems serve only 1 out of every 30 television homes in the United States. If there are only 17 CATV systems in Vermont, as Mr. Gibson states, it is likely that CATV systems in Vermont serve a still smaller percentage of the television homes in that State. This is quite a different situation from that existing in *Munn* v. *Illinois*, where the court found that the owners and shippers of the grain, which was destined for shipment in interstate commerce, had to make use of the facilities of the grain storage elevators.

The American Research Bureau published its findings in September 1965 to the effect that there were about 54,500,000 television homes in the United States. The National Community Television Association stated its estimates at the same time that there are about 1,800,000 subscribers in the United States. This would mean that there were about 3.03 percent of the total number of television homes, or 1 out of every 30 such homes served by CATV systems in this country.

Furthermore, according to the expert retained by the Federal Communications Commission in 1964 and 1965, this situation is not likely to be altered materially in the future.

The future growth of CATV systems appears to be in the direction of the larger cities or the larger television markets because the smaller television markets which did not have adequate television reception have presumably been saturated already by CATV systems. Dr. Martin H. Seiden, who was retained by the FCC to conduct the study on this matter concluded that even by assuming CATV penetration "which exceeds by many times the most optimistic hopes of the franchise applicants themselves," the highest realistic estimate of the television homes which CATV systems can ultimately reach throughout the United States is about 6 million such homes.[5] Dr. Seiden estimates that CATV systems will reach about 6 percent of the population of larger markets or about 3 percent of the television homes in the United States. Thus, when the population of this country reaches 200 million television homes, about 6 million such homes will be served by CATV systems. This is based upon his expert findings, including the areas in the country which have a large number of television station signals which can be viewed clearly by persons with the use of the usual antennas, which are built into the sets, or by the use of rabbit-ear or rooftop antennas.

Obviously, there are many vast areas of this country which are not likely to become attractive CATV markets. Therefore, it is obvious that the CATV industry is not in the "practical condition of economic monopoly" which existed with respect to grain elevator operators in the case of *Munn* v. *Illinois*. Instead of taking "a toll from all who pass," the CATV industry will be able to take a toll at most from only 6 percent of those viewing television, and even those 6 percent, unlike the grain owners in the case of *Munn* v. *Illinois*, can go back to their rooftop antennas and receive television signals in some other way, or they may receive television service from translators, satellites, or other sources. The two situations, that of the grain elevator operators on the one hand and that of the CATV operators on the other hand, are not at all comparable.

Mr. Gibson discussed the three classes of businesses discussed by Mr. Chief Justice Taft in the *Wolff Packing Co.* case.[6] Mr. Gibson discussed summarily the first class (railroads, other common carriers, and public utilities) and the second class (the usual public interest occupations regarded as subject to strict regula-

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[4] *Munn* v. *Illinois*, 94 U.S. 113 (1877).

[5] The "Seiden report" was published by the Government Printing Office on Feb. 12, 1965, under the title "An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry." See pp. 84 and 85.

[6] *Wolff Packing Co.* v. *Industrial Court*, 262 U.S. 522 (1923).

tion under the common law, such as inns, common carriers for hire, gristmills, etc.), and then Mr. Gibson proceeded to devote his attention to the third class, which he stated "is of particular interest in this discussion, because the present development of CATV systems basically meets the criteria imposed by this provision and very closely parallels the intent expressed by the classification." Mr. Gibson discussed the third class as follows:

"The third class concerned those businesses, which, though not public at their inception, may fairly be said to have risen to be such and have become subject, in consequence, to some Government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner, by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest although the property continues to belong to its private owner and to be entitled to protection accordingly."

Mr. Gibson gives no reason why CATV systems have risen to the status of a public utility. Every CATV system operator in this country will protest vigorously Mr. Gibson's gratuitous assumption that he has devoted his business to the public use. Again, if Mr. Gibson had consulted the Federal Communications Commission, he would find that the FCC has ruled repeatedly that a CATV system is not a common carrier. The FCC has repeatedly pointed out that the choice of television signals which a CATV operator will make available to his subscribers is strictly within his control and not that of his subscribers. Far from devoting his property to the use of the public, the CATV operator decides which television channels will be available on his CATV system and he enters into whatever contracts he wishes with his CATV subscribers and for the length of time he wishes to provide service, although the subscriber is free to discontinue service at the end of any month (this point has already been discussed in the only full paragraph on p. 10 above). The Commission has stated this fact to the U.S. Court of Appeals for the District of Columbia Circuit.[7]

To bolster his contention that CATV systems should be regulated as public utilities, Mr. Gibson stresses the importance of the "monopoly concept" in the field of public utility regulation. He then attempts to depict a CATV system as a monopoly. He states:

"The present situation concerning CATV systems is not unlike the telephone industry in many respects and indeed has now evolved to the point where it is providing virtually an essential commodity and is an active participant in the communication industry."

Mr. Gibson does not explain in what way CATV systems provide "virtually an essential commodity." If he means the reception of television signals, it is obvious that almost all the people of the United States can receive one or more television signals by conventional means without CATV service. CATV systems make available to their subscribers either a greater choice of television signals than they would have without CATV service or improved quality of the pictures viewed on their television sets. In a sense this is a luxury service and luxury services have not been made subject to public utility regulation in the past. This point was forcefully brought out by Mr. Richard A. Thompson, president of the North Dakota Public Service Commission, at the same 77th Annual Convention of NARUC in New York City. Mr. Thompson stated:

"Is CATV a public convenience and necessity? I can't quite reach that point. I am not sure, but I feel that when we have as much free television available to us as we presently have, that while CATV might offer some added attractions it could be considered more of a luxury than a necessity."

Mr. Thompson then made known the opinion of the attorney general for North Dakota that a CATV system is not a public utility under the jurisdiction of the North Dakota PSC. Mr. Thompson stated:

"My commission has received several applications for the operation of CATV systems. These applications raise the question as to whether or not my commission has jurisdiction to grant permits for such applications. We have appealed to our attorney general for a ruling as to whether or not the statute will allow this jurisdiction. After close scrutiny he indicated that it was a very gray area, and that he felt it would not stand up in court. We are attempting to clarify the problem before us."

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[7] *Philadelphia Television Broadcasting Co.; TAME, Inc.; et al. v. Federal Communications Commission and United States of America*, case No. 19,577 (1965).

For Mr. Gibson to compare the CATV industry with the telephone industry is to disregard the basic facts pertaining to both those industries. If a CATV subscriber is not satisfied with the service or rates of a CATV system, he may listen to TV via a rooftop, rabbit ear, or other antenna. If he is interested in the reception of a multiplicity of signals, he can, with the use of his conventional antenna, view the television signals via a translator service. Many areas of the country have organized groups and have applied for one or more translator licenses from the FCC to bring in additional television signals. In certain areas the total maintenance cost of this service is about $10 per contributor per year. Others have prevailed upon their television stations to raise their tower height in order to broadcast a better or farther reaching signal. A telephone user, on the other hand, cannot obtain telephone service from another company in his area. A telephone company is an absolute monopoly.

Mr. Gibson's further observation, quoted above, that a CATV system is "an active participant in the communication industry" is a fact which disproves his contention that a CATV system is of a public utility nature. A CATV system is an active participant in the television industry. It furnishes improved television reception. It is a useful adjunct to a television receiver set. In the words of the U.S. Court of Appeals for the Fourth Circuit, a community antenna television system in "a mere adjunct of the television receiving sets with which it was connected." [8]

The fact that CATV systems are active participants in the television industry should have convinced Mr. Gibson that it was not the intent of Congress to subject such systems to public utility regulation. The Communications Act of 1934 placed the television industry in the field of private enterprise, while it placed the telephone industry in the public utility or common carrier field under title II of that act. This was clearly brought out by Mr. Richard J. Thompson, president of the North Dakota PSC, at the NARUC convention, when he referred to the *DuMont* case [9] and stated:

"Since the *DuMont* case, there is little question but what the U.S. Government is 'completely occupying the field of television.' I can only believe that this very interesting, but disturbing factor is a roadblock which we must realistically face during this panel discussion. The Federal Communications Commission is possessed of the absolute control of all phases of broadcasting, there has never been any question of the intent of the FCC. Television franchises are under the complete domination of the FCC by the direction of the U.S. Congress affirmed by the U.S. courts." (For a fuller development of the principle that the Congress has preempted the field of television, including television reception, see the paper on "Legal Aspects of CATV Systems," which has been distributed among you.)

Mr. Thompson added later:

"Some regulatory commissions, in fact quite a number of them, have attempted to assume jurisdiction [over CATV systems] and the cases have been appealed to the courts and in every instance where a commission has ruled that it will assume the responsibility the court has overruled the commission's order."

Finally, Mr. Gibson attempted to saddle the CATV industry with a public utility label by referring to the fact that CATV systems make use of public utility poles. On this point, Mr. Gibson states:

"Most existing CATV systems provide their services by distributing television signals throughout a system by the use of cables. In most instances, these cables are attached to either the power company or telephone company poles and normally serve the same customers in the more densely populated areas. The pole attachments by the CATV companies are usually confined to a specific allotment of space, which is of a limited nature, and because of this, many utility companies have restricted the use of pole attachments by a CATV system to one supplier only. This in itself has created for all practical purposes a monopoly situation for the CATV system, because it would be extremely costly and in many cases virtually impossible to construct a duplicate pole system to supply CATV services."

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[8] *Lilly* v. *United States*, 4th Cir., 234 F. 2d 584, 587 (1956).

[9] *Allen B. DuMont Laboratories, Inc.* v. *Carroll*, 184 F. 2d 153, cert. den., 340 U.S. 490 (3d Cir. 1950). The court concluded its opinion in that case by stating: "We think it is clear that Congress has occupied fully the field of television regulation, and that the field is no longer open to the States, Congress possessing the constitutional authority to effect the result."

It is true that in the 15 years of the CATV industry's existence most small cities and towns where they grew had only one CATV system. This is quite normal, in view of the fact that the CATV industry, in the early years of its development, was considered a business which would probably come to an end when more television stations went on the air. Under those circumstances, a small city was fortunate to have even one CATV system. In fact, many municipalities did not have a CATV system because no one wanted to risk the capital involved in constructing one.

It is also correct that telephone companies have generally restricted pole attachments to one CATV system. The reason given was that they wanted to keep the "communications space" on the poles for expansion of the telephone plant. Furthermore, utilities wanted to make sure that if any damage was done to their poles or equipment, by a CATV repairman, the utilities would know which company to blame. However, there have been exceptions to this and a number of cities have two or more CATV systems such as Seattle, Wash., which has eight CATV systems. Again, if Mr. Gibson had consulted a telephone company or a person familiar with the CATV industry, he would have found out that the picture has changed and that many cities, if not all of them, can expect a second or third or more CATV systems at any time. The reason for this is that telephone companies have finally become very much enthused over the possibilities of CATV service. The various Bell telephone companies have filed tariffs to furnish CATV service to CATV systems in over 38 States and it is their intent to file such tariffs wherever there is a sufficient demand for CATV service. The second largest telephone company, General Telephone & Electronics Corp., not only has followed suit and is filing tariffs for such service in many States where its subsidiaries are in operation, but they have also organized a subsidiary which is applying for CATV permits (sometimes called franchises). In many municipalities this subsidiary will actually operate CATV systems. The third largest telephone company, United Utilities Corp., Inc., is doing likewise. Many independent telephone companies have filed such tariffs or have expressed their intent to do so in the near future.

These tariffs are common carrier tariffs which are filed with the various public utility commissions. Anyone who has a CATV permit from a city or other local government to operate a CATV system, can obtain this service by simply paying for it. The result is that a second or third CATV system will develop in many places where only one CATV system now operates. Because the telephone company bears the cost of construction, several persons will become interested in operating a CATV system in competition with an existing one. In fact, for a local TV broadcaster, who has no interest in doing more than filing a form of "strike application" and delaying CATV, a "lease-back contract" under a tariff can become a very attractive proposition. His interest, of course, is in assuring himself that the CATV system will always operate in a way favorable to his broadcast television business. In several towns in the last year, television and radio broadcasters and other applicants have applied for a second or third CATV permit where only one CATV system was in operation in the past. Accordingly, Mr. Gibson has attempted to base his allegation that the CATV system is a monopoly upon an alleged trend that is now working in reverse. Even when alone in a municipality, a CATV system did not have in any way a monopoly of making television signals available to the public.

This has been fully explained earlier in this discussion. Present developments in the industry and the trend indicated for the future establish that there will be even greater competition to be met by CATV operators even among each other in the same community.

At one place in his address, Mr. Gibson held out to CATV operators a "carrot" in the form of protection by the public utility commission against one or more CATV operators invading their CATV markets. Mr. Gibson stated:

"This position is further supported by the fact that regulation is to a large extent a substitution for competition and is designed specifically to prohibit the excessive duplication of facilities which could accompany an unregulated system. This provides a measure of stability for a utility which in turn is beneficial to the consumer in the form of lower rates and charges."

CATV operators have not asked for and do not want protection of this kind. They want to continue operating in the field of private business enterprises. They know that competition has done more to produce reasonable prices and costs of service for the public than anything else has succeeded in doing in this country. If another CATV system can come into a city at any time and offer in the long run lower rates or better services or both to his subscribers, it is up to him, the original CATV operator, to find the better business methods

under which his rival operates in order to be able to match or offer still lower rates or better service to his subscribers. This is the rule among businesses which are in the free enterprise field and CATV operators are willing to meet competition under these free enterprise rules.

Mr. Gibson was aware that telephone companies now offer CATV service to all comers because he states:

"It is now apparent that the major segment of the communications industry, the telephone companies, have come to recognize that the CATV industry is indeed a utility service worthy of consideration and as a result have recently filed in many States tariffs designed to allow the furnishing of CATV service from the television antenna to the television set. The only facility not provided is the master antenna itself, since the tariffs contemplate a third party owning the antenna and acting as agent to the CATV subscribers."

Mr. Gibson was almost completely correct in the type of CATV service which will be rendered by the telephone companies under a tariff, except that the CATV operator will own (or rent from some other party) the television antenna site, the tower or towers, the antennas, the powerline from the antenna site to the housing unit and the housing unit in which the transmitting equipment is lodged. Also, under one type of tariff a CATV operator will own the house-drops and the connection inside the home of the subscriber, while under another type of tariff he will own only the connection inside the home.

In stating that telephone companies recognize the CATV industry as "indeed a utility service worthy of consideration," Mr. Gibson apparently intends to convey the impression that the CATV service is a utility service. The facts are to the contrary. Telephone companies have offered under a common carrier tariff many kinds of services in the past without the various companies or industries receiving these services being transformed into public utilities because of this fact.

As their principal undertaking, the telephone companies offer certain complete services including all of the equipment and facilities for communication between customers. These complete services are:

	First offered
Basic exchange telephone service	1878
As auxiliaries of this service the following:	
Mobile telephone service (from and to motor vehicles)	1946
Personal signaling service (1-way signaling service to light-weight receiver carried on person of subscriber)	1957
Toll telephone service	1886
As auxiliaries of this service the following:	
Ship service (ship-to-shore and vice versa)	1929
Air-to-ground service (aircraft-to-ground and vice versa)	1957
See-while-you-talk service (telephone with picture)	1964
Teletypewriter service:	
Exchange	1931
Private line	1917

In addition to these complete service offerings, the telephone companies also provide private line channels designed for interconnecting certain special types of customer-owned terminal equipment. In general, the function of such customer-owned terminal facilities is specialized and involves fields which are outside the basic undertaking of the telephone companies. These offerings include channels for:

Program transmission:	*First offered*
Radio broadcasting	1924
Wired music	1936
Television and video transmission	1948
To meet other needs in this field:	
Commercial television broadcasting	1948
Off-the-air pickup and relay	1957
Oversea channels for slow-scan video (video operating at speeds slower than broadcast)	1960
Community antenna television	1959
Channels for use in educational television systems	1961
Telephotograph transmission	1925
Remote metering, supervisory control and miscellaneous signaling purposes	1952
Data transmission	1957

Many other very specialized services such as automatic announcement systems, emergency reporting, group alerting, automatic answering and recording and hospital services are furnished to satisfy certain specific customer requirements. Some of these specialized services have been available for a good number of years while others are recent additions, developed to take care of a newly created market requirement.

Although radio and television broadcasters have made use of leased lines furnished by telephone companies, since the beginning of the radio broadcasting industry, no State has attempted to convert them into public utilities. The same is true of all the other services described except usual public utilities.

It is interesting to note why the Bell telephone companies, while offering a CATV service to CATV systems, have not directly or through a subsidiary, as has the General Telephone & Electronics Corp., attempted to get into the business of operating CATV systems. Besides the fact that the Bell companies do not ordinarily get into the operation of businesses which are not basically related to the telephone business, they are estopped under a consent agreement entered into with the Department of Justice of the United States in 1956, from engaging in any business except one which is filed under a tariff subject either to the FCC or the State PUC's. If the plan espoused by the chairman of the Connecticut PUC and the chairman of the Vermont PSB were carried out to its conclusion, Bell telephone companies or any A.T. & T. subsidiary could engage directly in the operation of CATV systems owned by them. This would contribute to the greatest monopoly of CATV service, combined with an 85 percent control of telephone service in one giant corporation, the A.T. & T. As things stand now, the Bell telephone companies are making a huge effort to furnish CATV service under a common carrier tariff, which is the maximum extent to which they can enter a CATV business under the consent decree discussed above. The Bell companies make no pretense of concealing their enthusiasm at getting into the CATV industry as far as they are permitted. Mr. Gibson, in his address to NARUC, quoted at length from a Bell System expert witness who testified with respect to CATV systems before the Maine commission in part as follows:

"This service offering is basically a communication service. It is common knowledge that there has been a large growth in the community antenna system industry not only in Maine or New England, but throughout the whole country. A great deal has been, or continues to be, written in the newspapers and magazines about this service. It is apparent to us that because there is *such a public demand for this service* that the communications portion of such a service, namely, the placing of plant in public ways, should be provided by the telephone company. In line with our responsibility as a communication common carrier and because of *public demand for the service*, it seems appropriate that such service be offered in the State of Maine. (4)" ((4) State of Maine Public Utilities Commission, F.C. No. 1721, vol. 1, p. 7, 1965.) (Emphasis supplied by Mr. Gibson.)

It is not quite apparent that if the CATV industry were made subject to public utility regulation the telephone companies would reap the benefits of all the experiments, the risk of capital and all the efforts made by CATV operators in developing this brandnew industry which has made it possible for the public to subscribe to a greater variety and better reception of television signals? It has already been observed that the CATV industry is such a risk, because it can be displaced by new electronic discoveries at any moment, that subjecting this industry to PUC-type regulation would dry up available capital. Only the telephone companies would dare to invest their capital in the construction of CATV systems, because under public utility regulation they could write off these potential losses against the income which they would continue to receive from their telephone operations. The very monopoly which Mr. Gibson seems to dread is exactly what would be brought about by placing CATV systems under PUC jurisdiction.

In Mr. Thompson's[10] address to NARUC, there was reference made to complaints from utilities that there is no more room in the communications space upon the poles for the attaching of additional facilities. Mr. Thompson covered this point, as follows:

"If I am correct in my analysis, in every case in my State, every city granting a franchise has also previously granted a franchise to a recognized utility—a

[10] Richard J. Thompson, president of the North Dakota Public Service Commission.

power company or a telephone company. But in granting the franchise to the CATV operator, the city, in most cases, specifically restricts the stringing of the cable to existing utility poles. This is done despite the fact that the existing poles already have electric power lines and telephone lines upon them. I have heard complaints from our utilities that there is no more room in the communication space upon the poles for the attaching of additional facilities."

While telephone companies have generally insisted, as has been pointed out above, upon only one CATV system attaching to their poles, they cannot have such a restriction if they are to offer a true common carrier CATV service to CATV systems. Telephone companies have stated that, under a common carrier tariff, they can accommodate two or more CATV systems because they can lash the cables involved to their messenger wire and they can thus service any or all of these cables, because they have control of the situation and do not fear that injury will be made to their telephone service. This is the reason why they do not need to provide for clearances between the various cables. The next argument that they will undoubtedly make before PUC's is that they should be allowed to furnish all CATV service to CATV systems, rather than to allow one or more pole attachments to CATV systems, because they can more efficiently conserve space on the poles. A sympathetic PUC can easily follow this suggestion and penalize independent CATV operators who wish simply to attach their cable to utility poles, pay a reasonable amount for this rental of pole space and to service their own cable. This means much to the CATV operator and to his subscribers, because the rates under a tariff have uniformly been much higher for a CATV system than a pole attachment contract under which the CATV system installs and maintains the cable of its choice through the use of its own skilled employees. The CATV operator is as genuinely interested in maintaining reasonable subscriber rates as any PUC could be, because he has nothing to offer except a greater selection and better reception of television stations' signals. If his rates are too high, he goes out of business.

Public utility commissions, if they are truly interested in maintaining reasonable rates to CATV subscribers, should obtain facts from telephone companies, over which they unquestionably do have jurisdiction, about the great disparity in costs to a CATV system between the pole attachments at the nationwide average rate of about $2.50 per pole and the very high tariff rates which vary generally between $16.50 and $18 per quarter mile per month. In addition to that and other charges, there is a charge per house-drop or connection varying between 35 and 50 cents per connection per month. CATV operators who have considered changing from their present pole attachment setup to a tariff service have generally concluded that they would have to charge their subscribers about one-third more per month in order to make about the same reasonable profits as they do presently.

If telephone companies were allowed to compel CATV operators to accept CATV service under the usual tariffs, the telephone companies would own a large share of the CATV plant throughout the country. This will add to the monopolistic tendencies of the large telephone companies.

If telephone companies succeed in cornering the CATV market in this fashion, can it be doubted that they will marshal all kinds of arguments later to raise their tariffs even higher? Just take a look at an average telephone bill for a family in your State. Compare that to the national average charge of $4.49 per month for CATV service. It is quite possible that if telephone companies succeed in obtaining possession through ownership of the great bulk of CATV systems, they will then present the following arguments to the various PUC's. They will point out that the average telephone user uses only two strands of wire for about 1 hour per day; that the average CATV viewer makes use of wires carrying 12 channels of television cable for an average of 5 hours a day. He will want the Commission to approve an increase in rates commensurable with what the telephone user pays. They will argue that the telephone user makes use of only 3 kilocycles of spectrum space, while the CATV subscriber uses 72,000 kilocycles of space. This argument is not more far fetched than their reasoning, used before the California PUC that they should be paid more for pole attachment space because of the "sail strength" of the CATV cable. Still, the telephone company insisted upon use of larger cable than necessary under improved CATV technology, thus adding to the sail strength and the attachment costs.

Even if this did not occur in the future, is it not evident that the CATV subscriber now obtains a greater bargain than the telephone user does? The reason

is because the CATV business is in the realm of private enterprise and the CATV subscriber can obtain access to television reception from so many other alternative sources, as it has been explained above, that the CATV operator cannot afford to take the chance of driving him away from the service he offers by raising subscriber rates to a high level. This is not the kind of a business that requires PUC supervision. This will be explained later on in this discussion in a comparison of the increases which have taken place in CATV subscriber rates with those which have taken place in the telephone users' rates and the cost of other commodities.

If Messrs. Loughlin and Gibson had truly analyzed the suggestion they made, they would know that they would be ousting State PUC's and all States from regulation of CATV, if State legislatures converted CATV systems into common carriers. There can be no doubt that CATV systems are engaged in interstate commerce, as the FCC and State and Federal courts have ruled. (See "Legal Aspects of CATV" which has been distributed among you.) The FCC, as we have pointed out above, has ruled that CATV systems are not common carriers under the Communications Act of 1934 because they do not devote their business to the public or act as a common carrier or public utility*. If the State laws compelled CATV systems within their jurisdiction to conduct their business as public utilities or common carriers, CATV systems would immediately come under the sole and exclusive jurisdiction of the FCC under title II of the Communicatoins Act. This would mean that all permits or licenses would have to be obtained from the FCC and that the Commission would be compelled to regulate all other activity under title II of the Communications Act of 1934. Would it not have been wiser for these officials to recommend to the NARUC convention that a whole study of this matter be conduced before prejudging the issue whether PUC type legislation or other type of State legislation should be adopted with respect to CATV systems?

Because the CATV subscriber can discontinue service at the end of any month and view available television programs or obtain a greater selection through translators or other sources, as we have discussed above, he must keep his rates as low as possible consistently with the risk which he faces that he may be supplanted by another business with improved methods of television reception at any time and the assurance of a satisfactory income to warrant the expenditure of his time, money, and efforts. The question of the reasonableness of rates charged by CATV systems will be discussed at a later stage in this presentation. Suffice it to say at this point that the CATV industry prefers the pole rental approach to the tariff route because it is more likely to yield a reasonable profit while maintaining subscriber rates at their usual reasonable level.

If the members of NARUC at their 77th annual convention in New York City had heard both sides of the argument from knowledgeable persons, it is doubtful that they would have authorized the drafting of a resolution designed to produce PUC type of legislation to be recommended by its members to the various State legislatures. Instead of getting the true facts, they were furnished erroneous information. For instance, Mr. Richard J. Thompson, president of the North Dakota Public Service Commission, stated that it was his feeling "that the (CTAV) industry has deviated so far from the original purpose and intent and has so out-run the law that in many cases where CATV is now being used, it is a creature outside the law, having taken upon itself certain characteristics which in fact make it a monopoly." There was not one example given of what Mr. Thompson meant by this alleged deviation from CATV's original purpose and intent. The only change that has actually taken place is that CATV systems give a still better service to more people than they originally did. Far from being a "creature outside the law," a CATV systems comes under all the various regulations which pertains to business in general and, in addition, it is under the supervision of the Federal Communications Commission and municipal bodies at all times.

Mr. Thompson went on as follows:

"While all of these broadcasts, or by far the big percentage of the programs originate on a national television network regulated by the FCC, the U.S. Congress, to my knowledge, has not yet seen fit to give to the FCC the explicit power to control CATV.

"Consequently, all of the cable television companies are operating without either State or Federal regulation. They merely have a franchise, or rather I should say, a contract with the city or municipality in which they operate."

*FCC report and order in docket No. 11611 (F.C.C. 56-488, par. 11).

To the contrary, a CATV system which does not simply receive the signals which are available off the air at its tower site, but which plans to receive television station signals from a greater distance through the use of microwave, either must make application for a private microwave license from the Federal Communications Commission, or it must apply to a common carrier microwave company which, in turn, must apply to the FCC for authority to serve the CATV system with microwave service. For more than 2 years, the FCC has had interim procedures under which it imposes strict duties of receiving local stations upon CATV systems which desire microwave service and other requirements, such as simultaneous nonreception of the programs of other television stations which are the same as those offered by local television stations, as well as the nonreception of those identical programs through other than local television stations for 15 days before and after broadcast by the local stations. The FCC has imposed still greater requirements than under its interim procedures under a rulemaking entitled "First Report and Order," issued on April 23, 1965, in FCC docket Nos. 14895 and 15233.[11]

In addition, the FCC has instituted another rulemaking procedure and inquiry, in which it has announced that it intends to apply the same rules to all CATV systems, that it has jurisdiction to accomplish this, and that it will finalize its order to this effect after the Congress has had an opportunity to examine the Commission's action in this respect, presumably in early 1965.[12] This was explained to the NARUC convention by FCC Commissioner Kenneth A. Cox.[13]

Therefore, the statement that "all of the cable television companies are operating without either State or Federal regulation" although made mistakenly and without knowledge of the facts, is simply untrue. Still, this is the type of statement which NARUC members had to go by when they approved the resolution aimed at the draft of PUC legislation for CATV systems.

In addition, it is not correct to state tht there is no State regulation. Some States, such as California authorize their cities, counties, and other governmental subdivisions to authorize by franchise or license the construction of CATV systems, and to prescribe such rules and regulations as they deem advisable. In many instances, the governmental authorities, knowing the needs of their particular city or town, enact very few regulations. They often do this when a CATV system has proven that it gives excellent service to its subscribers and creates no problems. Other cities and towns enact very specific regulations including the quality of service and the requirement that rates be not increased without justification satisfactory to the city council being first made by the CATV operator.

This latter requirement differs quite radically from a PUC requirement that even the initial rate to subscribers be justified. Because of the nature of the CATV industry and the particular risks of being displaced by another electronic discovery, which we have discussed above, considerable leeway should be given in allowing a CATV system operator to project the amount of return he needs for insulation against a sudden demise, as well as to estimate what the rate to subscribers should be initially in order to produce a reasonable profit. However, when municipalities have imposed a requirement that a CATV system operator justify any future rate increases, this has not been objected to by the CATV industry. In many cities there is no such requirement, but in many others such a requirement exists. Who knows better than the city fathers what protection is needed in their particular city or town? A CATV system normally serves an integrated community, although the CATV system may spread out to the adjoining suburbs which may be in a different town or county. CATV operators have not, under these conditions, found any difficulty in obtaining the permission of the governing authorities of the adjoining subdivisions of government. The California legislation, which allows its cities and towns to make these determinations, is perhaps the best approach to CATV regulation, in the absence of licensing by the FCC. The Congress once considered granting the licensing power over CATV systems to the FCC, but it did not do so.

Now, the FCC is satisfied to be without that power and to allow the cities and towns to grant CATV permits. The fact that the FCC has not determined to

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[11] 30 F.R. 6038, 38 FCC 683, et seq.
[12] 30 F.R. 6078.
[13] Commissioner Cox's speech and the addresses of Ernest W. Gibson III and Richard A. Thompson have been printed in the Telephony magazine, dated Oct. 23, 1965, at pp. 31, 34, 36–38, 40, 49.

regulate the rates of CATV systems does not mean that it expects the States or cities to regulate such rates. It is doubtful, as pointed out in "Legal Aspects of CATV Systems" (which has been distributed among you), whether either the Federal Government or a State has the power to regulate such rates. As pointed out by Mr. Richard J. Thompson, in his remarks quoted earlier in this discussion, the Congress has preempted the whole field of television, including television reception, and if the power to regulate rates was not vested in the FCC, it does not mean that this power was left to the States. It is quite clear that the Congress did not want any aspects of the television industry regulated with respect to rates, any more than it would allow the States to regulate the rates to advertisers charged by radio or television stations. The fact that the power to regulate those rates was denied to the FCC does not mean that it was granted to the States.

The various questions raised by Mr. Richard J. Thompson in his address to NARUC members pertained more to the particular law of a particular State than they do to the question of PUC regulation. Mr. Thompson raised the question whether a State can grant a nonexclusive franchise or permit, as most cities do. Undoubtedly, cities consult their city solicitors before granting a license to do busines, if there is any question involved. In fact, it is commonly believed that a municipality does not have the right to refuse a CATV license.[14]

Mr. Richard J. Thompson proposed to the NARUC convention that CATV systems be regulated by the State from the standpoint of safety. Mr. Thompson said:

"Lastly and most important I invite your comment upon my proposal to regulate CATV on a State level from the standpoint of safety. The existing utility poles and their use should not be committed to the use of nonqualified and in some cases uninformed workmen who might, through their misinformation cause a possible disaster taking life and property."

It is doubtful that Mr. Thompson would have made this suggestion if he had known of the uniform practice of public utilities to require that the CATV personnel who work on poles be skilled and familiar with the requirements of the National Electrical Safety Code. They could not afford to permit unskilled personnel to work on their poles, because of the danger this would involve in interruption of telephone service and the danger to life and limb which could subject the utilities to costly law suits.

Power companies, telephone companies, and CATV companies construct their wire and pole lines systems according to rigid National Electrical Safety Code specifications so as to minimize the danger of interruption in the services which they supply and the dangers to life and limb.

A good example of this is contained in a policy statement which was issued on October 18, 1965, by the New York Telephone Co. The statement reads in part as follows:

"The telephone company, while generally wililng to accommodate the local desire for better TV, believes that it is a serious mater to permit outside companies to attach to, and to work on, telephone poles in close proximity to telephone facilities. We have an obligation under Federal and State law to provide telephone service to our patrons, and included in this is an obligation to protect these services against interruptions and deterioration from outside causes. We also have to consider the fact that the work of outside companies can endanger the safety of our employees. For these reasons we make it a primary prerequisite to the making of a license agreement that the CATV company and its principals be satisfactory to us, personally, financially and *technically*. We also use a standard form of contract which contains comprehensive provisions designed to prevent the CATV operation from interferring with our public service obligations to our telephone customers and from causing risks to our employees and to the public." [Emphasis supplied.]

The following excerpts from a typical Bell Telephone Co. contract are illustrative of the requirements made by public utilities with respect to the use of their poles:

"3. Licensee's [CATV company] cable, wires, and appliances, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of the National Electrical Safety Code, sixth edition and Bell System practices of the AG, C and G series or any amendments or revisions of

[14] *Rutland Cable TV, Inc.* v. *City of Rutland*, 122 Vt. 162, 166A, 2d 191 (1950).

said code or practices and in compliance with any rules or orders now in effect or that may hereafter be issued by the Pennsylvania Public Utility Commission or other authority having jurisdiction. The specifications attached hereto and made a part hereof, being Bell System practice AG17.902, is explanatory and descriptive of required construction under some typical conditions.

"5. Licensor [telephone company] reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such a manner as will best enable it to fulfill its own service requirements, but in accordance with the specifications hereinbefore referred to. Licensor shall not be liable to licensee for any interruption to service of licensee or for interference with the operation of the cables, wires and appliances of licensee arising in any manner out of the use of licensor's poles hereunder.

"6. Licensee shall submit to licensor evidence, satisfactory to licensor, of its authority to erect and maintain its facilities within public streets, highways, and other thoroughfares and shall secure any necessary consent from State or municipal authorities or from the owners of property to construct and maintain facilities at the locations of poles of licensor which it desires to use."

In addition, there is provision in those pole attachment contracts for application in advance by the CATV operator to attach to any particular pole or poles, inspection by telephone company officials, and a penalty in the form of termination of the contract for a violation of the pole attachment agreement. Besides, there is provision for property damage in the minimum amount of $50,000 each accident and $100,000 aggregate, and provisions for protection for bodily injury in the amount of $100,000 each person and $300,000 each accident or more. Obviously, not only the telephone company, but the CATV operator will make sure that the CATV employees who work on their poles (and who are often former employees of the utilities) are properly trained and skilled in order to prevent interruptions in service or property or bodily damage, if for no other reason than to be able to obtain the necessary insurance required by the utilities. Incidently, the insurance companies, in turn, do not issue such large policies without requiring that only skilled employees be hired to work on the poles by CATV systems.

With respect to the CATV cable itself, it is not a high voltage cable. CATV cables transmit infinitely small voltages. In fact, CATV signals are measured in millionths of volts. The same is true of the amount of voltage on a CATV wire that is attached to the back of a television set. It averages about one one-thousandth of a volt. An ordinary flash light battery delivers 1,500 times more voltage (1.5 volts) and, as every one knows cannot even be felt.

CATV cables and attachments are subject to the same clearances and separation requirements as telephone plant. This applies to horizontal and vertical clearances from ground, rails, foreign wires, guys, building attachments, etc., and separation between conductors and attachments on poles or between conductors in spans.

The exact location of CATV plant on poles with which the utilities are concerned are determined from a joint survey of lines with a telephone company and, if necessary, with a power company and others interested in the pole.

The independent telephone companies exact the same requirements from CATV systems as the Bell telephone companies do.

Therefore, as an argument in favor of enacting State legislation, the safety consideration is the weakest which could be advanced in view of the practices of CATV systems and the public utilities. Furthermore, if the argument exists at all, it should be addressed to an amendment to existing State law making the same safety requirements applicable to all pole users. It is not an argument in favor of regulation of CATV systems as public utilities.

Mr. Gibson misrepresented the CATV industry's attitude on regulation in his address to NARUC. He stated:

"It has further become evident that the CATV industry itself does not seek regulation, and in fact, it has demonstrated by word and deed on numerous occasions that its position is one of being strongly opposed to the concept of regulation in any form, either on a State or Federal level.

The CATV industry has welcomed supervision by the various municipalities, towns, villages, and counties in which CATV systems operate. They have not objected to reasonable regulation by the city fathers through ordinances which lay down the requirements for the conduct of their business. CATV systems normally operate primarily in one city or town. Where the CATV systems extend beyond the city limits, they obtain permits from other local governments, when these permits are required. With respect to the grant of CATV

permits and local supervision including the exercise of the usual policy powers of the local government, the CATV industry believes that these local governments are the most logical authority to regulate and supervise CATV systems. This conviction is shared by Dr. Martin H. Seiden, who was retained in 1965 to conduct a study of CATV systems for the Federal Communications Commission. Stating his conclusion that it was preferable for the local community to issue CATV permits and regulate matters largely of local concern than for the FCC to do so, Dr. Seiden said:

"Timelags in response to complaints would necessarily be introduced by distance, and the soundness of the adjudication of local disputes between subscribers, the township and the CATV would be limited by the relative inability of the Federal agency to make an on-the-spot evaluation in each case as can now be done by local authorities. Nor would the FCC be in a better position to judge among the applicants for franchises. * * * The local community is best able to decide the need, value, and quality of the CATV service it should have." [15]

Dr. Seiden's study proves that cities, contrary to the statements made at the NARUC convention, do in fact regulate CATV systems quite extensively. Some municipalities feel that less regulation is needed in their particular area, while others insist upon quite detailed requirements. From the study of the agreements with local communities of about one-third of then existing CATV systems throughout the country, Dr. Seiden concluded that the following were the types of regulations most often imposed by the localities:

Percent of local CATV franchises

Franchise provision:

The CATV must carry liability insurance and/or workmen's compensation in specified amounts and must hold the city harmless from liability actions	61
The city must approve any assignment or transfer of the CATV system	47
The CATV operator cannot charge rates in excess of those provided for by the franchise; these rates cannot be changed without authority from the city council	45
The CATV system must provide signals of good technical quality (good signal quality is virtually never defined in technical terms, however)	32
The CATV operator must post a bond to guarantee performance of his obligations	29
The city may renew the agreement for a stated period of years when it expires	25
The CATV system must carry a specified minimum number of television channels	19
The system must be capable of carrying color signals	9
The system must carry 1 or more FM signals	7
The CATV system must provide free connections to churches, schools, hospitals, etc	18
The CATV must not cause interference to regular television reception	15
The CATV operator is prohibited from selling or serving television sets	12
The CATV must offer services, without discrimination to all persons along the CATV distribution lines	12
The CATV must offer service to all homes within the city limits or other geographic units	8
The CATV must offer service in all areas having a specified minimum density of homes	3
The city reserves an option to purchase the CATV system under specified condiitons	7
The CATV system may not originate programing or commercials	5
The CATV system must carry the signals of a local station or stations (usually specified by call letter)	4
The CATV system must afford 1 or more local stations either simultaneous or nonsimultaneous protection from program duplication	[16] 1

[15] Dr. Martin H. Seiden, "An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry." Report to the Federal Communications Commission, p. 47 (1965).

[16] Ibid., pp. 46–47. Now that the FCC has asserted exclusive jurisdiction over certain phases of CATV-broadcaster relations, some of these "franchise provisions" will become inoperative because they have been superseded, if they were not already unlawful because the Federal Government had preempted this field in the Communications Act of 1934.

The various municipalities have done an excellent job of granting promptly CATV permits, imposing reasonable conditions under which they must operate, and supervising them properly. That is why CATV systems have proliferated throughout the country and have succeeded so well in developing a fine industry which allows its subscribers to have access to a wide variety of television fare. Cities and towns having CATV service have become the envy of the citizens of other municipalities who are clamoring for this service. There are now about 1,650 CATV systems but NCTA reports that applications for CATV permits are pending and about to be granted in 1,900 other communities.

With respect to those aspects of regulation, such as the protection of broadcast television stations, the application for microwave licenses to serve CATV systems, ect., the CATV industry, through its national trade association, NCTA, has sought Federal legislation. NCTA has supported the principle of H.R. 7715, which was introduced by Hon. Oren Harris, the chairman of the Interstate and Foreign Commerce Committee of the House of Representatives of the United States in 1965. In fact, it has even suggested amendments that would allow the FCC to regulate the CATV industry quite extensively. Officials of NCTA have met with the FCC and officials of the National Association of Broadcasters in an effort to obtain the passage of such legislation.

The substance of the suggested amendments to H.R. 7715 would include:

1. Authority to require automatic reception and distribution by CATV systems of all Grade A signals.

2. Authority in the Commission to prohibit the reception and distribution by CATV systems of any television signals during the time they carry programs which simultaneously duplicate those on signals required to be carried on the system.

3. Authority in the Commission on a case-by-case basis to extend such nonduplication requirements to 15 days before the broadcast of the program by the protected station, or extend such nonduplication requirements to the grade B contour of the protected station. Such additional requirements to be imposed only after a hearing and a finding based on substantial evidence of record that such requirements are reasonably necessary for the continuation of local broadcast services.

4. A prohibition against the Commission adopting any rules, regulations, policies, or practices in licensing microwave facilites which would prevent the recepton of any station or stations by a CATV system, subject only to the qualifications set forth above.

5. A provision to direct the Commission to conduct a factfinding investigation into the various facets of television broadcasting and reception, for the purpose of formulating legislative recommendations for the orderly development of a national television service by wire and radio.

Perhaps the most intemperate statement made at the NARUC convention was the following one by Mr. Gibson:

"The entrance into the field of CATV by some segments of the investment community, and in particular by the investment speculator, only serves to increase one's concern with protecting the interests of the general public from discriminatory practices, exhorbitant charges and poor service, and it is not unreasonable to expect that some protection should also be afforded for the stockholder against the possibility of financial exploitation."

Any business which is successful obtains greater access to financial sources. For many years it was difficult for CATV systems to obtain financing except at very high rates. Now that the public has shown that it wants CATV systems, investment houses and the banking fraternity have made funds available at reasonable borrowing rates. It is difficult to understand why Mr. Gibson thinks this is a reason for imposing a public utility type regulation upon the CATV industry. Mr. Gibson did not give one example of "discriminatory practices, exorbitant charges and poor service." The same loose charges could be leveled at any industry in an effort to bring them under PUC regulation.

CATV systems are subject to the Securities Act of 1933[17] and the "blue sky laws" which exist in a large number of States. These laws are usually considered adequate to protect investors. Now with respect to the alleged "exorbitant charges and poor service," CATV subscriber rates have shown an extraordinary and remarkable stability in a study of the only available sources which could indicate the fluctuation of rates in a 5-year industry rate study.

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[17] 15 U.S.C.A. § 77a, et seq.

The National Community Television Association, Inc. (NCTA), has made a study of CATV system rates over a 5-year period to determine trends in monthly service charges to CATV subscribers. The study involves CATV systems for which comparable data were available for the years 1960 and 1964, as reported in the 1961 and 1965 editions of Television Factbook, a recognized authoritative source of data on the television and community antenna television industries. Whenever CATV system figures appearing in the factbook editions did not lend themselves to absolute comparison, the data for an entire system were disregarded. Comparable data were available for 449 CATV systems representing all geographical areas of the United States and almost one-half of the estimated 1,000 CATV systems in operation in 1960. In those 5 years, CATV's increased their rates by 16 cents or less than 4 percent.

Data obtained from the study revealed the following system rate trends during the 5-year period: 326 or 72.6 percent had no rate increase, 106 or 23.6 percent had a rate increase, 17 or 3.8 percent decreased rates; total 449 or 100 percent.

Of the 106 systems which had a rate increase: 36 increased the number of channels of service and reduced their installation charges, 17 increased the number of channels of service, 35 reduced the installation charge.

Data on installation charges for two systems were not possible of absolute comparison.

Thus, only 16 CATV systems increased rates with no increase in channels of service or decrease in installation charges. Or, put another way, 84.9 percent of CATV systems showing a rate increase improved their service or decreased installation charges or both.

Most significantly, out of the 449 systems studied, only 16 or 3.6 percent increased their rates without increasing service or decreasing installation fees; and of further note, the monthly service charges of 6 of 16 systems are below the national industry average of $4.49 per month,* and 2 are only 1 cent above this national average.

In conducting its rate study, NCTA took particular note of those systems which changed ownership during the 5-year study period, in view of unsupported allegations made by some persons to the effect that CATV subscribers are subjected to increased rates to support these system sales.

Just such an allegation was made by Mr. Gibson in his address before NARUC:

"It is a well-known fact that many CATV systems, both in Vermont and elsewhere, have been repeatedly bought and, after being rapidly depreciated, resold for an enormous profit. This continues in an endless cycle with the consumer being compelled to pay higher rates than he would need to if the companies were managed under sound, consistent principles of public utility operation."

The NCTA study totally refutes such allegations. The study reveals that of the 449 systems studied in the 5-year period, 113 or 25.2 percent had a change in ownership.

On a simple arithmetical average, that would mean that only 22.6 systems or 5 percent change in ownership in any given year.

Of the 112 that had a change in ownership; 74 or 65.5 percent had no rate increase, 37 or 32.7 percent had a rate increase, 2 or 2.8 percent had a decrease in rates; total, 113 or 100 percent.

It can readily be seen that the increase or decrease in rates or no change at all in systems which change ownership was so close as to be almost identical with the national trend for all systems; the greatest difference being only about 9 percent, for those systems having rate increases.

A detailed inspection of the 37 systems that changed ownership and increased rates show that 16 increased the number of channels of service and lowered the installation charge, 7 increased the number of channels of service, 7 lowered the installation charge.

Thus, only seven systems increased rates with no increase in channels of service or a decrease in installation charges. On the other hand, 81.1 percent of the systems reporting rate increases showed an improvement in the number of channels of service or a decrease in installation fees or both.

Significantly, of the 449 systems studied, only 7 or 1.6 percent changed ownership and increased rates without increasing service or decreasing installation fees. And, the monthly service charges of three of the seven systems are below

*This, of course, is a national average. Some CATV systems, because they must use microwave or have other added expenses, must charge a higher monthly rate.

the national industry average of $4.49 per month, and one is only 1 cent above the national average.

In view of Mr. Gibson's specific reference to Vermont CATV systems in his allegations, NCTA conducted a special study on CATV systems in the State.

The Vermont study shows that of the 19 known CATV systems operating in the State as of 1964, only 1 system changed ownership during the 5-year period 1960–64, and this system did not increase its monthly service charge to subscribers.

Comparable data were available for the years 1960 and 1964 for 11 of the 14 known CATV systems operating in Vermont in 1960. Only three of these systems raised their rates, and all three increased their channels of service. Two of the three systems went into extensive modernization programs, increasing their service capacities from 5 to 9 in one instance, and 5 to 12 in the other. Both of these systems offered eight channels of service in 1964 as compared to four and five channels of service in 1960.

These data completely discredit claims that CATV systems are "repeatedly bought" and that the CATV subscriber is "being compelled to pay higher rates" to support such transactions.

Mr. Gibson could have found out the facts by writing a letter to NCTA or through a telephone call. He was present when the general counsel for NCTA testified before a committee of the Vermont Legislature to oppose legislation which would have placed CATV systems under the Vermont Public Service Board in 1965. At that meeting, the NCTA general counsel explained that CATV subscriber rates were among the most reasonable in th country and that they had not increased much since the inception of CATV in Vermont. Mr. Gibson then stated to the commitee that no one was questioning the reasonableness of the rates charged by CATV systems in Vermont. Still, at the NARUC convention, he changed his tune and indicated that his concern "with protecting the interests of the general public from discriminatory practices, exorbitant charges and poor service." Why did he not ascertain the facts detailed above before conveying the impression to NARUC members that this was a serious situation which cried aloud for a remedy?

At this committee meeting in the Vermont Legislature, Mr. Gibson was asked how many complaints by subscribers or others had been received by the Vermont PSB in the previous year. He replied that he did not know the number, but that complaints had been received. He was asked to call his office and ascertain the number and nature of the complaints. When he had done this, he admitted that only two complaints had been received in the last year. When asked what the nature of these complaints was, he said that one was from a retired Army colonel who had been charged $2 per day while in a hospital bed for the rental of a television set. He was then informed that he was trying to regulate the wrong business, because CATV systems in Vermont are not engaged in the business of renting TV sets.

The other complaint had been received from a CATV subscriber who was outraged because he moved and he was required to pay a reconnect charge in order to receive CATV service in his new dwelling. The NCTA general counsel then observed that this was no different from the case of a telephone user who moves and who is made to pay a reconnect charge by the telephone company and he asked Mr. Gibson whether the Vermont PSB had ever objected to that practice of prohibited telephone companies from making such a charge, but he received no answer. This is a common business practice, although some CATV systems do not assess a reconnect charge.

Upon the facts outlined above, the CATV industry challenges anyone to cite the record of any business providing a service to the public which has a better or even an equally good record of not increasing its rates or prices. We are not attempting to place a halo on the heads of CATV operators. The main reason for this remarkable stability in subscriber rates, despite a constant improvement in the quality of service and a steady increase in the cost to the CATV operator of the new and more efficient equipment which an improved technology makes possible, is the undeniable fact that a CATV subscriber can discontinue service at the end of any month and revert to his former practice of viewing the television signals available in the area with a rabbit-ear or rooftop antenna. CATV service is not, by any stretch of the imagination the "essential service" which Mr. Gibson tried to convince NARUC members that it was. It is, as Mr. Richard J. Thompson told them it was, a "luxury service."

Again failing to do his "homework," Mr. Gibson stated that in many areas of Vermont, CATV subscribers would not be able to receive any television reception at all without CATV service. FCC and broadcast industry statistics indicate that 90 percent of the homes in the United States can receive one or more television signals. The 10 percent of the homes which cannot are not all lodged in any one State or in any particular corner of any State, but they are dispersed here and there, a little everywhere. There are even particular homes in the large metropolitan areas close to television transmitters which, because of some freak of nature or of the laws of physics or of radio engineering, cannot receive good television reception.

Most of them are out in rural areas where there is no CATV service because of the scarcity of homes. Placing either CATV systems or television broadcast stations under a PUC will not reverse the laws of nature. The people in these rural areas, or even in more congested parts of a State often organize to construct one or more low-cost translators and obtain a license for it from the FCC. Because the vast majority of the subscribers of any CATV system can get one or more signals with the use of a rooftop antenna, the CATV operator cannot afford to and does not discriminate against the very few who cannot. His charges to subscribers are uniform, except that many CATV systems have a lower monthly rate for subscribers who initially paid a substantially larger connection charge in the early days of the construction of a system.

This is an equalizing factor. The CATV operator soon hears from irate early subscribers when the connection charge is suddenly and substantially reduced and an adjustment is often made in the montly rate. This is common to all businesses. Just ask any department store or television salesman what happens when he suddenly reduces his prices drastically. Those who have recently purchased the identical item for the higher price, demand and are often granted a rebate reflecting a similar price reduction, if for no other reason than to maintain the good will of the customer.

The notable stability in CATV subscriber rates described above is still more remarkable when one compares them with the increases in telephone charges or in the prices of staples and other commodities in the last 5 years or since the very beginning of CATV. While there are no published records from which a comparable study can be made of CATV system rates from their inception, a search of early "franchises" or ordinances from 1950 to 1960 indicates that a $4 to $5 rate was quite common. Apparently, almost all the CATV rate increases took place in the last 5 years, coincidentally with the development of improved electronic equipment for CATV systems. It is quite likely that the study of rates for the 5-year period outlined above represents substantially the total rate increases in the 15 years of the CATV industry's development and growth.

We know that prices and wages were quite closely controlled in the period from 1940–50 during the years of World War II and then the Korean episode. Most of the price and wage increases in other industries during the last 25 years took place in the period between 1950 and 1965, the exact period during which the CATV industry developed. This period from January 1950 through August 1965 is the period during which weekly earnings of workers in manufacturing adjusted to a dollar basis, have climbed from $1,025 to $1,995, and the uptrend in earnings of other workers has been similar to the uptrend in factory workers' earnings. Although the buying power of the dollars earned and saved in this period has declined, the rise in the total of dollars earned has far exceeded the decline in the buying power of the dollars. The vast majority of Americans today are far ahead of 1950 from a financial viewpoint.[18]

In the same period, wage rates increased about 88 percent and raw material cost levels increased about 36 percent. Consumer prices have more than doubled. Intrastate telephone rates, which are under the jurisdiction of the PUC's, have risen 45 percent.[19]

So, although CATV systems have had to pay increased wages, increased equipment costs, although they have generally increased their service to subscribers, decreased their connection charges, kept their increases in rates to subscribers down to a far lower level than other industries, even much lower than the level of the telephone companies whose rates are controlled by the PUC's, Chairman

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[18] Sylvia Porter, financial analyst, from figures furnished by U.S. Bureau of Labor Statistics, the Miami Herald, Friday, Oct. 15, 1965, p. 13–E (finance).

[19] "195 magazine" (the house organ of the American Telephone & Telegraph Co.), July–August 1965, p. 16. The Bell System's Role in a Changing World. The "195" refers to 195 Broadway, New York City, the address of A.T. & T. headquarters.

Gibson of the Vermont Public Service Board wants to convert these CATV systems from the private business which they are into businesses whose property is devoted to the public use and all in the name of "protecting the public from discriminatory practices, exorbitant charges, and poor service." How wrong can a public official be? If his reasoning is correct, then there is no business in America which cannot be brought under the control of PUC's under the same logic or "ill logic." Would CATV continue to prosper under this type of a regulator? Mr. Gibson already has concluded that CATV systems are public utilities, because in his address to the NARUC convention he complained that: "CATV systems are not required to file any reports or keep any records that would reflect the cost of providing service or the rate of return on investment." He bemoaned the fact that he has no information on their actual capital investment or any way to determine whether their rates and charges are fair and equitable or exorbitant. How many other private businesses are required to file such reports in Vermont? Why should a CATV system be required to file such reports when other businesses which are not public utilities are not compelled by law to do so? Mr. Gibson did not try to explain his reasoning with respect to this suggestion. He didn't say in what particulars the CATV industry differs from other private enterprises. Why should they alone of all private business have to reveal their trade secrets and actual profits and losses except to tax officials?

Why pick on CATV? The most recent available economic figures compiled by the FCC show that the revenues of television stations and networks in the United States in 1963 exceed $1,597 million.[20]

The FCC's own economic assessment of this affluent industry, which the FCC makes CATV systems protect against competition, before Federal tax, but after deduction for salaries, depreciation, and all other expenses, shows a profit of more than $343 million for 1963. As a matter of fact, the FCC reports that in 1963 some 87 television station operations in the United States reported a profit of more than $1 million each. And 1964 was bigger and better. Broadcasters had a net income in 1964 of $415,600,000 before Federal taxes on gross revenues of $1,800,000 (up 21.1 percent from $343,200,000 in 1953).[21] More than 100 stations showed a profit in excess of $1 million each. The original cost of tangible property for TV broadcasters totals $780,781,000, which now had a depreciated value of $393,-057,000. Therefore, according to FCC statistics, broadcasters reap a 50.3-percent annual return on their original investment and 105.7 percent on depreciated investment.[22] If profit is the criterion for determining whether a business enterprise should be subjected to PUC jurisdiction, it would seem that the commercial television broadcast business should have invited Messrs. Loughlin's, Gibson's, and NARUC's diatribes, rather than the CATV industry. We can only ask, why pick on CATV?

These high profits are not of recent origin or an unusla occurence in broadcasting.[23] Is Chairman Gibson or NARUC concerned about that? Has the Vermont PSC or NARUC ordered a study of this situation to determine whether the advertising rates charged by broadcasters to businessmen (particularly small businessmen) are fair and equitable or reasonable, in view of these profits, and to find out if these advertising rates should be brought under PUC jurisdiction? If the answer is that the Federal Government has preempted this field, it must be remembered that it is the same Comunications Act of 1934 (which gives authority to the FCC over broadcasters) which the FCC relies upon to regulate CATV systems. CATV is in the field of television reception and the Congress has preempted the whole field of television, as Mr. Richard J. Thompson pointed out at the NARUC convention. Don't forget that the FCC has not regulated advertiser rates or TV station rates for advertising just as it has not controlled CATV subscriber rates.

Mr. Gibson quoted the FCC as making, in connection with its recent rulemaking proceedings pertaining to CATV regulations,[24] the following observation:

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[20] TV Broadcast Financial Data, 1963 (FCC 54732), July 23, 1964.

[21] TV Broadcast Financial Data, 1964, released Aug. 6, 1965, on all 560 television stations and 3 networks.

[22] See supplemental comments of the National Community Television Association on H.R. 4347, hearings before subcommittee of the Judiciary Committee of the House of Representatives of the United States, 1965.

[23] The average radio broadcast station made 107 percent return on its investment after taxes on its depreciated investment in 1946 (before the inroads of television). Did NARUC consider the advisability of placing radio stations under PUC jurisdiction at that time?

[24] FCC docket Nos. 14895, 15233, and 15971 (1965); FCC first report and order (38 F.C.C. 683 et seq.).

"The Commission does not contemplate regulation of such matters as CATV rates to subscribers, the extent of service to be provided, or the award of CATV franchises. No Federal presumption is intended, apart from the areas in which the Commission has specifically indicated concern and until such time as regulatory measures are proposed."

Mr. Gibson should know, as the FCC should have known, that the Commission is not the lawmaking branch of the Federal Government. The Congress is the only branch of the Government which can decide to preempt a particular field consistently with the Constitution of the United States. Either the Congress has preempted the field of television or it has not. It is not up to the FCC to preempt. If the FCC is correct that it can allow the States to act when the FCC does not, then the States are free to regulate the rates which television and radio broadcasters charge, because the FCC has not done so.

We are not advocating that the States regulate the broadcaster's advertising rates. The Congress deliberately has left this area outside of the jurisdiction of the FCC both with respect to the broadcaster and the CATV operator. Both have constantly plowed a large portion of their earnings back into the purchase of better products and equipment with the result that the American public has the best systems of television broadcasting and reception in the whole world. The Congress wisdom has been proven by the evident results.

A CATV system is an improved television antenna reception service. Has the Vermont PSC or NARUC looked into the reason why so many people want CATV service? Evidently, it is because they are not satisfied with their rabbit ear or rooftop antenna service. Why do the latter deteriorate so rapidly? They must be changed after 1 or 2 years if peak performance is desired because of the erosion of the weather, etc. Are the purchasers (the vast majority of television viewers) getting their money's worth when they purchase a rabbit ear or rooftop antenna? No one keeps paying for CATV service unless he chooses to do so. If he continues his subscription at the end of any month, it must be because the CATV system provides him with something his own antenna cannot give him. Furthermore, a TV viewer does not pay just once for an antenna either. He pays again at least every few years, because it has a limited useful life. It will give peak performance for 1 or 2 years at best. After it begins to weather and corrode, it loses some of its ability to pick up a signal and the picture on the television receiver may become snowy. Besides, most homeowners are paying an extra premium every year on their "extended coverage" insurance policy because of their rooftop antennas. These antennas have a habit of blowing over and sometimes off the roof in a storm.

Are antenna manufacturers or salesmen making 200 or 500 percent or more return on their investments each year? Could some of their profits be plowed back into research and into the development of more sensitive and durable antennas so that the public would not continue to clamor for CATV service? We are not advocating that these business enterprises be placed under PUC jurisdiction, but it would be as logical as to vest jurisdiction in PUC's over CATV systems. Why are Messrs. Loughlin, Gibson, and NARUC picking on CATV systems?

It is quite possible that they and other members of NARUC had been listening to the loose charges of exaggerated profits made by some groups of theater owners who have picked up a cudgel to use against CATV systems in the hopes that less people will stay at home and view a wider variety of television fare, if these systems are not permitted to develop or if they are unduly curtailed in their operations by restrictive legislation. Theater owners' efforts to curtail television viewing are "too little and too late" to do any good. They have already lost a vast amount of their audience to the television broadcast industry, as the demise of many theaters since 1950 will attest. Do they seriously believe that they can reverse this trend by hobbling the CATV industry which serves about 3 percent of television viewers in this country? Should legislators try to dictate to the people what form of entertainment they should choose in order to keep theater owners in business? Furthermore, those theater operators who have tried to bring to their potential audience a different type of film than is being offered to the public on television continue to prosper. This fact was brought vividly to the attention of the public by Mr. Philip F. Harling, assistant to the president of the Theatre Owners of America in an address in April 1964, before a convention of the Interstate-Texas Consolidated Theatres in Dallas, Tex. Mr. Harling said:

"Here is a business which attracts an average of 50 million people into its theaters every week to provide an annual gross of $1,650 million in 1963. And if a business which has 16,972 branches in operation is on its last legs, what a way to die." [25]

Still, a theater owner group was successful in having another form of competition, pay-TV, outlawed recently by California voters in a referendum. The court, in striking down the law as unconstitutional had this to say:

"The difficulty with the position of defendant and amicus curiae in support of defendant is that the 'evil' with which they are concerned is speculative and illusory. The court has read with care the Report of Hearings on Subscription Television, 85th Congress, 2d session, and it is able to discern only the conjecture from certain viewpoints (some of which are not entirely unbiased) that subscription television may destroy free television operation. Others have felt that lacking experience from actual operations of subscription television, the extent and requirement of legislation cannot be determined. (Report of the Assembly Interim Committee on Public Utilities and Corporations Relative to Pay Television. Assembly Interim Committee Reports 1959–61, vol. 17, No. 7.)

"Moreover, the recitals of the Free Television Act itself are less than helpful in this regard. It is charged that pay television would have an 'adverse effect' on presently licensed stations which make no charge. It would 'tend' to deprive viewers of 'freedom of choice' and would 'tend' to create a monopoly. (Sec. 2.) Even in the act itself, accordingly, the 'evils' are well discounted by 'improbability.'

"In the final analysis it would appear that the charges here made could have been made by the radio industry when the television was made available for the home, and by the producers of silent pictures on that memorable day when Al Jolson appeared on the motion picture screen and sang in 'The Jazz Singer.' Invention and progress may not and should not be so restricted at least when they are cloaked with the immunity of the fundamental freedoms.

"The court concludes that the Free Television Act abridges freedom of speech contrary to the guarantees of the 1st and 14th amendments to the Constitution of the United States and of section 9 of article I of the Constitution of California." [26]

Also, the proponents of PUC legislation affecting CATV at the NARUC convention had probably read articles, often planted by theater groups, a small group of antagonistic broadcasters, the television antenna and manufacturers of television accessories group, Television Accessory Manufacturers Institute, and producers who delight in making charges of exaggerated profits by CATV systems in the hope of arousing misinformed legislators or associations like NARUC in supporting restrictive legislation for CATV systems. One example of an article which exaggerated the profitability of CATV was "CATV: Static in the System," carried in the Forbes issue of August 1, 1965, at page 39. The article speaks of the CATV industry as being "fantastically profitable," a "gold mine in the sky."

This extremely misleading article asks:

"In what other industry does a company which earns 57 percent on revenue and 33 percent on capital think its doing just a little better than far-to-middling? Where else could one find a company that earns 72 percent on revenue and 59 percent on capital?"

The article then conveys the impression that this is typical of the CATV industry. It goes on to state:

"CATV systems pluck broadcasts from the sky with huge antennas, then pipe them into homes through cables. For most of them, the capital necessary to build the antenna, string the cables, and make the subscriber's TV set capable of receiving signals from the cables runs to between $92 and $140 per subscriber. Operating costs are relatively low because the CATV systems do not generate programs (except in rare instances); nor do they pay royalties on the programs they snatch from the air."

Most CATV operators were aghast at the article and their immediate reaction was, "Show me where I can get one of those." The great bulk of CATV systems are independently owned by a small business enterpreneur and they

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[25] The Dallas Morning News, Apr. 7, 1964.

[26] *S. L. Weaver, D. E. O'Neil, and S. T. Greenhow, Plaintiffs* v. *Frank M. Jordan, As Secretary of State of the State of California, Defendant*, Superior Court of the State of California in and for the county of Sacramento, No. 02339, Sept. 14, 1965.

have only from 800 to 1,200 subscribers. The figures advanced in the Forbes magazine article were considered "fantastic" by them. However, even assuming the correctness of the figures last quoted in the excerpt above, it is evident that they do not support the article's conclusion of 57 percent earnings on revenue and 33 percent on capital, let alone the article's other wild conclusions of 72 percent earnings on revenue and 59 percent on capital.

Obviously, Forbes made no attempt to evaluate the data given to it by some for of CATV. Even assuming that a CATV system did cost $115 per subscriber and that it had annual revenues of $54 per subscriber and an operating profit of 57 percent of this amount, equal to $31 per subscriber, Forbes attempt to equate return on capital to $31 divided by the $115 capital investment per subscriber is highly irresponsible figuring. It does not comport with Forbes usual adeptness with financial computations.

It is absolutely necessary, as even any amateur accountant would verify, to adjust operating profit as follows: this system must be depreciated over a period of say 10 years. The cable does deteriorate given time, and so-called highly sophisticated electronic systems usually require replacement in less than 10 years. Therefore, an annual charge of $11 per subscriber should be made. This gives earnings before taxes of $20 per subscriber, or approximately $10 per year after taxes. The return on total capital investment that is $10 divided by $115, is in fact a little under 9 percent per annum. This is a far cry from the 33 percent on capital mentioned in the Forbes article, let alone the other more fantastic figure.

If one argues that the return on investment can be increased by the use of borrowed money, Forbes' conclusion still misses the mark by a wide margin. Assuming that half of the cost of the system is borrowed at 6 percent (nice work, if you can get it), there still must be deducted about $3 a year from the $20 profit before tax arrived at above for interest charges, yielding a revised profit before taxes of $17 a year. At a 50 percent tax rate, there would be an $8.50 profit per year, which would work out to about a 15 percent return on the $57 of equity capital invested. Again, this figure is nowhere near the 33 percent mentioned in the Forbes article.

In order to complete this analysis, one should make some adjustment for the fact that it ordinarily takes at least 4 years for a CATV system to reach its potential. You will note that all of the figures given above are for systems after they have reached their potential. Some adjustments would still have to be made for the undeniable fact that systems generally lose money for at least the first 2 years that they are in existence. The basic error in the Forbes article is the use of operating profits in relation to invested capital as a measure of earning power. It is a misleading statistic. If the advocates of PUC regulation were to rely upon this type of misleading statistic in order to support their contention, they would have to consider the fact that operating profit in relation to equity capital amounted to approximately 60 percent in the group broadcasting industry, which is much higher than the alleged CATV "profitability" of 33 percent on capital. In fact, in the highly regulated electric utility industry in 1963, "profitability" arrived at in this fashion amounted to 26 percent.

This latter industry enjoys the usual protection against competition common to public utilities. So why all the fuss about CATV? Many readers thought that Forbes article's plug for compelling CATV system subscribers to have to pay copyright [27] and the complimentary remarks about an attorney who has been conducting the litigation to accomplish this result was not purely accidental.

While it is true that many members of NARUC may have been conditioned to favor restrictive legislation for CATV by this or similar slanted articles, is it not obvious that prudence dictated that a searching study be authorized by NARUC to ascertain the facts about CATV rather than to prejudge the issue and authorize in their resolution that a PUC type of legislation be drafted for consideration and eventual recommendation to State legislatures?

[27] It is obvious that if CATV systems have to pay copyright for receiving TV programs, they will have to pass this added cost on to their subscribers. Thus a member of the public who is penalized because he lives in a remote area or disadvantageously located from the point of view of receiving good television reception via an antenna, would be penalized again by having to pay a second time for the copyright of the TV programs which he receives, while his more fortunate brethren in the city would have to pay but once. All who purchase goods advertised on television pay once for the copyright, because the cost of advertising is obviously added to the price of the goods sold to the public. Even if a person does not watch TV, he is assessed for copyright because the cost of advertising is contained in the pricing of goods sold.

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There was not an adequate discussion of this important issue at the NARUC convention. Why did not one make mention of the tremendous expense to the States which would be involved in the enactment of PUC type legislation for CATV? When Mr. Gibson was asked in 1965 by a member of a committee of the Vermont Legislature how much expense would be involved if the PSB were asked to regulate CATV systems he responded naively that there would be no added expense. If that is correct, there must not be much in the way of abuse to correct.

With the rapid growth in CATV systems which is taking place at present, it is obvious that a large number of investigators, accountants, rate specialists, hearing examiners, and other personnel would have to be added to the staffs of the various State PUC's throughout the country. The very passage of PUC-type legislation would breed disputes between CATV operators and their antagonists who would, if for no other reason than to embarrass CATV operators, precipitate or spawn disputes between them and their subscribers, or contest the reasonableness of their rates, etc. State PUC's would rue the day that they invited legislation which made them the forum for these time-wasting debates.

Why were not both sides of the debate about CATV brought to the attention of the NARUC convention? The panelists upon this most important subject were Commissioner Kenneth A. Cox of the FCC, Chairman Gibson of the Vermont PSB, and President Thompson of the North Dakota PSC. Only the latter attempted to weigh impassionately the issue whether CATV is a type of business which is of a public utility nature.

Commissioner Cox has been the prime antagonist of CATV ever since as a staff member in 1956, he attempted unsuccessfully to have the Senate Committee on Interstate and Foreign Commerce adopt a highly critical report on CATV which he had written. He has been the prime mover of FCC regulation restricting CATV successively as Chief of the FCC Broadcast Bureau and later as an FCC Commissioner. When he addressed the NARUC convention, he did not tell his audience that after all the 15 years of CATV existence during which congressional committees and the FCC conducted studies of CATV systems they had never found one example of a CATV system which had put a broadcast station out of business.

The Honorable E. William Henry, Chairman of the FCC, admitted to a committee of Congress in May 1965 that he could not give even one such example.[28] Fortunately from the point of view of time, there is no necessity of pursuing this point any further before this body, because the Federal Government has preempted the field of CATV-broadcaster relations and the protection of TV broadcast stations, and the FCC has indicated that it would occupy this field fully and exclusively. Accordingly, the States are precluded from regulating at least those aspects of CATV. This point has been discussed above and it was mentioned by Commissioner Cox. However, he believes in restricting CATV systems by any possible means and he did encourage NARUC members accordingly to seize whatever control they could of CATV by legislation or otherwise in order to "cooperate" with the FCC. While it was perfectly proper to invite Commissioner Cox, why did not those who planned the panel invite, out of a spirit of fair play, FCC Commissioners Bartley, or Loevinger who disagree drastically with Commissioner Cox on CATV or why did they not invite Commissioner Wadsworth who has stated publicly that he would not have voted for the FCC's First Report and Order on CATV, if he had then been a member of the Commission? Were they afraid NARUC members would learn the facts from exposure to both sides of the dispute?

Mr. Thompson did try to weigh objectively whether a CATV system is a "necessity" or a "luxury" service, but even he had apparently been exposed to the parade of "horribles" which are usually dreamed up by the opponents of CATV. He averred that CATV could become a "monstrosity," that the CATV operator could become a "monopolist," that while "there are no abuses existing in North Dakota CATV charges could become "outrageous" and that CATV could become a monopoly. If what is said about the CATV industry's practices in the purchase and sale of certain systems is true, he thought "the State should step into the picture."

Because both Mr. Gibson and Mr. Thompson spoke disparagingly of or questioned so-called quick writeoffs by CATV systems, a word will be said about

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[28] Hearings on H.R. 7715, Subcommittee on Power and Communications of the Committee on Interstate and Foreign Commerce of the United States, p. 79.

this. The Internal Revenue Service has never been accused before of being too lenient in allowing rapid writeoffs. Quite to the contrary, it has been criticized very often for not allowing sufficiently rapid writeoffs. In fact, the Congress revised this part of the Internal Revenue Act during the Kennedy administration in order to allow faster writeoffs and hasten the modernization of industry. Only the usual hard core of CATV antagonists, who try to disparage CATV system operators in any way they can, have charged that the IRS is lenient in this regard. Particularly because of these often printed allegations, CATV systems have been inspected frequently by IRS agents to determine the reasonableness of the writeoffs or depreciation claimed by CATV operators. It has been found repeatedly that CATV system operators take advantage of the same depreciation allowance as do broadcasters and other electronic companies for the same type of short-lived or obsolete equipment.

As more durable and permanent cable and other electronic equipment is developed for broadcast stations and CATV systems, the depreciation period is lengthened. IRS agents are constantly breathing down their necks as it is true of all other industries. If there is any complaint to be made on this score, it should be addressed to the Congress which makes the laws and to the IRS which enforces these laws. There is nothing PUC legislation could do to improve the existing situation. The public would be the first to complain vociferously if CATV operators and broadcasters did not replace equipment immediately when it has been supplanted by a product which can give the viewer the benefit of better television reception. This is not a proper basis for advocating a PUC-type of legislation for CATV systems.

The only other panelist was Chairman Gibson who has been trying to obtain jurisdiction over CATV systems in the State of Vermont for quite some time. He was hardly an objective panelist and the various excerpts from his address, discussed above, attest to the fact that his mind was already made up and that he had not bothered to find out the facts even about CATV systems in Vermont with respect to the increases in their rates or other aspects of their business which he criticized.

The NARUC convention did not hear both sides of the controversy with respect to CATV before voting for the resolution that ordered a draft of a PUC-type bill for eventual presentation to State legislatures. NARUC is a highly respected association. It has rightly earned this respect from the public because of its temperate evaluation of issues pertaining to public utility regulation in the past. All the loose and unsupportable charges which were made by the panelists about CATV systems could have been leveled at any industry. If the public and Government officials ever became convinced that NARUC can panic and be stampeded into the adoption of a resolution to bring under the aegis of PUC's, competitive businesses which are not unlike other private businesses, in order to placate a few of its prejudiced spokesmen who would like to regulate all businesses, even the broadcast industry as opined by Chairman Loughlin—then NARUC will lose the respect which it has justly merited in the past and it will become ineffective.

The CATV industry has voluntarily and wisely curtailed rate increases far below even the level of such increases by telephone companies whose rates are regulated by the State PUC's. CATV systems have done this mainly to remain competitive with other forms of television reception. They do not enjoy protection from competition, such as telephone companies do, or such as the television broadcast industry does now that the FCC has decided to protect them, without their having to prove a need for such protection, against competition for their viewing audience by CATV systems. In fact, CATV systems cannot even complain if an inferior translator interferes at its antenna site with the reception of television signals. The fact that this will black out a television channel on the subscribers' sets is immaterial as far as the FCC is concerned. even though the CATV system was operating for years in the area before the advent of the translator.[29]

The CATV system gets no protection but it must give protection to TV stations and to translators, and if it were transformed into a public utility, a PUC could saddle it with an obligation to serve dwellings distant from the CATV plant even when a sound business judgment would not justify serving such dwellings. The subscriber rates would necessarily have to soar under this type

[29] Claremont Television, Inc., FCC 63–42, 29469 (1963).

of legislation, the CATV system would lose connections and the present stability of his CATV operation would be jeopardized. This just does not make sense. This luxury service is not the type of business which lends itself to PUC regulation. The owners of broadcast stations, boosters, satellites, and translators cannot be compelled to serve areas where there is poor television reception and where their operators do not choose to serve. The Communications Act of 1934 did not differentiate between the methods of television reception. It left the whole field of television within the realm of private business enterprise. Only true common carriers could be subjected to public utility type regulation under the Communications Act and this act did not rest in the State governments or legislatures the right to impose the burdens of public utility status upon an interstate business in the television field. Otherwise, the State legislatures could impose likewise upon commercial television broadcast stations the status and obligations of a public utility and common carrier and thus place them under title II of the Communications Act. The mere proposition is preposterous, as it is equally with respect to CATV systems.

Mr. Thompson, in his address to the NARUC convention "was especially interested to note that a representative of the CATV industry (at a hearing before the North Dakota Public Service Commission) vigorously opposed State regulation for the reason he concluded that soon the Federal Government would act in the field and that for the time being, it would be preferable to allow the industry in North Dakota to deal with the cities rather than the State." Is it any wonder that the CATV industry prefers local municipal regulation of the free enterprise kind when the alternative is public utility type regulation under a State PUC?

NARUC members must have been confused by Mr. Thompson's statement that his PSC had been informed no firm and reliable action has been taken on the Federal level and Commissioner Cox's unequivocal assurance that the FCC had finalized its rules and order with respect to microwave-served CATV systems and that it intended to apply the same stringent regulations to all CATV systems in the near future because his Commission had found it had authority to do so under the Communications Act.

In view of those conflicting statements about CATV, the wild and uncorroborated charges; the misinformation; the total lack of firm information; the complete absence of people who were truly knowledgeable about CATV operations; the misleading reassurances of the chairman of the Connecticut PUC that his State had solved the problem of CATV regulation by the enactment of a PUC bill (when the truth of the matter was that CATV development in Connecticut had been set back for years vesting jurisdiction over it in the PUC); is it any wonder that NARUC members listened to the calm and reassuring voice of the young chairman of the Vermont Public Service Board, who sounded off as an expert and spoke as though authoritatively about all phases of CATV, all the while dispensing the greatest store of misinformation that the foes of CATV had ever dreamed up, is it surprising then that NARUC members welcomed the chance to vote for any resolution and end the nightmarish and bewildering discussion, when he oversimplified the whole issue and concluded:

"The problem then simply stated is one of directing all efforts to bringing CATV under proper regulation as soon as it can be accomplished."

CONCLUSION

The consideration given the resolution by NARUC members was inadequate, as were the discussions which led to its adoption. The decision to formulate legislation for the various States to regulate CATV systems as public utilities was not based upon sufficient information. A thorough study of the CATV industry and of its current practices should have preceded consideration of such a far-reaching decision affecting not only the CATV systems immediately concerned, but potentially all other free enterprise types of business in the future. Otherwise, NARUC's action will appear to be a power grab to extend PUC jurisdiction over the traditional private and free enterprise types of business. NARUC can only lose respect and adversely affect its prestige if it creates such an impression. The Connecticut experience has proven already that a PUC is not suited by training or experience to regulate a private, free enterprise type of business like CATV and that it can only produce undue delays and stymie the growth of CATV systems. The CATV industry is convinced that any thorough, impartial study conducted by NARUC or any other responsible organization will prove, as Dr. Martin Seiden, the FCC's hired CATV expert, has advised the

FCC, that the local municipalities are better suited than a central governmental agency to regulate properly the operations of a CATV system which are of a local nature. The municipalities for the 15 years of CATV existence have done an excellent job of insuring that CATV systems serve the public efficiently and satisfactorily. No good reason has been advanced for ousting them from jurisdiction. That is why there are so few corroborated complaints by CATV subscribers, city officials, or anyone else about CATV. That, also, is the reason why some 1,900 additional applicants for permits have been filed with city councils to satisfy the public's ever-increasing clamor for this wonderful, superior television reception service.

Mr. CONROY. I strongly urge this committee to make it clear both in such legislation as it may report out and in the committee report, that regulatory jurisdiction over community antennas is to be exercised exclusively by the Federal Communications Commission and that community antennas are neither common carriers or any other form of public utility. If television reception is to be regulated in any form, it should be done exclusively by the Federal Communications Commission in the interest of assuring uniform, equitable, and nondiscriminatory regulation on a national basis. Community antennas do not lend themselves to joint regulation, and divided responsibility and control over the industry would be nothing less than chaotic.

I would like to comment briefly on another proposal which has been made to this committee. The Federal Communications Commission has asked that Congress consider whether section 325(a) of the Communication Act should be made applicable to community antenna systems. Section 325(a) in essence provides that no station shall rebroadcast the signals of another station without permission of the originating station. The Commission has taken the position that it is not now able to state whether such an approach would be fully effective or fully consistent with the public interest.

The president of the National Association of Broadcasters has urged that this committee report a bill which would impose the requirements of section 325(a) upon community antenna systems. NCTA is unalterably opposed to this recommendation. It is extremely difficult for me to understand why the Commission is not prepared to advise the committee that it should not make section 325(a) applicable to community antennas.

It should be perfectly obvious to the Commission that if community antennas are required to obtain permission from television stations to receive their signals, community antennas would be completely within the control of the television broadcast stations and the networks. The Commission, under these circumstances, would be almost entirely without authority to promote the orderly development of community antenna services in the public interest.

It is no answer for the Commission to say that the television stations could not unreasonably withhold permission for community antenna reception. As the Commission well knows, very little programing is owned or controlled by the television stations. Virtually all national programing, and the very substantial part of that originated at local stations, is controlled by copyright owners and the national television networks. As the Commission recognized in the second report and order, no station could give permission for reception of its signals during any period that it is broadcasting copyrighted programs, or, for that matter, any network-controlled programs, unless

the copyright owners or the networks authorized such reception. The Commission and this committee are aware of the fact that the copyright owners and the networks are actively seeking or are supporting legislation and litigation which would impose copyright liability on community antenna reception.

If section 325(a) were made applicable to community antennas, the outcome of the copyright litigation in the United States District Court for the Southern District of New York would be of little importance, since the copyright owners and the networks could refuse to permit the television stations to authorize reception of the programs. In fact, making section 325(a) applicable to community antennas would be to give the copyright owners and the networks complete control over community antenna reception with respect to all significant programing.

It is inconceivable that the Commission honestly believes that it would have the power to promote the public interest in community antenna reception under such circumstances. One of the basic objectives, if not actually the underlying objective, of the second report and order is to permit the Commission to require reception of so-called local television stations in order that they may be fully accessible to CATV subscribers. Is it not impossible to require reception of a station if the copyright owners and the networks who control the programs can refuse to authorize CATV reception except upon their terms?

The failure of the Commission to oppose strongly the position of the National Association of Broadcasters suggests that either it does not understand the community antenna industry, the public interest in its services, or the manner in which the broadcast industry operates, or that it is indifferent as to whether the public should have free access to television reception by means of community antennas with due regard to such regulation as may be reasonably required to facilitate the continued operation and development of local television stations.

A principal problem with the Commission's approach to regulation of CATV systems is that its rules look to the economic protection of television stations of its choice, as Commissioner Bartley so well brought out in his testimony before this committee.

Still, there is not one word in the Commission's first or second report and order pertaining to CATV on the tremendous profitability of television broadcast service.

Although the Comimssion has in its files the annual financial returns of all television stations, not once to our knowledge has it tested the claims of television stations to a need for protection by reference to the balance sheets and profit-and-loss statements of television stations as shown on their annual financial returns. Why has not the Commission done this? Is it afraid that its finding will not support its rules?

As you know, NCTA and the NAB tried to get together on compromise legislation. A copy of the proposed compromise was inserted at pages 138 to 140 in the printed hearings on H.R. 7715. The NCTA board approved the compromise unanimously, but the NAB television board, according to the trade press, turned down simul-

taneous only, nonduplication protection by only one vote. These hearings might have been completely unnecessary except for that one vote.

If the Congress regards a local television station as one within 30 miles of the CATV community entitled to carriage and nonduplication, as suggested by NCTA, then the truly local stations will all be carried and protected through simultaneous nonduplication, the Commission will not be burdened with countless evidentiary hearings, and peace will be restored, as we hope, between the broadcaster and the CATV operator to the great benefit of the public.

In conclusion, I would like to emphasize Mr. Ford's statement that we believe the Congress should establish the basic policies which will govern the public interest in community antenna services, and that the Commission, without congressional authorization, does not have the authority to promulgate the regulation which it has adopted.

I thank you for the privilege of offering my views to this committee and for the opportunity to participate with you in this great Government of ours.

The CHAIRMAN. Thank you, Mr. Conroy. I believe we will start the questioning and see how far we might get. I might say to each member of the committee that we will limit the questioning to 5 minutes in order to get as far as we can. That won't be long, I am sure.

As I have said, we are going to try to limit this to 5 minutes for each member. Mr. Moss, you may proceed.

Mr. Moss. Mr. Conroy, you want to have regulation vested in the Federal Communications Commission. Is that what you seek today?

Mr. CONROY. This is correct, sir, as stated in our presentation before this committee.

Mr. Moss. I am trying to get your view.

Mr. CONROY. Yes, sir.

Mr. Moss. You want that to be very specifically spelled out by the Congress as to the limits of Commission jurisdiction?

Mr. CONROY. Yes, sir.

Mr. Moss. You would limit that to what? Nonduplication?

Mr. CONROY. Carriage and nonduplication of local stations, Mr. Moss. That is the essential part of it.

Mr. Moss. Do you feel that those two things are the only factors that the Commission should be able to consider in carrying on a regulatory responsibility over community antenna television?

Mr. CONROY. We believe that these are all that are required to insure the continued and proper growth of the broadcast industry. We want to insure that, because we are tied to the broadcast industry. We are not trying to put them out of business.

Mr. Moss. Do you know of any other regulatory function assigned a Federal regulatory commission on such a narrow basis?

Mr. CONROY. I am not so familiar with the whole broad body of law in this respect, Mr. Moss, that I really could reply.

Mr. Moss. Would you perhaps for good measure toss in a little public interest consideration in the regulation of CATV?

Mr. CONROY. In the bill which has been proposed and which Mr. Mackay introduced we pay firm attention to the public interest.

Mr. Moss. Is Mr. Mackay's bill the one you support?

Mr. CONROY. Yes, sir; it is.

Mr. Moss. Well, I am not prepared to deal with it in detail, but Mr. Mackay, I will be very pleased in mark-up, to discuss with you some things that I regard as serious deficiencies in the legislation.

I don't regard this as adequate to protect the public interest if that is the bill you are supporting.

Mr. CONROY. I might add in this respect that I have had conversations with any number of broadcasters. Most of them seem to feel—I can name them, if I have to—that this is all the protection that they would want to make sure that their stations carry——

Mr. Moss. I want to make it clear that I am not the spokesman for the broadcasters and they do not so regard me, and neither have they historically since I have been on the committee. I am a spokesman for the voters of the Third District of California with a strong sense of commitment to what I regard as the public interest. I am not at all concerned with the views of the broadcasters, nor am I of CATV.

Mr. CONROY. I am glad to hear that, sir, because this is why we are here.

Mr. Moss. I approach this job with proper dedication.

Mr. CONROY. This is why we are here, sir.

Mr. Moss. Now under the little doctrine of preemption, if we only gave the Commission the authority to consider these minimal factors, we would relieve you of a most onerous threat of regulation by a multiplicity of State commissions and municipal bodies, would we not?

Mr. CONROY. Yes, sir; that is correct.

Mr. Moss. That preemption is an attractive bit of bait and you are willing to make a minimal payment for it; is that correct? Rather a quid pro quo.

Mr. CONROY. I have not felt that we were coming up here trading anything, Mr. Moss.

Mr. Moss. I recall here last year we had one on advertising of cigarettes. They got a little preemption package that gave them an awful lot of protection and the public damn little. I think that is about the kind of bait we are being offered today. There is little consideration of public interest in this particular complex and challenging situation.

Mr. CONROY. We have a great interest in the public interest, particularly that part of the public's right to receive broadcast signals and that public has expressed its interest.

Mr. Moss. Are you not going to do everything you can as an association to try to get exclusive franchises in these communities?

Mr. CONROY. No, sir; that is not true.

Mr. Moss. You are not going to try?

Mr. CONROY. No, sir.

Mr. Moss. You are not going to go before a city council and oppose a competing application? You are going to invite competition?

Mr. CONROY. You mean application on top of an existing system?

Mr. Moss. Yes.

Mr. CONROY. Of course, we don't solicit competition, but we can meet it in our own way in the market.

Mr. Moss. You want this open, say like an automobile dealership in town where all you have to do is go down to city hall and pay a license fee and you are in business?

Mr. CONROY. It is completely open now, sir.

Mr. MOSS. I thought there was a franchise involved in most of these municipalities.

Mr. CONROY. The franchise is a misnomer. It is merly a permit or enabling ordinance which allows us to do it. Franchise denotes exclusivity, and we don't think of it in terms of a franchise, although it is called that. We are not looking for exclusivity. In fact, it is illegal, I am told.

Mr. MOSS. Is that why you are discouraged from seeking it, because it is illegal?

Mr. CONROY. Seeking what?

Mr. MOSS. Exclusivity.

Mr. CONROY. We are not seeking exclusivity.

Mr. MOSS. You don't want it?

Mr. CONROY. We are not seeking it. We don't want it.

Mr. MOSS. You don't want it?

Mr. CONROY. That is correct. We do not want it.

Mr. MOSS. You know, I have developed a certain cynicism in my 14 years here. You will pardon me for just saying I honestly don't believe that that represents your true conviction.

Mr. CONROY. In many towns, Mr. Moss, there are competing systems. I am not saying we invite competition.

Mr. MOSS. The fact that there are competing systems does not indicate that you do not want exclusivity in the operation of your franchise. I think that the pattern here, unless there is some regulation, will be one of merge, merge, and merge until we have a handful of CATV's across this Nation being serviced by a handful of broadcasters.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. You are here, sir, to advocate the stripping of regulatory powers from the State and local regulatory agencies over the price of service by CATV's?

Mr. CONROY. No, sir; not the municipalities.

Mr. DINGELL. How about the State public service commission or the State public utility commissions?

Mr. CONROY. The body of law which has been developed so far has not vested jurisdiction over CATV in any State commission except Connecticut, where there are no systems using utility poles on streets and highways.

Mr. DINGELL. Let us not engage in debating whether or not somebody is a public utility. A public utility becomes a public utility because it is so established by State statutes; is that a fact?

Mr. CONROY. I would expect that is the case.

Mr. DINGELL. Once that is done, then the degree, type, and manner of regulation is also established by statute in the State?

Mr. CONROY. That is the way it works.

Mr. DINGELL. Whether or not the law is developed so far on public utilities is relatively unimportant; am I correct? Because what, in effect, we are discussing now is whether or not you choose to strip the State and the local regulatory bodies from the power to assess the level of charges which shall be assessed against you, the CATV system?

Mr. CONROY. The States do not have the power now, sir. The local municipalities do.

Mr. DINGELL. You advocate that the Federal Government deny them authority to regulate signals by wire; am I correct?

Mr. CONROY. We are not of the nature of a public utility.

Mr. DINGELL. I am asking you whether or not you are here this morning—and I expect to quote you in executive session on this legislation—as to whether or not you want these States and local agencies stripped of the power to regulate charges levied by CATV systems. Are you telling us you want an exemption?

Mr. CONROY. You are asking me two questions. I would like to answer both of them, if you will let me.

Mr. DINGELL. All right.

Mr. CONROY. The local municipalities now have and do exercise that right.

Mr. DINGELL. You are telling me that local communities are now regulating the charges assessed by CATV's operating within their borders?

Mr. CONROY. They exercise rate supervision over our operation.

Mr. DINGELL. They do?

Mr. CONROY. Yes, sir.

Mr. DINGELL. Do all of them do this?

Mr. CONROY. Virtually all that I have ever heard of.

Mr. DINGELL. Are regulating as to charges?

Mr. CONROY. As to charges, local municipalities; yes, sir. In fact, in an operation in which I am directly involved there is a separate ordinance relating to my rates.

Mr. DINGELL. You are involved in two communities, one in Texas?

Mr. CONROY. Yes, sir.

Mr. DINGELL. Are they doing it in Illinois?

Mr. CONROY. In Illinois, they exercise the same supervision over us.

Mr. DINGELL. You are advocating that we strip the State commission of authority to regulate, but you are advocating that we allow this to the local communities?

Mr. CONROY. The local communities now have it.

Mr. DINGELL. You are advocating that the authority to regulate by statute be vested in the municipalities; am I correct?

Mr. CONROY. We feel that if we are going to be regulated by the FCC, that the FCC should occupy this field.

Mr. DINGELL. You are here expressly opposing economic regulation?

Mr. CONROY. By the States.

Mr. DINGELL. By the Federal Government, also?

Mr. CONROY. Well, the FCC has expressed the view it does not want such a type of jurisdiction.

Mr. DINGELL. What you are saying is that you are willing to accede to the FCC's position with regard to economic regulation in exchange for legislation stripping the States of authority to regulate with regard to the economic rates?

Mr. CONROY. No, sir; we are not asking that at all. You are putting words in my mouth.

Mr. CONROY. I am not. I am asking you, Is that your position?

Mr. CONROY. No, sir: it is not.

Mr. DINGELL. I am trying to find your position. I have some difficulty. I would like to know, Do you want the States to be stripped of the power to regulate rates and charges over CATV service within the borders of the States?

Mr. CONROY. You cannot strip them of something they do not have, sir. I don't believe they have it now.

Mr. DINGELL. Are you advocating that we deny them the right to enact a statute to accomplish that purpose?

Mr. CONROY. They do not have the right now. We want the law to spell out the fact that they do not have the right.

Mr. DINGELL. You want the Federal Government, then, to spell out the fact the States do not have the power to enact local regulatory statutes over CATV rates and charges. Is that what you are saying?

Mr. CONROY. Not like a utility.

Mr. DINGELL. We are getting very far afield here. I am asking you what I think is a very simple question. I want to know whether you advocate the thesis that this Congress should deny Federal Communications Commission the power to fix rates and charges, and whether or not this Congress should deny the State legislative bodies and State regulatory bodies the power to fix charges and rates to be established by CATV. Now this, I think, is a simple enough question that you can give me a yes or no answer.

Now, do you advocate this Congress stripping State legislatures and State regulatory bodies of the authority to fix charges by CATV for CATV service and their subcsribers within the borders of the State? That is a simple question.

Mr. CONROY. I will answer it by saying, Mr. Dingell, that we are advocating that the FCC preempt the field and leave the law the way it is now with respect to the regulation by local authorities. By "local," I do not mean State. I mean the municipalities in which we operate.

Mr. DINGELL. You have no objection, then, to this committee leaving the law so that the States may enact regulatory legislation over CATV rates if they so choose. Is that correct?

Mr. CONROY. If the law is left the way it is now, most of them cannot do it now. Most of them it has been ruled from the court that they do not have the right.

Mr. DINGELL. You want a pattern of circumstances to continue to exist whereby the States cannot regulate CATV, where the FCC will not do so, and where the communities are going to do this. Is that correct?

Mr. CONROY. This is correct.

Mr. DINGELL. In other words, you want community regulation. Now you want the community regulation, then, of CATV which will serve in large areas of the State over many, many separate and distinct municipalities. Am I correct?

Mr. CONROY. Community by community.

Mr. DINGELL. On a community-by-community basis. I am trying to get your position. Is it fair to say there are large numbers of communities which do not regulate rates for CATV service?

Mr. CONROY. There may be some instances, but I think the general pattern, Mr. Dingell, is that they do exercise rate supervision.

Mr. DINGELL. But there are a number of instances where this is true?

Mr. CONROY. Frankly, I could not name them. I could name more of the others which do supervise rate increases.

The CHAIRMAN. The 5 minutes have expired.

Do you have any questions you would like to ask?

Mr. PICKLE. Mr. Chairman, I would like to ask him one question. First, I want to say again what I said previously, that it seems to me that the CATV operators and the broadcasters here ought to be getting together better than they are. I have the feeling they are fairly close together. I am interested in your statement they were almost together on a compromise, and I suggest they are giving Congress and the American people an awful lot of agony and little ecstasy in the course of all these hearings. If you don't do it, we are going to write something where we will spell out regulations.

Mr. CONROY. We tried as hard as we could.

Mr. PICKLE. I say again you had better be getting together. I believe I have a clear idea of what you are saying here; that the FCC should be the sole agency to regulate the CATV operation, but that would not deprive the local communities of the same licensing or permit. As I recall the rule that the Commission issued, they just simply said you still have to get your permit but you could not go on the air until you received prior approval to commence broadcasting.

So you really have to go before both, and you would not be taking it away from the city necessarily, would you?

Mr. CONROY. That is correct.

Mr. PICKLE. The question I want to ask you is this. I don't know that I agree with you with respect to 325(a). You want to have a complete license to pick up those signals anywhere you find them. A broadcaster now will run a signal and he still has to comply with copyrights and permission of owners and he obtains that and broadcasts it. I don't know why you CATV operators could not do the same thing. I don't know that you are actually stealing signals off the air, but you are getting them for free. I don't want to get involved in so many words here, but if we can regulate it so that by nonduplication, perhaps that would save everybody or come close to it. But I am concerned with the 325(a) aspect of it. I don't know if there is any answer. I am simply making that as an observation.

Why do you think you ought to have free license?

Mr. CONROY. Our function is to pick up off the air broadcast signals which, in the first instance, are intended for reception by members of the public. This is our function. This is what we do.

Mr. PICKLE. Do you think they intend for anyobdy to pick it up and use it commercially? Do you think that was the intent when they broadcast that signal to begin with?

Mr. CONROY. These signals were intended for the homeowner. I might comment in this regard that there are two cases now in New York State out of which will come some adjudication of this copyright matter and the property rights in signals. I don't know how they are going to come out, sir.

Mr. PICKLE. You said it was intended for home consumption for the individual public to receive and you do not think it was intended

for any commercial establishment to pick it up and rebroadcast it. Do you think that was the intent?

Mr. CONROY. No. If you are talking about rebroadcast in the sense of putting it out over the air, this is not what we do.

Mr. PICKLE. I don't know how you want to spell it but that is what you, in effect, are doing: rebroadcasting, retransmitting, whatever you want to term it. I just say there is a place for both, and you had better get together or we will help you get together.

Mr. CONROY. We will do our best, Mr. Pickle.

The CHAIRMAN. The committee will stand adjourned until 2 o'clock this afternoon.

We hope that we will be able to sit at 2 o'clock. That depends on the House. If we cannot be here, we will notify everyone.

Mr. CONROY. Mr. Chairman, have you completed with me?

The CHAIRMAN. Well, we will have Mr. Dudley this afternoon.

(Whereupon, at 12:45 p.m., the committee recessed to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 2:45 p.m., Hon. Harley O. Staggers, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

Our first witness this afternoon will be Mr. William Lowell Putnam, president of the Springfield Television Broadcasting Corp., of Springfield, Mass.

STATEMENT OF WILLIAM LOWELL PUTNAM, PRESIDENT, SPRINGFIELD TELEVISION BROADCASTING CORP., SPRINGFIELD, MASS.; ACCOMPANIED BY MARTIN FIRESTONE, ATTORNEY

The CHAIRMAN. Mr. Putnam, do you have a prepared statement?

Mr. PUTNAM. Yes, sir; but in the last few days I have done some more thinking, so I am afraid my original prepared statement is not adequate to present the views that I think this committee should have.

With your indulgence, I will burden you with a few more thoughts.

The CHAIRMAN. All right. Do you mean to summarize your statement?

Mr. PUTNAM. No, sir. I think I better take it from the top, if that is permissible.

The CHAIRMAN. Is it the book you have there?

Mr. PUTNAM. No, sir. There are some notes and a lot of scratch paper in here.

The CHAIRMAN. We will be glad to hear from you.

We would like for each of the witnesses to make this as brief as possible, unless they have something completely new. This has been gone over considerably. We don't mean to cut anyone off.

Mr. PUTNAM. I appreciate this, sir. I think you have yet to hear from a genuine, dyed-in-the-wool UHF operator.

The CHAIRMAN. Fine. We certainly want to hear from you.

Mr. PUTNAM. I seem to be the guy that is the concern of everybody.

I am accompanied by Mr. Martin E. Firestone.

My name is William Lowell Putnam. I live in Springfield, Mass., where I was born. I am the president of the Springfield Television

Broadcasting Corp., the license of WWLP in Springfield and WRLP, serving Greenfield, Mass.; Brattleboro, Vt.; and Keene, N.H.

My corporation also holds a license for WJZB–TV, Worcester, Mass., and a construction permit for WKEF, Dayton, Ohio.

We also hold a construction permit for WENS in Pittsburgh and a half interest in the permittee of WJHF, Raleigh, N.C. All of my corporation's stations are in the UHF band and of them only the last two are not, at the moment, on the air.

I also have a part interest in three CATV franchises within our grade B area. I should make it clear that if that is the only way I can get myself nonduplication protection, I will keep trying to get CATV franchises everywhere I can, in our grade B area.

It is fair to say, though, that I am the acknowledged industry spokesman for UHF television, having appeared in that capacity before this committee on more than one occasion in the past, before your companion committee in the other Chamber on several occasions and repeatedly before the Federal Communications Commission.

I have been for several years, the chairman of the Association for Competitive Television, an organization of UHF station operators which is of recognized standing before the FCC, a director of TASO, and a member of the executive committee for All-Channel Broadcasting.

My purpose in appearing before you now is solely to inform you as to the views of UHF station operators. This is an area in which I can speak with greater knowledge than anyone in the country and I would not choose to stray or be led into speaking for any others.

I wish to tell you that UHF broadcasters are entirely behind the FCC in the matter of regulation of CATV. We might only wish that they had moved faster and, to a degree, farther.

One other UHF–TV owner has appeared before you. This operator's UHF experience totals 11 months. I assume it is this experience which leads him to believe that his UHF station will pay back his investment at a rate of $800,000 per year. Of greater importance, a preliminary prospectus filed by this so-called UHF operator with the Securities Exchange Commission on February 4 indicates that a subsidiary of his corporation, Gregg Cablevision, holds 29 CATV franchises.

For some years, my experience, and that of all UHF station operators, has demonstrated that no greater deterrent existed to the viability of the service that the UHF band was set aside to provide than CATV.

The experience of my own corporation will demonstrate for you in microcosm the experience of all local television stations, particularly UHF stations, forced to compete with completely unregulated CATV operations and will amply demonstrate why we so wholeheartedly endorse the recent action of the FCC.

I would, therefore, like to repeat for you some of the testimony which I presented before this committee in June of 1965.

In 1953, my corporation went on the air in Springfield with a UHF station which was soon forced to compete not only with another local television station but also two nearby, but out-of-town VHF stations, one in Hartford and one in New Haven, Conn.

Our road was not an easy one to travel, but we worked hard, lost hundreds of thousands of dollars, but survived and prospered. We

did so for several reasons: First, we were able to obtain, and retain, the NBC network lineup which permitted us to effectively compete against the CBS and ABC signals of our competitors; second, in addition to network programing, we provided and still provide an exemplary schedule of local service programing.

By the way, that adjective (exemplary) is the FCC's official description of our programing, not mine; third, despite the inequities involved in UHF versus VHF television competition prior to enactment of the all-channel receiver law, we stayed alive because ultimately all of the stations in the area, as licensees of the FCC, had to measure their performance and activities against the standard of the public interest.

Thus, within the confines of the public interest standard, stations serving the Springfield area were free to compete on a fair and equitable basis.

In speaking of free competition, I would like to note at this point that much has been said by CATV spokesmen concerning free competition and the manner in which the FCC is impinging. Of course, what they want is to continue the present situation in which they are responsible to no one for their actions while competing with an industry which must answer for its actions to the public.

It is ironic, however, that these voluble spokesmen for free competition, when considering entering a new community, will insist upon that community's governmental body issuing them an exclusive franchise which will insure that they need never compete against a fellow CATV.

At this point, because of certain comments made in these hearings by several CATV spokesmen, I feel I must digress from my prepared text to discuss the question of competition in greater detail.

CATV competition follows two lines. First, it is purely a reception service; and, secondly, it is not competitive with broadcasting. Mr. Ford stated before this committee on June 2, 1965:

> In effect, therefore, community antenna service is merely a more efficient, effective part of each subscriber's receiver.

And on June 24, 1965, before Subcommittee No. 3 of the House Judiciary Committee, he stated:

> We fail to perceive any real distinction between an apartment dweller's use of a profitable master antenna and the use by a smalltown resident of a community system installed by an investor. The equipment in both systems is virtually identical, antennas, amplifiers, and connecting cables. Aside from the fact that very few landlords utilize miles of cable and microwave systems to bring television programs to their tenants, there are some small additional amounts of equipment used by CATV's.

I would like to give you an example of what is considered minimal equipment for a CATV operation. This simple master antenna requires an antenna, head-in equipment, including preamplifiers, filters, traps, amplifiers, repeater amplifiers, line dividers or splitting transformers, line terminating, bridging or distributing amplifiers, transformers, trunklines, distribution lines, and feeder lines.

And how many landlord master antenna systems are capable of originating programing for their tenants? This leads into the second classical CATV argument, that CATV's are not competitive with television broadcasting and according to them constitute an auxiliary but supplemental service for broadcasting.

This position is almost tenable because at one time it contained a seed of truth. In its developmental days, CATV did perform an auxiliary service by carrying and extending the scope of a local station signal. It was, in effect, performing a function similar to that of a translator.

It was this performance which was considered by the FCC in its report and order in docket 12443, a document widely quoted by CATV spokesmen.

Then CATV started carrying duplicating signals, indeed offering a wider choice of programing to the subscribers. But these signals fractionalized the local station's audience. Despite this, CATV still maintained it was noncompetitive auxiliary service. It added signals now being carried by CATV systems where almost totally distant city stations which duplicated the local station's programing.

Thus, the CATV service was splitting that segment of the local station's market desirous of viewing the particular program being carried by the local station.

At this point, CATV had not only fractionalized the market, it had splintered the local station's specific audience. But at that juncture they still maintained they were a noncompetitive auxiliary service.

Now CATV spokesmen come before this committee and request it to adopt legislation which will permit CATV's to originate programing without restriction or regulation. Of course, they are quick to point out, as was pointed out in testimony before this committee, that—

> What we are talking about here is very, very incidental to the operation of a CATV system; very incidental.

I would like to point out how quickly CATV's had never discussed program origination before when arguing against Federal regulation in their various pleadings before the FCC, although I must admit it was common knowledge in the broadcasting industry that some CATV's had quietly started to originate news, weather, and time broadcasts, and even campaigns to write Members of Congress.

So from no origination they went to a few originations. Now they want unlimited rights for originations but as they describe them they are incidental and noncompetitive. Mr. Ford, in his statement delivered on March 23, stated:

> There are many ways in which CATV systems can originate programs which could never be offered on a continuing basis by a TV station with its limited capacity.

In response to the questions of Congressman Springer, "Would you like to originate sports?" Mr. Ford replied, "I think high school basketball games and that sort of thing."

In response to Mr. Springer's question, "Essentially you are saying you have the same right to originate as TV, that is what you are saying in effect at the present time?"

Mr. Ford said, "Yes, sir." Subsequently in response to another question from Mr. Springer, "So you could under your interpretation originate any programs?" Mr. Ford, "I say the first amendment applies to a CATV operator the same as it does to a broadcaster."

You should also know about Mr. Ford's statement before the House Subcommittee on Regulatory and Enforcement Agencies of the Small

Business Committee. He stated that under certain conditions relating to imposition of copyright fees on CATV's, CATV's will be required to "acquire the equipment and capabilities for origination and advertising. Of course, the antenna systems which insert its own advertising will delete the advertisements of the station being received to make room for its own ads."

And again with respect to this very incidental aspect of CATV operation, Mr. Ford asserted before this committee, "The specter of pay TV should not be used to prohibit the community service which one channel, in a CATV system, would supply."

How many landlords have asked you for the right to have their rooftop antennas be given unlimited to originate one full channel of programing? How many truly auxiliary services have made this request?

Can CATV program origination be anything but competitive with television station program origination?

In this vein, I would like to direct your attention to a statement made by one of my noncompetitors, Mr. Beisswenger, page 486 of the transcript. He stated: "We are not competitive with the broadcaster."

On that same page, in response to a question from Congressman Adams, Mr. Beisswenger stated he believed absolutely he had a superior product to that of the off-the-air broadcaster.

He then stated in response to another question from Mr. Adams, on page 488 of the transcript, that CATV could cover and extend over a limitless area of the United States. "Let the marketplace be the judge, Mr. Adams. If the people don't want our product then they don't buy it. Then we go down the drain economically."

And referring to the broadcasting system, "Let it go down the drain." I cannot believe this is the statement of a noncompetitor, particularly since there have been cases where CATV operators have filed protests against the introduction of off-the-air translators into the CATV's community on the grounds of economic injury.

As Mr. Beisswenger and Mr. Ford have admitted——

Mr. ROGERS of Texas (presiding). Are you back on the statement now?

Mr. PUTMAN. No, sir; I am ad libbing.

Mr. ROGERS of Texas. I couldn't find what you were reading. Go ahead.

Mr. PUTMAN. Would you like to ask a question on that point, sir?

Mr. ROGERS of Texas. No. What I was getting at was I was having difficulty keeping up with you because I didn't know where you were. You see, we don't have copies of what you are reading right now.

Mr. PUTNAM. No, this is some last-minute thinking I had to put into this, sir, midnight oil.

As Mr. Beisswenger and Mr. Ford admitted, CATV in its present form is dependent on broadcasting stations. It is our programing that is the mainstay of their operation.

For the present and in the fact of FCC action, CATV's reluctantly concede that perhaps some protection should be afforded to local stations. In return for this minimal protection of the public interest all they ask from Congress is merely that they be specifically exluded from paying copyright fees for the programs they pirate.

They would prefer that Congress enact some minimal, meaningless Federal statute which while emasculating the FCC, CATV rules will preempt this regulatory area, leaving CATV free of State and local regulation as well as Federal regulation, and that you declare they can have the unlimited right to originate programs.

In other words, they want absolutely no part of any reasonable regulation, and they want to use, on all but one of their channels, programs paid for and produced by television broadcast stations, networks, networks production companies, and they want to use this programing at not cost to them so that they may earn enough profits to subsidize their development of a wire program origination service, which, according to Mr. Beisswenger's words, will be capable of serving the entire country.

Then having milked broadcasting to develop this program origination service, they are perfectly willing, as he said, to let the public decide which form of program service goes down the drain.

I do not fear competition. I only suggest that if Mr. Beisswenger is correct in his statement, let CATV systems at this time obtain their product in the same manner that I do. Let them produce it themselves or let them pay for it. Let this payment be in the form of production costs or copyright fees, and if CATV's do believe they have the same right as broadcasters to full program origination, let them accept the full responsibility for their program origination such as we in broadcasting do.

Let them not seduce you with statements that the original limitation on their right to originate should be in terms of section 315 of the act and the Commission's fairness doctrine.

Let them accept a public interest standard against which their program must be measured. Let them originate programing, let them also submit programing reports to the Federal Communications Commission.

Let them show they are truly meeting the programing needs and interests of the communities in which they are located. Since the imposition of a standard is meaningless unless there is a means of enforcing the standards, let CATV's be licensed as we broadcasters are. Let them accept the possible revocation of their license for failure to perform a program in conformity with the public interests in the same manner.

There is only one other aspect of this subject of competition which I would like to deal with. Once and for all I would like to dispel the smokescreen put up by CATV operators concerning the loss in multiple service to the public if the FCC rules are effectuated.

Mr. Beisswenger in his testimony made a great deal of the manner in which CATV broadcasters can aid and abet broadcasters in New York City. This is true, but in New York they are performing a classical broadcast auxiliary function. They are filling in the areas of bad reception and are required to carry only the New York stations.

Mr. Beisswenger made no comment as to how CATV systems would mate New York City stations if they carried channels which duplicate the programing of each and every New York City station.

Furthermore, Mr. Beisswenger gave you the impression that the local UHF stations in Harrisburg, Pa., were ecstatic over his CATV in that town.

Gentlemen, I am specifically authorized by WHP, channel 21, to tell you this just plain ain't so.

Now I am back on my prepared script.

Mr. ROGERS of Texas. What page?

Mr. PUTNAM. Page 4, sir.

I would like to contrast the story of our station WWLP with that of our station WRLP, channel 32, in Keene, N.H.

In addition to Keene, this station also serves Brattleboro, Vt., and Greenfield, Mass. It is the only local television station in the region.

The three communities, as well as other small cities and towns in the station's service area, constitute a market in the order of 100,000 persons.

Additionally, we were assured that the station would be able to offer a complete NBC lineup. Thus, we were firmly convinced when WRLP went on the air in 1957 that it would succeed and develop into a truly significant outlet for local expression. Indeed, were we convinced otherwise we would never have undertaken the substantial investment necessary to place the station in operation.

When the station went on the air, there were some nine CATV systems operating within its service area. Between 1957 and 1965, the number increased to over 20 such systems.

Initially, we could see that there was some operational basis whereby our station and the CATV systems could help one another. We approached every one of the CATV systems within our service area for their aid in making our station visible, and hence, viable.

To our chagrin and dismay, we found that all these systems were carrying or proposing to carry the signals of NBC affiliated stations from far distant cities—in particular, Boston, Mass.; Albany, N.Y.; Portland, Maine.

Some of these systems were carrying, in addition to our signal, signals of other NBC stations—duplication; but a significant number were carrying these signals in lieu of ours—exclusion in our own service area.

We also found that in many instances where we were being carried on the cables—and, incidentally, never on an exclusive basis—our signal was technically degraded or we were carried in a highly unfavorable channel position. Despite our best efforts, we could never obtain better treatment.

In addition to all of the foregoing, we found that the CATV systems in our area were engaging in other activities which were having a severe adverse impact on the station. Many of the CATV systems were placing a trade-in value on outdoor antennas if they were turned in at the time the set owners subscribed to the CATV system.

In the rugged area in which WRLP is located this effectively precluded off-the-air reception of our station. Those systems which did not offer antenna trade-ins failed to provide cut-over switches for their subscribers.

Thus, subscribers desiring to watch our station on an off-the-air basis were forced to go through a highly cumbersome and inconvenient procedure. Our local advertisers told us that this also had an affect upon their viewing habits.

Without going into great detail, I would just like to say that the CATV systems and their practices had an adverse effect on our ratings,

the lower ratings resulted in advertiser reluctance and refusal to buy our station and consequently WRLP became a substantial loss proposition.

Yet, we did not turn our corporate back on the operation. For 7 years we utilized funds from our profitable operation at Springfield to subsidize WRLP's operations. However, a point was reached where we felt that we could no longer subsidize WRLP without degrading the service being provided by our other stations.

With reluctance, we informed the FCC that due to the unchanging and indeed worsening revenue situation at WRLP we were discontinuing local operations at that station. Even then we did not abandon the station. It presently operates as a satellite of our Springfield station and we have informed the FCC that we will reactivate local programing at WRLP when the competitive picture in its service area promises some hope that it can ultimately become a viable operation.

This same reasoning is applicable to CATV——

Mr. ROGERS of Texas. Are you off the statement?

Mr. PUTNAM. Yes, sir.

This same reasoning is applicable to CATV importation of independent signals. A perfect example of this is the situation in Pittsburgh, Pa. There are presently three network affiliated VHF stations in Pittsburgh. In addition, there is a VHF educational station in operation and a UHF educational station in operation.

The FCC in addition to all the foregoing allocated two commercial UHF channels to Pittsburgh. Construction permits have been issued for both channels, one permit being held by my corporation.

We are in the process of making this station operational, as the permittee of the other UHF channel. Both Pittsburgh UHF stations would provide the usual program fare for an independent television station.

There is pending before the City Council of Pittsburgh a request for a CATV franchise which proposes to ultimately bring into Pittsburgh the signals of the three independent television stations in New York City.

The CATV spokesmen talk about such multiple services providing concert and ballet, and so forth, and this may be true on a rare occasion. But there is no basic difference in the programing of independent television stations. They are on the whole a potpourri of movies, syndicated reruns, network reruns. No great programing benefit will be derived by Pittsburgh from the importation of three New York City signals.

Conversely, as recognized by the FCC in several of its decisions, the impact of these additional channels into the Pittsburgh market will have an adverse economic impact on the UHF stations which can seriously affect their programing ability.

CATV spokesmen say they will not compete with us in Pittsburgh, that what they propose is merely to permit us to compete against New York television channels.

But if it were not for the CATV, this competition would not exist. The impact of New York independents with their wealth of money to produce programing can result in forcing the local Pittsburgh independents off the air with a commensurate loss of program service,

for despite the similarity in the overall program structure between the Pittsburgh independents and the New York independents they are assuredly more locally oriented than the New York stations.

If Pittsburgh stations were important to New York on a two-way street deal it might not be so painful. But CATV people don't operate on a two-way street. They want everything going their way. No one downgrades the necessity of competition in American life, but when this competition is such that it destroys the distribution of local programing service, as invested by the Congress and the FCC through the terms of section 307 of the Communications Act, then action is required.

Apparently, however, this loss of free, local television service is of no concern to CATV operators, for it is apparent in their testimony before this committee they are perfectly willing to promise such local program service on at least one channel of their pay CATV system.

During the years WRLP was battling the CATV systems, we attempted to convince anyone who would listen that there was a crying need for some form of regulation which would result in an accommodation of the interests of local television and CATV service.

I would note that we never, now or in the past, urged that CATV systems be shut down or have unduly stringent limitations placed upon certain aspects of their operations, for we recognized that the signals of the ABC and CBS networks were not easily available off the air in the WRLP service area and that the CATV systems were, in fact, performing a public service by making them available in the area.

However, we could not see what program or public service was being performed by the CATV systems when they brought one, two or more NBC signals into the area to compete with the local NBC affiliate.

Now, what was the attitude of the CATV systems toward the achievement of an accommodation of interests? As noted before, in the early years on an individual private basis they spurned any and all offers and suggestions made by us. When governmental interest in the achievement of an accommodation by regulation became significant their attitude was, at best, one of duplicity.

Spokesmen for CATV interests urged the FCC not to attempt regulation because of incipient State regulation. To footnote, only one State as of this time has adopted CATV regulations.

To the States, CATV spokesmen urged nonregulation because of incipient Federal regulation. And, when CATV applicants appeared before municipalities from which they were seeking franchises they urged nonregulation because of incipient State and Federal regulation.

Finally, when it became obvious that some form of regulation was coming, CATV spokesmen returned to the concept of self-regulation. They urged that if left alone local television and CATV operators could reach satisfactory private agreements; particularly those relating to nonduplication of the local station's programing.

Let me say to this committee, that in 7 years I was unable to conclude any nonduplication agreement of lasting value with a CATV operator

in the WRLP service area. This, despite the fact that self-regulation was being promoted by the national spokesmen for CATV interests, the NCTA, and two members of the NCTA's board of directors who are the owners and operators of a substantial number of CATV systems in the WRLP service area were two of the CATV operators with whom we negotiated.

The deceitfulness with which CATV spokesmen have previously approached governmental regulation has now been carried over to the FCC's recent action.

As the members of this committee must know, there has been a great uproar against the FCC from these members of the public who subscribe to CATV services. We are all aware of the flood of form letters and post cards which have inundated the Congress. These letters have resulted from a deliberate scare campaign conducted by CATV operators and developed by their national association.

The major refrain in this campaign is that the Federal Government, in the form of the FCC, is going to take your television service away from you and dictate exactly what you can or cannot watch at home. There are very strong intimations of a "Gestapo-like" police state in all this.

Indeed, Mr. Beisswenger had no qualms in conceding before this committee that CATV as proposed by the FCC could lead to "totalitarian reform."

Let's see who is really controlling the programing which the public can view.

The CATV operators have a rule of thumb about how many subscribers per mile of cable are necessary for their systems to turn a profit.

In other words, there are some areas to which they will not provide service because there aren't enough subscribers per mile. So, the people who live in sparsely settled fringe areas, despite their ability to pay, are denied the multiplicity of television signals offered by the CATV systems.

Then, of course what of those individuals who cannot afford the installation and monthly charges of the CATV systems? The CATV systems will deny them service regardless of where they happen to live.

And, there is yet another aspect to this question of who is controlling what.

As the controversy over CATV regulation heated up, several television stations (WRLP included) engaged in editorializing on the subject of CATV operations. Complaints were filed against these stations (again WRLP included) by CATV operators charging that the stations had not dealt fully and fairly with all sides of the issue even though we publicly offered use of our facilities for reply.

The FCC, after carefully examining all relevant material, determined that these stations had not fulfilled their obligations as broadcast licensees to comply with the FCC's "fairness doctrine."

We were asked how we would comply, and insure future compliance. In our case, the FCC stated that it would look at our overall performance in this area at the time our license came up for renewal.

I do not hesitate to say that there has been compliance and that every station has in every way acted in accordance with the FCC's public interest determination in this matter.

Incidentally, no CATV operator has ever accepted our offers to discuss the issue over WRLP's facilities.

The Commission's "fairness doctrine" is intended to insure that the public is fully informed concerning all aspects of controversial issues of public importance—this is right and proper. But what of the role of the CATV systems in this area?

There has been much trade press coverage of the fact that, prior to these hearings, CATV systems engaged in program originations dealing with the question of CATV regulation. This coverage unanimously dealt with the need to write Congress so as to keep CATV service untouched. Slides and sound were used to get this message across to the subscribers.

From the foregoing, it is easy to see that CATV systems are not presently required to insure that the public is fully and adequately informed on all aspects of controversial issues The same holds true for political events. At this time, the CATV systems are not required to treat candidates for public office on a fair and equal basis.

Thus, CATV systems can, with impunity, promote particular candidates before their subscribers and there is no requirement which would insure that opposing candidates are afforded an equal opportunity to reach the same subscribers.

I do not think that more need be said on the questions of program control and CATV program origination other than to say that the problems relating to these matters, such as I have discussed, can and will be fully and fairly resolved by appropriate legislation.

Unfortunately, the members of the CATV public, unlike you and I, are completely unaware of the true content and nature of the actions taken by the FCC.

If they were, they would realize that the assertions of the CATV interests are patent nonsense. Not a single CATV subscriber will suffer any loss of programing as a result of the FCC's decisions. Perhaps he will not have two or three NBC affiliates to watch at one time, but then how many programs from a single network can one individual view at one time.

Moreover, even if the CATV system is limited to one affiliate from each network, should that affiliate fail to carry a network program or fail to carry it in or close to the time period for which it is scheduled, the FCC's rules permit that program's carriage by the CATV system.

The FCC's CATV rules constitute a rational, fair, and conservative approach to the problem of accommodating the interests of local television service and CATV service. Perhaps, from the standpoint of the local station operator they are too conservative.

However, as can be seen from that which we faced at WRLP and a reading of the FCC's rules, the rules do deal with the major problems which forced discontinuance of local program service at WRLP—duplication, carriage, the installation of cutover switches, importation of distant city signals, and so forth.

By the way, sir, in a letter dated March 1, 1966, addressed to "Fellow CATV Operators," the same Bruce Merrill, president of AMECO, that you have heard this morning, stated:

> Most of us were relieved and somewhat gratified by the contents of the FCC's public notice detailing their initial decisions on CATV regulation. We as an industry owe a debt of gratitude to Chairman Henry and other members of

the Commission who somewhat belatedly took the time to examine the true issues involved in this struggle between our industry and the TV broadcast industry.

This educational process, which was induced to a great extend by the magnificent effort the industry put forth to educate all those concerned with our problems, resulted in the revision of the harsh and unreasonable recommendations made by the Commission's staff and supported by some Commissioners.

This letter goes on. You ought to see this. This is what they have said to themselves, but this is not what they have said to you.

The unhampered implementation of the FCC's new rules leads me to conclude, and I base this conclusion upon 14 years of UHF experience, that I can once again look forward to WRLP offering a viable UHF local program service.

And, what holds true for WRLP, will hold true for all UHF stations. The FCC's rules constitute insurance that UHF television with the aid of the all channel receiver law, a law which this committee fostered, will live up to the expectations held for it by the Congress, the Federal Communications Commission and the public.

I thank you.

Mr. ROGERS of Texas. Thank you.

Mr. Moss.

Mr. Moss. Mr. Putnam, I want to thank you for adding a little meat to the diet of gruel that we have had here today. Your statement, I think, adds importantly to a better understanding of this rather complex problem now before the committee.

Mr. Chairman, I would like to ask that the letter referred to by Mr. Putnam from Mr. Merrill be made a part of the record of this hearing.

Mr. ROGERS of Texas. Without objection the letter will be received and it will be considered by the chairman of the full committee and the ranking minority member. If appropriate, it will be included in the record.

(The letter referred to follows:)

AMECO,
Phoenix, Ariz., March 1, 1966.

FELLOW CATV OPERATOR: Most of us were relieved and somewhat gratified by the contents of the FCC's public notice detailing their initial decisions on CATV regulation.

We as on industry owe a debt of gratitude to Chairman Henry and other members of the Commission who somewhat belatedly took the time to examine the true issues involved in this struggle between our industry and the TV broadcast industry.

This educational process, which was induced to a great extent by the magnificent effort the industry put forth to educate all those concerned with our problems, resulted in the rejection the harsh, unreasonable, and destructive recommendations which were made by the Commission staff and supported by some Commissioners.

We do not believe the Commission has valid authority to impose the regulation they intend upon our industry. We welcome their cooperation in seeking congressional review of this claim to authority, and congressional debate and action on the shape of regulation proposed.

Let us not forget, however, that we still have implacable foes. The late statement filed by the NAB just before the Commission took up the CATV matter, and NAB President Wasilewski's intemperate and vicious attack on us in his speech before the Washington Bar Association last week should serve to remind us that this organization and their big brother, the AMST, assisted by that other paragon of self-interest, TAME, are intent on the destruction of our industry and may have only begun to fight.

In order to remind you of this, and to review the underlying reason for the TV broadcast industry's dedication to our destruction, I invite you to study a speech

I made recently at the industry's financial seminar. The major portion of this speech was devoted to an analysis of the broadcast industry's position and the fallacy of it.

The issue hopefully will be joined in Congress soon. We must have action this year.

We urge you to keep your contacts in your communities tuned in and warmed up. Keep all your lines of communication with your Congressmen and Senators open and active. Contact these men often and urge your friends and other who will support freedom of reception to do likewise. Let them know that the issue is yet to be settled and that Congress must settle it.

Unless Congress carefully defines the extent and nature of the regulatory power the FCC is to have over CATV, the same Commission staff members who advocated destructive measures against us will be shaping the future rules under which our industry will live (or die).

We at Ameco are committed 100 percent to this struggle. If we can help you in any way, please call us at any time.

Sincerely,

BRUCE MERRILL,
President, Ameco, Inc.

Mr. MOSS. I have no further questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. No questions.

Mr. ROGERS of Texas. Mr. Satterfield?

Mr. SATTERFIELD. No questions.

Mr. ROGERS of Texas. Mr. Adams?

Mr. ADAMS. I have no questions. I would like to state to the witness, in light of what Mr. Moss has said, that I think his testimony has been excellent, has gone into specific examples, and has testified to the competitive facts in this situation.

I have no questions.

Mr. ROGERS of Texas. I would gather from your statement that you are against CATV, Beisswenger and Merrill.

Mr. PUTNAM. No, sir; I am not against CATV, I am merely against the destructive aspects of it. There are some destructive aspects and they destroyed WRLP.

Mr. ROGERS of Texas. Do you mean the competitive aspects?

Mr. PUTNAM. Yes, sir. The unnecessarily brutal aspects. I have asked CATV people why they feel it is important to duplicate local stations and I haven't got a straight answer from any of them yet. You ask them about the duplication and they start talking about signal strength.

Mr. ROGERS of Texas. There is one thing in your statement. I notice you said in your statement right at the last, at page 12, by appropriate legislation rather than H.R. 13286.

Mr. PUTNAM. I am content to let it stand, sir, as written.

Mr. ROGERS of Texas. As written?

Mr. PUTNAM. Yes, sir.

Mr. ROGERS of Texas. I was wondering if you had changed your mind.

Mr. PUTNAM. No, sir; not a bit. I am quite content with that legislation. I am also content that the Commission's own rules, if they are allowed to stand, are sufficient for my purpose anyway.

Mr. ROGERS of Texas. For your purpose?

Mr. PUTNAM. I am not here trying to represent anybody but UHF people.

Mr. ROGERS of Texas. I understand, but you see, we are interested in all the people of the country. Your purposes are incidental, to a degree.

What I am getting at is this: You say that you would like H.R. 13286 to stand. Do I understand that you then support the proposition that the Congress ought to delegate to the Federal Communications Commission the authority to write all the rules and regulations that they have asked for in this bill?

Mr. PUTNAM. Yes, sir.

Mr. ROGERS of Texas. And you would be willing for that same authority to be vested in the Federal Communications Commission with regard to broadcasting?

Mr. PUTNAM. Yes, sir. I don't mind being judged by the same yardstick as my competitors.

Mr. ROGERS of Texas. I don't care about the reason. I just wanted to ask you that.

The other is: Do you believe that the Federal Communications Commission ought to get into the regulation of CATV and the broadcasting business on an economic base?

Mr. PUTNAM. They already are, sir.

Mr. ROGERS of Texas. I didn't ask you that. I asked you do you think they ought to get into it.

Mr. PUTNAM. They have to, at some point, because when you get into judging the impact of one station's signal on another, on the economic ability of the other, somebody has to decide how well the public interest is served by a diminution of one station's income as opposed to an increasing of another. I have been involved with the FCC on this very point on two occasions.

Mr. ROGERS of Texas. I understand. But then you do support the basic proposition that the FCC ought to go into the economics not only of the CATV but also of the broadcasters in making determinations with regard to regulation of the broadcasting business, whether it is radio or TV?

Mr. PUTNAM. I support it on the basis that the Commission's basic function, pursuant to congressional legislation, is to look out for the public interests.

Mr. ROGERS of Texas. Let's don't beg the question.

Mr. PUTNAM. Let me finish, sir.

Mr. ROGERS of Texas. Public interest is something to you which might be one thing and to somebody else it might be another.

Mr. PUTNAM. I appreciate that, sir. What I am saying is that where the public interest is affected by economic factors, then the Commission should move in, and at no other time.

Mr. ROGERS of Texas. Do you think that the Federal Communications Commission ought to make the determination of what is in the public interest and what isn't?

Mr. PUTNAM. Certainly, yes, sir. The Communications Act pretty much spells that out.

Mr. ROGERS of Texas. With certain limitations, of course.

Mr. PUTNAM. Yes. But it is given the guidelines to exercise its discretion about.

Mr. ROGERS of Texas. Then you believe you feel to take the public interest into account as you have outlined it, that the Federal Com-

munications Commission then ought to have the right to determine the lengths and frequency of commercials?

Mr. PUTNAM. I am not sure that this becomes a factor in the public interest. If somebody says it does, then it is. But this certainly is not germane to this particular item.

Mr. ROGERS of Texas. The Federal Communications Commission has already said that it is, and has already said that it does.

Mr. PUTNAM. Have they? I am not aware that they have said this. I have a feeling that somebody around here, sir, told them they didn't have that authority.

Mr. ROGERS of Texas. Yes, sir; they sure did. That was by a substantial vote. But it wasn't until after we told them that that they withdrew.

This is the situation and I would like to know your feeling on it, because I think it is very important, Mr. Putnam, whether or not we are going to move on into the area of permitting a bureau that has certain delineated powers of regulation to expand those powers over into a field they were not intended to be in the first instance.

I think it highly important that the people in the business be heard on this.

Mr. PUTNAM. Sir, I suspect that the Federal Communications Act, as such, of 1934, says nothing about television, as such.

Mr. ROGERS of Texas. Of course. But this is all taken care of in the entire history because it is the transmission of radio signals and the reference to radio signals includes television signals. If there has never been any question about this, Mr. Putnam, the technicalities of the thing have nothing to do with the problem involved.

Mr. PUTNAM. That is what I have been saying, too, sir, that the FCC has to be able to exercise a certain amount of latitude in interpreting the basic congressional mandate. You grant that the latitude existed for them to regulate television, so all we are arguing about now is semantics.

Mr. ROGERS of Texas. I don't think it is semantics at all. I think what you are doing is running around the mulberry bush to keep from answering that question about getting into the economics.

Mr. PUTNAM. What is the question? I pride myself on straight answers.

Mr. ROGERS of Texas. The question is: Do you feel FCC ought to have the power to control the length and frequencies of commercials that you put on your station?

Mr. PUTNAM. They already have some power along this line, apparently, because they keep——

Mr. ROGERS of Texas. Are you for that power that they already have?

Mr. PUTNAM. It hasn't bothered me any.

Mr. ROGERS of Texas. Well, are you for or against it?

Mr. PUTNAM. I don't know. I haven't even thought about it, sir. I didn't come here prepared to discuss it in detail because I didn't think that was what you were considering by way of legislation.

Mr. ROGERS of Texas. You are here prepared to discuss Mr. Beisswenger or Mr. Merrill, and you ad libbed a little on this.

Mr. PUTNAM. I will be glad to ad lib. I came here to discuss CATV and the impact on UHF. That is what I thought you wanted me to

talk about. I am prepared to talk vigorously on that subject. I know something about it.

Mr. ROGERS of Texas. You already have. But then you are in the business and you say that you are operating a number of stations. I think that it is only fair that you should say how far you think the power or control and regulation of your business ought to go when you are advocating the power and control over another business or an associated business.

Mr. PUTNAM. Well, sir; I am prepared to go as far in agreement with the powers of the FCC as the Congress is prepared to give the FCC powers. After all, I am not going to argue with an act of Congress.

Mr. ROGERS of Texas. That is no answer, Mr. Putnam. It wouldn't be a matter of choice on your part. If the Congress did it, you would have to accept it anyway.

Mr. PUTNAM. That is right.

Mr. ROGERS of Texas. But the point is that the question of economics is the one that is controversial in this entire picture.

Mr. YOUNGER. Will the gentleman yield?

Mr. ROGERS of Texas. I will be happy to yield to the gentleman from California.

Mr. YOUNGER. I am interested in the two stations, WWLP and WRLP. Are they both operating?

Mr. PUTNAM. Yes, sir.

Mr. YOUNGER. I gathered from what you said that they were bankrupt.

Mr. PUTNAM. No, sir.

Mr. YOUNGER. That was on account of the competition, was it not?

Mr. PUTNAM. No, sir. WWLP has been profitable for the last 10 years.

Mr. YOUNGER. Despite the CATV?

Mr. PUTNAM. The CATV systems have not afflicted WWLP in any degree until reasonably recently. To date that impact is still minor. They afflicted WRLP.

Mr. YOUNGER. You are speaking for other stations, not for these?

Mr. PUTNAM. I wear several hats, sir, yes; in that I have been the spokesman for UHF for the last several years. I think that the FCC will tell you I am probably that guy, if there is one. So I speak for UHF people in general. I merely recite the experience of two of our stations to show you that. UHF can be a very viable service, even in competition with VHF, but that UHF dies because of the activities of CATV. All it is is duplication. We approached one CATV operator and we were perfectly willing to sign with him a simultaneous—not same day, but simultaneous only—simultaneous nonduplication agreement and he refused, and he is sitting in this room.

Mr. YOUNGER. Thank you.

Mr. ROGERS of Texas. Now let's get back to this question about length and frequency of commercials, if you don't want to answer it, it is all right, Mr. Putnam. You have a right not to answer it if you don't want to. But I think the committee is entitled to know your feeling on this.

Mr. PUTNAM. You want me to tell you whether I feel the FCC should be empowered to regulate the length and frequency of commercials?

Mr. ROGERS of Texas. Yes, sir.

Mr. PUTNAM. I am quite content that the FCC should be so empowered if you are, sir. That is what I say. I gather that you certainly are not, so I am with you.

Mr. ROGERS of Texas. Let's get this straight, We can answer that very quickly because you condition precedent to what you are going to decide on it can be very quickly answered because I am not for it.

Mr. PUTNAM. I gathered——

Mr. ROGERS of Texas. How do you stand on it?

Mr. PUTNAM. I don't care. I am content that the rules they were contemplating adopting were those of the NAB Code. I live with the NAB Code, anyhow.

Mr. ROGERS of Texas. I know.

Mr. PUTNAM. So it becomes moot as far as I am concerned.

Mr. ROGERS of Texas. I gather you don't want to make a direct answer to that particular thing, that you want to condition it. Do you mean you would agree with how I feel on it, and you would support me?

Mr. PUTNAM. I support you on that issue, certainly. But, as I say, sir, it becomes quite moot. If the rules the Commission are going to adopt are the rules I am quite prepared to live with, then I don't mind the Commission adopting rules.

Mr. ROGERS of Texas. Do you feel that the Commission ought to have the power to determine the rates that you charge?

Mr. PUTNAM. Do I think they should have the power?

Mr. ROGERS of Texas. That the Federal Communication Commission ought to have the power to determine the rates you charge your customers?

Mr. PUTNAM. If they are going to regulate my competitors I don't mind them regulating me, all by the same yardstick. All I want is to have one set of rules in this ball park.

Mr. ROGERS of Texas. Mr. Putnam, everything you answer is "if." Is your whole statement based on "if"?

Mr. PUTNAM. I don't think I prefaced very much of my testimony with that word.

Mr. ROGERS of Texas. Every time I ask you a question, you say if I am for something then you will be for it, and certain rules.

I ask you a simple question: Do you or do you not support the power of the Federal Communications Commission to fix the rates you charge the people that use your facilities?

Mr. PUTNAM. I don't think they should do that.

Mr. ROGERS of Texas. Do you think they ought to fix the rates that are charged by CATV operators?

Mr. PUTNAM. No, I don't think they should do that.

Mr. ROGERS of Texas. Do you believe they ought to have control of what programs go on a CATV station?

Mr. PUTNAM. I don't think the Commission has said they want that either, as such. I think they have merely talked about stations, not programs.

Mr. ROGERS of Texas. Have you read the bill they sent up here?

Mr. PUTNAM. They talked about stations, sir, not programs.

Mr. ROGERS of Texas. The whole thing goes to the programs.

Mr. PUTNAM. Yes, it does, to a degree. Without programs, sir, stations are dead.

Mr. ROGERS of Texas. It doesn't make any difference what degree it goes to. If it goes to programs, it goes to programs, and you believe they ought to control what programs go on CATV?

Mr. PUTNAM. Well, sir, may I answer that with another question? Would you tell me how many times you are prepared to watch "Bonanza"? If "Bonanza" is carried on three stations on your CATV system that is into your home, if it is carried on three different stations, how many times are you going to watch it at one time?

Mr. ROGERS of Texas. I will tell you this, that I have already watched one of them three or four times because they were repeated. I don't know what we can do about this. This is another question. It was all on the same station but it was repeats. I felt like a kin to some of those people.

Mr. PUTNAM. Where you have lost one or more of the two or three Bonanzas that are being carried at the same time, the same episode, they are all being carried live, and if somebody takes two of them off the cable and leaves only one, have you lost any programing?

Mr. ROGERS of Texas. The point is this: that on a CATV my question went to whether or not you think the FCC ought to control what programs go on that television antenna.

Mr. PUTNAM. To the extent that the public interest is injured, yes, I do believe they should.

Mr. ROGERS of Texas. And who is going to determine the public interest? The FCC?

Mr. PUTNAM. This is what the FCC has been set up to do.

Mr. ROGERS of Texas. And the FCC is not an elected body, it is an appointed body, is it not?

Mr. PUTNAM. That is correct.

Mr. ROGERS of Texas. Let me ask you one further question: You said in your statement—and I know you don't want to be unfair or misleading—that they want exclusive franchises. Can a municipal corporation in Massachusetts grant an exclusive franchise?

Mr. PUTNAM. Yes, sir.

Mr. ROGERS of Texas. In how many other places can they grant one?

Mr. PUTNAM. I don't know sir. I am not a lawyer. I happen to have looked into this in Massachusetts, so I am aware of it.

Mr. ROGERS of Texas. I think that you will find that in a majority of the States they do not have the right to grant any exclusive franchises. It would be my suggestion that one way to solve that problem of competition would be for you to get the Massachusetts Legislature to change that part of the law.

Mr. MOSS. Mr. Chairman, I believe that in my State of California a municipal corporation has the right to issue exclusive franchises and that right has existed. I recall, as a young man, when they had exclusive franchises granted for the operation of streetcar systems. I don't think it is anything new or novel to find it only in Massachusetts. I think it is probably fairly widespread.

Mr. ROGERS of Texas. As much as I respect the gentleman from California and as much as I like the great State of California, I would say if they have such a law out there it is one of their imperfections.

Mr. MOSS. We have many, Mr. Chairman.

Mr. ROGERS of Texas. I don't think anybody ought to be granted an exclusive franchise in a situation of this kind. Of course, in Texas you can't.

Mr. PUTNAM. For practical purposes, once you have an area wired up tight, you are exclusive. That is what it amounts to.

Mr. ROGERS of Texas. For all practical purposes, if you put every competitive force that comes along that might be competitive against the broadcasting so that they can't spend the money to go in and build the facilities you, for all intents and purposes, have a monopoly, haven't you?

Mr. PUTNAM. That is what it amounts to; yes, sir.

Mr. ROGERS of Texas. That is exactly right. And I am sure you wouldn't want that advantage. You don't mind the competition.

Mr. PUTNAM. I don't mind competition that is subject to the same limitations I am, the same regulations that I am subject to.

Mr. ROGERS of Texas. Just one further question, Mr. Putnam. In your statement—let's take Springfield, and John Doe is the public, how many signals can he get off the air? That is, with rabbit ears or a regular antenna?

Mr. PUTNAM. With an antenna on the roof or an inside antenna?

Mr. ROGERS of Texas. An antenna on the roof.

Mr. PUTNAM. The average person can get six signals.

Mr. ROGERS of Texas. Six Signals. How many can he get with CATV?

Mr. PUTNAM. He can't get any in Springfield because there isn't any CATV system.

Mr. ROGERS of Texas. That is a good answer. You have no problem there.

Mr. PUTNAM. I didn't say I did in Springfield.

Mr. ROGERS of Texas. Suppose you had a CATV there?

Mr. PUTNAM. I don't know. It depends on how many channels he is bringing in.

Mr. ROGERS of Texas. How many can he bring in?

Mr. PUTNAM. It depends on where he puts his antenna and how much of a stinker I make of myself in protesting the microwave grants, and so forth.

Mr. ROGERS of Texas. This is another question. The FCC already has control of the microwave, do they not?

Mr. PUTNAM. Yes, sir.

Mr. ROGERS of Texas. You can really make a stinker out of yourself if he goes in and tries to get it off microwave, can't you?

Mr. PUTNAM. That is right.

Mr. ROGERS of Texas. I am talking about the straight off the air. How many signals can be add to the six?

Mr. PUTNAM. It depends on how far up in the air he pokes his antenna.

Mr. ROGERS of Texas. Suppose he goes up 200 feet?

Mr. PUTNAM. Let me tell you what they do in the WRLP area, which is 50 miles north of Springfield. This is the area where they have killed my station economically, and they have done it for the most part with off the air. There is only a couple of microwave cable systems in the area. They are really not a determining factor in the bad things that happened to that station.

The CATV systems in that area bring in anywhere from four to nine signals.

Mr. ROGERS of Texas. You say that has had an adverse economic impact on your station?

Mr. PUTNAM. Certainly, because in some communities they had the town wired up and wouldn't put us in there at all.

Mr. ROGERS of Texas. Why is that an adverse economic impact? Is that because the people would rather watch what they can get from some other station than they would from your station?

Mr. PUTNAM. The people don't have any choice about what is on the CATV system.

Mr. ROGERS of Texas. They have no choice about what goes on your station, either, do they?

Mr. PUTNAM. No; but they can either watch it or not. But the cable system, sir, is not the subject of a popular referendum every time they want to put something on or off.

Mr. ROGERS of Texas. I am sure of that. And it isn't in your station, either. There is no popular referendum as to what you put on.

Mr. PUTNAM. I will tell you one of the things that does happen. The other night we had an exclusive in New England, an exclusive origination right to the Boston Celtic-Cincinnati Royals playoff game. There was one cable system that absolutely couldn't carry us for a variety of reasons, lousy signal; the people didn't like it. It was a terrible station, no local service. I heard a whole gamut of reasons why WLRP was no good. By gum, that night they could get us and they put us on the cable for 2 hours only.

Mr. ROGERS of Texas. Don't you think it would be a good idea for you to put that sort of thing on every night? They would watch you instead of the other and give the adverse impact to the other fellow.

Mr. PUTNAM. That is fine, sir, but unfortunately the Boston Celtics and Cincinnati Royals don't play every night in the final game of a playoff series.

Mr. ROGERS of Texas. Maybe enough people would like to see Cyrano de Bergerac or something like that.

Mr. PUTNAM. Good. But I can't afford to bring things of that type to their attention every night.

Mr. ROGERS of Texas. You don't mind people watching something other than your station, and you wouldn't force them; would you?

Mr. PUTNAM. If this is to be left to the public, that is fine. Then let's leave everything to the public to decide. You are out of a job, too, by that token, if you follow that to its logical conclusion. We have anarchy.

Mr. ROGERS of Texas. I don't want to do anything like that, of course.

Mr. PUTNAM. I figure you wouldn't be that rash.

Mr. ROGERS of Texas. Do you think, though, that the public, when they turn the dial—and I notice you said they had to go through some cumbersome ramifications to change station—what are those ramifications?

Mr. PUTNAM. I am not sure I get you on that, sir. What do you mean?

Mr. ROGERS of Texas. In your statement you said something about in order to get your station they had to go through some kind of cumbersome business. I lost my place there two or three times.

I don't remember just which it was. What did they have to do, turn a switch?

Mr. PUTNAM. I see. You mean if a viewer were hitched on to the cable and wanted to get our station?

Mr. ROGERS of Texas. Yes.

Mr. PUTNAM. Yes, sir. Normally, the cable operator will do his best to take down the rooftop antenna so that once he gets you hooked to the cable, you are hooked. You can't get off, without having to buy a new antenna.

Mr. ROGERS of Texas. If he wants your station, he has to go and put his antenna back up?

Mr. PUTNAM. And that costs a lot of dough. The homeowner says, "I can't do that. I can't afford it." So he is hooked. Once they get rooftop antenna down, the local guy is hooked. Then the cable operator can do whatever he pleases. Frankly, sir, I don't understand, and no cable operator has been able to give me a straight answer, as to why it is necessary to duplicate the local station. I don't see the difference between "Bonanza" carried on my station and "Bonanza" carried on somebody else's station. It is "Bonanza," no matter where it comes from.

Mr. ROGERS of Texas. There are some of those 1936 movies that I don't think should be carried.

Mr. PUTNAM. I am not discussing those.

Mr. ROGERS of Texas. You haven't been carrying those, have you?

Mr. PUTNAM. I don't know what the vintage of some of ours is.

Mr. ROGERS of Texas. Don't you think John Doe Public ought to have the opportunity to get all the information he can from any source that is available?

Mr. PUTNAM. I don't deny this, sir. My only contention is that "Bonanza" is "Bonanza" no matter what frequency it is put on the air.

Mr. ROGERS of Texas. "Bonanza" is rather fantastic. I saw a fellow get up on the right-hand side of a horse one time.

Mr. PUTNAM. Haven't you ever had an Indian-broke horse?

Mr. ROGERS of Texas. If that had happened, he wouldn't have gotten on another horse for a long time.

Mr. PUTNAM. When I was younger and stupider, I used to Indian-break horses for a dude ranch in Montana; so it can be done.

Mr. ROGERS of Texas. By an Indian, yes. But this wasn't an Indian.

Thank you very much.

Mr. Adams.

Mr. ADAMS. Mr. Putnam, I have enjoyed your testimony. Do you think there is an area of competition that should be left in the public marketplace between using airwaves and CATV? I am assuming now that we have done certain things that have been pretty much agreed to by some of the CATV witnesses, simultaneous nonduplication, and carrying the local station, many of the things that you outlined. Is there this area of competition, particularly with the UHF stations? You mentioned the New York independents being brought in against the local UHF independents.

Mr. PUTNAM. Well, sir, I am not sure I can give you a quick answer on that. The cable people will tell you, as they have rather repeatedly

on this record, that they do UHF stations a favor by making them easier to tune in the home-viewer set, by converting them to a VHF channel that is on all sets.

Mr. ADAMS. Mr. Rogers asked a series of questions on whether everybody shouldn't be able to watch everything. What I am asking you is: If we put in these protections and have the three networks carried on a CATV and not duplicated on a CATV—and, as you said, and I agree I don't see why you should be bringing in Portland, Maine, when you have on your station the same NBC affiliate—what about this area where they can get three, four, or five stations that are independents out of New York, Portland, or any other place, and they are being brought in on the cable. They will compete with your nonaffiliates in the area. Do you think we should allow this to be done?

Mr. PUTNAM. Well, sir, I believe that the marketplace determines to a large extent what is economically feasible. The argument that most people have with cables is that they have spoiled the nest, that they have interfered with the marketplace. For example, we must pay——

Mr. ADAMS. Mr. Rogers asked the question. We are in the process, and I agree with you, on economic regulations and so forth, where we are changing the marketplace. I am asking you should a CATV network in a particular area be allowed to compete, either with origination or by bringing in movies from some other UHF station, with a local UHF station in that area?

In other words, if they want to come in and say, "We will show you 12 channels, we are carrying the 5 locals and we will bring in 6 more. On one we will put weather, on another the 1936 movies, on another one local public affairs events, on another one we will have one station from New York that runs something all day," and so on. Should this be allowed?

Mr. PUTNAM. I don't see that that would hurt anybody, sir, provided it is done by the same rules. If the CATV is going to program, and going to do this, they should be subjected to the same rules of the public interest that the broadcaster is. They will soon find that a lot of local programing is very expensive. It is excruciating and painfully expensive.

The evidence today indicates that nonnetwork viewership in the major market areas where there is a variety of nonnetwork programing has about 16 percent of the viewership to these independent offings.

Mr. ADAMS. Do CATV and UHF compete for that 16 percent?

Mr. PUTNAM. UHF is merely another part of the band, sir. We are just higher.

Mr. ADAMS. I misused UHF. I mean the non-network affiliates.

Mr. PUTNAM. Here is where you get into a bind, in that if the total potential nonnetwork viewership is 16 percent of the audience, and that varies from week to week, or year to year, perhaps, assuming that for the purpose of argument, if I am running a nonaffiliated station, I can conceivably hope to get as high as 16 percent. If I am to be forced to share the 16 percent with four more independents brought in from someplace else, I am not going to make it. I am just not going to get off the net and I will have to die, because 16 percent split five ways just isn't enough to live on.

Mr. ADAMS. I may well agree with you on that.

Mr. PUTNAM. Is it in a major market.

Mr. ADAMS. But I am asked should this be allowed, is this a competitive market area.

Mr. PUTNAM. This is not. It should not be allowed because, in a large market like Los Angeles, 16 percent is enough to live on, you see. But when you get into a very small market, 16 percent of 100,000 homes, you can't share this with anybody. You can't even live on 16 percent.

Mr. ADAMS. Then as Mr. Rogers said, you will have to say to the people that some programing is available through a CATV system is not going to be able to be carried on that system.

Mr. PUTNAM. There are drawbacks to living in New York, and there are advantages to living in Vermont. If you want to go skiing and like clean, fresh air, you live in Vermont. If you want to see the Metropolitan Opera live, you go to New York. You can't have everything every place.

Mr. ADAMS. But it could technically be done?

Mr. PUTNAM. It is being done, sir.

Mr. FIRESTONE. Mr. Adams, if you take that position on the effect of the New York independents in Pittsburgh and you are willing to say let the marketplace knock the Pittsburgh stations out——

Mr. ADAMS. We are talking about the nonaffiliated.

Mr. FIRESTONE. I am talking about the nonaffiliated, two U's in Pittsburgh competing with the three V's independents of New York, and then you are scrapping section 307(b) of the act. If Congress determines that 307(b) is a dead issue and votes that way in a bill, then of course we accede to it. The purpose of our being here today is to convince you that you should not deter the FCC in this area, and certainly not to have you scrap 307(b).

Mr. ADAMS. Thank you.

Mr. ROGERS of Texas. Dr. Carter, did you have any questions?

Mr. CARTER. No questions.

Mr. ROGERS of Texas. Thank you very much.

Mr. PUTNAM. Thank you very much.

(Mr. Putnam's prepared statement, and a supplemental statement, follow:)

STATEMENT OF WILLIAM LOWELL PUTNAM, PRESIDENT, SPRINGFIELD TELEVISION BROADCASTING CORP.; CHAIRMAN, THE ASSOCIATION FOR COMPETITIVE TELEVISION; AND MEMBER OF THE EXECUTIVE COMMITTEE FOR ALL CHANNEL BROADCASTING

My name is William Lowell Putnam. I live in Springfield, Mass., where I was born. I am the president of the Springfield Television Broadcasting Corp., the licensee of WWLP in Springfield and WRLP, serving Greenfield, Mass., Brattleboro, Vt., and Keene, N.H. My corporation also holds a license for WJZB–TV, Worcester, Mass., and a construction permit for WKEF, Dayton, Ohio. We also hold a construction permit for WENS in Pittsburgh and a half interest in the permittee of WJHF, Raleigh, N.C. All of my corporation's stations are in the UHF band and of them only the last two are not, at the moment, on the air.

It is fair to say that I am the acknowledged industry spokesman for UHF television, having appeared in that capacity before this committee on more than one occasion in the past, before your companion committee in the other Chamber on several occasions, and repeatedly before the Federal Communications Commission. I have been for several years, the chairman of the Association for Competitive Television, an organization of UHF station operators which is of

recognized standing before the FCC; a director of TASO and a member of the Executive Committee for All Channel Broadcasting.

My purpose in appearing before you now is solely to inform you as to the views of UHF station operators. This is an area in which I can speak with greater knowledge than anyone in the country and I would not choose to stray or be led into speaking for any others. I wish to tell you that UHF broadcasters are entirely behind the FCC in the matter of regulation of CATV. We might only wish that they had moved faster and, to a degree, farther. For some years, my experience, and that of all UHF station operators, has demonstrated that no greater deterrent existed to the viability of the service that the UHF band was set aside to provide than CATV.

The experience of my own corporation will demonstrate for you in microcosm the experience of all local television stations, particularly UHF stations, forced to compete with completely unregulated CATV operations and will amply demonstrate why we so wholeheartedly endorse the recent action of the FCC. I would, therefor, like to repeat for you some of the testimony which I presented before this committee in June of 1965.

In 1953, my corporation went on the air in Springfield with a UHF station which was soon forced to compete not only with another local television station but also two nearby, but out of town, VHF stations, one in Hartford and one in New Haven, Conn. Our road was not an easy one to travel, but we worked hard, lost hundreds of thousands of dollars, but survived and prospered. We did so for several reasons: First, we were able to obtain, and retain, the NBC network lineup which permitted us to effectively compete against the CBS and ABC signals of our competitors; second, in addition to network programing, we provided and still provide an exemplary schedule of local service programing. By the way, that adjective (exemplary) is the FCC's official description of our programing, not mine; third, despite the inequities involved in UHF versus VHF television competition prior to enactment of the all channel receiver law, we stayed alive because ultimately all of the stations in the area, as licensees of the FCC, had to measure their performance and activities against the standard of the public interest. Thus, within the confines of the public interest standard, stations serving the Springfield area were free to compete on a fair and equitable basis.

In speaking of free competition, I would like to note at this point that much has been said by CATV spokesmen concerning free competition and the manner in which the FCC is impinging. Of course, what they want is to continue the present situation in which they are responsible to no one for their actions while competing with an industry which must answer for its actions to the public. It is ironic, however, that these voluble spokesmen for free competition, when considering entering a new community, will insist upon that community's governmental body issuing them exclusive franchises which will insure that they need never compete against a fellow CATV.

Now let me contrast this story with that of our station WRLP, channel 32, Keene, N.H. In addition to Keene, this station also serves Brattleboro, Vt., and Greenfield, Mass. It is the only local television station in the region.

The three communities, as well as other small cities and towns in the station's service area, constitute a market in the order of 100,000 persons. Additionally, we were assured that the station would be able to offer a complete NBC lineup. Thus, we were firmly convinced when WRLP went on the air in 1957 that it would succeed and develop into a truly significant outlet for local expression. Indeed, were we convinced otherwise we would never have undertaken the substantial investment necessary to place the station in operation.

When the station went on the air, there were some nine CATV systems operating within its service area. Between 1957 and 1965, the number increased to over 20 such systems. Initially, we could see that there was some operational basis whereby our station and the CATV systems could help one another. We approached every one of the CATV systems within our service area for their aid in making our station visible, and hence, viable. To our chagrin and dismay, we found that all these systems were carrying or proposing to carry the signals of NBC affiliated stations from far distant cities—in particular, Boston, Mass.; Albany, N.Y.; Portland, Maine. Some of these systems were carrying, in addition to our signal, signals of other NBC stations—duplication; but a significant number were carrying these signals in lieu of ours—exclusion in our own service area.

We also found that in many instances where we were being carried on the cables—and, incidentally, never on an exclusive basis—our signal was technically degraded or we were carried in a highly unfavorable channel position. Despite our best efforts, we could never obtain better treatment.

In addition to all of the foregoing, we found that the CATV systems in our area were engaging in other activities which were having a severe adverse impact on the station. Many of the CATV systems were placing a trade-in value on outdoor antennas if they were turned in at the time the set owners subscribed to the CATV system. In the rugged area in which WRLP is located this effectively precluded off-the-air reception of our station. Those systems which did not offer antenna trade-ins failed to provide cutover switches for their subscribers. Thus, subscribers desiring to watch our station on an off-the-air basis were forced to go through a highly cumbersome and inconvenient procedure. Our local advertisers told us that this also had an effect upon their viewing habits.

Without going into great detail, I would just like to say that the CATV systems and their practices had an adverse effect on our ratings, the lower ratings resulted in advertiser reluctance and refusal to buy our station and consequently WRLP became a substantial loss proposition. Yet, we did not turn our corporate back on the operation. For 7 years we utilized funds from our profitable operation at Springfield to subsidize WRLP's operations. However, a point was reached where we felt that we could no longer subsidize WRLP without degrading the service being provided by our other stations. With reluctance, we informed the FCC that due to the unchanging and indeed worsening revenue situation at WRLP we were discontinuing local operations at that station. Even then we did not abandon the station. It presently operates as a satellite of our Springfield station and we have informed the FCC that we will reactivate local programing at WRLP when the competitive picture in its service area promises some hope that it can ultimately become a viable operation.

During the years WRLP was battling the CATV systems, we attempted to convince anyone who would listen that there was a crying need for some form of regulation which would result in an accommodation of the interests of local television and CATV service. I would note that we never, now or in the past, urged that CATV systems be shut down or have unduly stringent limitations placed upon certain aspects of their operations, for we recognized that the signals of the ABC and CBS networks were not easily available off the air in the WRLP service area and that the CATV systems were, in fact, performing a public service by making them available in the area. However, we could not see what program or public service was being performed by the CATV systems when they brought one, two, or more NBC signals into the area to compete with the local NBC affiliate.

Now, what was the attitude of the CATV systems toward the achievement of an accommodation of interests? As noted before, in the early years on an individual private basis they spurned any and all offers and suggestions made by us. When governmental interest in the achievement of an accommodation by regulation became significant their attitude was, at best, one of duplicity. Spokesmen for CATV interests urged the FCC not to attempt regulation because of incipient State regulation. To footnote, only one State as of this time has adopted CATV regulations. To the States, CATV spokesmen urged nonregulation because of incipient Federal regulation. And, when CATV applicants appeared before municipalities from which they were seeking franchises they urged nonregulation because of incipient State and Federal regulation.

Finally, when it became obvious that some form of regulation was coming, CATV spokesmen returned to the concept of self-regulation. They urged that if left alone local television and CATV operators could reach satisfactory private agreements; particularly those relating to nonduplication of the local station's programing. Let me say to this committee, that in 7 years I was unable to conclude any nonduplication agreement with a CATV operator in the WRLP service area. This despite the fact that self-regulation was being promoted by the national spokesmen for CATV interest, the NCTA, and two members of the NCTA's board of directors who are the owners and operators of a substantial number of CATV systems in the WRLP service area were two of the CATV operators with whom we negotiated.

The deceitfulness with which CATV spokesmen have previously approached governmental regulation has now been carried over to the FCC's recent action. As the members of this committee must know, there has been a great uproar

against the FCC from these members of the public who subscribe to CATV services. We are all aware of the flood of form letters and post cards which have inundated the Congress. These letters have resulted from a deliberate scare campaign conducted by CATV operators and developed by their national association. The major refrain in this campaign is that the Federal Government, in the form of the FCC, is going to take your television service away from you and dictate exactly what you can or cannot watch at home. There are very strong intimations of a "Gestapolike" police state in all this.

But let's see who is really controlling the programing which the public can view?

The CATV operators have a rule of thumb about how many subscribers per mile of cable are necessary for their systems to turn a profit. In other words, there are some areas to which they will not provide service because there aren't enough subscribers per mile. So, the people who live in sparsely settled fringe areas, despite their ability to pay, are denied the multiplicity of television signals offered by the CATV systems. Then, of course what of those individuals who cannot afford the installation and monthly charges of the CATV systems? The CATV systems will deny them service regardless of where they happen to live.

And, there is yet another aspect to this question of who is controlling what? As the controversy over CATV regulation heated up, several television stations (WRLP included) engaged in editorializing on the subject of CATV operations. Complaints were filed against these stations (again WRLP included) by CATV operators charging that the stations had not dealt fully and fairly with all sides of the issue even though we publicly offered use of our facilities for reply. The FCC, after carefully examining all relevant material, determined that these stations had not fulfilled their obligations as broadcast licensees to comply with the FCC's "fairness doctrine". We were asked how we would comply, and insure future compliance. In our case, the FCC stated that it would look at our overall performance in this area at the time our license came up for renewal. I do not hesitate to say that there has been compliance and that the station has in every way acted in accordance with the FCC's public interest determination in this matter. Incidentally, no CATV operator has ever accepted our offers to discuss the issue over WRLP's facilities.

The Commission's "fairness doctrine" is intended to insure that the public is fully informed concerning all aspects of controversial issues of public importance—this is right and proper. But what of the role of the CATV systems in this area.

There has been much trade press coverage of the fact that, prior to these hearings, CATV systems engaged in program origination dealing with the question of CATV regulation. This coverage unanimously dealt with the need to write Congress so as to keep CATV service untouched. Slides and sound were used to get this message across to the subscribers.

From the foregoing, it is easy to see that CATV systems are not presently required to insure that the public is fully and adequately informed on all aspects of controversial issues. The same holds true for political events. At this time, the CATV systems are not required to treat candidates for public office on a fair and equal basis. Thus, CATV systems can, with impunity, promote particular candidates before their subscribers and there is no requirement which would insure that opposing candidates are afforded an equal opportunity to reach the same subscribers.

I do not think that more need be said on the questions of program control and CATV program origination other than to say that the problems relating to these matters, such as I have discussed, can and will be fully and fairly resolved by H.R. 13286.

Unfortunately, the members of the CATV public, unlike you and I, are completely unaware of the true content and nature of the actions taken by the FCC. If they were, they would realize that the assertions of the CATV interests are patent nonsense. Not a single CATV subscriber will suffer any loss of programing as a result of the FCC's actions. Perhaps he will not have two or three NBC affiliates to watch at one time, but then how many programs from a single network can one individual view at one time? Moreover, even if the CATV system is limited to one affiliate from each network, should that affiliate fail to carry a network program or fail to carry it in or close to the time period for which it is scheduled, the FCC's rules permit that program's carriage by the CATV system.

The FCC's CATV rules constitute a rational, fair, and conservative approach to the problem of accommodating the interests of local television service and CATV service. Perhaps, from the standpoint of the local station operator they are too conservative. However, as can be seen from that which we faced at WRLP and a reading of the FCC's rules, the rules do deal with the major problems which forced discontinuance of local program service at WRLP—duplication, carriage, the installation of cutover switches, importation of distant city signals, etc. The unhampered implementation of the FCC's new rules leads me to conclude, and I base this conclusion upon 14 years of UHF experience, that I can once again look forward to WRLP offering a viable UHF local program service. And, what holds true for WRLP, will hold true for all UHF stations. The FCC's rules constitute insurance that UHF television with the aid of the all-channel receiver law, a law which this committee fostreed, will live up to the expectations held for it by the Congress, the Federal Communications Commission, and the public.

I thank you.

SUPPLEMENTAL STATEMENT OF WILLIAM LOWELL PUTNAM, PRESIDENT, SPRINGFIELD TELEVISION BROADCASTING CORP.; CHAIRMAN, THE ASSOCIATION FOR COMPETITIVE TELEVISION; AND MEMBER OF THE EXECUTIVE COMMITTEE FOR ALL CHANNEL BROADCASTING

The following are matters of importance which, due to the press of time, I was unable to present in my oral testimony before the committee. However, they are of such a nature that I believe they must be brought to the attention of the members of the committee and beome a matter of record in this proceeding.

It is crystal clear from that which has been stated before this committee that the willingness of CATV to accept some minimal degree of Federal regulation has increased in direct proportion to the interest of State governments, in the form of public utilities commissions, in the operations of CATV systems. To avoid any possibility of State rate regulation, CATV operators are more than willing to see Federal regulation, but only in the form of some meaningless congressional action which wil leave them free to operate as they have done in the past year clearly preempt the field from the jurisdiction of the several States.

However, the CATV operators have made it clear that the only restriction upon their operations which they will willingly accept is a prohibition against simultaneous duplication. And, in return for this they want not only preemption, but a congressional mandate permitting them the unlimited right to originate programing.

Let me assure this committee that the present CATV attitude toward simultaneous nonduplication protection for local stations is strictly for public consumption: particularly those members of the public sitting on the House Interstate and Foreign Commerce Committee. To support my statement, I refer you to the Weekly CATV Addenda issued by Television Digest on April 4, 1966. It states that Pioneer Valley Cablevision, Inc., commenced CATV operation in Greenfield, Mass., in March 1966. This is the same community in which my corporation's station WRLP is located. According to the addenda, the new Greenfield CATV is carrying WRLP; it is also carrying WBZ–TV, Boston, Mass., which totally duplicates the network programing of WRLP, the local station. This has occurred despite, and in the face of, the statements made by CATV spokesmen before this committee.

The present CATV posture toward Federal regulation is a facade. It is entirely without substance. For example, while urging the committee to curb the Federal Communications Commission and/or enact CATV legislation which will be without meaning or effect, Mr. Ford, president of the NCTA, urged Subcommittee No. 3 of the House Judiciary Committee not to impose copyright liability on CATV systems because:

"It will be readily apparent that the legislation supported by copyright owners which would impose a copyright liability on CATV may very well frustrate the efforts of the Federal Communications Commission and the House Interstate and Foreign Commerce Committee to integrate community antenna systems into the national television policy in the public interest."

And, in their fight against effective regulation in the public interest, CATV spokesmen have not hesitated to resort to a "scare," or perhaps a better term would be the "hidden threat," technique in their appearances before the Congress.

The form of this technique is assertions by CATV spokesmen that, although they would not take such acts voluntarily, imposition of effective regulation will force them into doing exactly that which the broadcasters, the FCC, and you gentlemen fear they just might do. For example, about a year ago (June 2, 1965) in his testimony before this committee, Mr. Ford, in discussing FCC nonduplication regulations, stated:

"For example, when CATV systems have a blacked-out channel as a result of the 15-day rule and can no longer perform their traditional function as an antenna service, the only way they can meet the public's demand for a choice of programs is to originate them. This they now have the right to do, and there is nothing in the bill before you which would limit that right. Such programs would probably be paid for by selling advertising. This would place CATV in direct competition with the local station for its economic support."

As another example, let's see what some CATV spokesmen have said concerning CATV and pay TV. In general, the CATV attitude before this committee has been one of deprecating broadcasters' fears relating to the CATV-pay TV relationship. They call it one of the "horribles" that broadcasters have conjured up. They all deny that they have any interest in pay TV. Yet, on April 20, 1964, the NCTA filed further comments with the FCC objecting to the proposed rulemakings in dockets 14895 and 15233. On page 136, paragraph 229, of their document, the NCTA waived aside the CATV-pay TV relationship by stating:

"If pay TV is successful, it will first make its gains in the large metropolitan areas in 'Big City, USA' where CATV is nonexistent or quite scarce."

Subsequent to this statement, requests for CATV franchises were filed in New York City, Philadelphia, Pittsburgh, San Francisco, and several other large metropolitan areas.

Mr. Beisswenger, before this committee, emphatically denied any interest or desire to enter into pay TV. Yet, Mr. Ford, president of the CATV national association has made no such emphatic denial. Rather, he has stated before this committee that CATV is not interested in pay TV "if," and I quote from his March 23 testimony before this committee: "* * * if CATV systems ever engage in pay TV, it will be because broadcasters force them by their pay TV activity to engage in the business. * * *"

This is the old CATV game. What Mr. Ford is saying, in effect, is that if Congress does not want CATV to enter into pay TV, it must prohibit this area of endeavor to the broadcasters as well. For, if broadcasters invest their time and money and effort in developing pay TV, as they do now in producing programs, CATV systems want to reserve the right to move into the pay TV area to freely take advantage of that which the broadcasters have accomplished—the same way they take broadcasters' programing.

The "hidden threat" technique was also utilized by CATV spokesman before Subcommittee No. 3 of the House Judiciary Committee. On June 24, 1965, Mr. Ford of the NCTA stated before that committee:

"Imposing copyright liability on community antenna systems as the present bill is drafted may well require negotiation on a program-by-program basis. It seems inevitable that the community antenna owner will be forced to charge his subscribers on a per-program basis, rather than the present monthly service charge basis, because it may be presumed that different copyright owners will charge different fees for different programs. Thus, this proposed legislation has the potential for forcing CATV systems into becoming an outright pay television system."

Then, of course, Mr. Ford adds the disclaimer:

"Something we believe that neither the broadcasting industry nor this committee nor the community antenna desires."

The implication of Mr. Ford's statement, however, could not be clearer.

And, again before the subcommittee, Mr. Ford stated:

" * * * The bill's provisions which would subject these several millions of television viewers to a copyright fee not levied upon other viewers fortunate enough to live in geographical areas where television signals can be adequately received without the use of a community or mast antenna."

These statements, in addition to dramatizing the "hidden threat" technique of the CATV industry, also raise questions concerning the economics of the CATV industry. For, it would appear from Mr. Ford's assertions that CATV systems cannot absorb per program payments into their present service charges and that copyright payments would be passed onto subscribers in the payment of increased service charges or per-program fees.

Much has been said by CATV spokesmen during this hearing concerning the profitability of the broadcasting industry. Broadcasters are required to file annual financial reports with the FCC, and each year the FCC issues a financial report for the entire industry. These public records have been employed by the CATV spokesmen. Little, however, has been said concerning CATV profitability. Of course, there was Mr. Ford's comment:

"We believe that we are generally a much smaller and less profitable business than broadcasting, and we ask this committee to sanction the growth and development of this reception service."

The public record is devoid of comprehensive information relating to the profitability of the entire CATV industry. Pleadings and other information filed by CATV's with congressional committees and the FCC have been devoid of industry-wide financial data. However, I believe that by piecing together bits of information this committee can obtain some idea as to the financial status of the CATV industry.

There are instances, too numerous to cite, in which spokesmen for the CATV industry have stated that CATV profits make it one of the more attractive investments in America today. More specifically, Dr. Martin H. Seiden in his report to the FCC, conceded by the CATV industry to be an objective consideration of their operations, stated that a study of 28 CATV systems revealed a profit margin of 57 percent. This was after an average return to capital of 30 percent per annum. However, Dr. Seiden's figure for capital return does not take into account CATV recoupment of capital expenditures resulting from their initial installation charges to subscribers.

Just recently at the CATV hearings conducted by the Connecticut Public Utilities Commission, a CATV operator conceded that he expected a 400 percent return on his investment within 8 years of commencing operations. The Waterbury Republican commented:

"The community antenna television scheme looks like a once-in-a-lifetime investment potential. It looks, in fact, too good to be permitted, at least the way it has been proposed to the State public utilities commission. A Philadelphia firm conceded to the PUC the other day verbally and in a submitted financial statement that the percentage of return after 8 years of actual operation would total 400 percent. Annually, this would be only 50 percent, but compared to the maximum of 8 percent allowed utilities in Connecticut, it is a fantastic return."

The following appeared in the December 12, 1964, issue of Business Week magazine:

"QUICK PROFITS

"The lure of CATV of course is money, money machine. A Manhattan system could make money and lots of it. Assuming a capital investment of $10 million, return on invested capital would be 15 percent, but CATV systems are highly leveraged. Generally, 50 percent of capital is in bank loans. Another 25 percent is in subordinated debt. That leaves $2.5 million in invested capital or a net return of 60 percent. Even figuring net after payment of 6 percent interest and perhaps payments of $100,000 on subordinated debt, return is a healthy 44 percent."

And, on May 1, 1965, the same magazine asked this question:

"What is it that towers hundreds of feet into the air, mints money, and sells what television gives away free?"

In vivid contrast to the foregoing are the revenue figures for the UHF television industry released by the FCC in its annual financial report for 1964. This report indicated that during 1964 the combined profits of all UHF television stations in the country amounted to $2.7 million. This represented a profit margin of only some 5 percent.

There has been much discussion by CATV spokesmen during this hearing concerning the FCC's allegedly "unwarranted" interference in the economic competitive relationship between CATV and free television. They have attempted to paint the FCC's concern with the economics of broadcasters and CATV as some sort of unlawful extension of the Commission's regulatory authority. However, it is a well accepted premise that the Commission, under its public interest mandate set forth by Congress in the Communications Act, can consider economic impact upon broadcasters where there is a showing that the impact will adversely affect program service to the public. The Commission's exercise of authority in this area has been specifically approved by the courts. *Carroll Broadcasting*

Co. v. *FCC*, 103 U.S. App. D.C. 346, 258 F. 2d 440; *Carter Mountain Transmission Corp.*, 321 F. 2d 359, *cert. denied*, 11 L. Ed. 312.

No better examples can be found of the manner in which CATV economic impact can be translated into loss of program service to the public than Springfield Television's WRLP or the current situation in Pittsburgh, Pa. Because of the seeming acceptance of nonduplication protection by CATV operators, it is relevant at this point to confine the discussion to the Pittsburgh situation.

Pursuant to section 307(b) of the Communications Act, the FCC allocated two commercial UHF channels to Pittsburgh. These are in addition to the presently operating three VHF, network-affiliated channels and the two educational channels, one VHF, the other UHF. The new commercial UHF channels both propose independent programing operations.

It is an accepted rule of thumb in the broadcasting industry that independent television stations in major markets will obtain a total of 16 percent of the television audience during prime viewing hours. Thus, under normal circumstances, the two Pittsburgh independents could look forward to a maximum of 16 percent of the total market audience supporting their program services.

Now, however, CATV applications before the Pittsburgh City Council propose to bring into Pittsburgh the signals of the three independent VHF channels in New York City. The impact of such service would be to divide among five stations rather than between two that segment of the Pittsburgh audience available to the independent television stations. Regardless of the nature of the division, the loss of audience to the local independents will have an adverse impact upon their revenues. And, any reduction in revenues to the local stations will first affect their local programing capabilities. For, as any broadcaster will testify, production of local programing is the costliest item in a station's program service.

The ultimate result of the foregoing will be the nullification of section 307(b) of the Communications Act. At the very least, the unlimited importation of independent signals by CATV systems will have the practical effect of amending section 307(b) to read that the only local program service available to the several States and the communities therein will be provided by network affiliated television stations which are protected from CATV duplication of their signals.

The CATV explanation of this situation is that it is not the fault of CATV operations but the result of the operation of a free competitive marketplace. They assert that "all" they do is provide the Pittsburgh independents with the opportunity to compete against other stations, e.g., the New York independents. But this is, at best, a half truth. CATV operations do not create a truly competitive market because, while giving the New York independents the opportunity to compete with the Pittsburgh independents for the Pittsburgh audience, they do not provide a comparable opportunity to the Pittsburgh independents to compete for the New York audience. Perhaps if the CATV systems guaranteed this opportunity their position might almost be tenable.

The ultimate irony in this entire discussion of competition is that CATV interests have not hesitated to utilize the FCC's processes where they felt CATV economic interests might be jeopardized by off-the-air broadcast service. For example:

On April 25, 1963, Tele-Ray Translator System of Snyder, Tex., filed applications for two UHF television broadcast translator stations to serve that community. The translators proposed to broadcast the signals of NBC and CBS affiliates. A petition to deny these applications was filed by Snyder Community Antenna Television, the local CATV carrying, among others, the same signals, on the ground that this partial duplication would impair its revenues. The CATV alleged that the filing of the translator applications had resulted in a loss of subscribers and that if the translator applications were granted, the number of its potential subscribers would be reduced.

On May 4, 1964, the FCC denied the CATV's petition because "* * * the petitioner has not made substantial or material allegations of fact tending to show that operation of the proposed translators will be injurious to the public interest, convenience and necessity." In re *Applications of Tele-Ray Translator System*, F.C.C. 64-390, released May 4, 1964.

The foregoing is still another example of the duplicity of CATV interests in the face of public interest regulation. While spokesmen for the CATV industry have appeared before this committee denying that the FCC has the authority to examine economic factors in attempting to preserve free off-the-air television serv-

ice in the face of CATV competition, members of that same industry have appealed to the FCC to consider the same economic factors in an attempt to forestall free off-the-air television competition in exclusively CATV communities.

Mr. ROGERS of Texas. Our next witness is Mr. Richard D. Dudley, of station WSAU–TV, Wausau, Wis.

STATEMENT OF RICHARD D. DUDLEY, PRESIDENT AND GENERAL MANAGER, STATION WSAU–TV, WAUSAU, WIS.

Mr. DUDLEY. This is a very short statement but I think it is pertinent to the subject. Mr. Chairman and members of the committee, my name is Richard D. Dudley. I am president and general manager of television station WSAU–TV in Wausau, Wis., and I appreciate this opportunity to even appear before the committee and make some observations about the regulation of CATV.

Since WSAU–TV went on the air—October 24, 1954—our station has had four CATV systems go into operation, all without our grade A coverage area, in Rhinelander, Merrill, Marshfield, and Stevens Point.

A CATV system began operating in Wausau itself in 1952, 2 years before WSAU–TV went on the air.

WSAU–TV has a net weekly circulation of 121,400, according to the American Research Bureau 1965 report. Consequently, our city is not included within the top 100 markets and therefore is afforded little or no protection from signal importation.

Signal importation in a smaller market is a serious problem. The more signals that are available, the more our 121,400 home audience is diluted, creating more of a problem for a station to sell advertising on a local, regional, and national basis.

This revenue is what makes local TV possible and increases the appeal of the station to all segments of the audience. CATV systems, however, have been able to operate without any of the restrictions which are imposed on television stations by FCC regulations.

Let me give you one example of the adverse effect of CATV on our operations. In the period from 1954 to 1957, WSAU–TV carried the Green Bay Packers football games. Incidentally, we are 88 airline miles from Green Bay, well outside the 75-mile blackout area, and were operating with a power of 100,000 watts.

When we improved our facilities in 1958 and went to maximum power of 316,000 watts the Green Bay organization invoked the blackout of home games. This, of course, is their prerogative and one could assume that, logically, it was justified from the Green Bay standpoint, because many fans, on cold fall days, make their way from our area to attend these games.

Consequently, on Sunday afternoons in November and December, we program movies during these blacked-out games and incidentally they are 1936 movies, because we don't have anybody watching them when football is available—while the CATV systems can bring into all of the above-mentioned towns, without restrictions, the home games of this fine National Football League team.

I want to afford all the viewers (121,400 weekly circulation) the advantage of watching these games because (1) all the Green Bay games are sold out on a season ticket basis and (2) the cable systems will never be able to serve all these people in our entire area. They

can only serve those in the concentrated population areas because it is not financially feasible to wire up rural areas. Since many of our 121,500 homes are in rural areas, they naturally would be restricted from seeing these games.

The attempts made by WSAU–TV to get these Green Bay games for our viewers followed this pattern. Last season we talked with the Green Bay general manager. He was asked if WSAU reduced its power to its former 100,000 watts, would he allow us to carry these games.

We then applied to the FCC for temporary reduction of power during these games. They cooperated and gave us permission to do this. We contacted Mr. Pete Rozelle, commissioner of the National Football League, to gain his permission and he related it was up to the local team to make the decision. We contacted CBS and tried to enlist their help. They also said it was a local team decision. We then again appealed to the Green Bay organization, but were refused.

Conclusion: WSAU–TV made every legitimate effort it could to make these games available to our viewers, but to no avail. Then we would read in the newspaper ads in the various communities we cover that the Packer games would be available on the cable systems. It seems only logical to me that the same blackout restrictions should be imposed on cable companies as are imposed on broadcasters.

Not that I particularly agree with the blackout rule but I think there should be an equal situation.

Another area that has been little discussed but is significant in the lesser markets is the problem of delayed programing. Wausau, Wis., has but two television stations. WSAU is affiliated with two networks and we carry 7 hours of programing on a delayed basis.

It is obvious that WSAU's intention is to give our 121,400 homes the best programing both from CBS and NBC.

The programing carried on a delayed basis is as follows:

Program	Time	Delay (days)
Bob Hope Show	Tuesday, 9-10	6
Perry Mason	Tuesday, 10:30-11:30	2
Candid Camera	Wednesday, 10:30-11	9
Trials of O'Brien	Thursday, 10:30-11	6
Branded	NBC, Friday, 10:30-11	5
Daniel Boone	Saturday, 5-6	9
Flipper	Saturday, 6-6:30	14
Jeannie	Saturday, 8-8:30	0
Secret Agent	Saturday, 10-11	0

The reason we carry delayed programing is simple. To carry Bonanza—here it comes again—we would have to eliminate Perry Mason. Perry Mason is therefore delayed 10:30 to 11:30 p.m. on Tuesdays and the same situation exists with the other programing as listed.

While the subscribers to cable in our area are not a majority of viewers, the number is large enough so that if no period of protection is available to delayed programing, it could be very possible that delayed programing would be eliminated, thereby making many of these fine programs unavailable to the great rural audiences that cable does not presently serve or intend to serve.

These problems at WSAU–TV could be multiplied in many TV markets in the United States and in the ultimate would be detrimental to broadcasters as well as the rural viewers. It could lead to the demise of many small stations, which I am sure is not the intent of the Congress and/or the Federal Communications Commission.

Thank you, sir.

Mr. ROGERS of Texas. Why would it do away with the delayed programing? Could you not go ahead and show them anyway?

Mr. DUDLEY. The problem, and I am going to speak in the economic area, in selling to a local advertiser or national advertiser you have to deliver a certain number of homes, and now if a program—let us use Bob Hope as an example, normally going into this period we would deliver in the area of 34,000 or 35,000 homes. With Bob Hope on a delayed basis then it drops down to about 26,000 or 27,000 homes thereby reducing its value to us.

Now I am sure that part of the reason is that it has been viewed ahead of this time on CATV systems within our area, and there is approximately 9,000 subscribers within our area on CATV.

Mr. ROGERS of Texas. What you are actually saying is that even if these rules proposed by the FCC come into effect that you won't be helped unless these rules are extended to the area served by your station, is that right?

Mr. DUDLEY. I think there should be an extension to a delayed period, a protection for a delayed period.

Mr. ROGERS of Texas. When you say you have to deliver a certain amount of homes and you serve 121,000 homes, do you want to have those 121,000 homes as captive audiences of your station?

Mr. DUDLEY. No, sir; I did not say that.

Mr. ROGERS of Texas. I know you did not say that.

Mr. DUDLEY. No; I don't want them as a captive. I don't think they should be denied any programing. I don't think if we are running in competition, using another evening, say Wednesday night where we are running Danny Kaye, I don't think they should be denied being able to see the ABC show on that time period, I don't think they should be denied seeing the NBC show.

Mr. ROGERS of Texas. You think then that the FCC ought to have the power of program control?

Mr. DUDLEY. No, sir; I don't.

Mr. ROGERS of Texas. How are you going to control where these are shown or whether they are not?

Mr. DUDLEY. Whether I show it or not?

Mr. ROGERS of Texas. No, whether the CATV shows it or not.

Mr. DUDLEY. I don't think—maybe we are confused on program control.

Mr. ROGERS of Texas. Well, program control to me is simply saying you can show it or you can't show it.

Mr. DUDLEY. I look at the FCC regulations as having to do with technical restrictions on the operation of your stations. I don't think that they intend to say to me, "Mr. Dudley, you run at 9 to 10 on Tuesday night: you run CBS Reports." That is not my intent.

Mr. ROGERS of Texas. Do you think they ought to have that right on CATV to say you cannot run something from 9 to 10 at a certain time?

Mr. DUDLEY. I think they should if it means duplication.

Mr. ROGERS of Texas. Then you think it ought to be program control on them but not on you?

Mr. DUDLEY. No.

Mr. ROGERS of Texas. I do not follow this. But maybe I am all mixed up.

Mr. DUDLEY. Let us start from the basic premise. I don't think that any viewer should be denied any programing, whether it is a single-station market or a multiple-station market or whatever it is.

I don't think he should be denied this. If a program in Wausau, Wis., is not available on the two stations that operate there, if it is not available on either one of these stations it should be made available on a CATV system. So that the viewer has the choice of programing.

Mr. ROGERS of Texas. What you are saying is this, that he ought to have a chance to see every program but he ought to be told at what time he can see it and on what station he can see it.

Mr. DUDLEY. I think you are off on a different basis. We are talking about 9,000 homes compared to 121,000 homes.

Mr. ROGERS of Texas. Suppose the whole 121,000 get on the cable?

Mr. DUDLEY. This is impossible, sir, in my particular area.

Mr. ROGERS of Texas. Then they can't hurt you very much.

Mr. DUDLEY. It is primarily a rural area. It can in the metropolitan center; Wausau, Wis., is a small town. It is satellited with many other small towns that are around it. All of these smaller towns have cable systems in.

This is where the buying power is. This is where the majority of concentration of population is, of course. If all of these get the cable system, the potential cable system in these towns—in Wausau, Wis., and the other towns that I mentioned—is 27,000 homes.

That would be their maximum potential. They are at 9; again, you are going to go back to, say, go back—saying that these 27,000 people should dictate the desires of the 121,000.

Mr. ROGERS of Texas. No; I am not saying that. I am merely asking the question. What I am saying is that you are espousing some degree of program control either in CATV or in the broadcasting business; aren't you?

Mr. DUDLEY. I am sure I am confused on your term of control. Again I will be going back, I don't think anybody should be denied a program of any kind.

I don't think they should be denied. Now if there has to be a rule to protect—then on a delayed period or simultaneous delay, then things like that.

Mr. ROGERS of Texas. Now, that would be a good degree of programing control, would it not?

Mr. DUDLEY. I don't quite agree with you in that area, sir.

Mr. YOUNGER. Will you yield?

Mr. ROGERS of Texas. I will be happy to yield.

Mr. YOUNGER. I have one question. Why this delay? You represent both NBC and CBS?

Mr. DUDLEY. On our particular station; we have another station then in the market. It has ABC and NBC.

Mr. YOUNGER. Your delay is occasioned by the fact that you have two networks?

Mr. DUDLEY. That is right, sir. What I am trying to do in the rural area, which is my big concern—in the metropolitan area this is

not a problem where you have the three stations and all this programming is available only on an equal basis—any—my concern is with the rural viewer who could possibly be denied some of this programing because we would take everything we could possibly live off the network to eliminate the duplication problem.

Mr. ROGERS of Texas. You are a member of NAB, aren't you?

Mr. DUDLEY. Yes.

Mr. ROGERS of Texas. They are against any programing control.

Mr. DUDLEY. I am against program control but in the sense that I don't think that is should be dictating the content.

Mr. ROGERS of Texas. Mr. Staggers, do you have any questions?

Mr. STAGGERS. No questions.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. I am interested in the delayed program aspect. I am confused by the fact you control two networks and don't have anything to do with the cable. It seems to me that if somebody could get the program live somewhere else, the people can see it and view it the same night that it is released over the air all over the country, they should not be denied that right just because you happen to have the control of two networks.

Mr. DUDLEY. I am not speaking in my own behalf in this particular area. What I am thinking about is the comparison of the 9,000 homes that are presently connected to cable compared to the 121,000 homes in the total area.

You are talking about 112,000 homes that could possibly be denied a show like Bob Hope and could not see it at all either on a delayed basis or live because it just is not available in the market any other way.

Mr. YOUNGER. Those who are on the cable would have to wait for you.

Mr. DUDLEY. Yes, sir.

Mr. YOUNGER. You can give it to them sooner or later, mostly later?

Mr. DUDLEY. Mostly later, yes; but we try to cut the delay down to as short a period as possible.

Mr. YOUNGER. How about establishing another TV station and NBC give them the network?

Mr. DUDLEY. This is in the offing, sir, so that will take care of that problem.

Mr. YOUNGER. Then you won't have any delays. I don't see how you could have any local time for local presentation as required by the FCC and at the same time do justice to two networks.

Mr. DUDLEY. Sir, I would like to tell you that we do probably more live local programing than most small stations in the country.

Mr. YOUNGER. Then you have to cut out an awfully lot of network programing.

Mr. DUDLEY. No, sir. This is one of the reasons that we delay this to the later periods.

Mr. YOUNGER. It would not make any difference how much you delay it, you have only so many hours of programing every day from each network. If you delay it, all you do is accumulate more network hours.

Mr. DUDLEY. No, because we take some of the periods, like we program our 12 to 1 period at noon as all local live programing.

Our period from 4 to 6:30 is local live programing. Our period from 10 to 10:30 is local live programing. In a small market such as

Wausau, Wis., this is a lot of local live programing. When I say "live" it is live. It is not films.

Mr. YOUNGER. During those hours there is available to you NBC and CBS network programs?

Mr. DUDLEY. That we don't carry. I agree that the cable system should be able to carry this programing if it is not available on my station.

Mr. ADAMS. Will the gentleman yield?

Mr. YOUNGER. I am through.

Mr. ADAMS. I have just one question. Will the network drop your ability to put on the delayed program? Is that what you are saying, if you go down to so many homes?

Mr. DUDLEY. No; we would drop it and carry everything on a live basis to protect ourselves from the duplication factor.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have no further questions.

The CHAIRMAN. Mr. Dudley, we appreciate your coming and giving us the benefit of your views. I am sure they will be helpful to the committee when we get into executive session on this legislation.

Mr. DUDLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Cecil Woodland. I believe you come from the district of one of our colleagues, Mr. Rooney.

Mr. WOODLAND. Yes, sir.

May I introduce our Washington counsel and attorney, E. D. Johnson?

The CHAIRMAN. I might say, Mr. Woodland, that you have one of the distinguished Congressmen of this Congress on this committee, Mr. Rooney. He is very able. We are proud to have him on the committee. We would like to give him the opportunity of presenting you to the committee.

Mr. ROONEY. Thank you, Mr. Chairman.

Mr. Woodland is not exactly from my district but my ancestors date back to the anthracite regions of Pennsylvania for many years. As an administrative executive of the Scranton Times, I want to take this opportunity to welcome him to Washington in his appearance before this very distinguished chairman of the committee.

Mr. WOODLAND. Thank you Mr Chairman, and Mr. Rooney. My statement is quite brief. This covers an area which the chairman has touched on. I will get through it very quickly.

STATEMENT OF CECIL WOODLAND, ADMINISTRATIVE EXECUTIVE, WEJL RADIO, MANAGER OF SEMIT CABLE TV CO., PAST PRESIDENT OF THE PENNSYLVANIA ASSOCIATION OF BROADCASTERS, SCRANTON, PA.

Mr. WOODLAND. My name is Cecil Woodland, 124 Glenburn Road, Clarks Green, Pa., administrative executive of WEJL radio and manager of Semit Cable TV Co., one of four applicants for a CATV franchise in Scranton, Pa. I am a past president of the Pennsylvania Association of Broadcasters, am currently district 3 director

of the National Association of Broadcasters, and my broadcasting experience includes more than 30 years of active participation in radio and television. Both WEJL radio and Semit Cable TV Co. are solely owned by the Lynett family which also published the daily Scranton Times.

Scranton and Wilkes-Barre is an all-UHF market, with three local stations providing service from all three networks. In applying for a Scranton CATV franchise, Semit Cable TV Co. has made it clear that it intends to protect, and indeed to foster, the continuance of local TV service by those three local stations.

Firm commitments have been made in respect to carrying the local TV stations on the CATV system without degradation of signal. There will be no simultaneous duplication of network programs, no inducements will be offered to encourage subscribers to remove their rooftop antennas, no pay TV service will be provided without consent of the city council, local stations will have favored positions on the subscribers sets, and quality construction of the system will guarantee no interference with the reception of nonsubscribers.

History shows that the owners of Semit Cable TV Co. have an outstanding record of cooperation with local television stations. The Scranton Times prints a weekly supplement listing programs and printing new stories of programs to be seen on the local TV stations. Additionally, it prints a daily list of outstanding programs available on those stations.

It has a reciprocal news arrangement with WNEP–TV, channel 16, in Scranton and Wilkes-Barre, and provides complete election returns over that station directly from the Scranton Times newsroom.

Since the advent of television in the Scranton area, the Scranton Times has done much to improve viewing of the local TV stations. At its own expense, it changed the frequency of its former FM station to eliminate interference with local television reception.

WEJL technicians spent weeks tracking down sources of interference caused by boosters used to bring in a Binghamton VHF station.

Also it was a recommendation by the Scranton Times resulting from an engineering study financed by it, which the Federal Communications Commission approved when it allocated a third television channel to Scranton.

This fact is documented in the sixth report and order of the Commission, which states that the third channel was allocated to Scranton at the request of the Scranton Times.

We welcome regulation of community antenna television by the Commission. We have noted with satisfaction the Commission's statement in the second report and order, and elsewhere, that it would welcome congressional guidance as to policy and congressional clarification of its authority in this field.

However one particular section of the Commission's new rules regarding CATV is of particular concern to us, and it is our hope that the Congress will, after these hearings, influence the commission to modify, that section, namely section 74.1107, to the extent that it now includes an absolute requirement for an evidentiary hearing upon a request for permission to extend a CATV service into one of the largest television markets as determined by ARB.

This requirement, for all practical purposes, freezes CATV for Scranton and places the community at a disadvantage with relation to Wilkes-Barre and other communities.

At the present time CATV systems operating within the grade A and grade B contours of our local TV stations, all of which operate on UHF frequencies, serve the communities of Honesdale, Forest City, Carbondale, Wilkes-Barre, and others.

These are communities within the Scranton-Wilkes-Barre market, which is ranked 70th in size among the top 100 markets. Despite the operation of these existing systems, no evidence has been produced to show any economic harm to the three UHF television stations operating in Scranton and Wilkes-Barre.

In fact it appears that these stations have found CATV to be most valuable to them by expanding their audiences. One of the local UHF stations advertises the fact that its programs are carried on 101 CATV systems and that this increases its audience by 145,000 homes.

In similiar fashion CATV can well increase the audience of new UHF stations in areas where such UHF stations complete with established VHF stations, as in Philadelphia.

The UHF stations in Philadelphia carry important events not available on the VHF stations, and many CATV systems would gladly carry such programs, thus helping directly to increase the audiences and potential revenue of those stations.

Because fears have been expressed that CATV will lead to pay TV, let us point out that such activity can be easily forbidden by local governing bodies in the writing of the franchise.

All applicants for a franchise in Scranton, for example, have stated they have no objection to such a ban being included. In the case of Semit Cable TV Co., in addition to agreement with such a ban, we state that we will not present any programs on the basis of extra payment by the subscriber.

Any service that we originate will be provided under the regular monthly fee agreement with the subscriber. As to the charge that CATV systems degrade the local signal, this problem will no longer exist when the nonduplication regulations apply. If CATV subscribers are not provided with a quality picture of a station carrying a program they wish to see, the CATV operator will be unable to obtain or retain subscribers.

It is apparent that the Federal Communications Commission is attempting to protect the economy of television stations by restricting competition, with the result that in the case of Scranton, Pa., its citizens would be deprived of the better reception and the wider choice of programs currenly enjoyed by many other communities, including nearby Wilkes-Barre and others in the shadow of the local TV stations.

We hope the committee will agree that, on the record of the operation of CATV systems and UHF stations side by side in northeastern Pennsylvania, there is no justification for the Commission to require a hearing to determine whether or not a CATV system should be permitted to operate in Scranton, while surrounding communities already enjoy the service.

In effect, the Commission suggests that the citizens of Scranton, Pa., should be satisfied with a choice of 3 television stations, while citizens

of adjoining communities are permitted a choice of 7 to 10 stations.

And since the area is mountainous, many homes in Scranton are unable to receive all of the three local stations. Also because of a weak or nonexistent signals in some areas, many residents hesitate to buy color receivers.

CATV will provide quality color reception, plus quality of all three local UHF television stations.

In his statement before the committee on March 24 Mr. Robert Beisswenger, president of the Jerrold Co., pointed out that the statements of the National Association of Broadcasters do not reflect the unanimous opinion of its members.

There are many like myself who disagree with the NAB position, and this difference of opinion has existed for a considerable length of time. For example on the occasion of the hearings before the subcommittee on communications and power, chaired by Congressman Rogers in May of—May and June of last year, we filed a letter, which is printed on pages 516 and 517 of the record, pointing to the specific reasons why we did not agree with the NAB position.

Similarly the Association of Maximum Service Telecasters has had its pronouncements disputed by members, one of whom even publicized his dissenting opinion. We express the hope that this committee will not accept the statement of the NAB as representing the unanimous opinion of its members.

Finally we respectfully suggest that local television stations should accept CATV as competition, just as newspapers and radio accepted television as competition, and just as all forms of advertising accepted television as a competitor.

In accepting new competition, television can and should protect itself by producing better programs and providing better service rather than relying on protection by Government regulation.

We do not believe that the Congress ever expected the Federal Communications Commission to serve as a protector from competition for any branch of the broadcasting industry. We submit that the record in northeastern Pennsylvania as one example shows that CATV has been a major factor in the progress made by three local UHF television stations, and we express the hope that this committee will recommend legislation which will permit all other citizens to enjoy the wider choice of stations and programs now enjoyed by those communities currently served by CATV systems.

Thank you.

The CHAIRMAN. Thank you, Mr. Woodland. You are in favor of some legislation?

Mr. WOODLAND. Yes. In fact, the bill introduced by Mr. Mackay we would approve—we would approve it and the position of the NCTA.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. I have no questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. I have no questions. Thank you very much for your contribution.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

You mentioned on page 5 that the NAB and the Maximum Service Telecasters do not have unanimity of opinion in their own organization.

Do you mean to infer then that the CATV's are all united?

Mr. WOODLAND. Not at all, sir. I am not a member of the NCTA.

Mr. PICKLE. On page 5 you say that the broadcasters should not rely on protection by Government regulation. You leave the impression that it ought to be completely free.

Yet you tell the chairman now that you think we ought to have legislation.

Mr. WOODLAND. I did not mean to give the impression I thought there should not be control of CATV, because I certainly think there should, sir.

Mr. PICKLE. Your statement I am reading says—

and providing better service rather than relying on protection by Government regulation.

It seems to me that you are implying that it is all right to have Government regulation if it helps you but not if it helps the other, or vice versa.

Mr. WOODLAND. On page 2 we said we would welcome regulation of community antenna television by the Commission.

Mr. PICKLE. I simply point out that it looks to me like you have made two different statements; that is all, Mr. Chairman.

The CHAIRMAN. Mr. Rooney.

Mr. ROONEY. Mr. Woodland, you state on page 1 "local stations will have favored positions on the subscriber's set." What do you mean by that?

Mr. WOODLAND. We would carry the three local stations on channels 2, 3, and 4 on the VHF frequency location on the dial. So that the purpose of this, Mr. Rooney is that a viewer, using the cable, would not be tempted in switching back and forth among the three stations, he would not hit an out-of-town station, and be tempted to stay with it.

With the 2, 3, and 4 which we think are the best positions on the dial.

Mr. ROONEY. Your testimony today clearly indicates that you are very much interested in the three UHF stations in the Wilkes-Barre and Scranton area. You want to protect them in every way possible and you cited the Scranton Times is assisting the local UHF stations in carrying election returns and so on.

I think that is commendable but at the same time—I don't know whether or not you were here at the time, Mr. Woodland—the Chairman of the Federal Communications Commission, Mr. Henry, about 3 weeks ago in his testimony gave some graphic illustrations whereby local UHF stations are blacked out in the Scranton-Wilkes-Barre area.

Will you tell me something about that, whether or not this situation exists?

Mr. WOODLAND. I understand that the system in Wilkes-Barre does not carry the Scranton stations which are UHF. The reason for this is that all-channel receivers universal in that area receive the UHF stations directly off the air, whereas the other stations brought into

Wilkes-Barre are converted to one of the VHF channels. Consequently, the subscribers to the system have the advantage of receiving the UHF stations satisfactorily directly off the air and the more distant stations are on the UHF portion of the set. However, this situation will not exist in Scranton where all four applicants for a CATV franchise have agreed to carry the local stations on the subscribers' sets without duplication.

Mr. ROONEY. Is it true also that the local UHF stations that are carried by the local CATV channels would not normally be received in the mountainous terrain areas and suburbs of Scranton and Wilkes-Barre?

Mr. WOODLAND. That is correct; although two of them have translators now which help in some areas, but there are still some bad spots.

I think, Mr. Rooney, I would like to say that I have heard a lot of testimony here about the importation of distant signals. This to me should be a two-way street. The local stations which use as a selling tool the fact that their programs are heard as far away as Ithaca, N.Y., and Elmira, it seems to me the case of importing a distant signal is fine if you are the station doing it but it is bad if you are the CATV station receiving it.

Mr. ROONEY. In other words, local stations in Scranton are being seen in faraway areas, as far as Elmira and Utica?

Mr. WOODLAND. Yes; Delhi, Deposit, Hancock, Waverly, Ithaca, Oswego—there is a long list.

That prompts me to say that the figure I quoted of 145,000 homes which the TV station claimed to have CATV homes, these figures were as of 1963 and updating some of them I think we could conservatively say that figure would be up to 300,000.

I base that on the fact that Elmira in 1963 had 5,000 homes and now has 14,000. It has tripled. So have some of the other communities.

Mr. ROONEY. Then the CATV system in this instance is not actually competing against the local UHF stations but augmenting many additional people who might look at it?

Mr. WOODLAND. At the risk of oversimplification it seems to me that the situation in Scranton and Wilkes-Barre is purely and simply one where CATV industry is a great industry when it takes a signal beyond the grade B contour but if it intrudes itself in the grade A contour and might dilute the audience then it becomes the villain.

I don't believe you can have it both ways.

Mr. ROONEY. No further questions.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have no questions of this witness.

The CHAIRMAN. Thank you, Mr. Woodland, for giving us the benefit of your knowledge.

Mr. WOODLAND. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Lyle O. Keys, president of TeleMation, Inc., Salt Lake City, Utah.

Mr. Keys, your statement is long. Would you care to put it in the record and summarize it?

STATEMENT OF LYLE O. KEYS, PRESIDENT, TELEMATION, INC., SALT LAKE CITY, UTAH

Mr. KEYS. Thank you, Mr. Chairman. I don't want the book to frighten you. Most of it is exhibits. I have 12 pages of testimony, of which I would like to read 10. I believe my testimony is unique in that it covers local origination, and I don't believe that has been thoroughly explored here.

The CHAIRMAN. All right, you may proceed.

Mr. KEYS. Mr. Chairman, members of the committee, my name is Lyle O. Keys and I reside at 2905 South 27th East in Salt Lake City, Utah. I am president of and stockholder in TeleMation, Inc., of Salt Lake City, manufacturer of specialized television apparatus for the educational television and community antenna television industry.

TeleMation is a small company with 39 employees, but we are the principal manufacturer of what we refer to as automated public service equipment for the CATV industry. Our weather channel equipment, an automatic time and weather televising device, is in use by approximately 300 cable television systems in 45 States.

Last July, TeleMation and the Associated Press introduced a second automated public service called news channel, a device for continuous, 24-hour presentation of the Associated Press news report. Like the weather channel it is normally carried on an otherwise unused channel without interference to any other programing. Our 70 orders for this service have been received to date with many of these now in operation since deliveries were started in December 1965. Industry response and public acceptance to date indicate that the news service will be even more significant than the time and weather service.

The news channel is a joint participation of TeleMation, Inc., and the Associated Press, with TeleMation manufacturing the equipment and the Associated Press supplying the news report and marketing the service to the industry. Thus, the case I plead is much broader than the interests of TeleMation alone. In addition, the Nation's other national wire service, the United Press International has also entered the field in conjunction with another manufacturer and is offering a similar service to CATV systems.

Our specific area of concern is paragraph b, section 331, of H.R. 13286—the Staggers bill—under consideration by this committee. We are distressed to see that under the language of the paragraph the American public might, perhaps inadvertently, be deprived of these and other worthwhile services.

I propose to develop two points with my testimony today:

First, that automatic public service, such as news and weather should be exempt by definition from any consideration of restriction on program origination by CATV's and, second, that prohibition of program origination by CATV's is not in the public interest, may be violative of the first amendment to the Constitution of the United States, may be violative of section 326 of the Communications Act of 1934, and is not germane to the desired objective anyway, if that objective be defense against pay TV.

I planned to display several large pictures and maps illustrating the news and weather devices and application. In the interest of expedi-

ency, I will proceed to page 4 of my testimony. The pictures concerned are attached to your copies of the testimony.

In further support of my first point—that devices such as news channel and weather channel should be exempt from consideration of program origination restrictions—I offer the following facts:

1. Automatic news and weather devices do not "originate programs" as such. The news machine merely repeats the news copy as it is transmitted from the national or regional point of origination. The weather machine automatically senses and displays current conditions and the time of day. It also has the capability of displaying printed announcements but does not well lend itself to origination of programs as such. Nor do these devices detract from interest in other programs fare, since their use is more as an information source to be referred to as one would look at a clock, but not to be watched for hours on end.

2. These devices do not diminish viewers' interest in obtaining more complete information via newspapers, radio, or television stations. On the contrary, the news channel has been shown to stimulate that interest. As evidence of this, I submit a compilation of data obtained from a survey conducted during a 6-week period starting May 19, 1965, at Miles City, Mont. This survey was made following a field test of news channel on the Miles City cable television system.

May I call your attention to this chart on which results of that survey are illustrated. It shows that we asked Miles City viewers, at the conclusion of the test, whether their interest in hearing or seeing a story on radio or television increased or decreased after they had seen it on news channel. More than 70 percent said it increased their interest in hearing or seing it on radio-television, and 67 percent said they were more interested in reading about it in the paper.
terest in hearing or seeing it on radio-television, and 67 percent said they found news channel a valuable addition to their television fare.

Ninety-four percent said they regarded it as an important public service.

Eighty-seven percent said it made them better informed. And 25 percent said they watched up to 30 minutes a day; 44 percent said they watched up to an hour off and on; and 25 percent said they watched as much as 3 hours.

May I say in this connection that we found some unexpected favorable reaction from Miles City mothers who said it seemed that their children—totally absorbed in television as they are—might yet be getting the reading habit at last by watching and following the words on news channel.

News channel and weather channel are not programs to be watched by the hour. They are supplemental services and aids to be referred to—like a weather forecast, the thermometer, the clock on the wall, the dictionary.

My second point—that prohibition of program origination by CATV's is not in the public interest—is supported by the following facts:

1. I have discussed the two devices in general use for CATV public service—news and time-weather equipment. I believe it is generally accepted that these devices perform a worthwhile service. Indeed,

Chairman E. William Henry, of the FCC, described them as "very worthwhile services" in recent testimony before the House Small Business Committee.

There are currently under development or consideration other devices which would similarly provide CATV viewers additional fare of a public service nature. Any blanket restrictions against local origination would stifle developments in this field since the prospective manufacturer would be faced with the possibility that the time and money invested in a product development would be lost through prohibition of the product's use. The viewing public would thus be the end loser.

2. Many CATV systems throughout the country are presently providing various services to their communities through local origination. Typically, they are providing regular daily newscasts, interviews with public officals, high school debate coverage, civil defense information, charity drives, sports programs, and general announcements of public interest and concern. In nearly every instance, these services have evolved as a result of a CATV operator accepting his community responsibility and fulfilling a public need.

There are real services filling real needs, and specific examples are clearly reflected in the more than 100 letters I have here from viewers and organizations that have benefited. I have attached 23 of these letters to the printed copy of this testimony as typical of the sentiment expressed. And I respectfully request members of the Committee to examine them, for they are most eloquent testimony of the worth of this voluntary public service being provided by CATV systems.

You will find, for example, this from Chairman R. J. Miller of the Grand County, Utah, commission:

> The Tuesday interview on "Moab Report," on the local CATV system, is an excellent chance for us to inform people on our deliberations, our policies and decisions * * * since few people actually attend our weekly meetings.

And this from Superintendent C. Robert Sundwall of the Moab, Utah, School District:

> Without the help of the local CATV system, our school television project could never have been accomplished. You have made it possible for us to originate our own taped and live programs, and to reach every student and teacher with special programs and bulletins.

From Cumberland, Ky., there is this from Director E. S. Jacobs of the Harlan County Planning and Development Association:

> The local CATV system made it possible for the Social Security representative and me to get advanced medicare information to local viewers in advance of the public meeting.

And from Fitzhugh Craft, director of Cumberland's Civil Defense Office:

> Through local CATV facilities, we were able to give specific instructions to the majority of our citizens through the numerous flood crises we have had. Especially valuable was the help during the 1963 March flood * * * when we were able to warn people to evacuate certain sections in time.

And from Robert White, esteemed publisher of the Mexico, Mo., Ledger, and former president of the New York Herald Tribune, who is installing a CATV system in his community:

> I have contracted for news channel and plan to contract for time/weather channel * * * I hope to bring interesting local people before the camera. Inevitably more people will know what's going on this way.

These letters also reflect the important fact that through regular and responsible program origination by CATV operators, there is a television outlet for community news and issues that TV stations cannot accommodate. This would include the campaign for alderman in Hornell, N.Y.; the daily 10-minute local news show at Goldendale, Wash.; the safety film show for railroad workers at Rock Springs, Wyo.; the Sunday church service at Perrytown, Tex.; the junior college science fair at Trinidad, Colo.; the water conservation program at Naples, Fla; the pros and cons of community incorporation at Lake Tahoe, Calif.; the Christmas parade show at Toccoa, Ga.; junior achievement at Findlay, Ohio; the Elks charity show at Wheeling, W. Va.

Prohibition of local origination by CATV's would eliminate services such as these. Is there not a gross inconsistency in the Federal Communications Commission literally enforcing the devotion of a certain percent of a radio or television station's time to public service while denying the CATV operator the right to voluntarily provide such service?

3. CATV systems by virtue of their capacity for multichannel service present a readymade vehicle for expansion of educational television. Many operators are already assisting local educators in ETV programing and we have knowledge of many others where such cooperative plans are in the advance discussion stages.

In a great many instances the equipment for origination of the school systems program fare must be located at the CATV facility. In some instances it is desirable for the CATV operator to actually own the physical plant used for ETV origination. We submit that this is in the public interest and that the Congress will do the public on injustice and will, to a degree, stifle the development of educational television if this type of service is in any way discouraged.

4. Similarly, CATV systems can provide religious services for shut-ins and others, can provide adult education, language instruction, vocational instruction such as is available from various Government agencies, and can be an important device for Government sponsored training programs.

As an example there is currently being planned a program for post-graduate medical education which would cover a four-State area and which would use CATV systems and CATV microwave facilities as the exclusive medium of transportation and distribution. The physical plant for this federally sponsored project would cost an estimated $2.5 million were it not for the availability of a low-cost CATV facility readymade for the purpose.

We submit that this project is in the public interest and that the Congress should do nothing to discourage the development of this and any future projects of this nature.

5. Prohibition of local origination by CATV's raises serious questions of constitutional legality in denying a CATV operator the right to provide, and the public the right to receive whatever fare might be offered.

The California Supreme Court recently found the ban on subscription television to be illegal on the grounds that it violated the first amendment to the Constitution of the United States. There is an

obvious analogy between the California situation and the restriction of what program material a CATV may offer and the public thus receive.

6. Questions of violation of the Communications act of 1934 are also raised. Paragraph 326 states that "Nothing in this act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, or no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

7. I am informed that the FCC, in proposing the ban on local origination by CATV's, had in mind to stifle the development of pay TV. I can see no cause-and-effect relationship between local origination and pay TV. Indeed, pay TV could very well flourish without benefit of any local origination by offering sporting events, moving pictures, theatrical presentations, et cetera, brought to the local CATV system via available microwave facilities.

To my knowledge, all pay TV methods that have been proposed or tried would obtain their revenue from per-program charges.

I think it is safe to assume that any pay TV method would have to use per-program charges in order to provide the individual viewer with the necessary privilege of program selection, while obtaining revenues from each program commensurate with the worth and perhaps cost, of that program. Therefore, if the Federal Communications Commission is fearful that CATV systems will evolve to become pay TV vehicles, let them restrict CATV's from charging for any services on a per-program basis. This would be simple, effective, and fair.

I would like to depart from my written text at this point. I would like to discuss this issue further.

Commissioner Henry, Commissioner Bartlett, and NAB President Wasilewski have all built their case against local CATV origination on the premise it will revolve in pay TV. I doubt anyone can demonstrate by common logic how local origination can become pay TV or how local origination would effectively eliminate pay TV.

I would also like to correct an error in my testimony wherein I expressed the thought that all pay TV methods that have been proposed or tried base their revenues on per-program charges. I am now informed by Mr. Bob Clark, president of Viewmore, who I believe is present in this room, that the Bartlesville, Okla., experiment used a flat monthly charge and that the failure of the experiment was partially due to this method of collection.

Mr. Clark points out that a pay TV operation can be viable only through per-program charges for two reasons. One, because those who own program rights require payment on a royalty basis, and, two, that viewers resent being required to pay for programs they don't want.

I would also like to take vigorous exception to statements by Commissioner Henry and Wasilewski—quoting from page 5 of Mr. Henry's testimony, which says:

> A community antenna as such does not serve as an outlet for local expression—

And quoting further—

> I think the supplementary nature of CATV, can best be pointed up by the fact that CATV is wholly dependent on the broadcast system for its product.

From page 5 of Mr. Wasilewski's testimony:

> In its deliberations leading up to the establishment of a table of assignments for television, the Commission was of the opinion that as many communities as possible should have locally oriented television service.
>
> To this end, the Commission promulgated an overall plan, giving the highest priority to local service, by virtue of which channels are assigned throughout the United States. By relating antenna heights and power limitations to mileage separations, there has evolved a pattern of service areas so that markets are served by local stations familiar with local needs.
>
> The unrestrained expansion of CATV could easily lead to the destruction of this system. At its ultimate, the issue could well be whether service will be limited to programs originated in a handful of large cities and distributed by wire to those who can afford to pay the charges, or whether as many communities as possible should have the opportunity of enjoying the advantages that derive from having local outlets that will be responsive to local needs. In our opinion there is no adequate substitute for the kind of local service upon which this country has come to depend.
>
> Local radio and television stations are essential to the cultural, economic, and political vitality of every community. They provide outlets for the expression of local opinion on a wide variety of subjects.

Had Mr. Wasilewski substituted the word "market" for the word "community" he would have been more correct. As a practical matter a television station's market area is typically made up of hundreds of individual communities, often in different counties or States. The TV stations do not now and cannot provide outlets for local community expression unless that community constitutes a major portion of the station's market area. There therefore exists a void that can be best filled by permitting CATV local origination.

The philosophy expressed by Mr. Henry also shows up in the second report and order where in paragraph No. 124 it is speculated that CATV would have an adverse impact on UHF and the major justification for protecting the UHF is that the CATV does not serve as an outlet for local expression.

Quoting from paragraph 124 it says:

> Most important CATV does not serve as an outlet for local self-expression, does not present local discussions, local ministers or educators or local political candidates.

Why should not the CATV system serve as outlet for local expression? Many of them stand ready to provide this expression if Congress provides them proper guidelines.

I am sure no one will here deny the value of the services I have described, and I am equally sure that the FCC, were it given discretionary powers to permit this type of local origination, would grant its permission upon proper application. Unfortunately, this case-by-case treatment of public service needs would do little to insure the continued availability of this form of public service to CATV viewers.

For example, the CATV operator in Cumberland, Ky., good citizen that he is, could hardly justify the expenditure necessary to provide the required plant facilities if its use were restricted to flood warnings alone. Likewise, the Moab, Utah, operator whose many good deeds have inspired literally hundreds of letters of commendation, could not justify setting aside the channel space and the equipment investment were he permitted to provide classroom television only.

In short, the only way a CATV operator can justify providing public service facilities is if he is permitted to use these facilities for any

and all matters of community interest. It is necessary that he be permitted to bring in programing by microwave such as some systems are doing in providing high school basketball coverage. He must be permitted to take advantage of the convenience of video tape and film equipment.

Likewise, he should be encouraged to install local studio facilities. This can only be accomplished through Congress specifically directing the Federal Communications Commission to permit unrestricted local origination while imposing such safeguards relative to pay TV "fairness doctrine" and other matters as may be deemed advisable.

Gentlemen, if you will help remove the cloud of uncertainty that has hung over this industry for so long, and permit unrestricted local origination on CATV systems, you will see this medium blossom forth as the finest method available for dissemination of matters of public interest and concern. I suggest that not only do you not prohibit local origination, but that you enact legislation to require CATV systems to provide local public service in the same way that broadcasters are now, in effect, required to devote time for public service.

The CATV system at Winchester, Va., is now required to furnish its subscribers with 30 hours of "local public programing" per month. This requirement is a condition of the franchise from the city of Winchester. The system started meeting the requirements this month with live coverage of city council meetings, and other community affairs. A news story on this attached as an exhibit.

In conclusion let me remind the committee that the Federal Communications Commission is charged with the responsibility of protecting the "public interest, convenience, and necessity," and that this responsibility will not be served by denying worthwhile services to the public in a misguided attempt to fight the pay TV bogeyman.

Such a prohibition could deny the considerable benefits of educational television—locally produced educational television—to millions of homes; it could deny hundreds of communities a forum for discussion of local issues—forum not carried by commercial stations because of their lack of appeal to mass audiences; it could deprive the smalltown citizen of any local television outlet at all and, carried to extreme in a blanket prohibition without definition, it could take away from millions of Americans the silent sentinels of information that "news channel" and "weather channel" have become.

Let Congress lend a degree of objectivity to the problem empowering the FCC to specifically regulate against any programing that is outside the public interest but not to inadvertently deny the public that which is clearly in their best interest.

Guard against and prohibit pay TV if we must; deny any system that makes charges per program as such. But preserve the new breed of "contributors" to the television spectrum—contributors with needed and watchable service to offer, contributors allied with free television and allied with free enterprise as well.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Keys.

Mr. Pickle, do you have any questions?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Keys, you make reference to the fact that there should be no restriction on origination and that in fact what CATV really does is not origination but sort of something you refer to you don't watch it but you just refer to it and that really it is not origination. Is that your point?

Mr. KEYS. In referring to the automatic time equipment, the time and weather equipment and the automatic news equipment, yes.

Mr. PICKLE. What do you call it then if it is not origination? What is it?

Mr. KEYS. It is not origination in that it is not programing as such. I believe the word is program origination. It is not under the control of the CATV operator. The news wire is brought into the machine, the machine automatically displays whatever comes in.

Mr. PICKLE. You say it is not orgination in that sense, and so on. But no matter how you look at it, it is a form of origination, is it not?

Mr. KEYS. Insofar as the video signal originates on the premises of the CATV operator.

Mr. PICKLE. You go further to say it is not origination. Yet, when you get into the public service you list some 50 instances here where you think they should have that right.

Mr. KEYS. Yes. Let me go back for one moment.

Mr. PICKLE. That is pretty broad origination; is it not?

Mr. KEYS. I addressed myself to two specific points. Point No. 1, the automatic equipment which we do not consider to be local origination, per se. Point No. 2 is in other local origination wherein I urged that they be allowed to originate local public interest programs, it is origination.

Mr. PICKLE. No matter how you slice it or describe it, it is still origination. So is the first category. In your principle that it may be a less objectionable form but it is still origination, is it not?

Mr. KEYS. Not insofar as the program is under the control of the CATV operator.

Mr. PICKLE. It seems to me like you are saying that whisky is in one sense a medicine and in another sense it is an alcoholic beverage.

Mr. KEYS. I think it is so considered.

Mr. PICKLE. So I can feel that it is origination no matter how you look at it. When you get in terms of 50 different types of programs, and I admit it does render public service but this gets pretty extensive. The question I want to ask is this, and it intrigues me: When you put on a public service or a high school debate or a church service, do you charge for it?

Mr. KEYS. I am not an operator, myself. Of the exhibits I have attached to my testimony, I do not know of anywhere a charge has been made. I believe that the industry would accept restrictions against such charges if the Commission deemed it necessary.

Mr. PICKLE. You tell me that throughout the country where you have public service programs that they do not charge, in no instance or in practically no instance CATV does not charge for it?

Mr. KEYS. I cannot speak for the industry. I have heard of instances where they have sold advertising on CATV's. As far as charging for the public service type programing, I know of no instance of it.

Mr. PICKLE. Where is there a real distinction if we sell advertising to run before, during and at the close of a public service program, and if they have someone sponsoring the program.

Mr. KEYS. Mr. Pickle, I am not here to advocate that they be allowed to sell advertising. I am only requesting that they be allowed to carry public service programs.

Mr. PICKLE. Are you willing to say in no instance shall a CATV operator or a pay television be allowed to do any advertising unless they pay for it?

Mr. KEYS. I think the CATV industry would be content with that sort of regulation although I do not speak for them.

Mr. PICKLE. If you do this broad public service operation, I wonder why you don't go ahead and set up your own channel and go to the Commission and get a license to set up a broadcasting system and run your complete system.

Mr. KEYS. A simple matter of economics. The CATV systems that might be otherwise tempted to sell advertising finds themselves in an awkward position in that they very seldom have enough TV sets connected to their system to make it a viable enterprise to go into advertising.

Mr. PICKLE. In the local market they still have to charge either by way of spots or sponsorship of a program. It seems to me that is origination. Are you telling me that in a basketball game locally, which you make reference to here on page 16 or 10, whatever it is, that you don't charge anything for that basketball game?

Mr. KEYS. I think this is true. The basketball I referred to, the one where they carried this regularly, is Goldendale, Wash. I have many, many letters from Goldendale, Wash. I am quite certain that the operator there does not make an extra charge of any kind for the basketball nor does he have any sponsored messages.

Mr. PICKLE. If that is the case, I wish you would bring that fellow up here. I want to try him out on this committee and the Congress and let the people look at him because he is a rare individual.

I used to be in the radio business. We ran the public service broadcast but wherever we could, if we could get somebody to sponsor it, we would latch on to him.

Mr. KEYS. I am not suggesting that these people are motivated by strictly altruistic interests. They have two interests in mind when they carry public service. No. 1, they can recognize that their franchise is held on the basis of what kind of public service they perform. In the same way that a broadcaster holds his license by the public service he performs; No. 2, the CATV operator is able to inspire more connections the more closely he allies himself with his community.

Mr. PICKLE. I was interested in the statement you made in some cities the grant of a license and permit required so many hours of public service. That was interesting to me.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Mr. Chairman, I just want to thank Mr. Keys for being here. Congressman King of Utah recommended that he testify. I think he has done an excellent job. He also has covered the area of Seattle.

I might comment that they do originate public service programing there and have a rather elaborate system of CATV program origination. I think that is correct, is it not?

Mr. KEYS. Yes, sir.

Mr. ADAMS. Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Thank you, Mr. Keys, for giving us the benefit of your views. You have been waiting some time to testify.

Mr. KEYS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Weber? How long is your statement, sir?

Mr. WEBER. Let me say I realize the hour is late. After 14 years of being involved in the subject we had digested it originally to 7 pages, but we certainly won't use the 7 pages.

The CHAIRMAN. You may proceed.

STATEMENT OF FRED WEBER, EXECUTIVE VICE PRESIDENT, RUST CRAFT BROADCASTING CO.

Mr. WEBER. I know each one who appears before you feels they have something unique to present. With some degree of modesty, we would like to present what we consider a unique situation, a UHF station going into a major market where two VHF's have been in existence since 1952 or 1954. I won't go into my background. I have been in the broadcasting busineses since 1927. Our company operates VHF, UHF television, radio stations, and we are operating CATV systems in which we comply completely with the rules and policies.

We have supported the Commission's present action because it appears as a minimum to have done five things which have been the subject of constant discussion, controversy, and problem in the industry going back to 1954 and 1955, and even prior to that date. We appear before you because up to February 19, 1966, of this year the Jacksonville television market enjoyed two VHF television services. All efforts by the Commission and any and all other parties were futile and unavailing to encourage or produce a third television service until Rust Craft commenced channel 17 in Jacksonville. It made a sizable investment only after it understood all of the conditions that it would and could expect to face.

It recognized that this undertaking would now require 3 to 5 years of diligent and costly work to become viable under all the existing and anticipatable conditions and circumstances.

Our early experience in the operation of the station has already proved the realism of our planning and the projection may even have been somewhat overconfident.

An unconventional station had to be built from the ground up. It had to employ the maximum in power, the installation of a 50-kilowatt transmitter, and the most costly form of transmission. It had to be equipped with as many of the costly frills as its established and long-entrenched station competitors possessed. It had to undertake the entire task of educating and encouraging the public to buy converters, to buy new sets, new antennas, where necessary, and to learn how to go through a new and unfamiliar tuning process as well as other added personal public expenditures.

Only when these steps will have accomplished reception of channel 17 by a majority of the people in that area—it will take a protracted period of time—can this station expect to enjoy advertising acceptance and then at a charge far less than its competitors. Today it is operating at a rate of $200 per hour. UHF was commenced with this undertaking in Jacksonville. No television station signals were being received in any form, from outside, other than the two local existing stations. Nor are any other signals required to expose all network programing today in the city of Jacksonville. No third VHF assignment was to be made to Jacksonville by final Commission order and decision. No serious terrain disadvantages were evident in Jacksonville to add further obstacles to the abnormality of UHF.

Nevertheless, no unusual advantages were faced in commencing this station and all of the typical disadvantages prevailed.

The beginning was undertaken because there was a confidence that there would be sufficient interest on the part of the public for three television services and the ABC television network. Competitiveness and equality to the established stations was not envisioned for a long period, but there was faith that ultimately the station could be viable under the set of audience conditions that existed and could be projected when this undertaking was begun. No cable system existed in Jacksonville. No outside stations or signals were received. The task that UHF development faced was clearly chartered when we began our operations.

It had to develop sufficient audience to be a competitor to the existing stations and thus provide a public service. It did not face the possibility that nonduplication would be meaningless because there was some other way to bring in network programs to render the use of channel 17 unnecessary either by the public or by the advertiser.

We will not bore you by a listing of the frustrations, the trials, the discouragements, the financial fortitude that this UHF operation is accepting and will continue to do for the period of development. We can testify with complete honest conscience that by our experience and that of our experienced staff which has operated in UHF, by their knowledge, that this UHF station will have a short life unless it can develop audience under the conditions which prompted its construction; namely, the furnishing of one of only three signals and three television services for the Jacksonville area.

Samples of the kind of public education being done to trigger the interest will be submitted along with this exhibit. The material concentrates on conversion and set use to stimulate the public interest in channel 17, a UHF, as the new and third source of programing for Jacksonville.

In an undeterminable time and with gigantic underwriting, this UHF is expected to build an audience that survey companies will recognize sufficiently to allow this station to receive advertiser attention to a comparable extent.

Only then will this station commence to recoup the losses projected and planned at the time of our commencement. If UHF does not succeed in Jacksonville with this station, with a network affiliation, maximum power, major city classification, suitable terrain conditions, experienced staff, and things support, then the judgment of intermix-

ing UHF in two VHF established markets and all-band legislation will have proven to be a myth.

Duplicated or unduplicated CATV importation of outside of Jacksonville, signals, combined with CATV advocacy of local or distant signal availability to avoid conversion costs on the part of the Jacksonville public, as well as CATV consigning 17 to a different dial position for its reception would do havoc to all-band legislation and it will impair the growth of WJKS–TV consistent with the larger and more effective use of radio in the public interest.

This issue has been morassed in a sea of rhetoric. Cable considered as augmenting television sometimes is often characterized as an industry of competitive interest. Cable conceived and represented as fulfilling the need for improved or deficient signal by community stations does not have to demonstrate such fact either initially or continuously to any licensing body that makes a determination of need of service in the similar manner that stations do.

Uncompelled to compete in its industry, in its field, and its performance, cable becomes identified as a competitor to stations who face the dual competition among themselves on similar grounds and with cable on a varying ground.

Unrequired to compete with any competitor for program material to develop audience and advertising support, cable would seem to deserve different and more realistic consideration than even the present rules now propose. Nevertheless, they do offer a treatment rather than a cure in the approach toward the balancing of the competitive interest they accommodate but they do not integrate both industries in the larger and more effective use of radio.

No logical nor lasting conclusion seems to have been reached by the current action that:

1. Grandfathers generally existing cable operations.
2. Permits duplication following the same day network presentation.
3. Allows cable opportunity to exclude programing and advertising from a local station.
4. Institutes case-by-case handling of all future conflicts.
5. Distinguishes between the impact of cable upon large as compared with small markets.
6. Characterizes cable and stations as competing interests although a competitor is defined as one who is engaged in selling, buying, or furnishing goods or services in the same market as another.

To a very minimum, however, the present action must be supported. After years, the Commission has done something about "the risk of adverse impact on the public interest in the larger and more effective use of radio which accompanies the burgeoning CATV development" in its new field of expansion to 12 to 20 channels and to blanket the Nation.

We appreciate the opportunity of appearing. We want to reemphasize that in operating a UHF station, the compulsion upon the television industry to develop is in the capacity to interest people in being able to receive UHF, not to be converted to another channel but to receive UHF and for such stations to be able to begin to attract audience, attract advertising and develop over a period of years. This was

the purpose of the all-band legislation. We know that if this and similar stations are faced with the importation of Atlanta and Miami and New York, we know that its development will be stifled.

We appreciate the opportunity to appear and to present this information.

The CHAIRMAN. Thank you, Mr. Weber.

I notice that you support H.R. 13286.

Mr. WEBER. Yes, sir.

The CHAIRMAN. If this bill does get out, there probably will be many changes but you support the principle?

Mr. WEBER. Yes, sir.

The CHAIRMAN. I am sorry I have to leave. I am the only remaining one. There is a vote on the floor.

Thank you so much for coming. This will be in the record and will be available for every member of the committee. I think it is very helpful.

Mr. WEBER. I appreciate being here.

(Mr. Weber's prepared statement follows:)

STATEMENT OF FRED WEBER, EXECUTIVE VICE PRESIDENT, RUST CRAFT BROADCASTING CO.

My name is Fred Weber. It has been my privilege to be employed in broadcasting since 1927 and to have participated before the House committees and Senate committees as well as in Federal Communication Commission proceedings with respect to allocation, network, regulation, and CATV. My position is executive vice president of Rust Craft Broadcasting Co.

The Commission's assertion of jurisdiction over cable television and its pursuit of further legislation by Congress to clarify and establish further basic national policy is supported.

So, too, are H.R. 13286 and S. 3017 supported in principle.

The majority opinion of the Commission, championed by Chairman Henry, has taken one forward step in pursuit of a goal of equitable and appropriate assimilation of cable television with a fully developed television service. We agree with its position in principle but believe it is inadequate as a practical solution. The opinion released by Commissioner Cox deals more realistically with the fundamental and crossroad issue. A clearer decision is compelled as to whether television is to become preponderantly a nationwide wire service of public monthly payment, or of stations augmented by community antenna systems.

We support the Commission's present action because it appears as a minimum to have:

(1) Advocated a local station's access to its own market.

(2) Reserved same day network program rights for an affiliate.

(3) Instituted procedures to hear the question of importation of distant signals into the grade A contour of any station in the top 100 markets.

(4) Created a procedure for local station presentation of the need to limit unconfined expansion of cable beyond at least a "grandfathered" existence.

(5) Provided an opportunity for an interested party to demonstrate the impact of distant signal importation by cable into markets that are classified as smaller than the top hundred.

The number of signals from increasingly distant sources being furnished by cable seems to have become completely equated with the number of program sources delivered by existing and potential stations. And, thus, it has seemed to confuse the fundamental concept of allocation and of service to the public.

Extending stations beyond their sphere of influence by cabling seems to have become equated with the fostering of the maximum in television service to the public by local and area broadcasting stations. And, thus, the accommodation of cable with station service has become equated with larger and more effective use of the radio in the public interest.

Accordingly, pursuit of customers by cable, that do not have to arrange for programs, has become equated with the pursuit of programing, audience popu-

larity, and advertising support by stations. To complete the apparent fallacy and although engaged in furnishing service on a dissimilar basis, cable has become equated with stations as having a competing interest that must be balanced, undisrupted, and resolved generally on a case-by-case treatment.

It is for this reason that we appear to demonstrate why the proposed rules do not appear to insure in practice a larger and more effective use of radio in the public interest.

Until February 19, 1966, the Jacksonville television market enjoyed two VHF station services. All efforts by the Commission and any and all parties were futile and unavailing to encourage or produce a third station until Rust Craft commenced channel 17. It made this sizable and speculative investment only after it understood all the conditions that it would and could expect to face. It recognized that this undertaking would require 3 to 5 years of diligent and costly work to become viable under all the existing and anticipatable circumstances. Early experience has already proven the realism of that planning and that the projection may even have been overconfident. An unconventional station had to be built from the ground up. It had to employ the maximum in power and the most costly form of transmission. It has to be equipped with as many of the costly frills as its long established and well entrenched giant station competitors. It had to undertake the entire task of educating and encouraging the public to buy converters, new sets, new antennas, and to learn how to go through a new and unfamiliar tuning process as well as added expenditures. Only when these steps will have accomplished receivability of channel 17 by a majority of the people, and over a protracted period of time, could this new station expect to enjoy advertiser acceptance and then at far lesser charge than its competitors. UHF was, thus, commenced in Jacksonville. No television signals were being received in any form from outside; nor are required to expose all networking. No third VHF assignment was to be made to Jacksonville by final Commission decision. No serious terrain disadvantages were evident in Jacksonville to add further obstacles to the abnormality of UHF.

Nevertheless, no unusual advantages were faced in commencing this station and all of the typical disadvantages prevailed. But the beginning was undertaken because there was confidence that there would be sufficient interest on the part of the public for three television services and ABC programs. Competitivenesss and equality to the established stations was unenvisioned for a long period, if ever; but there was faith that ultimately the station could be viable under the set of audience conditions that existed and could be projected. No cable system existed. No outside stations or signals were received. The task that UHF development faced was clearly charted. It had to develop sufficient audience to be a competitor only to stations. It did not face the possibility that nonduplication would be meaningless because there was another way to bring in its network programs to render the use of channel 17 unnecessary. You will not be bored by a listening of the frustrations, trials, discouragements, and financial fortitude this UHF operation is accepting and will continue to do for a long time. But we can testify with honest conscience and by our experience and that of our capable staff's devotion and knowledge that this UHF will have a short life unless it can develop audience under the condition which prompted its construction; namely, the furnishing of one of only three signals and three television services for the Jacksonville area.

Samples of the kind of expensive and extensive public education being done to trigger interest is exhibited. The material concentrates on conversion and set use to stimulate the public's interest in channel 17 as the new and a third source of programs for Jacksonville. In an undeterminable time and with gigantic underwriting, this UHF may build an audience that the survey companies will recognize sufficiently to allow this station to receive advertiser attention. Only then may this station commence to recoup the losses projected for a long period. If UHF does not succeed in Jacksonville with a network affiliation, peak power, major city classification, suitable terrain, experienced and devoted staff, and financial support; then the judgments of intermixing UHF in two VHF established markets, and all band legislation will have been proven to be a myth.

Duplicated or unduplicated CATV importation of outside of Jacksonville signals, combined with CATV advocacy of distant and local signal availability to avoid conversion costs for the Jacksonville public, as well as CATV consigning 17 to a different dial position for its reception would do havoc to all band legislation and impair the growth of WJKS–TV, consistent with "the larger and more effective use of radio in the public interest."

This issue has become morassed in a sea of rhetoric. Cable considered as augmenting television is often characterized as an industry of competitive interest. Cable conceived and represented as fulfilling the need for improved or deficient signal by community stations does not have to demonstrate such fact either initially or continuously to the licensing body that makes a determination of need of service by stations. Uncompelled to compete in its industry, field, and performance, cable becomes identified as a competitor to stations who face the dual competition among themselves on similar grounds and with cable. Unrequired to compete with any competitor for program material to develop audience and advertising support, cable should receive different and more realistic consideration than the rules propose.

Nevertheless, they do offer a treatment rather than a cure in the approach toward the balancing of the competing interests. They accommodate but do not integrate both industries "in the larger and more effective use of radio in the public interest." Accordingly no solid conclusion seems to have been reached by the current action that:

(1) Grandfathers generally existing cable operations.

(2) Permits duplication following same day network presentation.

(3) Allows cable opportunity to exclude programing and advertising from a local station.

(4) Institutes case-by-case handling of all future conflicts.

(5) Distinguishes between the impact of cable upon large as compared with small markets.

(6) Characterizes cable and stations as competing interests although a competitor is defined as one who is engaged in selling, buying, or furnishing goods or services in the same market as another.

To a very minimum, the present action must be supported. After years, the Commission has done something about "the risk of adverse impact on the public interest in the larger and more effective use of radio which accompanies the burgeoning CATV development."

The CHAIRMAN. I would like to state to you gentlemen who are waiting here, if you do not mind, the Chair will take a recess for 15 minutes. I will have more members with me when I come back. They had to go over to the floor. I understand one or two of you have to go home tonight. We will give you the opportunity to present your statement before the committee. We will come back to accommodate you. It is either that or you have to come back tomorrow morning.

I understand some of you have to leave town.

With that, the committee will stand in recess until 25 minutes to 6.

(Brief recess.)

Mr. ADAMS (presiding). Gentlemen, we will continue and the members who are voting will be returning.

I understand there are a number of witnesses, or several left who have come from a great distance and who would like to testify prior to leaving. So we will keep the hearings open for that purpose.

Is Mr. Holben here?

Mr. HOLBEN. Yes.

Mr. ADAMS. Mr. Holben, will you come forward, please?

You may proceed.

STATEMENT OF ROBERT G. HOLBEN, MANAGER, BROADCAST DIVISION OF SARKES TARZIAN, INC., BLOOMINGTON, IND.

Mr. HOLBEN. Thank you for staying beyond normal hours. I will reward you with equal courtesy by being brief. I will not read my statement. I should identify myself.

My name is Robert Holben. I am manager of the broadcast division of Sarkes Tarzian, Inc., Bloomington, Ind. We have three tele-

vision stations: a UHF station in Fort Wayne, a UHF station in Lafayette, a VHF station in Bloomington-Indianapolis.

I would like to talk just to Lafayette and Indianapolis because their application to the problem at hand is a little clearer.

We are in favor of regulations that would restrict CATV's from importing signals, or, rather, transporting them beyond grade B contours. In Lafayette we took a station that had gone dark in 1959 and put it back on the air. Lafayette lies within the grade B contour of two of the Indianapolis stations and building conversion in that community has been most difficult because two program services were fully available and our third program service available as a signal was not receivable because we switched from channel 59 to channel 18 in order to have a better UHF channel and thereby canceled out what previous conversion there had been and started from scratch.

By the spring of last year we had achieved about 48 percent conversion and things have been going pretty nicely. Over the years we have lost a total of $350,000 in the development of this station and that market as a television market.

In came CATV in the spring of 1965 and quickly established 7,500 subscribers. Initially we were quite delighted with this because after all in an area that has 21,000 television homes, if you suddenly become receivable in one-third of these homes in addition to those you were already receivable in, this is a boom. But it has not turned out that way. We expected that our average quarter-hour audience which is 2,200 homes per quarter hour average viewing, would be increased.

After almost a year of CATV operation where we had been on the CATV system and had been protected against duplication by the CBS affiliate in Indianapolis, we just received our spring survey and we are still televising to an average of 2,200 homes per quarter hour.

I think what we have devised as the reason is that the number of attractions on that cable system has actually enlarged the freedom of choice there. Though we are receivable in more homes those homes now have more choice so our audience potential has been diluted.

So we are not a real great believer in CATV as the great salvation of UHF.

More to the point, and where we have more to lose, with respect to our independent television station, nonaffiliated station, which operates in Bloomington-Indianapolis, there we have a real problem of operating on a smaller share of audience, as you alluded to earlier this afternoon—I think the figure ranges variously between 14 and 20 percent share of audience for an independent in a four-station market.

We happen to have worked hard enough over the years to have achieved a 14 percent share. For 7 years we made no money but lost money; we lost $2 million in 7 years of independent operation there. Finally, last year, we came into the black and made $100,000.

At that rate, it will take us 20 years to get it back. This year we will make another $100,000, based on our 14 percent share of audience.

For the prospect of a CATV system being established in Indianapolis or Bloomington or any of the communities we serve in our area there, the consequences, in our opinion, would be these: it is almost axiomatic in the broadcast business that you achieve a percentage of national revenue somewhat equivalent to your share of audience and a

share point in Indianapolis is worth $90,000. So you see we have to lose only two share points or $180,000 and we're back in the red.

Mr. ADAMS. Have you filed your statement for the record?

Mr. HOLBEN. I was going to ask to do so.

Mr. ADAMS. Without objection, this will be placed into the record after appropriate consultation between this chairman and the ranking minority member.

(The statement referred to follows:)

STATEMENT OF ROBERT G. HOLBEN, MANAGER, BROADCAST DIVISION, SARKES TARZIAN, INC.

My name is Robert G. Holben. I am manager of the Broadcast Division of Sarkes Tarzian, Inc. The Tarzian company is based in Bloomington, Ind. It is a manufacturer of electronic components such as tuners for television receivers, transistors or semiconductors, cameras, and other equipment for the broadcast business, plus magnetic tape, and a number of consumer products.

The Tarzian company also is a licensee of seven broadcast stations. These include three television stations, two of which are UHF stations, also two AM radio stations and two FM radio stations. These broadcast stations operate in every conceivable market situation. In each of these situations the immediate effect of CATV in its present form has been different. But the long-range effect will be the same. And it is this long-range effect which impels us to oppose H.R. 12914 and support the principles set forth in H.R. 13286 for the regulation of CATV. As licensed broadcast operators with a long record of service we feel qualified to help analyze the immediate and long-range effects of CATV as it now operates. Charged by license with the responsibility for serving the public within our viewing areas we feel obligated to demonstrate how unregulated or improperly regulated CATV can diminish rather than improve service to the total viewing audience.

Some description of our television operations is required for an understanding of our position.

WTTV, our Bloomington-Indianapolis television station, has been on the air since 1949. It was among the original 105 stations licensed prior to 1950 when the Federal Communications Commission was literally begging for license applicants. Since 1957 this station has operated without network affiliation with the attendant prolonged financial losses that independent operators across the country have faced.

We acquired WFAM–TV, our Lafayette UHF station in 1959 when the previous licensees could no longer support the operating losses and let the station go dark. We, too, have operated at a loss since that time. Television receivers in Lafayette were capable of receiving the VHF signals from Indianapolis 70 miles away but were not equipped to receive the UHF transmission from their own hometown station. Our prolonged battle of converting receivers to the UHF band was helped most by the Federal legislation which requires all receivers shipped in interstate commerce to be UHF as well as VHF equipped.

In Fort Wayne, with our UHF station WPTA, we were in a more fortunate position. There the only television signals that have ever been available from the start have been UHF signals and the viewing public bought only those receivers capable of receiving UHF. In Fort Wayne we have prospered. At the present time, only one of the three television markets which we serve has felt the full impact of CATV. This is Lafayette where a cable system now serves 7,500 homes in the immediate metropolitan area. This is approximately one-third of all television homes in Tippecanoe County. We are on the cable with full CBS programing, and the CBS programing from other stations is blocked from the cable by the FCC's simultaneous nonduplication protection.

We will be the first to admit that the immediate effect of this improved receivability for our programing in one-third of Lafayette's television homes has been beneficial. Advertisers, many of whom are now cable subscribers, had previously generalized upon their own inability to receive WFAM to say that no one could receive WFAM. This prejudice existed despite surveys which showed that more than 40 percent of the television homes did have UHF receivability. The advertiser just wouldn't believe it. Now the advertiser who

is on the cable and who does watch WFAM generalizes in the other direction and much to our benefit. If he receives WFAM, everyone receives WFAM.

So our local sales have increased. We are encouraged but not to the point where we ignore the two damaging effects of CATV which are quietly working against us and which will eventually far offset the immediate benefit we have realized. And we say that these same damaging effects will exist in Fort Wayne and Indianapolis.

The first of these effects is the dilution of WFAM's audience potential. It is true that we are now receivable in many more homes than a year ago. But at the same time in all of those homes, viewers have twice as many station choices. The cable has programing on it from two stations in Chicago and two stations in South Bend. Also three from Indianapolis and our own from Lafayette. That's eight program choices as opposed to the four that previously existed. So the size of audience viewing WFAM at any one time must ultimately be smaller with the cable than it would be without the cable.

There is another way that WFAM can achieve total receivability in its market. That is by the effect of the all-channel receiver legislation. If total receivability is achieved by the natural emergence of all-channel receivers than WFAM has only three other program services against which to compete, namely those coming in from Indianapolis. If total receivability is achieved through the cable, then WFAM will have as many as 11 other program services to compete with. Its ultimate audience potential will be correspondingly reduced.

The direct affect of this audience dilution is that advertisers will insist upon paying less for the smaller audience. However, the station's expenditures will not be reduced. Its profit—or rather its ability to break even—will be reduced.

And it is not only the station licensee who suffers. Eventually it is the public that is deprived most especially that part of the viewing audience that lies beyond reach of the cable and must depend upon direct off-the-air reception of the local broadcast stations. For if the station cannot break even or if it cannot produce a reasonable profit, then its ability to deliver a good news service, good public forum discussions, good vehicles for local talent, good religious and educational programing—its ability to deliver all of these is greatly curtailed. And after all, it is on the basis of delivering this service to the public that a broadcast station's license is granted.

The audience dilution problem of the independent television station is even more severe than that faced by a network affiliate. Since an affiliate in one city will almost always carry its network's programs on the same day and time as affiliates in other markets, it is easy to make a nonduplication rule apply. Thus when our station in Lafayette is carrying CBS programs, the Lafayette Cable Co. is forbidden from feeding through the network programs from the CBS affiliate in Indianapolis or South Bend.

But consider for a moment the situation that could exist in Indianapolis or in Bloomington if a cable company should want to bring in the programs of WGN, Chicago, or KPLR, St. Louis. Just how could WTTV, the Bloomington-Indianapolis independent, be afforded protection? Its programs may correspond to those of WGN or KPLR in as little as 5 percent of the total schedule. And yet the network affiliates are protected in as much as 70 percent of their schedules since they all carry a bigger share of common programing.

I have no solution to that problem short of banning, totally, the carrying of nonnetwork programing from outside the market.

There is another damaging effect that CATV quietly brings to bear upon the broadcast station, beyond the dilution of audience just mentioned.

It is the fact that advertisers are beginning to realize that CATV extends the reach of their advertising messages beyond the markets in which they have bought time. Why should an advertiser buy time on WFAM when the commercial messages placed on WGN in Chicago are seen also in one-third of Lafayette's TV homes without additional charge? Carried to the extreme, an advertiser could buy time on stations in the country's top 25 markets and ultimately CATV would be carrying these messages free of charge to viewers in all lesser markets. No need to buy the lesser markets by themselves.

Indeed the whole rationale on which CATV prospers is a complex formula of something for nothing. The CATV operator can expand the television program variety for the viewers in any community at a cost to its subscribers so reasonable that it makes the other types of pay TV seem like extortion. But it can do this only because the CATV operator pays nothing for the programing

he feeds over the cable. By contrast it costs us in excess of a half million dollars per year to buy the films and the video tape programing with which we program our single channel independent in the Bloomington-Indianapolis market. Under present situation a CATV operator in Indianapolis could program 12 channels without spending 1 penny for programing rights, simply by microwaving into the system 3 independent program services from Chicago, 2 from Detroit, 1 from Milwaukee, 1 from Minneapolis, 1 from St. Louis, and the 4 from Indianapolis.

By the same token, it would soon become obvious to the national television advertiser that he would be getting good Indianapolis exposure for his television commercials without buying time in Indianapolis. All he would have to do is buy time on the stations in the larger markets whose programs are carried on the Indianapolis cable, and he would automatically get a free ride in Indianapolis. Again—something for nothing.

I realize our position can be construed to be strictly a selfish position—one intended to preserve our present economic status in broadcasting. As a matter of fact many broadcasters, uncertain of what will happen with CATV, are getting into it themselves as a hedge against that future uncertainty. You will not find those broadcasters represented here today.

Our position is that we are against CATV in its present unregulated, something-for-nothing form. The Tarzian company stands dedicated to free enterprise and we would do nothing to stifle free and fair competition.

We, as television broadcasters remember the plight of motion picture producers and exhibitors and theater owners as they adjusted to the fierce new entertainment competition of television. We, as television broadcasters, realize that similar adjustments will have to be made by us as additional forces of competition assert themselves with the audiences we seek to entertain and to inform.

But we also remember that television paid for the programing with which it competed against the movie houses and today television is the best cash customer the motion picture industry ever had. And television substituted advertising for the theater turnstile as a way of paying for this programing.

We are not opposed to cable television. We are opposed to the unfair economic competition that faces us as a result of the unregulated, something-for-nothing manner of CATV operation as it exists today.

We support regulations that will require CATV operators to pay for programing they pick up from other sources.

We support regulations that will require CATV operators to delete from their feeds any commercial messages originated from another community.

If these regulations are put in force, CATV operators will then, for the first time, face the realistic programing and operational costs that attach to entertaining and informing the public.

Under those conditions, the television broadcast operator can compete. And with this fair competition he can preserve his financial solvency which is the foundation for the service he renders to all people including those who are not within reach of the cable.

Mr. HOLBEN. Thank you.

Our problem, potential problem, is that operating a small station as an independent, with only $100,000 of profit that we can look forward to now and in the near future, and recognizing that the share of revenue in the market that an independent achieves is somewhat commensurate with his share of audience, and since we are talking mainly in terms of national dollars flowing into the market, a 1-percent share of audience difference is worth about $90,000 to the station.

So any dilution of audience we suffer by the instruction of programing from outside the market making its way into the market by CATV, any lowering of our share of audience, has a financial consequence at the rate of about $90,000 for every 1-percent share of audience.

If we were to go back through the dilution of audience through the days when we had 6 or 8 percent, we would be in the red again.

Sure, it is an economic thing, but we do provide good service to the community. We have a fourth program service. The "Play of the

Week" has been one of our vehicles in years past. We teach Spanish courses for the school district. We have travel adventure shows and types of entertainment not available on the network-affiliated stations.

We spend $500,000 a year for programing. It seems to us quite unfair that a CATV operator should be able to come into that community eventually and, by microwave or maybe by off-the-air reception, with the improvement of antennas and receivers, be able to offer the programing of St. Louis or Chicago or Detroit, in competition with ours, and yet they have no financial stake in the presentation of that programing to the CATV subscriber.

These basically are our concerns.

Economic, yes. But ultimately not every operator is in the fortunate position that my owner is to have a profitable manufacturing enterprise by which he can support the losses of his television operations.

I think this will particularly become true as UHF stations are expanded, because most of them will find themselves in the role of the nonaffiliated independent operator. They will be struggling for a share of this 16 percent of the audience.

They, like we, will suffer if there is a proliferation of programing available on CATV. That is our point, plain and simple.

Mr. GILLIGAN (presiding). Thank you, Mr. Holben.

Mr. HOLBEN. Thank you.

The CHAIRMAN. The next gentleman is represented by one of the highly respected and competent members of this committee. I would like for Mr. Pickle to introduce the next witness. Mr. Pickle has been very attentive, having been at all the meetings and listening to all the evidence. He is very interested in this.

Mr. Pickle?

Mr. PICKLE. Thank you very much, Mr. Chairman. You are very kind to give me this opportunity.

Our next witness is Mr. Frank W. Mayborn, of Temple, Tex., who is president of Channel 6, Inc., in Temple, serving a good area of central Texas.

Frank Mayborn is a newspaperman, a radio broadcaster, a television broadcaster, and it has been my pleasure to work with him on many civic matters that affect the State of Texas as a whole.

We have no better civic-minded and fair-minded businessman than Frank Mayborn. I am particularly pleased to present him to the committee at this time.

STATEMENT OF FRANK W. MAYBORN, PRESIDENT, CHANNEL 6, INC., TEMPLE-WACO, TEX.; ACCOMPANIED BY CHARLES V. WAYLAND, ATTORNEY

Mr. MAYBORN. Thank you, Congressman Pickle.

I will be very brief, Mr. Chairman. My statement is very brief and very important, because we have one of the bigger systems in the whole country being built in Waco-Temple, where there are already some 500 miles of wire strung but very few customers, due to the fact they are just getting on the air.

Mr. Chairman and members of the committee, my name is Frank W. Mayborn. I am president of Channel 6, Inc., licensee of television sta-

tion KCEN–TV, Temple-Waco, Tex. I appear here to support the action of the Federal Communications Commission in assuming jurisdiction over CATV systems.

I am not a lawyer; therefore, I am not in a position to debate whether the Communications Act supports the Commission's action but, if not, I urge this committee to recommend legislation to the Congress such as is contained in H.R. 13286 conferring such powers on the Federal Communications Commission.

I am not opposed to H.R. 12914 introduced by Mr. Walter Rogers if the phase "reception of radio communications or signals transmitted by any radio station" is meant to apply only to signals received by the radio receiver directly from the station, but if it is intended to also apply to a CATV operator picking up the signals or communications and putting them on wires, amplifying them, transmitting them, and selling them to subscribers, then I am opposed to H.R. 12914 because, in my opinion, there is a marked difference between the reception of signals in the home, club, or bar directly from a station which normally serves the area and the picking up of signals originating on distant stations and transmitting those signals for the purpose of selling them to subscribers residing in areas already served by one or more local stations.

The Commission, in my opinion, on the whole, did a good job as far as it went, but it is my further opinion that it did not go far enough. In the first place, the distant station rules place an enormous burden on individual television stations.

The impact of the carriage of distant stations by CATV on local and area TV stations is and will be so serious that the Commission should have issued a simple rule prohibiting the carriage of television stations beyond their grade B contours except in remote, isolated areas which do not have and cannot be expected to receive, in the future, adequate direct off-the-air service.

The rule could also provide for hearings when, and only when, the CATV system makes a strong showing beforehand that its importing of distant signals will not threaten the establishment and maintenance of television broadcast service.

I feel that the Commission, in requiring hearings on new CATV systems proposing to serve the top 100 markets, has neglected to afford protection to the television service being rendered by stations such as KCEN–TV in the smaller markets such as Waco-Temple.

The Commission provides for an ad hoc approach in cities under the first 100 markets whenever a protest is made by the existing station concerning the institution of a new CATV system or if an existing system intends to import distant signals.

This, to me, means that the station or stations in such a market, to obtain Commission consideration, must file a petition setting forth objections which in the top 100 markets are to be taken for granted inasmuch as the rules, as I understand them, provide that in such markets a hearing is automatically required.

This procedure puts an additional financial burden on the small market operator which is not placed on the operators in the top 100 markets. The same rule should be applied to all markets. In fact, if any discrimination is to be made, it should be made with respect to the small markets.

The Commission in its second report and order emphasized time and again its intention to protect the development of UHF television service. It is commendable that the Commission is concerned that the future growth of UHF television service should be protected.

However, I can find no justification for confining such protection to only the top 100 markets. For example, there is an application for a new UHF station to be operated in the Waco-Temple market presently on file with the Commission.

Isn't the development of UHF in this market important enough to merit protection? I also believe that protection should not be confined to the future development of new UHF stations, but protection consideration should be afforded the existing service now being rendered by both VHF and UHF stations.

There are CATV systems operating in both Temple and Waco. These systems, I am informed, are designed to carry nine channels. I have been told that it is the plan of the CATV operator to eventually bring in signals emanating from Los Angeles stations.

In my opinion, the carriage of Los Angeles stations on these CATV systems would jeopardize the service being rendered by the present stations serving Temple and Waco. I presume that the Los Angeles stations proposed to be carried will be independent stations.

Since these stations are furiously competing with the network stations for viewers in this large metropolitan area, it stands to reason they telecast the best filmed material they can obtain. I am, therefore, fearful that because of all this, all nonnetwork filmed material used by KCEN–TV will be second or third run by the time we put it on the air.

Also, there undoubtedly will be other programs prepared and telecast by these independent stations designed to attract viewers with which, in our small market, we have neither the resources nor the manpower to compete.

For these reasons, if carriage beyond the grade B contour of a station is to be permitted, I urge that the CATV system should be required to prove that such carriage will serve the public interest and will not adversely affect the service of existing TV stations, both VHF and UHF, in the same manner as will be required by the Commission in the top 100 markets.

I emphasize service because, in my opinion, the question of whether or not the existing stations retain their present service to the public is of paramount importance. CATV systems are designed to serve the city dweller.

They are not designed to serve the farmer, rancher, the residents of very small towns or villages, or those who either cannot afford to pay for the service or who do not desire to do so. The maintenance of service to these people is fundamental.

These people are today being served in the Temple-Waco area by existing VHF stations. Protecting the service being rendered by these existing stations is, therefore, just as important as proposing protection to the future service of UHF stations in the top 100 markets.

I also urge that CATV systems be prohibited from originating programs. What I fear most is that the continued growth of CATV systems will eventually, if not now, permit them to link together in a

giant combine and for a fee of $1 or less per subscriber, outbid the networks for such events as the world's series, specific college and professional football games, basketball games, and coverage of such events as the Olympic games.

Should this happen, there will be a gigantic grassroots protest which will make the recent mail barrage to Congress, incited by the CATV interests, appear insignificant. To say this can't happen would be fatal because to some extent, it has already happened.

Query: When was the last championship heavyweight boxing bout televised for public viewing?

I also urge that the same restrictions be placed on CATV systems as are placed on television stations by section 325(a) of the Communications Act. Station KCEN–TV may not pick up and rebroadcast the signals of any other station unless permission for such pickup and rebroadcast is granted by the station originating the broadcast.

This provision protects the originating station from having its programs "pirated." I fail to see why a CATV system can pick up any program it chooses, without permission of the originating station, and sell that program to its subscribers.

Either CATV systems should be placed under the same restrictions of section 325(a) of the act or the act should be amended to delete the proscription against rebroadcasts.

I recommend to your careful attention the dissenting statement of Commissioner Cox attached to the Commission's second report and order. In my opinion, his grasp of the problems involved is excellent.

I would particularly recommend that portion of his dissenting opinion which discusses the Commission's action in reducing the protection of nonduplication of programs from 15 days before-and-after broadcast to 1 day.

The 1-day-only protection will force stations to crowd in every network program possible on the same day it is released by the network under penalty that if the program should be delayed it could well become obsolete insofar as the CATV subscribers are concerned.

I suggest that if 15 days before and after is too long, which I don't think is correct, that the Congress inform the Commission that the time should be a minimum of 3, and better yet, 5 days.

Finally, I want to make clear that the problem before Congress is not whether existing television stations remain profitable ventures but, rather, that such stations will continue to make sufficient money to enable them to continue to serve, without fees, those members of the public who either cannot or who do not want to pay for television service.

Thank you for permitting me to appear.

Mr. PICKLE (presiding). Thank you, Mr. Mayborn, you have made a very fine statement. As one member of the committee, I think you have a good point with reference to the 100-market rule. If you are going to make it applicable to 100, you should make it applicable to all of them.

It is the first time I have heard anyone say that if there was going to be protection, it should be in reverse, with the small markets first.

Mr. MAYBORN. I think Commissioner Henry the other day said 100 or 101. We are 110 by Nielsen and 116. We are right on the line.

Mr. PICKLE. I want to ask you about origination. Would you object to CATV operations originating weather and news types of originations?

Mr. MAYBORN. I object to their originating anything. They applied before our commissions down there to pick up television signals and rebroadcast them. It was an augmented service. That was the only discussion before the Commission.

Mr. PICKLE. And you would want to extend 325(a) to permit no origination of any kind, without permission from the originating broadcaster?

Mr. MAYBORN. If you weaken any points of origination, there is no end to it. Already, of course, they have been solicited by the wire services with pictures, wire services, the movie people have been to see them. They are ready to originate.

Mr. PICKLE. With reference to your 15-to-1-day delay, I notice you say that we might have a minimum of 3 to 5 days. I asked this question previously, How would you feel as a broadcaster if the Commission would provide for a delay of 48 hours?

Mr. MAYBORN. This would be a considerable improvement over now. About 75 percent of the programs, I understand from the figures I have seen, are completed on a delay of 48 hours, and some of them perhaps into another day. But certainly 1 day is not enough to get the job done.

Mr. PICKLE. From whom would CATV get permission, if this was required? From whom would they get permission to rebroadcast a signal that came off the air?

Mr. MAYBORN. Do you mean if the 325(a) was changed?

Mr. PICKLE. Yes.

Mr. MAYBORN. They would ask the local station from which they get the program.

Mr. PICKLE. How would you handle that as a practical matter?

Mr. MAYBORN. This depends on a good many circumstances. If I had a contract with NBC and they wouldn't allow me to do it, I certainly wouldn't do it. I understand such things are in the mill. If I wanted to pick up a station, which is in reverse to what you are saying, I could pick up CATV all right, but I would be picking up Los Angeles which would be in violation.

I wouldn't be picking up CATV, really, but just picking up another television station. It goes both ways, I think. But if there is a question of permission to be granted, it is granted by the station which originates the program.

Mr. PICKLE. Thank you.

Mr. Mackay?

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. Mayborn, I appreciate the candor of your statement and it seems to me that you did cast your argument almost wholly in economic terms, beginning with the proposition that there is unjust enrichment on the part of the CATV operator for picking up somebody else's work and selling it.

Mr. MAYBORN. We are not so concerned about how rich they get. We would like to be allowed to stay in business.

Mr. MACKAY. But that is an element present in your thinking, that they are really selling somebody else's product?

Mr. MAYBORN. What I am talking about is that the program that they are picking up is being relayed for a fee, and their original intention, as you know, of course, was that this was an augmented service, a great service to everybody who couldn't get a signal. It has gone beyond that at this point.

Mr. MACKAY. The second thing is that you feel that CATV really augments those areas with poor reception. That is its function and it should not be more than that.

Mr. MAYBORN. That is the way it was to begin with and the way it got started. Two years ago, when the franchise was granted in Waco, I couldn't find anybody in this leading engineer's office who thought that Waco and Temple would ever be bothered with a CATV system because in Waco, which is in the Dallas B pattern, we get all the Dallas signals, which is about all there is, including the movie station, in addition to the present two local VHF stations.

Mr. MACKAY. But it is the introduction of the long signals, the signals from great distances, which has created the mounting concern?

Mr. MAYBORN. This is what concerns us, because we are not set up to compete with the whole world.

Mr. MACKAY. The original conception of the FCC was simply to bring order to the airwaves, wasn't it?

Mr. MAYBORN. That is my understanding, in the public interest.

Mr. MACKAY. It seems to me you are asking Congress to make the FCC an economic arbiter between economic interests.

Mr. MAYBORN. Let me answer it this way: When we went on the air we had to show that we were financially able to go on the air. This is an economic consideration invoked by the FCC in the public interest, I guess, to make sure we would stay on the air.

Mr. MACKAY. But as between communications media; that is, that the original consideration was how many wavelengths could be compatible in an area.

Mr. MAYBORN. This is true as to the limitation of facilities. That is true. But now if we are to have CATV, we will say, come in and string wire over the urban area, which is the heartland of our market, and serve a portion or the cream of the crop, and get enough business going to where we are deleted from a big buyer's program and he buys the top 16 or top 20 markets and he doesn't buy the secondary markets, it is true that it affects our economics.

If it affects them seriously enough, I have to curtail my staff. If it affects still more seriously, the quality of programing that I have finally is limited and the people who are dependent on us, which is a great vast number of people in a populated area that is not profitable for CATV, simply suffer.

Mr. MACKAY. You are asking, then, for the FCC to assume a new role and become an economic arbiter as to how many operations can be compatibly had in an area economically?

Mr. MAYBORN. I went into television on ground rules established by the FCC. If my economic life is threatened by loss of sufficient money to stay in business due to competition that is unregulated, and which is living off of my product, my work, my labor, my affiliations with networks, I don't know just who is going to referee this, and I guess that is why we are up here before Congress, because it is a complex matter.

But certainly if we go off the air for economic reasons, we have hurt a vast number of people that CATV has no interest in and couldn't economically serve.

Mr. MACKAY. The thrust of your argument, then, is that CATV is a movement toward pay television and the stifling or termination of what we call free television?

Mr. MAYBORN. This is right. It could be very easily the end of free television in smaller markets.

Mr. MACKAY. Do you think these two things are compatible, CATV and free television?

Mr. MAYBORN. I think they would be quite compatible, if you give them the same rules you give me.

Mr. MACKAY. A number of other members of the committee who are not here have asked witnesses whether or not this can be substantiated now, based on existing facts, or whether this line of argument represents a projection of your fears as to future developments.

Mr. MAYBORN. Let me give you a simple example. When I was up here to the first 3 days of this hearing, we were complying with the microwave requirements that we notify the CATV within certain lengths of time and enumerate the programs which we did not want duplicated, the rule with which you are familiar; the microwave rule.

We did this correctly and adequately. But then the CATV promptly, in this confusing period which nobody knew where we were—and we are all up here talking about it—started carrying what I call a degraded signal of carrying my station, an NBC affiliate, on three channels besides its own channel.

They carried it, our station, during that period and on seven, which was an agreed channel. They also carried it on six, but because it is so close it is a degraded signal on six. When it got to the time for us to go on with our local news at 12 o'clock, they switched us, then, to the NBC station in Fort Worth and the Temple people got the Fort Worth news.

This went on and the confusion was pretty great and the result was that they had quite a bit of trouble with their own people. We sat down and talked with them and said:

> Either do as we think ought to be done and as the proposed order states, either putting us on our chanel 7, which we thought we agreed on, and run it straight through the day, and leave us off all the other stations, but if you put us on any other channels, leave us on all day long and don't degrade the signal.

We have lost all of our local audience because they think they are looking at our station and all of a sudden they find they are in Fort Worth looking at the news. This needs regulating, I would think.

Mr. MACKAY. I have one other question. You heard Mr. Rogers testify that they had a model act to have State legislatures declare CATV a utility and put this under the regulation of the utility commission.

You say the FCC Act is good as far as it goes, but it doesn't go far enough. What is the role of the State legislature and the local governing authority insofar as CATV is concerned?

Mr. MAYBORN. The role in Texas does not exist. In the case of the local authority, they have simply issued permits to use the streets and protect the interests of the people.

Mr. MACKAY. That is a permit and not a franchise.

Mr. MAYBORN. It is a permit and repeats and says it is not a franchise. I am not a lawyer and I don't know whether it is a franchase or not.

Mr. MACKAY. Do you know of any case yet, Mr. Mayborn, where there is competition in CATV in the same area?

Mr. MAYBORN. I am not aware of this; no.

Mr. MACKAY. I have no further questions.

Mr. PICKLE. Mr. Gilligan?

Mr. GILLIGAN. I would like to follow this line of questioning for just a minute, Mr. Mayborn, because I asked this morning a witness who operated CATV networks around the country whether or not he would invest in a UHF station, a proposed station, in a market not one of the first 100 markets, if it were presently served by CATV.

Would you make an investment in a UHF station going on the air in that market if they already had CATV?

Mr. MAYBORN. I can only answer that by saying that the man named Glassgow, who owns a radio station in Waco, who has filed an application, asked me that question, and I told him I would, if I were he.

There are three networks. He would undoubtedly get one of the networks, and the conversion to U's will eventually come about. It will be thin pickings for a while, but he would wind up with a facility, provided either the FCC or the Congress gave protection and some reasonable regulation which would insure his survival.

Mr. GILLIGAN. I am assuming that we have the situation of 6 months ago, no regulation, because one of the proposals before this committee is that the FCC should not operate in this field, and that the orders they have issued are arbitrary, whimsical, and so forth and should be withdrawn.

Without regulation of CATV, if there is a CATV system operating in this market, would you then, sir, invest or urge someone else to invest?

Mr. MAYBORN. I would give it a long, serious, hard thought, depending on the market conditions that existed there. But this is a hazard. If you have no distant signal control, and if the local CATV can originate, I would go south.

Mr. GILLIGAN. Suppose the CATV would not be required to carry the signal of the UHF station in their service?

Mr. MAYBORN. This would be fatal to them also.

Mr. GILLIGAN. And presumably the nonduplication rule, if there were no nonduplication rule, you would consider this?

Mr. MAYBORN. All of these things are the very things that affect both VHF and UHF but in a smaller station getting started, with a limited number of UHF conversions as against the old sets, this is much more difficult, if you are talking about UHF.

Mr. GILLIGAN. There is the proposition that it is the announced policy of the Congress and the FCC to encourage the developments of UHF stations around the country. I am trying to get the opinion of people in the field as to whether or not this policy can come to fruition unless CATV is regulated.

Mr. MAYBORN. If CATV is not regulated, UHF is in a disastrous position.

Mr. GILLIGAN. Thank you, sir.

Mr. PICKLE. Mr. Adams?

Mr. ADAMS. I have no questions, Mr. Chairman.

Mr. PICKLE. Again, Mr. Mayborn, we want to thank you for appearing before the committee.

Mr. MAYBORN. Thank you very much, gentlemen.

Mr. PICKLE. I believe our next witness is Mr. Rex G. Howell, who is president of KREX–TV in Grand Junction, Colo.

STATEMENT OF REX G. HOWELL, PRESIDENT, KREX–TV, GRAND JUNCTION, COLO., KREY–TV, MONTROSE, COLO., AND KREZ–TV, DURANGO, COLO.

Mr. HOWELL. Mr. Chairman and gentlemen of the committee, I am grateful for the opportunity you have provided me to appear before you and express my opinion in this important matter. I believe that in so doing I can safely say that I am also expressing the opinions of many more broadcasters who operate television stations in the Nation's smaller cities.

My name is Rex Howell, and I am the owner of three small television stations and one CATV system in the Rocky Mountain west. I hope you will not judge me as self-serving if I go into some detail about my stations, but I believe that in doing so I may be able to acquaint you with some little known facts about small market television.

My stations are KREX, KREY, and KREZ television operating in Grand Junction, Montrose and Durango, Colo., respectively. The laregst city is about 25,000 population and the smaller 2 are around 10,000 population. By the normal standards of television these are markets too small to support their own station.

We have disproved this assumption, however, and have successfully operated these stations from 1954 in the case of the primary station, and as early as 1957 for one of the satellites.

We have provided the people of our area now numbering over 50,000 television-equipped homes with the choice offerings of all three national TV networks, plus local service of news, weather, public events, and other vital public services.

Ours is properly a small business, doing about three-quarters of a million dollars' annual business and providing well-paying jobs to about 60 persons of multiple skills. Of infinitely greater importance is the fact that we have brought the modern-day miracle of television to the isolated homes of a section of the Nation which would be totally lacking in reception without us.

I'm sure it must be difficult for some of you gentlemen to visualize television services limited to a single channel. You are more than likely accustomed to a great multiplicity of channels, with overlapping services. In your abundance of television reception you may at time feel somewhat surfeited with it.

Were you to go to San Juan Mountains of southwest Colorado you might be pleasantly surprised to find how much television really means to people of that area. It is not only the source of their en-

tertainment but is literally their only link with the rest of the world at times.

A viewer in Silverton, Colo., once wrote me providing this heartwarming expression of his appreciation for our efforts. Silverton, by the way, is high in the mountains, and it is not uncommon for the heavy snows of winter to completely isolate the community for extended periods.

He wrote: "There was a time when in winter we had nothing to see at night but the inside of our shuttered windows; since you brought us television we have a window upon the world."

The schoolchildren of mountain hamlets have watched the launchings of our space vehicles and shared the sorrow of the death of a President; the rancher and his family have witnessed the miracle of global television as men in Munich, Geneva, Paris, and New York discussed the pressing international problems of our times.

There is a community called Lake City which has the distinction of 100-percent saturation of TV ownership. Every home in town has TV—of course, there are only about 200 families—but every one of them are kept in constant touch with what's going on in the jungles of Vietnam, here in Washington, and in their nearby counties. They have no newspapers, but they do not lack for news, thanks to free television.

"Free television" is the term I use to describe programing which is received over the air in the traditional pattern of American broadcasting without costing the viewer anything but his time. Please take my word for it—to these people free television is very important. I'm sure many of them would describe it as a vital and essential force in their lives.

When a television station's audience is measured in thousands rather than millions, it is not always an easy task to create an adequate economic base for its support, but these rural American families so served are no less entitled to such service than their fellow citizens in the Nation's metropolitan areas.

I like to think this was what the Federal Communications Commission had in mind when it drew up its sixth order and report, and placed the highest priority upon local TV service in its plan of nationwide allocations.

Today your committee is concerned with legislation which clarifies the depth of the responsibilities of the FCC under the act by which you of the Congress created that agency.

I would not presume to engage in discussion with you learned Congressmen on matters of jurisdictional responsibilities, under the Communications Act. I am not a lawyer, but for the 40 years I have been a broadcaster, I have labored in a field in which we must be quite conscious of that jurisdiction—whatever its scope, and I suppose I would be less than honest if I didn't admit that many times we have honestly felt that jurisdictional limits have been exceeded.

Whether the right to fully regulate community antenna systems is inherent in the Communications Act and thus an existing responsibility of the FCC, or whether it is a matter which needs clarification by the Congress, is in my opinion, not the most vital issue.

I believe that the FCC is charged with the responsibility for setting rules which will assure the orderly growth of broadcasting, and no one can deny that CATV has escalated into a major facet of that responsibility.

There is no need for me to provide redundant material on the growth of CATV. You are well aware of these details. Suffice to say it has become the "tail that now wags the dog." It developed as a part of man's ingenuity to get what he wants.

CATV has undoubtedly been a great force for good by bringing television reception to places where direct reception was impossible. It had its beginnings mostly in the West and other mountainous States where difficult terrain virtually had excluded over-the-air reception.

As you recall, in the earlier part of my statement I went into some depth as to how programs of this nature are affected.

Nourished by the programs available from our free broadcasting system which it has delivered to people who wanted to see them, the CATV industry has prospered exceedingly well. As a supplement to free broadcasting CATV has played a vital role in serving the public interest.

The problem today, however, is that many elements of this vast new industry no longer see themselves in a supplementary role—and they aspire to supplant over-the-air reception in many places.

There is no doubt that what they envision is technically possible; namely, that of connecting a great majority of the homes in the Nation together by wire, and distributing multiple programs to them at a fee. But technical feasibility does not necessarily carry with it the assumption that such a technology will serve the public interest to the maximum.

Mr. Frederick Ford, President of the National Community Antenna Association revealed for perhaps the first time, the objectives of his organization in his remarks a few days ago before the Federal Communications Bar Association. His comment was to the effect that the use of frequencies for over-the-air broadcast of television programs may soon be no longer justified.

Comments such as these clearly demonstrate the intent of many CATV interests to supplant over-the-air service with the wired concept. This is in stark contrast to what has heretofore been the basic premise of broadcasting under the regulatory authority of the U.S. Government.

If wired television is to one day replace our present system, which I seriously doubt, all the more reason to place it under the regulatory control of that agency of Government now charged with the responsibilities of broadcasting in the public interest.

My first license was issued to me by the late Mr. Herbert Hoover, then Secretary of Commerce. I was a licensee when the first Radio Act of 1927 was written and the original Federal Radio Commission was formed to enforce it.

Subsequently, it became amended as the Communications Act, but throughout this entire history of broadcasting to this day, our system has been built upon the foundation of free use of the spectrum to the end that the public interest, convenience, and necessity is served. Rea-

sonable Federal controls are essential and have ever been a necessity for the proper guidance of the growth of the broadcast media.

If one needs any testimony to the efficacy of our system we have only to look at what we have compared to any nation on earth whose broadcast facilities are tax supported, rather than under the system of free enterprise.

The Radio Act of 1927 turned broadcasting from utter chaos into the beginnings of orderly growth. It has flourished throughout the years, notwithstanding the complaints of those of us who feel the hand of regulation becomes somewhat heavy at times. With all of its shortcomings it is the best system of broadcasting on earth, and I think we all agree that the American people expect us to keep it as such.

The FCC, perhaps somewhat belatedly, has recognized that fundamental changes were taking place in our broadcast system. After careful allocations of television frequencies that agency finds that artificial extensions of coverage through CATV are making a shambles of the allocations plan.

The FCC lost many precious years, in my opinion, while arguing among its members as to whether it had any right to intervene or assume any responsibility. My only regret is that the bill before us today does not contain a 1955 enacting date.

Many present members of the FCC inherited these problems, which go back many years before their appointment to the agency, so it would be unfair to lay the blame at the door of the agency as presently constituted.

The Commission has sought to inform itself through extensive study of the CATV problem and in testimony to the complexity of the issue there are some members of the FCC who have not yet discovered the full impact which unregulated CATV has produced upon broadcasting, particularly in small markets.

I endorse what my predecessor said a few moments ago in that respect.

I do not say this in a critical sense, because it is a very confusing problem which has been compounded by some pretty inaccurate propaganda launched recently on a massive scale. I understand you gentlemen were the major recipients of that propaganda.

I have personally been most gratified by the grasp of the issue as so ably expressed by Commissioner Cox in his statement of February 15. I understand that is already a part of the record.

I would also like to have inserted the attachment in the form of my letter dealing with the recommendations of Commissioner Cox. I will pass up any necessity for reading it at this time.

Mr. PICKLE. That will be done at the conclusion of your statement.

Mr. HOWELL. I think the views of Commissioner Cox, particularly as they apply to the issue of nonduplication, are very sound.

Again, I hope you will pardon the use of personal reference, but in our small stations we are able to obtain many, if not all, of our network programs for the very simple reason that they are not receivable in our area by any other means. National advertisers pay us a modest fee for broadcasting their sponsored programs.

If these same programs were artificially piped into our community from a distant station the advertiser would have no need for our service. Thus, if a CATV system in any one of the cities we serve were to duplicate our programs we would soon lose the right to carry these programs. It is not the loss of revenue which is of overriding concern, for literally that in the narrow sense is our private interest.

Of infinitely greater importance is that the loss of a single program through duplication means that the thousands of people living outside the CATV served area would be deprived of the program entirely. That, I submit, gentlemen, is a matter of public interest.

The proposed rules of the FCC do not fully meet this kind of problem, as yet. In fact, it is my belief that the duplication issue is of paramount importance, but I have faith in the Commission to explore the matter more fully and to amend the rules to more adequately cope with the dangers inherent to small city free television posed by this knotty problem.

When the FCC first assumed responsibility and conditioned microwave licenses upon a showing of nonduplication an excellent rule evolved in which free programs were protected against duplication for 15 days before and after local broadcast. The new rules water this down to protection for a single day.

It would be catastrophic if the FCC goes no further than this, and to us small-market broadcasters the legislation authorizing jurisdiction would then become meaningless. But if past records are indicative of future action the FCC will find a way to accomplish better rules and fully discharge its responsibilities to the public it serves.

It will do so without punitive action, and with fair and impartial concern for the private interest, but with unremitting concern for no less than the optimum in the public interest.

Therefore, my testimony today is in support of H.R. 13286. If there is a single doubt in a Commissioner's mind about his responsibility, this legislation should dispell it.

In my opening statement, I identified myself as both a broadcaster and a CATV operator. May I figuratively now put on my other hat and speak to this proposed legislation as a CATV owner and operator.

In the small market of Montrose, Colo., my company has started a CATV systems. Although only a few weeks old, we are receiving good community support. In applying for the permit from the city of Montrose for right-of-way to construct our system we were opposed by three rival CATV companies.

We received the first permit and I believe we did so largely because we also operate the only free TV station in the area. People felt secure in supporting us, that in so doing they would not jeopardize free service to those so located or so disposed as to not receive the cable services.

We have no problem providing our station with maximum nonduplication protection. We simply do not bring in CBS from any other source, thus our primary network is automatically protected. No viewer is particularly concerned about where his program comes from.

He merely wants good reception, and doesn't want to be denied anything. He can only watch one program at a time and if all three networks are available, plus an independent and an educational channel,

he has an abundance of signals. The talk about 12 channels of service is ridiculous.

There simply aren't that many good programs available simultaneously. We choose from the prime offerings of all three national networks to obtain enough good programs to supply a single channel.

I have watched cable systems which did not protect the local station's contractual rights. The same program comes on about three different channels across the whole dial. Other than the "snob appeal" of lots of channels, I can't see where the customer gains anything from such overabundance.

The FCC would like to see everyone in America get at least one channel, and hopefully all three national networks if possible. Additional service, especially from educational channels is very much to be desired. Repetition of 4 or 5 services throughout 12 channels is sheer waste.

Our system does carry a local weather channel and some background music in addition to the services I have enumerated. We have yet to receive a single complaint based upon insufficient service, although admittedly our service is new. Perhaps if we had misled people into thinking we would carry 12 different programs simultaneously, we very likely would have found some customers dissatisfied.

I believe that in those cities in which CATV customers have complained about nonduplication, it is the result of the practices of the cable operators. I have been told there are some places where the cable system deliberately cuts off programs in the middle, or deletes part of a movie, and then blames it upon the local station.

They make their customers believe that these disruptions were caused by the nonduplication requlations of the FCC and the demands for protection by the local station.

This type of deceit has no place in responsible broadcasting. The FCC should one day be empowered to deal with such actions in the same manner it can now enforce candor on the part of a broadcast licensees.

CATV is a product of the growth of broadcasting. It should be operated under ground rules which are applicable to broadcasting.

As a CATV operator, I have no fears about our being able to comply with all reasonable regulations without sacrifice in our service to the public.

As a CATV operator, I would also far rather see our system operating under a set of Federal regulations which apply to the whole industry, rather than taking our chances on 50 different kinds of public utility regulations promulgated by the individual States.

I do not believe CATV is a public utility, nor is it a common carrier.

I believe it is a supplementary part of the broadcast service which is subject to the regulatory power of the United States.

Only the FCC should have responsibility for overall regulation, as the duly authorized agency of the Congress.

I believe the Congress should implement and clarify the authority of the FCC by enacting H.R. 13286.

I thank you gentlemen for your courtesy and for your kind interest in allowing me to present this testimony.

(Letter referred to follows:)

KREX-TV,
Grand Junction, Colo., February 18, 1966.

Hon. KENNETH A. COX,
Commissioner, Federal Communications Commission,
Washington, D.C.

DEAR COMMISSIONER COX: First let me say that I wholeheartedly endorse your dissenting statement from the majority action of the Commission in the matter of CATV regulation (February 15) in its entirety. It is most regrettable that the Commission majority failed to recognize the peril to the public interest which is inherent in its action.

As a small-market broadcaster I am acutely aware of the fact that there are many risks involved in the normal course of our efforts to serve the public, but now we have the specter of artificial barriers erected to thwart what progress has been made. We cannot seek protection of our private interests, but we have very right to seek and support efforts to protect the public interest.

It has never been demonstrated that multiple choice of reception for the few at the expense of curtailment of service to the many is in the public interest. The Commission's previous action in requiring nonduplication for 15 days before and after a local broadcast has been adequately demonstrated as a protection of the public interest. Rural viewers and those who cannot afford the cost of cable subscription have been the grateful recipients of programing via network kinescope films over small-market stations. National advertisers have placed these programs into the small markets and have paid the small added cost for this coverage. The moment that these programs no longer receive nonduplication protection the small stations will be dropped and the national advertiser will be content to accept a smaller audience at no cost since the subscriber indeed pays for it!

When these programs are dropped the nonsubscriber has no access to them in markets such as ours. As you will note from the attached program schedule our stations carry all 10 of the top shows, even though some of them normally compete at the same hours. We are able to do this through the use of kinescopes with a few days' delay from the original broadcast date. ("Bewitched" loses none of its appeal due to a 1-week delay.)

The loss of the 15-day protection, in my opinion, places many small stations in an untenable position, and risks the loss of many programs to a substantial segment of their viewers.

The other phase of the decision which was most startling was the fact that the Commission majority saw fit to provide protection to the big metropolitan outlets in the top 100 markets against the importation of distant signals, but took no cognizance of the small market where the problem is most acute.

The Associated Press quotes Chairman Henry as saying, "The only thing that it is going to do is perhaps force the local broadcaster to be more on his toes and put on the kind of program that will insure his place in the market."

This is a strange rationalization for the problem of preserving network service available to the people served by these small stations on which he would like to apply the rule as a punitive measure. No small TV station can survive without network programing.

I have always admired your knowledgeable approach to these problems as well as your ability to articulately set forth indisputable facts which some others seemingly do not discern. You and I have had friendly debates over minor differences of view in other matters, but today my fondest hope would be that your views were held unanimously by your colleagues of the Commission.

Small-market television in particular is at a crossroads. Those of us who can must find some way of getting into the cable business for the present trend forecasts the day when free-over-the-air television in small markets will have become a thing of the past, unless we can somehow convince the Commission majority to reconsider its actions of February 15. The earnest efforts of the FCC to assure the orderly growth of television broadcasting as well as lifetime efforts of those of us whose total resources are involved in the broadcast profession are in dire jeopardy. The vocal minority who are self-appointed critics of both the Commission and the industry can now vindicate their oft-expressed indictment of the dire consequences "if broadcasters run to the Commission for help."

I, for one, hate to give them that satisfaction, but my greatest sorrow is due to my belief that the Commission majority was pressured into actions by a

campaign based upon falsehood and misinformation launched by the NCTA, and that broadcasters failed to provide a positive program of truth to counteract the propaganda efforts of those, who having grown rich by selling a product which they gratuitously took from our industry, now seek to use their wealth to destroy the traditional system of American broadcasting.

Respectfully,

REX G. HOWELL,
President, KREX AM–FM TV, KREY TV, KREZ TV.

Mr. PICKLE. Mr. Howell, we appreciate your appearance before this committee, also, and we are sorry that you have been delayed in having this opportunity.

Mr. Howell, let me ask you a question or two. You received a permit for a CATV operation?

Mr. HOWELL. Yes, sir; one.

Mr. PICKLE. Do you anticipate there will be other permits? I noticed your testimony said you received the first one.

Mr. HOWELL. Actually, there were two others granted almost simultaneously with ours, but we received the first pole permit from the telephone company and under the conditions of our grant we were to start construction within 30 days, which we did, and the others did not.

So we thereby became the only eligible one. It is a nonexclusive grant. It is a revocable permit.

Mr. PICKLE. Your endorsement of the bill, the Staggers bill, puts you in the position of both a broadcaster and a CATV operator. In your CATV operation do you do any kind of origination other than news and weather?

Mr. HOWELL. We do no news origination at the present time. We do have one of these automatic weather boards, and on the same channel we supply some background music.

Mr. PICKLE. Obviously you don't have any problem on duplication. You don't want to compete with yourself. I can see that you wouldn't have any basic problem there.

Suppose some other station had a license in that city; would you feel the same way about CATV?

Mr. HOWELL. I think so. I think we could assume the responsibility for properly protecting more than a single station, speaking now as a CATV operator.

Duplication is not such a complex problem as it sounds on the surface. It is a matter of knowing ahead of time. We feel we could do it by automation, actually, where the switching can be set up with modern-day equipment to do it automatically.

I should perhaps explain, Mr. Chairman, that we only operate a CATV system in one of the communities in which we operate television. In the other two, the CATV is operated by someone else other than ourselves.

Mr. PICKLE. Mr. Gilligan?

Mr. GILLIGAN. I have no questions, Mr. Chairman.

Mr. PICKLE. Mr. Adams?

Mr. ADAMS. I have no questions, Mr. Chairman.

Mr. PICKLE. Again, Mr. Howell, we thank you for your testimony. I will state again that we regret the delay in your appearing today.

Mr. HOWELL. Thank you.

Mr. PICKLE. The Chair would like to say that we have one witness, Mr. Radph Stufflebam, of Springfield, Mo., who is not able to be with us. Without objection, his statement will be included in the hearing today.

(The statement referred to follows:)

STATEMENT OF R. L. STUFFLEBAM, COMANAGER AND COMMERCIAL MANAGER OF SPRINGFIELD TELEVISION, INC.

Mr. Chairman and members of the committee, my name is R. L. Stufflebam, comanager and commercial manager of Springfield Television, Inc. Our company operates television station KYTV, channel 3, Springfield, Mo.

My appearance here today is in support of H.R. 13286 introduced by Representative Harley O. Staggers. Since the Federal Communications Commission has asked Congress for legislative guidance on some matters, it is also my purpose to point out what matters are, in our judgment, necessary corrective legislative actions, to urge their careful consideration and adoption as guidelines for future FCC guidance.

The explosive growth of community antenna television in the past few years has brought the industry to the verge of chaos. It is our studied opinion that enlightened Federal regulation is the only way to restore order in this important industry. We support the Federal Communications Commission in its assumption of jurisdiction over the total CATV industry.

A local television station is charged with the responsibility of meeting the needs of its community and the area in which it operates. To fully serve the needs of such a community as Springfield, Mo., and the Ozarks region around it, we serve as an outlet for local self-expression, we provide local and area news coverage, on the spot coverage of important local events, special public affairs programs on local and area problems, time provided to public officials on important issues, programs, featuring local cultural events, religious programing oriented toward the needs and interests of denominations and religious organizations in our area, extensive agricultural programming, local emergency information and public service announcements for the many organizations throughout the area. I have the strong conviction that these services and activities by our station or any of the local or area television stations in the Nation provide community identity and diversity. Certainly identity and diversity are important and become a function of existing television stations since most authorities are agreed that origination of these services is not the function of a CATV. To give an idea of the amount of public service rendered, when this station filed for renewal of its license in 1964, during the composite week KYTV ran 137 public service anouncements and 7 public service shows.

The program and production costs of any television station is one of its largest expense items. The breakdown of our 1965 income to support this service is as follows: 33 percent came from local advertisers; 40 percent from regional and national advertisers; 23.7 percent from network advertisers, and 3.3 percent from miscellaneous sources. We estimate that our programing and production costs for the year 1966 will not be less than 40 percent of our operational costs, and could be considerably higher.

The coverage of KYTV exceeds the prescribed Springfield, Mo., trade area, as defined by the Springfield Chamber of Commerce.

This station has been in the forefront in providing the very latest facilities of the television industry for the people of this area. The latest facility to be offered to viewers and advertisers in our area are complete color facilities.

I detail the above facts only to illustrate that while this is a small market the facilities are bigtime and that we endeavor to render the best possible service to our viewers.

Springfield, marketwise, is ranked 190th according to population; Standard Rate and Data, January 1966. The American Research Bureau, through the Market Analysis of 1964, ranks Springfield, Mo., as the 102d primary market in the United States. In quarter-hour delivered audience it ranks 105th in the 1964 report. The 1965 ARB total net weekly circulation lists Springfield as the 106th market. So we have been close to the top 100 markets for the last several years. The number of markets between 95 and 105 could flow and ebb according to each rating report. One really never knows whether or not his market is in

the top protected 100 markets until the ratings are published. An exceptionally good rating report could conceivably jump a market from 105 into the top 100 markets. This bit of information is detailed for the following reason. The Commission's new rules restricting carriage of distant stations is in substance only applicable to the top 100 markets and denial of the same protection to those markets below 100 is unreasonable. We recognize the Commission's concern of a hybrid CATV pay TV. Admittedly, the very large markets, the top 100 if you will, are natural breeding grounds for any wire pay TV operation. They are also areas where new UHF stations face substantial danger from the economic impact on all stations, UHF and VHF, in small markets. The impact on stations in the smaller markets will be even greater because the Commission has failed to impose any effective limitation on the importation of multiple outside signals. We believe that the top 100 markets need protection, but we also believe the stations from the top 100 markets on down also need the same protection. Legislation is generally written for the protection of the weak. We urge that all markets, regardless of size, be treated equally.

There is a great distinction between a local television station and a CATV operation. A local television station originates local and film programs plus network programs. All of these are important and are free to the area served by the station and cost the station a great deal in time and money. A CATV system, on the other hand, picks up distant signals free and provides this service to the subscriber for a monthly fee, thus diluting the local station's audience.

There are certain fundamentals regarding regulation of CATV's which we feel essential for the survival of local television stations, and they are as follows:

1. Local stations must be carried without duplication by the system. Rules should be adopted restricting the importation of distant stations into the grade B service area of local stations regardless of the ARB rank of the market where the local station operates. This would mean that the importation of signals by CATV systems from distant stations would not be permitted unless the CATV system demonstrates that the importation of such signals will not adversely affect the television station or stations in the system's city, and serve a definite public need which is not being served by the existing station or stations.

2. In addition to, but not in lieu of, other regulatory measures, section 325(a) of the Communications Act which prohibits the rebroadcast of signals, unless the consent of the originating station is first received, should be made applicable to CATV systems as well as broadcast stations.

3. A CATV system should be prohibited from originating programs or commercial messages.

4. A network of CATV systems should be prohibited.

I am testifying here today both as a station manager and as a representative of our company which is an applicant for a CATV system in Springfield, Mo.

We feel that if CATV is coming to Springfield, local broadcasters would be the most qualified to operate such a system. We have, therefore, formed a corporation with KTTS-TV in our city and have applied for CATV in Springfield, Mo. If we are awarded the local franchise, we will do the best job possible; but we believe the above suggested regulations should be enacted regardless of who is the operator.

Turning to the matter of congressional action, let me comment briefly on the two legislative proposals before this committee—H.R. 12914 and H.R. 13286, which appear to represent two diametrically opposed principles. As we interpret it, H.R. 12914 would prohibit any regulation of CATV. Indeed, we understand this to be its sole aim. To the extent this is the case, it follows from what I have said previously that we are opposed to the enactment of this bill. Indeed, its enactment would reverse a public policy which was established by Congress as far back as 1934 and reaffirmed by Congress as recently as 1962. Reversal of this policy would be contrary to the public interest.

We support enactment of H.R. 13286 insofar as it reaffirms the FCC's jurisdiction in this area. If legislation is enacted to reaffirm the Commission's broad authority in this area, we believe it would be appropriate for Congress once again to reaffirm, as the first aim of regulation in this area, the policy regarding the development of free television through the preservation and growth of local television broadcast stations. Certainly nothing in the bill should be construed in derogation of this policy.

We are troubled by one aspect of the proposed bill. Section 331(b) of the bill would give the FCC authority to authorize program origination. In our view

the origination of program material by CATV is a first step toward the implementation of a pay television system and must not be allowed. We urge that section 331(b) be amended to confine CATV to the reception and simultaneous retransmission of signals of television broadcast stations.

The question has been raised whether CATV system should be required to obtain the consent of the stations whose signals they transmit and whether section 325(a) of the Communications Act should be amended to accomplish this aim. As I previously indicated, we support a consent requirement. But it must be understood that a consent requirement addresses itself to only one aspect of the CATV problem and not a substitute for direct regulation of CATV.

Thank you for permitting me to present my views.

Mr. PICKLE. Have we any other witnesses who were scheduled to be heard this afternoon?

If not, this committee will stand in recess until 10 o'clock in the morning.

(Whereupon, at 6:48 p.m. the hearing was recessed to reconvene at 10 a.m., Thursday, April 7, 1966.)

REGULATION OF COMMUNITY ANTENNA TELEVISION

THURSDAY, APRIL 7, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

This morning the committee will continue with hearings on H.R. 13286, and companion bills. For our first witness we have one of our distinguished colleagues from the State of Tennessee.

I would like for him to come forward and bring with him the witness who is with him so that he might introduce him because he is a constituent of his.

I might say to Mr. Smith that you can well be proud of the Congressman from your area because he occupies a very important position here in the Congress on the Rules Committee.

And he is doing a good job. This morning we would like to hear from Mr. Quillen.

STATEMENT OF HON. JAMES H. QUILLEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. QUILLEN. Thank you, Mr. Chairman.

I am most grateful for your very kind remarks. It is a pleasure to appear before your committee and its distinguished members.

I sincerely appreciate the opportunity of being here at this time because I am scheduled to go home in a few minutes.

I am pleased to present to you the president and general manager of the Appalachian Broadcasting Corp., which operates WCYB–TV in Bristol and covers my district. WCYB–TV and its general manager and president, have a very fine reputation and does an outstanding job for the people of that area.

This morning I am happy to present Mr. Smith to the committee. He has with him his local attorney, and I will let Mr. Smith present him. It is a pleasure to be here and an honor to present Mr. Robert Smith.

The CHAIRMAN. Thank you, Mr. Quillen.

Mr. Smith, we are glad to have you and you may take your seat with your counsel. I do not know how long your statement is. If you wish to put it in the record and summarize it we will be glad to have it that way.

Did you wish to summarize or give it in its entirety?

STATEMENT OF ROBERT H. SMITH, PRESIDENT AND GENERAL MANAGER, APPALACHIAN BROADCASTING CORP.

Mr. SMITH. Mr. Chairman, if it is of any use to the committee I will be glad to summarize it.

The CHAIRMAN. Which ever way you can do it the best. We are trying to expedite the hearings as you probably know. We don't want to cut anyone off. You use your best judgment.

Mr. SMITH. Thank you, Mr. Chairman. I think I will just submit the statement for the record.

However, if I may, I would like to add orally that we feel that it is extremely important that some form of tracks be laid down by which this industry can proceed and deliver to viewers good signal without reduction of choice of programs.

We think that can generally be done through the Federal Communications Commission. We would like to see the Congress give them specific authorization to do so and that in essence is the purpose for my being here without going into the full statement if that will conserve it.

If that will conserve the committee's time I will be glad to state it that way and I will be glad to answer any questions that I can that anyone would like to ask.

(The complete statement of Mr. Smith follows:)

TESTIMONY OF ROBERT H. SMITH, PRESIDENT AND GENERAL MANAGER, APPALACHIAN BROADCASTING CORP.

My name is Robert Smith. I am president and general manager of Appalachian Broadcasting Corp., licensee of television station WCYB–TV, one of two VHF stations serving Bristol, Va.-Tenn., Kingsport, Tenn., and Johnson City, Tenn., as well as the surrounding areas. Our market is nationally known as the "tricity" market.

I would like to endorse generally the testimony of Lester Lindow and of Vincent Wasilewski in connection with pending legislation, and on the possible effect of unrestricted expansion of CATV on existing television service.

In addition, I would like to address my remarks to a limited number of matters discussed by Mr. Lindow and by other witnesses, and to which reference has been made by several of the members of this committee. The purpose of my remarks is to supplement the record with the specific experience of my station in these matters.

First, I would like to respectfully suggest that the Congress direct the Commission to impose the most stringent and precise technical requirements relating to the carrying of signals from local TV stations over CATV systems. Our experience is an illustration of what can happen in the absence of such requirements.

WCYB broadcasts over channel 5. In Kingsport, one of our principal cities located within our grade A contour, and to which we give a city-grade signal, WCYB is carried over a CATV system. Because of the character of the CATV transmission, the WCYB signal over the cable is so degraded in quality by ghosting, or by improper installation or maintenance of the system, that its reception on the cable is much, much inferior to signals from distant stations which are brought in by the cable. The effect of this degradation is to fragmentize our audience on programs which are duplicated by other stations, since the viewer will select the better picture. Moreover, the poor quality of the signal also limits the viewer appeal of our local and unduplicated programs which are produced for, and directed to, our local audience.

These unsalutory effects can be avoided by appropriate technical requirements, which I suggest be imposed by the FCC. Obviously, the FCC can impose these requirements only if it has jurisdiction over CATV systems. This alone, is sufficient reason for Congress to affirm that the FCC has clear jurisdiction over CATV systems.

Second, I would like to discuss the effect of CATV on market standings. This subject has been referred to briefly by a number of witnesses. The "tricities" market which we serve ranked between the 95th and 99th, prior to the recent enlargement of CATV service in our primary service area. We now find in the most recent ARB survey that the tricities has become the 101st market.

TV market ratings are predicted on the total number of homes viewing stations located within a specific market. To the extent that a viewer, residing within the market of a station, views a program carried on the CATV system and brought in from a more distant station not located within the local television market, such viewer is credited to the station outside of the market. More important, credit for such viewer is not given to the local station or to the local market.

Since there are only a very few thousand homes separating the 95th and 105th markets, a cable system, or several cable systems in the primary area of the local stations, which duplicate the programs of the local stations, or which systems degrade the signals of the local stations, are capable of reducing the homes credited to the local stations in the market, thereby reducing the national market rating. That is exactly what happened to WCYB–TV.

Obviously, if the signal of the local station is degraded and is not of a quality as good as that of a distant station, a viewer on the cable system is more likely to select the better signal. Thus the local station and the market has lost not only the viewer, but the ability to sell the market and the station on the basis of circulation.

Once a set is connected to a cable, it may cost the customer as much to erect an antenna and to cut away from the cable, as it will to outfit the normal family of kids with shoes for school. If the station is not protected against degradation or duplication, it just can't continue to do the job it is doing today.

As a practical broadcaster, I want to tell you, gentlemen, that there are many adverse effects to a station when its market goes over the "magic" 100 figure. For one thing, there are many advertisers who limit their purchases to the first 100 markets. Obviously, we no longer are in that group. We, therefore, miss out on budgets allocated solely to that group.

As important is the fact that the whole market suffers when its TV market standing is reduced. Our market comprises an area in five States. It is primarily composed of the Ninth Congressional District of Virginia, and the First Congressional District of Tennessee. It also has part of the western congressional district of North Carolina; the eastern district of Kentucky; and a small portion of the southern district of West Virginia.

The size and rank of the TV market not only affects the TV advertising "buy," but directly affects the distribution of the product in the market area, and thus directly affects the well-being of the jobbers, wholesalers, brokers, and even of the retailers in the market. I need not elaborate on the overall economic effect which flows from this.

Moreover, some products, because of the failure in advertising, or in distribution, may even wind up in not being available to the consumer in that market.

Next, the Commission has only recently taken this "magic" 100 figure as the dividing line between the type of protection television stations are to be granted in connection with the operation of CATV systems within their primary service areas. Since the Commission's action has been explained at length by other witnesses, it needs no further elaboration and I will not take the committee's time to review it.

In sum, CATV has not only knocked us out of the top 100 market classification, but in addition we have been pushed into a more vulnerable position in that we can no longer obtain even the limited type of protection which the Commission considers necessary and desirable for stations in the top 100 markets.

Third, WCYB-TV prides itself on the local service which it provides to the area it is licensed to serve. We are proud of this service. We believe it meets the needs of our area. We believe it is in the public interest. And this belief has been abundantly confirmed by the viewers and by the public service agencies.

For example, though we are technically licensed to Bristol, Va., we have received the Tennessee Educational Association School Bell award only last week in recognition of the outstanding service we rendered to the State of Tennessee last year in the field of educational broadcasting.

Another example is the fact that we are in the AP bureau for our service area which, as I have mentioned above, serves in whole or in part, five congressional districts in five separate States. For this service, we have received during the last 6 years, three annual national awards for local news reporting and coverage.

We are able to provide this local program service because advertisers support our station, and because this support gives us the sinews which are required to produce such programs. These sinews include personnel, equipment, and services. These sinews, in one word, are money.

We get this advertiser support because we can and do deliver the audience in our basic marketing and service area. As one of the witnesses pointed out on Tuesday, any time that the national and the regional advertisers believe that their message is being received in our primary market through CATV, by the extension of signals from other markets, then they will not use our facilities. If they do not use our facilities, we will not have the means with which to produce our local programs. The effects will snowball, so that in due course, we will not be able to provide any service, local or otherwise.

I am not crying "wolf." I am not saying that this will happen tomorrow, or even next year. But if CATV continues to develop unrestricted, unregulated, and unchecked, this must be the inevitable result.

Moreover, it should be noted that we are not trying to protect our position as a two-station market. There is a UHF channel assigned, and there are applications pending for the use of that channel. This station will provide yet another local service. We welcome competition which will provide additional local service, but, we submit, such service should be provided on a fair and competitive basis. Quite frankly, I think that if CATV continues to spread in the manner which is now indicated, not only will stations such as ours be drastically affected a period of time from now, but stations such as the proposed UHF facility will never even get off the ground.

One last point which I would like to make is in response to the question raised by Mr. Mackey on your committee, concerning the program fare which is available over television today. Personally, I think there is no question that any viewer, by appropriate selection, can obtain at least a number of programs a week which will meet his taste, regardless of how elevated that taste may be. I do not want to get into a discussion on programing merits in general. However, I do want to point out to Mr. Mackey that bringing in unrestricted CATV is not going to improve the caliber of TV programs since all that it will do is to duplicate in substantial, if not identical measure, the very same network and nonlocally produced programs which are being broadcast by the local stations. But, in addition, and most important, unrestricted CATV will result in almost complete deletion of the type of local programs of which I am sure even Mr. Mackey enthusiastically approves; namely, those programs which are directed to informing and educating the local viewer as to local issues within his immediate area.

The CHAIRMAN. That is fair enough. I think we have the basis perhaps for what we want to know. Would you identify your counsel?

Mr. SMITH. This is Mr. Schulkind of the firm of Fly, Shuebruk, Blume & Gaguine.

The CHAIRMAN. In short, your statement is in support of the FCC bill which was presented to this committee?

Mr. SMITH. Yes, sir.

The CHAIRMAN. You are in the broadcasting business?

Mr. SMITH. Yes, sir.

The CHAIRMAN. TV broadcasting?

Mr. SMITH. Radio and television. But we have no cable. We are not involved in ownership operation of any cable system.

The CHAIRMAN. You are here solely in the interest of radio and TV broadcasting?

Mr. SMITH. That is exactly correct.

The CHAIRMAN. You think then that the FCC should be in this picture to regulate the relationship between broadcasting and CATV?

Mr. SMITH. Yes, sir; I absolutely believe that. I think that the chaos that exists today will not improve and will become much worse until that is done.

The CHAIRMAN. How long have you and your organization been in the broadcasting business, Mr. Smith?

Mr. SMITH. My company has been in business, and I have been with it, since 1946. I have been in Bristol since 1936. I have been in the broadcast business in one way or another beginning with part-time work, since 1926.

The CHAIRMAN. You certainly have the background to speak for your interest. Do you have a cable in Bristol and surrounding areas?

Mr. SMITH. Yes, sir.

The CHAIRMAN. And in the surrounding communities?

Mr. SMITH. Yes, sir; we have a total of six cable systems operating within our city grade area, all of which duplicate all our network programs, most of which have from time to time signal difficulties with us, and all of which have been requested not to duplicate out network programing, none of which have been willing to discuss that non-duplication with us.

The CHAIRMAN. Do you think that some kind of legislation to—is necessary to bring order into the picture?

Mr. SMITH. Yes, sir; I certainly do.

The CHAIRMAN. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. No questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

In regard to this bill are you in favor of giving authority to the FCC to make rules and regulations governing CATV, is that right?

Mr. SMITH. That is right.

Mr. YOUNGER. There is a case in the courts to determine whether the FCC now has that authority. It seems to me that as long as there is a question as to whether they have such authority, although they have assumed it, that it might be well to wait on this decision until the court has decided.

If the court decides that the FCC does not have the authority to do what it has already done, I think it throws a little different light on what Congress probably ought to do. I understand a decision is due in not too distant time. I am just wondering for the industry concerned if it would not be better to wait for that period to arrive before we legislate.

Mr. SMITH. Well, Mr. Younger, I'm not in the confidence of the Commission as to some of their purposes and early planning, but it would seem to me that they were probably concerned that if Congress did not give them a clear line that a court case might give them clarification.

I would assume that they would much prefer clear tracks to run on from Congress as an administrative agency.

Please understand that nobody told me what is their thinking as far as that is concerned but that is my opinion and it is my opinion that if the Congress recognizes this as a factor which involves not the broadcast industry welfare economically but the consumer, the viewer as well as the broadcaster, and lays down the track much in the way they tell the Commission the framework within which it is to administer the present act, I think it would be desirable.

I firmly believe that the Congress could do a very great service to the public.

Mr. YOUNGER. One of the difficulties, at least that I have here on the committee, and it does not apply solely to the FCC for we have had similar difficulties with the other regulatory agencies over which this committee has legislative power—which is the tendency of these agencies to continually reach for more and more power.

It seems to me that the industry itself, if the court would say to the FCC, no, you did not have that power, I think it would be better for future it might protect you because of the tendency that regulatory the industry, both, CATV and TV and broadcasting too and in the agencies have if they get by with this, which is a question on which there is a variance of opinion, the next time they might reach out after you.

I just raise this point with the idea that it seems to me that we ought to wait for that decision before we legislate.

Mr. SMITH. Mr. Younger, I am very prone to agree with you. I would not test my wisdom in the affairs of that type as compared to yours. My experience is pretty well one sided, sir, and not as rounded as yours.

I think, however, if there is a little bit of fire in the barn and a lot of hay around we ought to take whatever steps we can to do something about it and not be afraid to call in help in case the fire gets larger.

If we are talking about regulating the receiver, and I doubt that that is the best way to put it, it is kind of saying that if a man has a horse you can't tell him how fast he can ride it or if he has an automobile you can't tell him how fast he may drive.

We recognize those things as infringements on the public welfare. Perhaps I am begging the point slightly but I have grown up under regulations of one degree or another but I feel very strongly that we need this legislation.

Mr. YOUNGER. Thank you, sir.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions.

Mr. CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. No questions.

The CHAIRMAN. Mr. Smith, we appreciate very much your coming here and giving us the benefit of your views. This brings back memories of years ago down in Bristol where I knew many of your cohorts.

I wish you would convey my best wishes to them.

Mr. SMITH. Mr. Chairman, I want to thank you and I want to thank the committee. I shall certainly deliver it and remember you to your football acquaintances and others.

The CHAIRMAN. Thank you very much.

The CHAIRMAN. As our next witness we have our distinguished colleague on this committee. I would like to call on him to introduced the next witness since he comes from his State and from his area.

The man on whom I am going to call on to introduce this witness is a very distinguished member of the committee. He holds the position of representing the district in Texas that the President of the United States formerly used to represent. So I would like at this time to call

on our colleague, Mr. Pickle, from Texas, one of our very able colleagues to introduce the next witness.

STATEMENT OF HON. J. J. PICKLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PICKLE. Mr. Chairman, I thank you. You are very kind.

One of the most delightful and colorful characters I have ever known in Texas is our next speaker, or witness, Mr. Vann Kennedy of Corpus Christi. He is president of KZTV and KSIX radio in Corpus Christi.

He is a leading businessman in southwest Texas. We had the distinction, Mr. Chairman, of going into the radio business at about the same time. I was the commercial manager of a radio station in Austin and Vann Kennedy was putting on a radio station in Corpus Christi.

We used to commiserate about many problems, mainly about selling advertising. I know he is a veteran in this field.

He is a leading civic personality in the southwest Texas area. I suppose he has been a friend and confidant of more individual Senators and Governors of Texas than we have ever had.

I have not had a chance to read his testimony but I know he will present it forcefully and with clarity and he will even be willing to argue about it, if I know Vann Kennedy. I am happy to present the Honorable Vann Kennedy.

The CHAIRMAN. We are very happy to have you with us. With that fine introduction we will expect a lot of trouble, especially with the name Kennedy. If you will proceed, I may say to you, Mr. Kennedy, that you may present your statement for the record and summarize it if you wish.

We want to make the record as complete as possible. We leave that up to you.

Mr. KENNEDY. Mr. Chairman, my deep appreciation to the Honorable J. J. Pickle. If you will bear with me I shall read my statement.

STATEMENT OF VANN M. KENNEDY, PRESIDENT, KZTV AND KSIX, CORPUS CHRISTI, TEX.

Mr. KENNEDY. Mr. Chairman and gentlemen of the committee, my name is Vann M. Kennedy. I am president and general manager of television station KZTV and radio station KSIX, both of which serve Corpus Christi, Tex., and surrounding area.

Let me thank you for the privilege of appearing to advocate complete regulation of community antenna television cable systems.

I oppose H.R. 12914 and support H.R. 13286, with suggested amendments thereto.

Corpus Christi is a medium, or secondary market. It is not 1 of the magic 100 which the FCC has elected to protect from the ruinous effects of cable TV. The area already has been dangerously penetrated by CATV and is threatened with total penetration. The market has already suffered shrinkage and the adverse effects of this parasitic competition are now apparent.

It might be noted that Corpus Christi and the coastal bend area of Texas are served by 3 television stations and 17 radio stations. There

is no paucity of broadcast service in this area. It should be emphasized, however, that this market cannot yet fully support three television stations.

It is gratifying that the FCC has at long last assumed jurisdiction over CATV and proposes a modicum of regulation. Although it is disappointing and woefully inadequate in many respects, it is a worthwhile beginning.

The Commission clearly needs firm guidance and specific direction from the Congress.

This witness has read the dissenting comments of Commissioner Kenneth Cox to the Commission's second order with admiration and approval. It is most regrettable that the majority of the Commission did not adopt the recommendations of Commissioner Cox.

The explosive growth of community antenna television threatens to subvert the entire system of free broadcasting. Here is a situation that cries out for regulation. The broadcasting industry urgently needs Congress as an umpire and protector.

In effect, the FCC has met the CATV crisis by providing full protection to the large markets—which least need protection—and has handed a crying towel to the small-market stations which are suffering the most from CATV competition.

It would appear that the FCC has adopted an easy and cynical compromise. The big markets are regarded as important and easy to protect. The small markets are not regarded as important and are much more difficult to protect.

The obvious effect of such an arbitrary and discriminatory rule is to halt invasion of the big markets by CATV, but to encourage penetration of the small markets. The guidance of Congress is needed to correct the inequities in the Commission's order.

The FCC has failed to take into account the disastrous effect of CATV competition on radio broadcasting. It is common practice for CATV systems to pick up distant radio signals for rebroadcasting over local cables. Background music services are also provided. Time, weather, and news are sometimes transmitted.

This is directly competitive to local radio stations, of which there are many. Any additional fragmentation of audience is certain to be harmful in any radio market.

The Commission has shown much concern and demonstrated a great zeal in the propagation of FM radio broadcasting. CATV systems commonly rebroadcast distant FM stations.

The struggle for survival of FM stations is well known. The smaller the market, the greater the difficulty for the FM station.

Inasmuch as the Commission has failed to provide any protection for radio stations, Congress must come to their aid. In particular, it is most vital that CATV systems be prohibited from originating news, time, and weather information.

You are not being asked to arbitrate and decide an issue between two self-supported and free-standing businesses that have a conflict of interest. The only question here is to what extent you will permit a greedy parasite to devour a vital public service which is free to all of your constituents.

The broadcasting industry has not asked you to stop or control new forms of free broadcasting. Radio broadcasters did not ask you to

curb or halt the growth of frequency modulated broadcasting, or TV broadcasting, or UHF development. The broadcaster has met these new forms of industry competition on equal footing.

Now the broadcaster, notwithstanding the increased and intensified competition within the industry itself, is called upon to support a dangerous and unregulated competitor.

Congress has fathered and fostered the free broadcasting system, which, in an amazingly short time, has come to serve the entire Nation in splendid fashion. This system serves all of your constituents—both rural and urban. It is not only for the affluent few.

It must be remembered that a CATV system does not provide the broadcaster with just one competitor; it usually provides some 9 to 11 competitors. The modern CATV system provides service on all 12 VHF channels.

Future CATV systems will be able to provide additional services on a large number of UHF channels. To have one additional competitor is a very serious problem to a small market broadcaster. To have competition on 11 or more channels could be ruinous.

It should be noted that the effect of CATV within the broadcasting industry is a one-way street. Only big-market television is salable by CATV. The small city stations cannot hope to have a signal repeated in the big markets by means of CATV. The first 100 markets are certainly not threatened by CATV penetration from smaller markets.

The basic problem is that the average person feels that he can only get big-time television from big-time markets. The resident of the big cities would scorn any television service from smaller markets, no matter how excellent and complete.

CATV enables the big broadcaster to compete with the little broadcaster in the smallest markets for the national advertising dollar. The big broadcaster gets bigger, while the small broadcaster gets smaller. Thus the effect within the broadcasting industry of CATV must be considered.

The impact of CATV is not limited to its adverse effect on broadcasters. It actually brings about market shrinkage. It repeats the signals on the big market stations and thereby extends their coverage and enlarges their market size. The small market thus penetrated becomes a smaller market. Markets are now defined by the area and size of their TV coverage.

The big market becomes bigger and more important in a marketing sense, and the CATV-penetrated market becomes smaller and less important as a marketplace. This is reflected not merely in advertising, but in jobbing, distribution, and retailing.

The radio and TV stations are not the only media to suffer from CATV competition. It has an adverse effect on the small city daily and the county weekly. The CATV system takes money out of the local retail market. The shrinkage of retail sales in a small city is immediately felt by all media—both print and broadcast.

CATV provides the means by which big-city retailers grow and prosper at the expense of the small city and town retailers. Big-city retailers, through CATV, can compete directly with in-city penetration of neighboring small cities. Good highways and fast automo-

biles make it possible for anyone to shop in the largest cities 100, 200, or even 300 miles distant.

Congress should examine the impact of CATV upon small market retailers. Small businesses should be protected from ruinous competition by big business.

The FCC has kept TV stations carefully within the boundaries of their natural contours. The big-market station has not been permitted to invade the territory of smaller markets by means of translators, but this same invasion and pentration is taking place by means of CATV.

The Commission has seen the wisdom of prohibiting one station from invading the coverage area of another station by means of translators. Why has it been so reluctant to prohibit this invasion and penetration by cable?

The Commission has stood by and permitted CATV to accomplish what it prohibited broadcasters from doing; and now the Commission proposes to put its protective arms around the first 100 markets, almost all of which have become bigger and more prosperous at the expense of their smaller neighbors, thanks to CATV.

Congress has wisely provided for absolute fairness in political broadcasts. Section 315 of the Communications Act prohibits censorship of a candidate's speech, and provides for equal opportunities in broadcasting for all candidates and political parties. Moreover, the specific obligation is laid upon broadcasters "to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

The cable operator, on the other hand, is completely free from any of these restrictions and obligations. He can censor your speech at will, or suppress it altogether. He is completely free to repeat endlessly the speeches and advertisements of your opponents. He can "black out" candidates and parties by whim and caprice.

He is under no obligation to form any fair and balanced presentation as between parties and candidates on the multiple channels in which he can rebroadcast or originate political material. The selected stations being rebroadcast might provide for an unfair concentration upon one political viewpoint.

Cable systems are being put together in large groupings and chains. This monopolistic grouping could have serious political consequences unless the provisions of section 315 are made applicable to CATV systems.

The FCC, backed by Congress, gives a searching scrutiny of the legal and character qualifications of broadcasters. An alien cannot own a broadcasting station but he can own as many CATV systems as he can afford to buy. Congress will not permit a broadcasting station to be sold or transferred without the approval of the FCC. There are no restrictions whatever upon the transfer of cable systems. In fact, there is a very lively traffic in cable franchises. The FCC weighs the character qualifications of broadcast applicants and does not hesitate to find against those who have blemishes of character.

No character qualifications are required for ownership of a cable system. An enemy agent, a felon, a rabid racist—or even a horse-thief, can own a cable system.

The FCC, with the approval of Congress, has punished most severely concealed ownership and control of broadcast stations.

Without regulation, ownership and control of cable systems may be concealed and manipulated to the detriment of the public interest.

The FCC has drastically limited the number of broadcast stations which any one individual or group may own, and no one may own more than one facility in any given market. No limits are placed upon the number of cable systems which may be owned by the same group. Large groups or chains of cable systems are now forming. These constitute a dangerous concentration of natural monopolies.

The Commission has imposed a vertical duopoly rule, but has permitted horizontal duopoly through CATV.

If ownership qualifications and limitations are sound policy for on-the-air broadcasters, why not for cable broadcasters?

Wisely and properly, the FCC has prohibited the broadcasting of information concerning lotteries or programs which involve the elements of a lottery. A broadcaster will be punished severely if he permits his station to be used to aid and foster horserace gambling.

This is not only morally right, but it prevents one broadcaster from using unfair and questionable methods to attract audiences. Cable operators are under no such restraints. They can broadcast lottery information, schemes of chance, and operate as a touting service for racetrack gambling. Moreover, the antenna systems can conduct audience-building contests of a type proscribed to broadcasters.

Broadcasters may not broadcast obscene, profane, or salacious material. Broadcasters are subject to fine, imprisonment, and license revocation. CATV is unrestrained. Cable operators are free to originate any kind of material they choose. It is unlikely that most CATV operators would be guilty of broadcasting indecent language or obscene material, but unless put under some form of restraint, it is possible that a few of them would be tempted to originate "adult only" type of movies, and "blue" nightclub acts.

The unrestrained growth of CATV is being permitted to violate the spirit, if not the actual letter, of section 307(b) of the Communications Act, which directed that the FCC should "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

Pursuant to this provision of the law, the FCC has established tables of allocation, but CATV systems are destroying the balance and equities which were built into these tables.

A completely lopsided and inequitable system is resulting. Congress did not intend to set up and support a system of big-city broadcasting only, but CATV is now bringing this about. Congress wisely decreed that all sections of the Nation should fare equitably and evenly in the distribution of broadcast facilities. If this wise policy is to be maintained, Congress now must act to prevent the tables of allocation from becoming a complete shambles.

As it is now growing, CATV is going to enlarge greatly big-city broadcasting and slowly kill off small-city and rural broadcasting. It will provide service for the affluent few and wither the free service available to the poor and to rural residents. Eventually the entire free system would be supplanted by a pay system.

By its enactment of section 325 of the Communications Act, Congress has recognized that the broadcaster has a property right in that

which he broadcasts. Violation of section 325, or any other section of the Communications Act, is punishable by a maximum fine of $10,000 or imprisonment for a term of 1 year, or both.

Congress has made piracy of broadcast material by another broadcasting station a crime. The strange irony of the present situation is that a broadcaster may not steal from another broadcaster, but a nonbroadcaster may steal from a broadcaster then with impunity.

What is a crime for a broadcasting station should not be freebooty to others. Congress and the FCC should not grant "letters of marque" to cable operators.

The one fundamental issue involved here is a moral one. Let me suggest that the first duty of Congress in this situation is to legislate morality.

Congress should continue its historic role of providing a sound market and fair competition in interstate commerce. It is imperative that Congress prohibit trafficking in pirated goods. Section 325 of the Communications Act should be extended to cover cable operators. Congress should make it unlawful for anyone to transmit by cable any broadcast material which the operator does not have clear title or performance rights therein.

Establish the same morality for the cable operator which Congress has established for the broadcaster. If it is wrong for the broadcaster to pirate the goods of another, it should be unlawful for the nonbroadcaster to pirate such goods.

The extension of section 325 would not cure all of the problems, but it would go a long way toward amelioration of the present chaotic situation.

It is noteworthy that CBS is writing into new affiliation agreements a proviso that no affiliate may give permission for network material to be broadcast by CATV without the express permission of the network. This and other performance controls within the industry will do much to curb the unfair and ruinous competition of CATV systems.

Because of the intangible factors involved, the crass nature of CATV conversion of the broadcast product is not always realized. For a parallel, imagine, if you will, two adjacent drive-in movie theaters. The operator of what we will call the Paramount Drive-In runs an expensive movie.

The operator of the neighboring Buccaneer Drive-In mounts a mirror high enough to view a picture from the Paramount screen, amplifies and reflects this feature to one of the screens of his theater.

Is this piracy—or is it just giving the public a greater freedom of choice? Should such an act be outlawed, or should it be excused on the ground that the Buccaneer is serving the public interest?

Let us turn the CATV situation around:

Would you say that a broadcaster has the right to tap the cable of a CATV system and rebroadcast therefrom? Would you say that it is right and legal for anyone to tap the cable of a CATV and feed another CATV system therefrom? Would it be right and legal for someone to pick up the signals from a CATV microwave and retransmit them for a profit? In other words, is it all right to hijack the pirate?

Obviously, such acts would be wrong and should be outlawed. It cannot be ethically right for anyone to take the property of another

and convert it to his own use for profit. Legitimate CATV operators should be protected as well as broadcasters. No one should be permitted to move goods in interstate commerce without a clear title thereto.

For a broadcaster to be deprived of exclusivity is for him to be robbed of a most valuable possession. Aside from questions of copyright ownership, the CATV system deprives the local broadcaster of exclusivity in service and programs. The entire system of free broadcasting is based upon exclusivity in allocations, program rights, and services.

Yet the FCC proposes to destroy exclusivity in brodacast by the 1-day rule. Certainly the 15-day rule was far from adequate to protect all of the residual values in broadcasting. The 1-day rule is not even adequate to protect exclusivity in news. An entertainment program remains timely much longer than 15 days. A fiction magazine retains full currency until the next issue is published.

Heretofore, the Commission has shown concern and even alarm over what it regards as too much power in the hands of the networks. It has been anxious for affiliates to have freedom of control from the networks. Now it has handled the networks a club with which they can enforce nearly 100 percent clearance of programs in live time.

Congress has wisely recognized the value of created works of science, art, and literature. The products of inventive and creative minds are protected for 17 years by patent and 56 years by copyright. A created product or service does not have a 1-day value.

In dramatic and musical productions first performance rights are especially valuable. Congress and the FCC should protect the broadcaster in his exclusive enjoyment of first performance rights.

One of the clever sophistries of the cable operators is that they provide the public with freedom of choice. Freedom of choice at whose expense? Freedom of choice to how many? Is it available to the poor man, the farmer, and the rancher? Is it made available in the thousands of small hamlets and tiny crossroad communities which dot the country?

Let us look into the source of this so-called freedom of choice. Who makes this service possible and available in the first place? Is it the cable operator who buys in honest and above-board fashion the product he sells?

Who makes available the tremendously expensive network programs? Who supplies the payrolls for the army of men and women who man the great system of American broadcasting?

Who pays the taxes on these great investments? Is it the heroic cable operator? Is it the cable operator who is so full of unction about how he is serving the public interest?

You know the answer. Broadcasting provides this freedom of choice—freely. It provides a free service which a few clever promoters convert and sell to an affluent few, to the ultimate disadvantage of the many.

If these eager promoters are so anxious to serve the public interest and nobly provide the public with a freedom of choice, why haven't they availed themselves of the opportunity to serve the public with UHF stations and translators? There are UHF frequencies going begging in nearly all of the congressional districts of the Nation.

Congress and the FCC have made it possible for these people to enter the broadcasting business through the front door. Why aren't they trying to serve all of your constituents? Both rural as well as urban—both the poor as well as the affluent?

Regulation of CATV is a matter of simple justice. Broadcasting is regulated down to the last electron. If broadcasting is to be regulated, it seems elementary that any extension thereof, by whatever means, should be regulated in the same manner and degree. The broadcaster should not be forced to compete with an unregulated, or half regulated competitor. The ideal of equal justice under the law should require equal regulation.

CATV systems should be licensed just as broadcast stations are. Why require a 3-year license for a broadcast station and permit a CATV system to operate without a license? Why license the source of broadcasting and not license the extension thereof?

If the operation of a broadcast station requires periodic review, why should not a cable operation be subject to the same review?

Through the licensing process, the FCC holds power of life and death over the licensee. Thus the accountability of the broadcaster is maintained and operation in the public interest is assured. Justice demands that the cable operator be subject to the same licensing power—to the same requirements and strictures as is the broadcaster.

Commissioner Kenneth Cox has wisely suggested that a moratorium be imposed upon CATV for a 5-year period, providing enough time for the problems involved to be solved. The FCC has not hesitated to impose moratoriums or freezes on the broadcasting industry. These seem to have served a useful purpose.

Congress should authorize and specifically direct a moratorium period. This would provide time for property rights to be adjudicated and new copyright legislation to be enacted. Time enough to assess the full impact of CATV upon broadcasting. Time enough to let municipalities establish some uniformity in local franchises. Time enough to let UHF and educational stations get established.

Let me recommend appropriate amendments to H.R. 13286 by Chairman Staggers, which would accomplish the following:

1. Prohibit any originations whatever by cable antenna systems.
2. Extend the provisions of section 325 to cover community antenna systems and direct the Commission to enforce these provisions with appropriate measures.
3. Provide that no community antenna shall transmit over its system any program or other material to which it does not have clear title or performance rights therein.
4. Provide for the licensing of community antenna systems and regulate them to the same extent and degree that broadcasting is regulated.
5. Require the FCC to restore the 15-day delay rule.
6. Direct the Commission to apply the same protections to all markets alike.
7. Direct the Commission to place a moratorium, or freeze, on any new community antenna systems for a period of 5 years.

Mr. Chairman and gentlemen of the committe, your courtesy in allowing me to appear and express my views is very much appreciated.

Thank you.

The CHAIRMAN. Thank you, Mr. Kennedy.

I believe you have left no doubt where you stand on this issue. I believe we got the message all right. Mr. Rogers, a fellow Texan, might want to ask you some questions.

Mr. ROGERS of Texas. Mr. Chairman, I would be most happy to ask Mr. Kennedy some questions, as an old friend of mine and as a wonderful fellow.

I would want to defer questions in an effort to accommodate Mr. Kornegay, who I understand has a man he wants to introduce, who is being called away. If Mr. Kennedy will be available later and I am sure he will be, I will have one or two questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. No questions, sir.

Mr. YOUNGER. I have just one question of importance. In the first place I judge from your paper that CATV is immoral?

Mr. KENNEDY. Its use can be immoral. At least, sir, if it is not immoral, it is unmoral.

Mr. YOUNGER. Do you own the air in which you broadcast?

Mr. KENNEDY. No, sir, the public owns it.

Mr. YOUNGER. Then there is a vast difference in tapping the air which the public owns and tapping a private wire which someone owns, isn't that true?

Mr. KENNEDY. Mechanically, yes, sir. But in terms of ethics, no, sir, because a property right may be destroyed. Exclusivity may be denied, ruined, appropriated, or converted, immorally or unmorally, as one's viewpoint may be.

Mr. YOUNGER. To come back, you say CATV is immoral.

Mr. KENNEDY. In my view, its present use of appropriating and converting goods and properties of others for private profit is immoral.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I won't take but just a moment. If you were to extend section 325, from whom would the cable operator get permission to rebroadcast the signal?

Mr. KENNEDY. Section 325 requires that one broadcasting station have the permission of another broadcasting station to rebroadcast the signal of the latter. Certainly this should be required of the cable operator; to have the permission of the property owner.

You cannot trespass upon somebody else's property, limit or destroy the usefulness of his property without his permission, without thereby depriving him of something. Therefore, any way you look at it, this is a form of piracy.

Mr. PICKLE. Will he get permission from you, the broadcaster, in Corpus Christi, or will he get permission from the broadcaster's network, or from whom will he get permission for rebroadcasting in order that that service be made available?

Mr. KENNEDY. Under 325 he would have to get it from the repeated broadcast stations.

Mr. PICKLE. Your station?

Mr. KENNEDY. Yes, sir.

Mr. PICKLE. Would you give it?

Mr. KENNEDY. I might. Or I might not. In my case, I could not give it because CBS has already specified that its affiliates cannot give permission.

Mr. PICKLE. Generally speaking, there would not be a CATV operation in your city then?

Mr. KENNEDY. Not necessarily. It would depend a great deal on what is involved. This involves many complicated questions of rights, and so forth. But certainly, the broadcaster could be protected in first performance rights, which is rather vital. But basically, aside from 325, if Congress decides that certain properties may not be transported in interstate commerce without a clear title thereto, this would go a long way to solving the problem, the ethics as well as the competitive problem.

Congress has already decided in many cases that certain types of merchandise to which people do not have clear title, cannot be transported in interstate commerce. There is adequate precedent for it.

Mr. PICKLE. Mr. Chairman, I will defer any other questions until such time as it is resumed in order that Mr. Kornegay may introduce his colleague.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I do have some questions but I want to defer to Mr. Kornegay to accommodate him if the witness will return.

Mr. KENNEDY. I will be happy to be available at any time at the convenience of the committee.

The CHAIRMAN. If the witness will step down for a few minutes.

Mr. KENNEDY. Thank you, sir.

The CHAIRMAN. Our next witness will be introduced by Mr. Kornegay, of North Carolina. I might say to Mr. Essex that Mr. Kornegay is a very valuable member of this committee. He has been very diligent in his duties and been very much interested in the subject. He has specifically requested that he have the privilege of introducing you.

At this time I will call on Mr. Kornegay to introduce the next witness.

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

First let me thank the members of the committee for deferring to me. I regret very much that I must leave at 11 o'clock. It is a pleasure for me, Mr. Chairman and members of the committee, to introduce to the committee not only a fine North Carolinian but a very good friend.

He is from a neighboring city. He is Mr. Harold Essex, president of the Triangle Broadcasting Corp., which is licensed for WJS–TV of Winston-Salem, N. C.

Mr. Essex has long been associated with and identified with the broadcasting industry of North Carolina. He is a leader in the North Carolina Broadcasting Association as well as in the National Association of Broadcasters.

He is not only a good broadcaster but a very fine citizen. The station's coverage is rated as the 49th top U.S. market and he serves a great market and has a fine station. We welcome you to the committee, Mr. Essex.

STATEMENT OF HAROLD ESSEX, PRESIDENT, WJS–TV, WINSTON-SALEM, N.C.

Mr. ESSEX. Thank you, Mr. Kornegay.

The CHAIRMAN. With that fine recommendation we expect a great deal from you.

Mr. ESSEX. Mr. Chairman, I have my Washington counsel, Mr. Schulkind, with me, hopefully to keep me out of trouble.

The CHAIRMAN. We will all try to do that.

Mr. ESSEX. A couple of weeks ago I said to Mr. Kornegay jokingly that I thought I might move across the county line so that I could vote for him. I happen to live in an adjacent county. After that generous introduction I think I had better consider that seriously rather than jokingly.

I appreciate it very much.

The CHAIRMAN. As I told the other witnesses you may present your statement for the record and summarize it if you wish or since you have a very short statement you may read it.

Mr. ESSEX. I appreciate your problem in time and I have been sitting here 3 days and I know what you are going through. I have prepared this purposely as a very short summary.

The CHAIRMAN. Go ahead.

Mr. ESSEX. My name is Harold Essex. I am president of Triangle Broadcasting Corp., the licensee of Television Station WSJS–TV in Winston-Salem, N.C., and I am the station's general manager.

As a television broadcaster in Winston-Salem, I represent one of the middle television markets. Winston-Salem is a part of the Greensboro-Winston-Salem-High Point television market, ranked as 49th by the American Research Bureau.

WSJS–TV provides the market with the programs of the NBC–TV network; WFMY–TV, in Greensboro, provides CBS programs; and WGHP–TV, in High Point, provides ABC programs. In short, the market gets the programs of all three television networks.

Let me note at the outset that I have heard the testimony presented to the committee by Mr. Lester Lindow, of the Association of Maximum Service Telecasters, and by Mr. Vincent Wasilewski, of the National Association of Broadcasters. WSJS television fully supports their testimony. I do not want to take up the committee's time by merely repeating the points made in their testimony, but I do want to call to the attention of the committee one or two aspects of CATV operations which are of particular significance.

We agree that the recent CATV actions taken by the FCC is a step—and an important one—in the right direction. But unfortunately, as the AMST and NAB have shown, the FCC's new rules fall far short of the essential protection needed to preserve the operation of local television stations.

While the Commission's new rules purport to give some protection to local stations against duplication of their programs by CATV systems, the protection is wholly inadequate. Heretofore, the FCC's rules—which applied only to CATV systems employing microwave relays—provided 15-day before-and-after nonduplication protection. But the Commission has now abandoned this provision for simply

same-day protection. And even here, there are several important exceptions under which no protection whatever is afforded to the local station.

It is clear from the FCC's report adopting the new rules that, in abandoning the 15-day before-and-after protection, the Commission was motivated primarily by its consideration of network programs. In taking this tack, however, the Commission overlooked the important and serious deleterious effects on local television stations which can flow from the duplication of non-network programs as well as network programs. A significant portion of the programing carried on local network affiliates such as WSJS television consists of non-network syndicated programs and feature films. In order to have the exclusive right to carry these programs in its area, the station must pay a susbtantial sum of money. Nevertheless, under the FCC's rules, these very same syndicated programs and feature films can be brought in by a CATV system on the day before or the day after they appear on the local station. Thus, the hard-won exclusivity for which the local station has contracted and has paid a handsome sum, is lost, and as a result audience and revenue are lost. We feel that this is most unfair competition.

Consider particularly the effect of the Commission's same day nonduplication rule on a UHF station that has to depend primarily on syndicated and feature film for the backbone of its entertainment fare. There are at least two UHF channels allocated in our market. Since the three VHF stations already operating are each affiliated with one of the three national networks, any UHF station in the market would probably operate as a non-network independent. If CATV is required to afford this UHF station only same-day protection on syndicated and feature film programing, the UHF station would be licked before it started—and consequently, there is not much chance one will start in the market when the would-be UHF operator realizes this fact.

The 15-day before-and-after provision, in our judgment, was a bare minimum of the necessary protection. Indeed, we agree with Commissioner Cox that, in many instances, even 15 days is not enough. The present provision—merely same-day protection—can only result in seriously impairing the present method of program distribution. The broadcaster must, at the very least, be afforded protection of his right to be the first to present the programs he purchased for his market.

As I noted, station WSJS television is in one of the middle-range television markets, its market being ranked 49th by ARB. Thus, under the FCC's rules, before a CATV system operating within WSJS television's grade A contour could "leap frog" into the market the signals of distant stations, an evidentiary hearing would be required. But the provision against "leap frogging" in the top 100 markets applies only to CATV systems operating with in the grade A contour. CATV systems operating beyond the grade A contour, but still well within a station's service area, are free to bring in the signals of distant stations with impunity.

The fragmentation of a local station's audience that would result from such importation of distant stations will seriously impair the local station's ability to provide its audience with good programing.

For such fragmentation can only result in drastic reduction in revenues, and this means less finances to support the purchase and/or production of programs to compete for audience against the programs imported by CATV.

At our own station we take particular pride in the job we are able to do in the public interest. Our public service programing is something on which we spend a lot of time and money. We take that provision of the Communications Act that says stations should be operated "in the public interest" as meaning just that. Each year we report on our activity "in the public interest" in detail. The members of this committee are on our list to receive that report, which, I hope, some of you may remember. The report of our 1965 public service activity is on the press this week. Your copy will be along shortly. We want very much to be able to continue this service to the community we serve. A serious loss in our audience, which CATV unlimited can bring about, can also bring about a likewise serious loss in revenue—thus less available money to spend on continuing this nonrevenue producing, but all-important television service in the public interest. And the viewing public ends up as the loser.

We urge the Committee, in considering the proposed legislation before it, to consider carefully the serious effects that CATV unlimited operation can have on local television stations.

Thank you very much.

Mr. ROGERS of Texas (presiding). Thank you, Mr. Essex, just one question. Who do you think ought to determinne what is in the public interest? The people who live in the community or the bureau in Washington?

Mr. ESSEX. I am a great believer in home rule, Mr. Rogers.

Mr. ROGERS of Texas. Thank you.

Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I am interested, Mr. Essex, in a little more detail on your view regarding the nonduplication. Do you think that a station should be protected against prior showing of any film feature package, whether or not it has contracted to buy or exhibit it? Would you, for example, feel you should be protected against showing of any movie on CATV, whether or not you had booked this movie itself, or should that determination, in the event of duplication, be based on features you already would have booked for showing?

Mr. ESSEX. Only on the ones we had already booked. We could not possibly ask for protection that broad, on those we had not bought but hoped to.

Mr. VAN DEERLIN. Your bookings are normally about 30 days in advance?

Mr. ESSEX. Well, booking would probably be about 30 days in advance, Mr. Van Deerlin. But purchases are made most of the time 1, 2, 3, and up to 5 years.

These big packages that cost quite a lot of money have to be used over a long period in order to get your money back.

Mr. VAN DEERLIN. Are those options or firm contracts?

Mr. ESSEX. Firm contracts.

Mr. VAN DEERLIN. So you could have a 26-week series of something coming up maybe 2 years in advance?

Mr. ESSEX. We could, yes.

Mr. VAN DEERLIN. On that booking that far in advance, would you stress nonduplication?

Mr. ESSEX. For that long a period?

Mr. VAN DEERLIN. Yes.

Mr. ESSEX. No. As I said in my statement, we felt that the 15 days was adequate. We would like to have more in some instances but the 15 days before and after I think was a fairly good time.

Mr. VAN DEERLIN. I thought you might want more than 15 days in advance, because you emphasized the right to show the features first in your own community when you are paying out the money for them.

Mr. ESSEX. If I left that impression it is erroneous because I don't think any reasonable operator could ask for that type of protection, that if you bought it this year and ran it the next year that you could ask for protection that long.

Mr. VAN DEERLIN. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. With reference to the 15 days' protection, if you don't approve of that, what amount or time would you think would be fair protection?

Mr. ESSEX. You mean something less than 15.

Mr. PICKLE. Yes. The Commission reduced it to 1 day. What do you think should be the solution?

Mr. ESSEX. The Commission reduced it to same day. Of course I would like the 15 but I would take it——

Mr. PICKLE. You mean if you had your "druthers," coming from North Carolina, if you had your "druthers"?

Mr. ESSEX. If I had my "druthers," yes. If I had my "druthers," at least 7. But we prefer 15, believe me; 7 before and after.

Mr. PICKLE. Thank you. That is all.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. No questions.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Did I understand you to say that you believe the local people should decide rather than the FCC what type of service they want in their area?

Mr. ESSEX. What type of programing. I can't say to you that the local people should decide rather than the FCC on the entire line of broadcasting because somewhere there has to be an overall traffic cop.

Mr. ADAMS. In other words, if you had your choice between the local market or local people prefering to have CATV to bring in outside independents to those who are willing to buy the service, as opposed to continuing to watch the local free airwave UHF stations, then you think the local people should decide which of the two services they want, sir; is that right?

Mr. ESSEX. I think they should.

Mr. ADAMS. In other words, you do not believe that the FCC should prevent the bringing in of outside independent stations in the local market area?

Mr. ESSEX. I think that the provisions that the FCC has set forth are reasonable and equitable for long-distance stations. If the service is in the market there is no use bringing in additional service.

Mr. ADAMS. Maybe I have not phrased it just right. You would be perfectly willing to compete in the local market and let the local people decide whether they would rather have, say, three New York independent UHF stations brought in by CATV and have them only on cable or have another UHF station in your area?

Mr. ESSEX. I think that what would have to be taken into consideration there, sir, would be the possible adverse effects on the local station. Our interest is in preserving local television.

Mr. ADAMS. There is no question about the adverse effect on the local UHF stations that is going to be competing then with outside stations. I want to be sure that it is your position that that is fair competition, the market ought to determine that, is that right?

Mr. ESSEX. I think that was my statement as I said it a moment ago and as I approved the statements of Mr. Lindow and Mr. Wasilewski.

Mr. ADAMS. That is where I am confused. Their positions are a little different from yours. They are saying you should protect the local UHF stations, the FCC should protect the local UHF stations and allow it to flourish and keep the other independents out for a period of time, 15 days, or some other period of time, as Mr. Pickle says it may be a day, or 15 days or some other period of time.

Whereas there is another position taken by CATV that they should be able to bring in whatever group of stations they want other than duplicating a local station. This would then be legitimate competition between the local UHF station and the CATV network.

Mr. ESSEX. Of course, you are making a differentiation between UHF and VHF.

Mr. ADAMS. I am sorry, the "nonaffiliated station."

Mr. ESSEX. It is my position that the local nonaffiliated station should be protected so that then it can survive in the local community. Whereas if you bring in these far-distant stations which are much better able to program far more attractively, that it probably would be a serious thing for the local independent station and he would not survive.

Mr. ADAMS. Then you do want the FCC to come in and protect that local station?

Mr. ESSEX. Yes, sir.

Mr. ADAMS. Thank you. I have no further questions.

Mr. ROGERS of Texas (presiding). Mr. Springer.

Mr. SPRINGER. I have one question, Mr. Essex. The FCC has already put into effect its rule. Could you live with those rules?

Mr. ESSEX. Yes, sir.

Mr. ROGERS of Texas. Mr. Essex, I have one question.

You say you are a great believer in home rule. If the people in your area said, "We want reception of television stations long distances away," do you think that that decision ought to prevail or do you think that the invoking of rules by the FCC to protect a local broadcasting station ought to take precedence.

Mr. ESSEX. Mr. Rogers, I think that some rule by the FCC at the direction of the Congress should be put into effect that will protect the local service television stations. If it is necessary to prohibit the

importation of long-distance signals to protect the local-interest stations, then I think we should have that protection.

Mr. ROGERS of Texas. Why do you think they ought to be protected? Of course, there is a controversy whether they need protection or not. But why do you think they should be protected if the people then in that area say, "We don't want to sacrifice other information that we can get in order to protect one station"?

How you can square that with public interest? I don't get this.

Mr. ESSEX. First of all, I don't agree with the supposition that the people say this, Mr. Rogers.

Mr. ROGERS of Texas. I am not saying that they would say it. Don't you think as a home-rule proposition under democratic processes that they ought to be allowed to have a say in it?

Mr. ESSEX. I think they have a right to be heard; yes, sir.

Mr. ROGERS of Texas. Yes, sir. Well, you go ahead.

Mr. ESSEX. I still go back to my original premise that for the good of the local community, for the good of the home community, it is local television service that should be preserved under some means.

Mr. ROGERS of Texas. That is your conclusion. Suppose the people in the area disagree with you and say that, "We think for the good of this community we ought to get as much information as we can, whether it comes in by TV station, by coaxial cable, by microwave or any other way, we want it"?

Don't you think they are the ones who ought to make the decision?

Mr. ESSEX. Would that not be a minority of the community? Throughout this hearing I think we have talked here, I have heard a lot of——

Mr. ROGERS of Texas. I am not talking about a minority in the community. I am talking about the majority in the community.

Mr. ESSEX. I am thinking about the people who would not pay, who could not afford to get on the cable. If the cable then came in and knocked out the local service station——

Mr. ROGERS of Texas. Now you are getting back over into economics and not in public interest. Let us stay with public interest just a minute because the argument about pay TV has a lot of holes in it, as I am sure you have heard. Let us go on public interest. Suppose the people in your community said, "We want this cable TV service and we are not interested in arguments, we want this because we want to get stations in certain places."

Do you think if this were done that the FCC ought to have the power to overrule that community and say you cannot have anything except the service of the television station that we grant the license to and we have the right to cancel the license of?

Mr. ESSEX. Mr. Rogers, the way you put it, yes——

Mr. ROGERS of Texas. Bad, isn't it?

Mr. ESSEX. It is a democratic expression by the people in the community, the majority rule which we all believe in. They should have what they say they want. I have to say that to you.

Mr. ROGERS of Texas. I know you are from North Carolina. I know you believe that way. That is the thing that has disturbed me in this whole picture. I am afraid sometimes we get into a fight among the industrial giants and the people are forgotten. I think they are, on this, the ones who ought to be heard from. The chances are that the

people in your area may be so sold on the line service you are giving them that they say we don't need any further service.

My point is that I don't think the Congress or anybody else in a democratic country ought to deny people information if they want it and are willing to pay for it and are willing to get it any way they can.

That is just my basic feeling. I can't change it. If it is different from others, I am sorry.

Mr. VAN DEERLIN. Will the gentleman yield?

Mr. ROGERS of Texas. I will be happy to.

Mr. VAN DEERLIN. Do you think that the licensing of the TV station or radio station to be left to local determination?

Mr. ESSEX. TV and radio?

Mr. VAN DEERLIN. Do you think that the voting public ought to be charged with the responsibility for licensing stations?

Mr. ESSEX. Mr. Van Deerlin, I do not for the very simple reason it is practically an impossibility for them to do it. It has to be done in one place because of the traffic-cop angle.

Mr. VAN DEERLIN. Would you agree that the regulation of CATV is inextricably linked with the licensing of the TV channels in this country?

Mr. ESSEX. I think it is.

Mr. VAN DEERLIN. Thank you.

Mr. ROGERS of Texas. I might say this to you, my colleague is an able broadcaster and has been in the business. He knows there are two different problems involved in this picture.

Are there any further questions? Thank you very much, for your fine presentation.

Mr. ESSEX. Thank you, Mr. Chairman and gentlemen.

Mr. ROGERS of Texas. Now I have been instructed by the chairman to recognize next Mr. Richard Moore, president of Southwestern Cable Co. of Los Angeles. Mr. Kennedy, are you able to wait a bit?

Mr. KENNEDY. Yes, sir.

Mr. ROGERS of Texas. Mr. Moore, you are from Los Angeles, Calif. I recognize the member from California, Mr. Van Deerlin.

Mr. VAN DEERLIN. It is not only this witness' association of long standing with broadcasting which prompts me to greet him. It is because he is operator of a CATV in San Diego which qualifies him for this accolade.

Like another CATV executive who appeared 2 weeks ago from San Diego, Mr. Moore's operation is of the highest caliber. Any differences in philosophy regarding the two systems of broadcasting that have been apparent in this hearing have nothing whatever to do with the caliber and high ethics of the operators of CATV, of which Mr. Richard Moore is one.

I very cordially greet him

Mr. MOORE. Thank you, Mr. Van Deerlin.

Mr. ROGERS of Texas. We have another member from California, Mr. Younger.

Mr. YOUNGER. I want to pay my respects from a northern Californian to a southern Californian. We believe he does an excellent job and performs a very useful service in the television field.

Mr. MOORE. Thank you very much.

I certainly want to thank Mr. Van Deerlin for his fine remarks and it is a pleasure to pay my respects to Mr. Younger. People talk about moving. I am spending so much time in San Diego, I am about ready to move down there. I like it fine.

STATEMENT OF RICHARD A. MOORE, PRESIDENT, SOUTHWESTERN CABLE CO., SAN DIEGO, CALIF.

Mr. MOORE. Mr. Chairman and members of the committee, my name is Richard A. Moore. I live in Flintridge, Calif., and I appear before you as president of Southwestern Cable Co., which owns and operates a CATV system in the northern section of San Diego pursuant to a franchise from the city declaring such service to be in the public interest of the city and its inhabitants.

My experience in television in southern California covers 17 years, first as general manager of the western division of ABC, and 11 years as chief executive of KTTV in Los Angeles, a nonnetwork station, which was owned by the Times-Mirror Co., publisher of the Los Angeles Times, which I served as a member of the board of directors.

I am a past president of Television Broadcasters of Southern California, a founder and first cochairman of the Television Bureau of Advertising, and I have been an active member or officer of numerous industry organizations over the years.

Southwestern received its franchise October 30, 1964, and began service to its first subscriber December 22, 1965. After some 3 months of operation we have about 850 subscribers. San Diego has two VHF stations, one affiliated with CBS and one with NBC.

It also has an unaffiliated UHF station which began service about 5 months ago and there is a VHF licensed to Tijuana, Mexico, whose signal reaches most homes in San Diego and is affiliated with ABC.

Our system carries all four of these stations, plus four unaffiliated VHF's and one network VHF(ABC) from Los Angeles. We also carry the UHF educational station from Los Angeles. San Diego homes can received educational television only by means of CATV, and if San Diego ever has an educational station of its own, we will carry that.

We do not carry the Los Angeles CBS and NBC stations at all, and thus have never duplicated any of the programs of the two VHF stations in San Diego. Many homes in our area can receive some or all of the Los Angeles VHF stations directly over the air. On the other hand, many homes have reception trouble even with the San Diego stations.

I appear today not to discuss matters like nonduplication, station carriage or engineering standards. I believe that these matters can be worked out voluntarily. However, if regulations are needed, the Federal Communications Commission or the local municipality can provide them. Instead, I am here to discuss one aspect of the new FCC rules, which I consider to be of overriding importance.

I refer to the rule which provides that no one may introduce certain outside signals by CATV into any of 100 specified communities without FCC permission—even though citizens of those communities may

be hungry for such outside signals as a means of broadening their choice of information and entertainment—and even though a majority of those citizens may already enjoy such broadened choice over the air—if their houses happen to be favorably located.

Mr. Chairman, I respectfully and urgently suggest that this rule runs head on into the first amendment—and in this collision it is the rule which must fall. If Congress itself were to adopt such a rule, I believe Congress would do so only after the most searching scrutiny—and only on the most compelling evidence that an abridgement of the first amendment was justified by some higher purpose.

In such a case, the evidence would have to be real and present—not speculative or remote. Yet the record upon which this rule was adopted is admittedly bare of any hard evidence at all.

May I refer you to the concluding paragraph of the second report and order? There the Commission candidly states that CATV may well bring additional diverse service to millions of people without detriment to the broadcast service of the entire Nation.

Alternatively, it also states that there is the possibility—that is their word, possibility—that CATV might prove destructive of the larger goals of the broadcasting service. The Commission then said, "It is time to get the facts."

Mr. Chairman, the Commission's action was not taken on the basis of facts. It wants to get the facts.

It is customary in many situations for the Commission to obtain facts in evidentiary hearings before reaching a decision. But here the decision has been reached prior to the hearing and prior to the development of facts. Meanwhile, the flow of information to a hundred markets is cut off at the border by a 5 to 2 vote of an administrative body, without a hearing, whose jurisdiction over the very subject matter has received responsible challenge.

Now there is a chicken and an egg situation. The Commission says it wants to find out the effect of the CATV in the top 100 markets on broadcast. How does it find that out if it does not permit CATV to enter the markets?

How can it hold an evidentiary hearing when there is no evidence? They cut it off before the facts exist. I do not think the rule was thought through in first amendment terms. Nor was it thought of as the absolute barrier to the free flow of information which it is.

True, the Commission has the power to waive the rule and the power to take down the barrier around any city after an evidentiary hearing. But it is the power to erect that barrier, and to maintain it permanently, or as long as the Commission pleases, which infects the rule with the germ prior of censorship which is repugnant to our Constitution.

In my State of California, our highest court has just given careful consideration to a similar rule. I am sure there are many members of the committee who will agree that the Supreme Court of California is one of the most respected courts in the land. I suggest that its opinion is entitled to careful consideraiton by this committee.

Incidentally it is not in the advance sheets yet. I have two or three copies which I will be glad to leave with the committee. That court, sir, has just struck down in a 6–1 decision a similar barrier and struck

it down in no uncertain terms. The measure which the California court was considering was not an act of an administrative body, it was not even a statute adopted by the legislature. It was an act adopted by the people themselves in a referendum, an act which, therefore, carried the highest presumption—the highest presumption of validity, an expression by the people.

The measure declared it to be unlawful for anyone to deliver television programs into the home for a fee.

May I indicate the similarity of the California situation by quoting the court's description of the act:

> Thus the act is entirely clear that no one may speak or disseminate ideas to the home through the medium of pay television and likewise that no one in the home may listen to a pay television transmission or receive transmission ideas or images conveying such ideas over the outlawed medium.

Mr. Chairman, if we simply substitute the word CATV we can see how precisely parallel is the FCC rule. If it be argued that the FCC prohibition may be only temporary, I would emphasize two points.

First, an infringement of the first amendment does not become a noninfringement because we hope it may be withdrawn at some future time. Second, how temporary is a situation which may require 100 evidentiary hearings?

Parenthetically let me say that the barrier in California was temporary. It was struck down a year and a half later, but the patient had died. The company went bankrupt although the court said it had the right to conduct that business.

In the California case it was argued strenuously that the competitive effect of subscription television could fatally or seriously impair free television. The court rejected these arguments as speculative and illusory.

Citing case after case from the Supreme Court of the United States, the California court held that the rights guaranteed by the first amendment are preferred rights, paramount rights, and any attempt to restrict those liberties must be justified by clear public interest threatened not doubtfully or remotely, but by clear and present danger. Only the gravest abuses endangering paramount interests, give occasion for permissible limitation.

I am not talking about the first amendment in abstract. Let me be more specific. San Diego is an industrial and Navy town among other things. It is an agricultural county. Many citizens go to work early in the morning and retire early at night.

Many like to watch the news before bedtime. But for reasons of their own, none of the San Diego VHF stations present their bedtime news until 11 p.m. However, two Los Angeles stations have major news programs—national, international, State, and local at 10 p.m. Many San Diegans would like to watch these shows—as opposed to no bedtime news programs at all. But the FCC has assumed the power to say to those citizens that they may not watch those programs by CATV—and no one may bring them those programs by CATV.

Now consider this further thought. Each of those news programs, one of which features Mr. Alex Drier and one Mr. George Putnam, presents a popular and respected newsman commentator and presents editorial comment as well. It could be said that each of these men has a strong point of view, generally the opposite of each other.

But many San Diego citizens who may want to hear such point of view will be barred from doing so—to all intents and purposes the signals will be jammed at the border.

Just last night, there was a specific example of the first amendment situation. This week Time magazine has a cover "Is God Dead?" If you read it, it is a most provocative and serious article. I believe that is the first time I can remember that Time has had anything but a picture of a person on the cover. That magazine can cross the border to San Diego without anybody to stop it. It goes into thousands and thousands of homes. Last night and the night before Mr. George Putnam on his news program presented a searching discussion of the question, "Is God Dead?" Last night he had one of the most distinguished clergymen in California, Rabbi Edgar Magnin, in a most stimulating and thorough and heartening discussion of that subject.

So the FCC says San Diego can't hear Rabbi Magnin by CATV without their permission. I am not talking about an abstract situation.

To the extent that the FCC has limited power over transmission of programs by broadcast stations, that power stems from the scarcity of frequencies in the spectrum and the Commission's obligation to allocate those frequencies. Short of that limited power for that limited purpose, I doubt that the flow of information by any means—cable, telegraph, facsimile, book, magazine, or public address system can properly be stopped at all.

I would remind you that General Sarnoff has told us that between satellites and microwave and high-capacity cables, to use his words, some day this medium of information will be a single medium where the book and the magazine will come into the living room just like the radio and the television programs.

If we take steps to cut this off without any facts at all, or by administrative action, I think we are getting into an area that is so dangerous and so profoundly important that it requires the fullest consideration by this committee and the Congress, itself.

But if it can be stopped, that serious step should be taken only by Congress itself, and then after the most searching examination. As things now stand, no one may introduce information by CATV into Philadelphia, Boston or Cleveland—or 97 other major communities where 90 percent of our population resides.

I respectfully recommend that the Congress adopt a resolution suspending the second report and order, or at least this section, at the earliest possible moment so that Congress itself can make the thoughtful decision which the public interest requires.

Pending such action, I would further recommend that this committee send a communication to the Commission requesting immediate interim suspension, until Congress itself can examine this profoundly serious question as the public interest warrants.

Thank you very much.

The CHAIRMAN. I am sorry that I did not get to hear all your testimony, Mr. Moore, but I will read it, Mr. Rogers of Texas.

Mr. ROGERS of Texas. I don't believe I have any questions at this time, Mr. Chairman.

Thank you very much.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Are you an attorney?

Mr. MOORE. I practiced law in New York 20 years ago, sir.

Mr. DINGELL. Have you read the opinion in the California Supreme Court decision on pay television?

Mr. MOORE. Yes, sir.

Mr. DINGELL. You indicate that you can substitute CATV for pay TV, am I correct?

Mr. MOORE. Yes, sir.

Mr. DINGELL. If that is so you can substitute practically any other words which might happen to exist in the communications field such as radio or TV?

Am I correct?

Mr. MOORE. Not in this context, sir.

Mr. DINGELL. You say that the language of the court in California was such that it would apply to CATV as well as pay TV?

Mr. MOORE. No, I say the theory of the case, that not even the people themselves can prevent other people from hearing information from pay TV, would apply equally to their right to hear it over CATV.

Mr. DINGELL. On page 4 you quoted from the court's description of the act?

Mr. MOORE. Yes.

Mr. DINGELL. Then you said that we could substitute CATV for pay TV within the decision of the court. Am I correct?

Mr. MOORE. Yes.

Mr. DINGELL. I am now asking you that if this is so, could we not also substitute the word "radio" for the word "television"?

Mr. MOORE. No, sir. What I said was that by substituting the word CATV we could see how precisely parallel is this particular FCC rule. We are dealing with cable here that does not use up the spectrum. The Supreme Court has already said that when it come to using the spectrum for radio and television broadcasting the commission necessarily has to have the authority to limit the number of stations so that they won't collide with each other in the air.

The California decision has no bearing on the FCC's jurisdiction over broadcasting and it would not be parallel.

Mr. DINGELL. You are not asserting at this time that this decision would strike at the regulatory authority in the Federal Communications Commission over radio, television, pay TV, or CATV?

Mr. MOORE. No, sir. This decision, when it talks about the right of free speech, includes the right to distribute, the right to receive, the right to hear, see, and read.

Mr. DINGELL. Do you say that it pertains to the right of the FCC to regulate in the area of broadcast?

Mr. MOORE. No, sir.

Mr. DINGELL. Now the next question I want to discuss with you is the issue of CATV. Are you here as an advocate of CATV as a supplemental service or as a new form of business enterprise which will enter and compete with television in the large metropolitan areas?

Mr. MOORE. I am not here for either, sir.

Mr. DINGELL. You must obviously have a point of view on this point?

Mr. MOORE. I do. I don't think the facts are in yet. I say today people want the privilege of receiving the same choice of television as their neighbors may, their neighbors 10 miles away or their neighbors next door.

I find nothing in the record of this proceeding that would justify taking that right away from anyone or denying the right of anyone to bring it to them. In San Diego the waitress at the hotel will say, "When are we going to get the cable?" The taxi driver will ask me, "When are we going to get the cable?" When news of this rule came out there were letters to the editor, our phones were ringing steadily: "When do we get the cable?"

Mr. DINGELL. All you are saying is that we should permit CATV to enter large metropolitan areas and compete with existing broadcasting mediums there? Mr. Moore, is this your position?

Mr. MOORE. Yes, sir. I see no basis for keeping them out of the larger markets. I don't think there is any legal justification for it at all.

Mr. DINGELL. If CATV money goes into providing this service in the large densely populated areas there will be much less money for CATV operations in the less densely populated areas where there might be one, two or perhaps no television stations available to serve the area, am I correct?

Mr. MOORE. Did you say if more money goes into the big cities?

Mr. DINGELL. Yes, if CATV goes into the large metropolitan areas there will be less money to go into the areas where there is no service or very limited television service.

Mr. MOORE. There will be more money. As the system grows in size and grows in prosperity and economical health it is free to extend its lines further and further.

Mr. DINGELL. I see. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. I have just one question. As I understand it, there are certain new developments in regard to broadcast. They are making disks and tapes, which you can attach to your television receiver and you can originate your own program in your own home through the receiver.

Do you think that the FCC should have any authority over that?

Mr. MOORE. Origination in the home? No, sir; I don't.

Mr. YOUNGER. Those programs which one originates will certainly take other programs off the receiver and your local station might object to it.

Mr. MOORE. I would let the public decide, Mr. Younger. If the public wants to have a device on the living room that can record the program so that they can play it after dinner or after they have gotten the kids to bed or after the PTA meeting, I don't think there is anything in the world to infringe that right.

Mr. YOUNGER. It might be a good patent to have.

Mr. MOORE. Yes. You know one of the big problems in the broadcasting industry is that they often put the good shows opposite each other. Such a device might be—might give people a choice—Pop could watch the ball game, and later Mom could watch the soap opera.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I thought your testimony was most persuasive.

Mr. MOORE. Thank you, sir.

Mr. VAN DEERLIN. However I see one difference between the pay television system that the Supreme Court protected in California and CATV as it has been thus far—that is that the pay television system envisioned original programing, whereas CATV is picking up programs out of the air.

Mr. MOORE. CATV is, as we say, a reception service. In a sense pay TV is an origination service. But I think that argument is misleading a bit, sir. The fact is that if pay TV ever comes it is going to be an exhibition medium, not a creative medium. It is simply going to put more seats in the theater.

The motion picture theaters in California discovered that people like convenience and they brought the motion picture to the automobile.

It is perfectly apparent that for the American public, which likes convenience and does not like to pay parking charges and that sort of thing the next step is to have a set in the living room for existing entertainment, for existing motion pictures or a ball game.

Pay television is more seats for existing attractions. The originator of the Dodgers versus the Giants game is Mr. Walter O'Malley and Mr. Stoneham, whether the game is picked up by pay TV or free TV or relayed by CATV. It is an existing attraction, there is a difference.

I think basically the legal comparison is absolutely parallel here, that the people have a right to see these things if they want to pay for them and nobody is forcing them to.

Mr. VAN DEERLIN. Isn't it a little like kissing? A splendid institution, and we all enjoy standing under the mistletoe. But where would the mistletoe be without the mighty oak?

We have seen the development of an industry here which has literally been feeding off another industry, has it not?

Mr. MOORE. It has not been feeding off it, sir: It has been performing an independent service. RCA feeds off it and so does General Electric and Westinghouse, who make TV receivers on which people can see the ball games.

Procter & Gamble is feeding off it by selling soap, sir.

Mr. VAN DEERLIN. There is an ownership involved here, is there not?

Mr. MOORE. An ownership?

Mr. VAN DEERLIN. If you want to go to the ball game, somebody is paying for putting on the show. If you want to enjoy the film fare that the station owner buys, he has an investment in this.

Mr. MOORE. Right.

Mr. VAN DEERLIN. Now the CATV relay exhibitor is not contributing to this, is he? All he has done is pick up a signal that somebody else is providing?

Mr. MOORE. He has invested substantial sums of money and worked hard to build a system that will bring TV. As you know, San Diego is a city with 40-foot masts. Practically every home in San Diego is reaching out for signals and getting some. We are performing a service that those people could perform for themselves.

We have a head-end site in La Jolla. It is on the side of a big, empty hill. There would be room for practically everybody in San Diego to put a pole on that hill and run a wire to his house but it would be impractical.

We are doing it for them. We are performing a service which the city council has declared to be in the public welfare of the inhabitants of the city. When the zoning commission gave us a variance for our head-end site they said CATV is good for the city and will get some of the unsightly antennas down.

We are performing a service with our own capital and own hard work to give the public what it wants and they want it.

Mr. VAN DEERLIN. Carrying a provocative Los Angeles program this week is not unknown in San Diego; 40-foot antennas have been bringing Los Angeles signals in quite well.

Mr. MOORE. In many homes?

Mr. VAN DEERLIN. Yes.

Mr. MOORE. And not in others, that is the rub. Some get them and some can't. We have two classes of citizens. I don't know what regulatory body has the right to classify your cousin down the block a first-class citizen and the second cousin, some distance away, a second-class citizen.

Mr. VAN DEERLIN. Now the reason that the public passed this proposition in 1964 abandoning pay television—what do you think motivated their action in this regard?

Mr. MOORE. The same thing that has motivated a lot of people in this debate, scare.

Mr. VAN DEERLIN. What was the scare?

Mr. MOORE. The scare was created by the motion picture theater owners—not the producers, not MGM and Fox—the independent producers. They wanted the market for their films. But the theater owners who were not in pay TV felt that the fellow who could see the movie in his own home would represent competition.

They raised a war chest of $2 million or more. They paid 20 cents a signature to get 400,000 signatures. I was accosted by a fellow who got a signature who said: "Do you want to save free TV?"

Mr. VAN DEERLIN. What did they put on their billboards?

Mr. MOORE. "Save free TV."

Mr. VAN DEERLIN. So you would assume there was some popular point of view here represented.

Mr. MOORE. Yes; there was. The people voted, by a majority, against pay TV because they were convinced. They had seen cartoons in the theater of a monster grabbing the TV set away. They said pay TV will take away your free shows.

I have been hearing, for 20 years, that some new development is gong to ruin broadcasting. The first I ever heard was the duopoly rule, when the Commission said you can't own two radio stations in one town.

And when they separated the blue and red networks. Again when they repealed compulsory clearance by affiliates and said affiliations should be nonexclusive. The networks said if we do this we will never be able to perform our services. They said, "No," again, when the must-buy provision was outlawed.

They said if we can't sell a compulsory "must buy" of 50 stations we can't sell the medium and we won't be able to afford to bring the astronauts or news or political conventions.

Yet each year the profits have gone up for the networks and the stations. Now we hear it again. Every time that something comes along that the people may want I hear that same argument: "It will put us out of business."

I regard it as the court did, as illusory and speculative and in no way hard evidence that would justify a limitation of the first amendment.

Mr. SPRINGER. Would the gentleman yield for a question?

Mr. VAN DEERLIN. Yes.

Mr. SPRINGER. The mystery to me is the logic you are trying to present here—certainly I would like to see the Buffalo Bills if I lived in Buffalo and have someone broadcast them. Is that the right thing?

The fact that somebody pays millions of dollars to broadcast it and somebody else picks it up and runs it back into Buffalo, that is right because someone can pick it up and do that?

Mr. MOORE. I did not say that.

Mr. SPRINGER. Why would it be just as logical if you could get a picture off the screen in somebody's movie house and run it?

I would like very much to sit in my home rather than go downtown in the snow and see it.

Where is the logic of picking up something from somebody else who has invested millions in it and you have nothing? We have a copyright law. How can anyone pick up something, a valuable piece of property, rebroadcast it or rerun it or whatever you want to say about it, whether you can copyright it or whether you can't copyright it, but if you can do this for nothing?

Mr. MOORE. I heard Mr. Foss' testimony. I would not object to a rule which says that the owner of an attraction of that kind can be protected in his own negotiations so that he can negotiate——

Mr. SPRINGER. Let me ask this: Is the property right there whether he does it for the ball game? That happens to be the most exaggerated example and one with which I don't think anyone could find fault.

The fact you invest money for wire on telephone poles would not be worth a nickel unless you could pick free his program and transmit it.

Anybody would want it if they could get that, if I could get the Buffalo Bills in my home or I could get "My Fair Lady" at home.

Mr. MOORE. You may be able to do this, someday.

Mr. SPRINGER. This is the part that somehow or other never gets through to me in this whole thing, that because people want it this is exactly what they ought to be entitled to.

Mr. MOORE. Let us take San Diego. If this house here can get it and this one can't, this one could spend a lot of money to put an antenna up that high. Can the FCC say that you can't pay a CATV fellow instead to come in and give you a signal?

Mr. SPRINGER. Now you are talking about developing a property right of your own.

Mr. MOORE. Two houses side by side.

Mr. SPRINGER. If you are talking about developing a property right, you are talking about something in which there might be some merit.

This is the great broad question of what makes up CATV, that is picking up somebody else's signal and transmitting it.

Mr. ROGERS of Texas. Let me ask one question about that. Are the people whose signals you are picking up and carrying to San Diego complaining to you about it?

Mr. MOORE. Heavens no. They love it.

Mr. ROGERS of Texas. If there is a property right in there, there is a place in the courts of the land to assert it. They are not complaining about it at all?

Mr. MOORE. No, sir.

Mr. ROGERS of Texas. Has anyone whose program you ever put on complained about your bringing it up?

Mr. MOORE. No, sir. The only complaint I have had is from a station who is not carried, who wants to be carried. The property right of the program is something that is not within the framework of this rule or this discussion. That is a matter for copyright legislation. That is, we know, a serious question and there may be rules that we will have to adjust to.

Mr. ROGERS of Texas. That is exactly right, and the courts are prepared to take this situation on. I think the people who have property have the right to protect it. I think they ought to be paid for it. I don't think that the Government ought to undertake to regulate all kinds of industries to protect some person's property right. That is not the purpose of the regulation.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Only one last question. Have you found San Diegans unique in their desire to go to bed before 11 o'clock?

Mr. MOORE. No, sir. We have quite a similar situation in Los Angeles. I used to run a television station there for many years and we used to have the news at 11 o'clock. We used to get so many complaints that we eventually moved it to 10.

In this case, the station at San Diego carries entertainment shows until 11. We got so many calls and requests we moved the news down to 10. A lot of people do not want to stay up until 11 o'clock.

Mr. VAN DEERLIN. I was afraid that the impression might have been created that we roll up the sidewalk early.

Mr. MOORE. No.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have just this question. You have emphasized at great length the first amendment effects here, and I think you are one of the first witnesses which has done so. You do accept the position that the spectrum can be regulated by the FCC and the Supreme Court so held?

Mr. MOORE. Yes, sir.

Mr. ADAMS. Will you accept also the position that from this comes the right of the FCC to allocate and thereby license in a particular area in broadcasting?

Mr. MOORE. Yes, sir. If you are talking about the spectrum, yes.

Mr. ADAMS. From this comes the fact that the FCC has the power to say, then, you may have a station in Los Angeles and if you have been there before I get there, I can't?

Mr. MOORE. Right.

Mr. ADAMS. There is no question that that is a prior restraint upon my right to produce what I want in the Los Angeles area?

Mr. MOORE. That is right.

Mr. ADAMS. You have this right, and I don't?

Mr. MOORE. Right.

Mr. ADAMS. Now the next thing I want to ask is, do you believe that the FCC has the right under the first amendment, as you interpret it here, to say to CATV they must show a particular station on their network as part of the allocation or licensing system and power of the FCC?

Mr. MOORE. I don't think it has the power, but I think carrying local stations is a healthy thing to do.

Mr. ADAMS. You do not think that as part of the allocation system they can require a carrying by a CATV station of a particular television station?

Mr. MOORE. I don't think they have that power. May I illustrate? If I wire my own neighborhood to a hundred families so that they can pick up some stations, I am using my own wire, maybe I am using my own poles, I don't think there is any Federal body in the world that can tell me what I can carry on my own system.

Mr. ADAMS. Do you think they can prevent someone from carrying a particular program in a particular area as part of the allocation system?

Mr. MOORE. I don't think so, Mr. Adams.

Mr. ADAMS. They can do this, I think we both agree, at the present time with both radio and television in terms of the nationwide allocation system. In other words, they can keep you or me from going into an area where there is already a station there and using the airwave spectrum?

Mr. MOORE. You may not use their frequencies without approval.

Mr. ADAMS. So they do have this power with regard to radio and with regard to television, but you say they do not have this power with regard to CATV?

Mr. MOORE. Yes, sir.

Mr. ADAMS. Why?

Mr. MOORE. Because I don't think the use of wire involves anything having to do with the spectrum.

Mr. ADAMS. Just a moment. If you don't have the spectrum and it does not come to your wire, what would happen?

Mr. MOORE. I would be out of business.

Mr. ADAMS. You don't have any program without this?

Mr. MOORE. Right.

Mr. ADAMS. So you are a part of a transmission from X point into a home, are you not?

Mr. MOORE. Only in the same sense that the antenna manufacturer or the set manufacturer or anybody else is. We are a reception service, and the signal is there.

Mr. ADAMS. You have control, have you not, in CATV net as to who goes on and who does not go on?

Mr. MOORE. Yes. Pardon me, the city of San Diego has the power, as far as I am concerned they have it, and they have exercised it, to require us to carry the local stations.

Mr. ADAMS. If you don't want to carry a Los Angeles station?

Mr. MOORE. If we didn't want to carry a Los Angeles station, nobody can make us carry one at this point.

Mr. ADAMS. So you can exercise, so far as that community is concerned, a censorship effect in your system, because you own it?

Mr. MOORE. I think because I don't do something does not involve censorship.

Mr. ADAMS. You have that power?

Mr. MOORE. No, I don't have the power of censorship. I have the power to determine what service I will give to the people.

Mr. ADAMS. And what service you will not?

Mr. MOORE. That is right. Like every other free enterprise.

Mr. ADAMS. Exactly. This goes through from this service of stations, and you are, just like the station, able to determine what should or should not go into a particular set of homes that are on your cable?

Mr. MOORE. Right. If I didn't make a good choice, the public would be after me. I would lose customers and somebody else would come in.

Mr. ADAMS. You still take the position that FCC, which can regulate this system up to a point cannot regulate your extension which you are controlling, the portion from X antenna into the home?

Mr. MOORE. I do. May I explain briefly why?

Mr. ADAMS. Yes.

Mr. MOORE. The power of the Commission to determine allocations of frequency has to do with the collision of frequencies. That is the limit. From that, they derive a very important power. But the power to control the allocation of frequency does not give the Commission the power to guarantee a profit to the operator of that station or to protect him from competition when the public wants to buy something else. I have noticed the transition of this limited power to regulate the frequencies toward a power to be the czar, the economic czar, of the industry. You hear people saying, "The Commission should protect me, if I am a station operator, from the fact that someone may come in with better programs from out of town. I am an opeartor in town serving that community. I am afraid of out-of-town competition."

One station has already petitioned the Commission to keep those signals out because it would hurt him economically. He has not told what his profits are, what his reasonable profit should be, how badly he is going to be hurt. He says, "I might be hurt, cut off competition." I don't think the Commission should have the power to protect the owners of the television station to protect them from economic competition for one minute.

Mr. ADAMS. You say the first amendment prevents this?

Mr. MOORE. The 1st amendment, 14th amendment, and several other amendments prevent a private company from invoking Federal protection, like a public utility, protection from a Federal body to fence out competition and ring a curtain around this area where no one can come in. If it ever comes to that, I say flatly they are going to be like a phone company, they are going to be like a railroad. They will be limited to 6-percent return on the investment. I don't feel that is what the broadcasting companies want to have.

Mr. ADAMS. Do you believe if we extended section 325(a) to CATV stations and contracts were made between major networks and the television stations, that none would allow their signals to be rebroadcast by CATV so that you would have an absolute control within the network and within the broadcasting stations over their signal, that this would be a violation of the first amendment?

Mr. MOORE. Yes, sir. If the Commission adopted a rule which says—and I have to use the example in my own area—that channel X in Los Angeles may refuse permission to receive and transport those signals to those houses, this house, or that house, I think that would be unfair to the people in San Diego whose neighbors can receive that channel over the air. As Mr. Van Deerlin said, one Los Angeles program is probably received by 40 percent of the families in San Diego. The other 60 percent may want it. I don't think the Commission can say to those families, "You may not receive, you may not watch, you may not hear."

Mr. ADAMS. The networks and broadcasters have gotten together and section 325(a) says you cannot rebroadcast another signal unless you get permission. If they get together on a private basis and they all agree that CATV cannot use our signals.

Mr. MOORE. You say, if 325 is made applicable to reception or transportation by CATV?

Mr. ADAMS. If they get together and say nobody can use their signals.

Mr. MOORE. I think that violates a lot of rules, including antitrust laws. I don't think people can conspire or agree or adopt administrative regulations which limit the right of people to receive and see what they want to see, without some overriding hard evidence that some public injury is going to be done. Just like the business of shouting "fire" in a theater or obscenity or treason. Free speech doesn't permit those things. But short of things like that, I can't understand a rule like this, if it is going to be adopted at all, not being adopted by the legislature, the Congress, with the fullest exploration of facts and not the usual speculation, "I am going to be hurt if competition comes in." I have been hearing that for years, and every year the profits go up.

Mr. ADAMS. Thank you.

The CHAIRMAN. I want to thank you for appearing and giving us the benefit of your views. There is just one question I would like to ask you, Mr. Moore. Are you familiar with Public Law 88–609?

Mr. MOORE. I may be, but not by number.

The CHAIRMAN. It has to do with boosters and translators.

Mr. MOORE. I am not really as familiar as I should be with that rule.

The CHAIRMAN. Let me give you a little summary to refresh your memory. The background on it is this: Boosters and repeaters have been used for some years as a means of extending television service to small communities, remote from metropolitan areas, where television stations have been largely concentrated. They are technically the simplest, and apparently the best and the least expensive means of achieving that end. Stripped to its barest essentials, a booster consists of an ordinary rooftop antenna strategically located to receive a

usable though normally weak signal from a distant station. A cable connected to a small amplifier runs to a second rooftop antenna which beams the signal down into a community to be served. Available power is supplied to feed the amplifier.

Do you know what I am talking about?

Mr. MOORE. Yes.

The CHAIRMAN. Do you know that the Congress said that the FCC could regulate these and they took them out of operation completely?

Mr. MOORE. These were the airwaves.

The CHAIRMAN. They were rebroadcasting and doing the same thing that you are doing by cable.

Mr. MOORE. That is right.

The CHAIRMAN. I am on a cable. I am satisfied with it, but I tried to buy one of these boosters because one of the technicians told me I could buy one for $25 and have somebody put it up and it would beam the TV signal into my house, which could not be served by cable. This law made it possible for the FCC to prohibit boosters.

Mr. MOORE. As you can judge——

The CHAIRMAN. Didn't they give you protection by having the bill passed? According to this report there were 1,000 of these boosters in operation in the West and they were all outlawed.

Mr. MOORE. If they did, I would not advocate that.

The CHAIRMAN. You know they did. You know the business well enough, Mr. Moore.

Mr. MOORE. Yes, they did.

The CHAIRMAN. When I tried to buy one, they told me I could not buy one.

Mr. MOORE. I think that is wrong.

The CHAIRMAN. I could not get the cable, either one.

Mr. MOORE. I think that is wrong. That is why I am here.

The CHAIRMAN. This bill was passed and it did not protect you in your business?

Mr. MOORE. I was not in the business at that time. If somebody has a better mousetrap, who can do a better job than I am doing——

The CHAIRMAN. Perhaps we ought to repeal this and go back again to boosters in this country.

Mr. MOORE. I would be all for it. I don't understand how anybody can say that he ought to be protected against a better mousetrap. If the booster can do a better, more economic job than CATV, they can put me out of business tomorrow.

The CHAIRMAN. I think that the CATV is doing a good job and serving a purpose. I want you to know that this is not one sided all the way.

Mr. MOORE. I don't think it is at all.

The CHAIRMAN. The Congress is now protecting the business that you have. Congress regulated these boosters and gave the FCC the opportunity to knock them all out. I had the technician tell me in my situation where I lived I would get better reception.

Mr. ROGERS of Texas. Will the Chair yield?

The CHAIRMAN. Yes.

Mr. ROGERS of Texas. I think the booster situation ought to be very clear. As I told the chairman, if a man can produce a booster or

anything else to put on a television set and you can get reception from overseas, it would suit me all right if they went out in the open market to sell it. The point about the booster thing, and the law passed by the Congress, is that the FCC at that time advised us that the radiation from these boosters was interfering with other frequencies and that they wanted the right to license these operations because they were using the spectrum which was public property. That is the only reason in the world that I agreed, if I was on the committee at the time, that they could have the power to license these boosters.

So they have the power because it is a part of the spectrum.

The CHAIRMAN. You are right that they are a part of the spectrum. I am saying to you again, and to the gentleman who is on the witness stand now, that according to the technicians that have talked to me—and I have not talked to them in the last 5 years, because, as I said, I am satisfied in my case; the cable is doing a good job. But the whole question is not one sided. I was here on the committee when this was brought up. I was opposed to it until the people at home came and talked to me with respect to the economics in the community. And I did go along with it at the time. I listened to all the testimony.

As I say, one must go back and look at the record. I just wanted to bring this in for the record, Mr. Moore.

Mr. MOORE. Yes, sir.

The CHAIRMAN. Are there any other questions?

If not, we want to thank you for coming and giving us the benefit of your views.

Mr. MOORE. Thank you. I appreciate the opportunity.

The CHAIRMAN. Is Mr. Jack Lee present?

Mr. Lee, I have the honor and privilege to say that I am introducing one of my fellow West Virginians, a man I have known real well and who has been in this business for a long time. He is well acquainted with his job. I am just happy to introduce to you Jack Lee, from station WSAZ, Huntington, W. Va.

Although you don't come from my district, you come from a section of the State which is important. I am happy to present you to the committee.

STATEMENT OF JACK W. LEE, GENERAL MANAGER, STATIONS WSAZ, AM AND TV, HUNTINGTON, W. VA.

Mr. LEE. Thank you. Accompanying me today is my attorney, Mr. J. Roger Wollenberger, of Wilmer, Cutler & Pickering.

Mr. Chairman and members of the committee, my name is Jack W. Lee. I am general manager of stations WSAZ, AM and TV, in Huntington, W. Va. Most of my adult life has been devoted to broadcasting.

I want to state at the outset my support for the position taken in these hearings by the National Association of Broadcasters. I should mention that I am currently serving as chairman of the radio board of directors of the NAB, but I am not appearing on their behalf. I am appearing simply as a broadcaster who is concerned with the subject you are considering.

To make my position more specific:

1. I do not believe that the 1-day duplication protection on which the FCC has now decided is adequate. It does not give television stations the flexibility they need to schedule network programs to meet the tastes and desires of their local audiences. I am even more disturbed by the CATV proposal that protection be limited to simultaneous duplication only. This would strip stations such as WSAZ–TV, that operate near the borders of time zones, of most of the protection other stations would receive.

2. I am concerned with the fragmentation of the television audience that unrestricted CATV growth may cause, and the effect this may have upon established VHF stations such as WSAZ–TV and struggling new UHF stations.

3. I am also concerned with the potential use of CATV systems to provide a base for the growth of pay television. I think the Commission should have full power to prohibit local program origination by CATV's.

You have heard reams of testimony on these subjects, however, and I would prefer to spend most of my time on a subject that has received must less attention—CATV and radio.

Radio is a vital and growing medium serving people of all ages in every part of the United States with a wide range of news, information, and entertainment services. One of radio's essential features is its mobility. It can accompany the listener in his automobile and, since transistors, wherever he chooses to walk. It can free the listener from dependence upon a static source of electric power. In times of local or national emergency, it can continue to function—to broadcast and be received—when other services have been cut off.

Recent examples are the hurricane on the gulf coast last year and the blackout in the northeastern part of the United States last November.

A front-page column in the New York Times of November 11, 1965, reported:

> New York's radio stations were acclaimed yesterday for a major community service in covering the blackout * * *. That radio vividly demonstrated its indispensability in a moment of crisis was confirmed by the most tangible testimony that a broadcaster could seek. Untold numbers of listeners took the trouble to supply what news they could to help stations * * *.

It was also reported that President Johnson first heard of the power failure on his car radio, while driving near his Texas ranch.

No wire service could have done what radio did in those anxious days and nights.

Radio is also intensely local. Within the service areas of most television stations, there are scores of communities that will never have television outlets of their own. But more than 5,000 commercial radio stations, AM and FM, bring many of these communities local news and weather, local politics and community issues, local personalities, and a service tailored as a whole to their interests.

The same radio stations bring local businesses an advertising medium that reaches their communities but stays within the reach of local advertising budgets. Many—perhaps all—of the members of this committee have purchased radio and television time in political campaigns. You must be keenly aware of the problem faced by a local

advertiser who is interested only in his own community but must purchase the entire coverage of a television station if he wants television exposure. Radio meets the needs of that advertiser as no other medium can.

But with all these advantages, radio is not, by and large, a golden bonanza that pours out profits for any businessman lucky enough to get a license. The industry is highly—in many places fiercely—competitive. To survive and perform it vital functions, it must attract regional and national, as well as local, advertisers. A successful radio broadcaster must expend a great deal of effort, ingenuity, and money to devise and sell a service that can hold its own in a very demanding marketplace.

CATV systems compete with radio in two direct ways. First, they often import not only distant television signals, but also the signals of distant, big-city radio stations—signals that would never reach a local radio station's community on their own. Second, CATV systems often originate local programs. The most widespread service of this kind is a single channel on a cable system that regularly gives local time and weather information, and in many cases background music and news. These are some of the basic elements of local radio service—the elements on which your local station must rely for survival and success.

I want to make one thing crystal clear. The radio broadcaster does not fear or oppose competition. Within his own 5,000-station industry, he meets competition of a kind that no cable television operator has ever experienced. He lives daily with the competition of television, newspapers, and other media. He knows in his bones what people mean when they say that competition in a fair and open field is the lifeblood of this country's economy.

But CATV's competition with radio is not competition in a fair and open field. When a cable system imports a big-city radio signal into a local radio market, it takes the product that broadcasters created for one area and uses it to attract cable subscribers in another area. It forces the radio broadcaster in a small community to compete against big-city stations with programing that they can afford to produce but he can't.

In the same way, a cable operator uses the product of our free television industry to establish an economic base for his business and then throws in a local time, weather, and news channel as an extra attraction that he can afford because his subscribers are paying primarily for television. No CATV system could compete successfully against radio on the basis of local time, weather, and other originations alone. No cable operator has ever tried to compete against radio without the crutch that his subscription television service provides.

This is not free and open competition. If I am allowed to ride on my competitior's back, I will win every contest.

The letters "CATV" stand for the words "community antenna television." The CATV industry has always claimed that it provides a television master antenna service, which any ordinary citizen could provide for himself. Let the CATV industry live up to those words and that claim. Let it distribute the signals of local television stations and refrain from using free broadcasting's product as the economic base for competition with free broadcasting.

For if radio stations are driven off the air by this kind of competition, the public will lose the mobility and the multitude of local servces that radio offers—and wired systems will not replace them. People will have to pay for local service, and those who can't afford it—or who live in the country beyond the reach of cable systems—won't get it at all.

And long, long before radio stations are driven off the air, competition of this kind can cripple their ability to make the extra effort and spend the extra dollars on the public services that they bring their communities today.

For these reasons, I urge the Congress to confirm the Commission's authority to regulate CATV systems, whether they use microwave relays or take broadcast signals off the air. The matters involved go far beyond the private interests of broadcasters or CATV operators. They affect sharply the role which radio and television will play in this country's political, social, and economic life.

Thank you.

The CHAIRMAN. Thank you, Mr. Lee, for a very concise statement. I want to thank you for coming and giving us the benefit of your views.

Mr. Rogers, do you have any questions?

Mr. ROGERS of Texas. Mr. Lee, didn't the advent of television materially affect the economics of radio as a competitor?

Mr. LEE. Certainly.

Mr. ROGERS of Texas. As a matter of fact, it closed a lot of radio stations, didn't it, who couldn't stay in business?

Mr. LEE. I think I see what you mean, Congressman. I don't know of any if that is the answer you are asking for.

Mr. ROGERS of Texas. I don't mean that. What I am getting at is this. A number of radio stations were put on the market after television came in and the demand for radio frequencies or radio licenses fell off measurably. I mean, you understand this. I don't have the records with me. I had many complaints at the time that television as a competitor of radio began to move in. I gather from your statement that you feel that the FCC should have economic control of CATV operations.

Mr. LEE. No, sir; I didn't mean to say that, if you took it that way.

Mr. ROGERS of Texas. Don't you feel what the FCC is trying to do is to control these CATV stations, to regulate them according to this bill that they have introduced?

Mr. LEE. No, sir; I don't understand the economic portion of your question at all.

Mr. ROGERS of Texas. Well, if they can tell a CATV station by rules when they can put programs on and when they can't, and they cannot originate any programs, they can certainly control the economics of the station, can they not?

Mr. LEE. No, sir; because, if I understand you correctly, the CATV operator is getting his money from the people. If he is providing a community antenna television service to bring that into the home better than a local antenna, for whatever reason, then how are you controlling his economic opportunity?

Mr. ROGERS of Texas. By telling him that he cannot put on programs and he cannot do this and he cannot expand his operation.

Mr. LEE. We certainly all live by a set of rules. Don't we broadcasters live by a set of rules? Why should they be freebooters? Why should they go off in any direction?

Mr. ROGERS of Texas. You live by a set of rules having to do with traffic in a spectrum. That is the point I am coming to. Do you think that the FCC should have economic control of the broadcasters?

Mr. LEE. No, sir; I don't think they should have economic control over either broadcasters or——

Mr. ROGERS of Texas. Do you think they ought to limit and determine the length and frequency of commercials on your station?

Mr. LEE. No, sir.

Mr. ROGERS of Texas. Do you think they ought to have that power over CATV?

Mr. LEE. No, sir.

Mr. ROGERS of Texas. Don't you think they are asking for it when they say they cannot originate anything on these facilities?

Mr. LEE. Let them apply, as we do, and put it on the same basis.

Mr. ROGERS of Texas. In other words, what you are advocating is the adoption of the rules that the FCC has laid down with regard to CATV?

Mr. LEE. Yes, sir.

Mr. ROGERS of Texas. Now would you be willing for the broadcasters to go by the same rules and the same identical regulations?

Mr. LEE. Don't we have to, Congressman?

Mr. ROGERS of Texas. No; I don't think you do. I think the FCC is trying to work it out to where you do. Let us go one step further on this about economics. You knew Mr. Henry, the chairman, is advocating that CATV's are public utilities. Now if it is a public utility, then the basic proposition involved is economic control over the business, is it not?

Mr. LEE. No, sir.

Mr. ROGERS of Texas. In other words, if you have a public utility you control the economics of it to prevent it from expanding out and becoming a monopoly and robbing the people.

Mr. LEE. All right, sir.

Mr. ROGERS of Texas. Do you go along with his thinking that a CATV is a public utility but broadcasting is not?

Mr. LEE. I didn't know I was going along with the Commission, and I have not stated this is a public utility. If you are asking me to state this at this point, the point is——

Mr. ROGERS of Texas. No; I am not trying to put words in your mouth.

Mr. LEE. You have me at this point thoroughly confused as to what question I am supposed to answer. I don't go along with Mr. Henry on many things.

Mr. ROGERS of Texas. I mean this particular situation about CATV.

Mr. LEE. Are you asking me is CATV a public utility, and then are you asking me a second question, is broadcasting a public utility?

Mr. ROGERS of Texas. Do you think that CATV ought to be regulated as a public utility?

Mr. LEE. I don't think so.

Mr. ROGERS of Texas. I am glad you don't, because I don't think it measures up to a public utility. If it does and the FCC gets the power

that they are seeking in this thing, the broadcasters are whistling in the dark if they think they won't be right on your neck next. Frankly, I think that is exactly what they are searching for.

Mr. LEE. Congressman, I have only one comment. There is a division there between a CATV and a broadcaster, is that right?

Mr. ROGERS of Texas. What do you mean by "division"? There is no question about that. One of them is using the spectrum and the other is using a wired communication. That is right. That is the reason you have your question of jurisdiction involved.

Mr. LEE. I understand—this in on advice of counsel—that FCC has held that CATV will not be treated as a public utility.

Mr. ROGERS of Texas. Let me hear that again.

Mr. LEE. That FCC has held that CATV will not be treated as a public utility.

Mr. ROGERS of Texas. But the Chairman of the Commission has testified before this very committee that he thinks they are a public utility and he says that that is his own view. But there have been suggestions by the staff numerous times that CATV was a public utility. Actually they have not held that, because they have not taken jurisdiction of CATV. They only took it recently.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Lee, for coming to the committee and giving us the benefit of your views.

Mr. LEE. Thank you, sir.

The CHAIRMAN. The committee will stand adjourned until 1:30.

(Whereupon, at 12:35 p.m., the committee recessed to reconvene at 1:30 p.m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

Our first witness this afternoon will be Mr. Jack McBride.

Mr. McBride, will you come forward?

Mr. McBride, you are general manager of the TV station, KUON, Lincoln, Nebr.

STATEMENT OF JACK G. McBRIDE, DIRECTOR OF TELEVISION AND GENERAL MANAGER, KUON-TV, UNIVERSITY OF NEBRASKA, AS PRESENTED BY DR. FREDERICK BREITENFELD, JR., ASSOCIATE DIRECTOR, EDUCATIONAL TELEVISION STATIONS DIVISION, NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS

Dr. BREITENFELD. Sir, I mentioned to the clerk of the committee that Mr. McBride was here a week ago. He is not here today. I shall be reading the statement with your permission.

The CHAIRMAN. What is your name?

Dr. BREITENFELD. I am Frederick Breitenfeld and I am associate director of the educational television stations division of the National Association of Educational Broadcasters. It was with our CATV committee, made up of representatives of educational television stations across the country, that this statement was developed.

There are presently 114 educational television stations on the air. Approximately one-third of them are owned by universities, another

third are owned by nonprofit community organizations established specifically for that purpose, and the rest are divided among schools, school systems, State authorities, and State commissions. The broadcasts of these stations are aimed at school and college classrooms, children at home after school, adults at home, and a variety of special professional and vocational audiences. The typical ETV station is on the air 50 hours weekly, 5 days a week, although broadcast schedules are expanding rapidly and many areas are being served 70 hours each week. It has been estimated that 60 percent of America's population is now within reach of these stations. Within the next 2 years we expect that another 30 educational television stations will begin broadcast operations.

At the national level, national educational television has provided a major source of quality and cultural and public affairs programs to a growing number of American homes via ETV stations. The Educational Television Stations Program Service provides a national program exchange capability. For schools and colleges, the National Center for School and College Television and other regional libraries have provided major supplementary sources of quality instructional television materials to local stations. There are other program sources, as well as regional networks, extensive State plans for educational television development and other facets of educational television, but for those details I refer you to the educational television fact sheet which I submit as exhibit A to my statement.

The original purpose of community antenna television, as we understand it, was to bring the signals of television stations to areas in which reception was difficult because of the terrain or the scarcity of local stations. Where this function is served, community antenna television installations can assist educational television stations in enlarging their potential audiences. Almost half of the ETV stations across the country report that their signals are being retransmitted by at least one CATV system.

When it appears that a CATV system will be used not only to improve reception of nearby stations, but also to bring signals from other communities into metropolitan areas already served by two, three, or more existing commercial stations as well as an educational station, then the function of CATV assumes new implications, resulting in a different analysis. Where there is concern among educational station operators about a potentially negative impact of community antenna systems, it is largely because of this circumstance.

As CATV extends its role, there is the possibility that the presence of the signal from an educational station in another community will inhibit development of local service. While it could indeed stimulate such development to some degree, the likelihood is that the presence of an outside ETV signal on the CATV system would be reason to postpone plans for local educational service. The limitations of CATV in covering outlying rural areas, and the ease with which inappropriate school programs designed for schools in other communities can be misused in the CATV community are both important considerations that illustrate the need for local ETV services. To the extent that widespread development of CATV goes beyond its original purpose, many are anticipating that CATV systems will inhibit the development of local educational television stations.

Technically, educational television and commercial television are identical. Their tools are the same, and they both seek audiences, though the educational broadcaster is usually more interested in who is watching than he is in how many are watching.

Economically, educational and commercial television systems are totally different. The latter in this country has become a giant industry, and the ownership of a local television station can be extremely profitable. Educational licensees, on the other hand, are forbidden to operate at a profit and forbidden to carry commercial messages. This is the only system of broadcasting in the world that does not have a firm, permanent and definite base of support. Educational stations operate on funds from a variety of sources, and the very existence of a station often depends upon these sources. For instance, stations earn an average of 23 percent of their income from the gifts, grants, and donations of local subscribers, businesses, and foundations. In addition, an average of 20 percent of station income comes from services rendered to public schools, universities, and local industries. If signals are brought into a community from distant ETV stations via CATV, it is possible that the loyalties of various audiences to the local ETV station can be split. Considering the economic base on which educational television in this country must operate, this is an extremely dangerous prospect.

We do not wish to dwell here on the details of any proposed regulation. We do wish to make the point, however, that regulation of CATV will be essential to educational television stations across the country if the original concept of broadcasting in this country—that is, that the greatest benefit to the entire country can be realized by means of a multitude of local broadcast services—is not to be changed.

We suggest further that the only agency equipped to take on the responsibility of such regulation is the Federal Communications Commission. We therefore urge that H.R. 13286, as proposed by Representative Staggers, of West Virginia, be considered by this committee for approval.

(The attachments to Mr. McBride's statement follow:)

EXHIBIT A

FACTS ABOUT EDUCATIONAL TELEVISION COMPILED BY EDUCATIONAL TELEVISION STATIONS, A DIVISION OF NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS, WASHINGTON, D.C.

By March 1, 1966, 114 educational television stations were on the air with some 80 more in various stages of future development. Telecasts aimed at in-school programing reach 2 out of 3 of the Nation's students, in more than 800 school systems and 400 colleges and universities. General educational or cultural programing is now within reach of the homes of an estimated 130 million people. Thus, television, which has become such an important part of our national life, is now making available vast new educational opportunities for children and adults alike.

ETV LICENSEES

Noncommercial educational television licenses are granted by the Federal Communications Commission to nonprofit educational organizations "to serve the educational needs of a community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial TV broadcast service." "No announcement (visual or aural) promoting the sale of a product or service" is permitted.

In addition, ETV stations must abide by the same technical rules that govern all television stations. They are subject to the same programing rules that apply to commercial operators in areas such as controversial issues, equal time for political candidates, and editorializing. Regulations specifically concerning educational television are set forth in section 73.621 of the FCC rules and regulations governing all U.S. broadcasting. All ETV stations are tax exempt under 501–C (3) of the Internal Revenue Code, and contributions to them are tax deductible.

Four general types of licensees operate educational television stations: (1) Universities, (2) public school systems, (3) statewide ETV commissions, and (4) nonprofit "community" corporations. More than half of the ETV stations now on the air broadcast over VHF frequencies (2–13), but most of the channels reserved by the FCC for future ETV stations are in the UHF band (14–83). Recent legislation now requires all manufacturers of television receivers to include capability for UHF reception on their sets.

ETV HISTORY

In early 1952 the Federal Communications Commission reserved 242 channel assignments for noncommercial educational use, constituting about 12 percent of the total number of VHF–UHF channels then allocated. In 1965 a new allocation table provided 632 reserved assignments.

The first ETV station to go on the air was KUHT at the University of Houston, Tex., on May 25, 1953. Financing of noncommercial television was a major drawback; but nevertheless, 80 ETV stations managed to go on the air within a decade, aided significantly by the Fund for Adult Education, the Ford Foundation, and many other private sources.

To ease financial pressures and encourage the development of the new educational medium, the Educational Television Facilities Act was passed on May 1, 1962, authorizing $32 million over a 5-year period for Federal matching grants to be used in the activation of new ETV stations and for the expansion of facilities of existing stations. The act administered by the Department of Health, Education, and Welfare, specifies that the applicant for Federal matching funds must demonstrate financial ability to provide the non-Federal funds needed for the construction, operation, and maintenance of an ETV station. Thus far 87 grants have been approved for a total of over $17 million and within the coming fiscal year an additional 64 applications amounting to approximately $14 million are expected to be processed.

Today's ETV stations serve 40 States. Some cities including New York, Chicago, Milwaukee, Pittsburgh, Miami, and Minneapolis-St. Paul, have more than one educational television station. Several States have already established ETV networks—including Alabama, Georgia, Maine, Nebraska, New York, North Carolina, and Oklahoma. Other States are expected to do so soon.

ETV STATION FINANCING

A report, "The Financing of ETV Stations," available from the Educational Television Stations Division of the National Association of Educational Broadcasters at $2 per copy, shows that the average ETV station spends $370,000 annually, based on a comprehensive survey of station capital outlay, operating costs and sources of income. The report reveals that, although station budgets as high as $2 million annually have been reported, 37 of the 95 stations on the air in December 1964 were operating on less than $200,000 annually, and only 26 stations had budgets higher than $400,000.

An analysis of income sources shows 54 percent of the income received by all stations during the year of the financing study comes from "direct budgeted support"—money appropriated by universities, school systems, and State legislatures. An additional 23 percent of income was derived from gifts, grants, and donations and an equal amount was earned by the stations through services rendered to their communities.

ETV PROGRAMING

The average educational television station broadcasts from 5 to 6 days a week: 10 to 11 hours a day. Programs are divided almost equally between classroom instruction for schools and colleges and programing designed to be viewed in the home by all age groups.

Telecourses, both credit and noncredit, at all levels of instruction are available through television, bringing a larger range of educational resources to a far

greater number of students than ever before possible. Recorded television courses for classroom use are available to educational television stations from the National Center for School and College Television located at Indiana University, by the Great Plains Regional Instructional Television Library at the University of Nebraska, and by the Northeast Instructional Television Service located in Boston.

The late afternoon, evening, and weekend program schedules of ETV stations are intended to meet the needs and interests of many diversified groups of viewers. A typical ETV program schedule for home viewing may contain basic educational courses for illiterates, English and Americanization for the foreign born and vocational courses for the untrained, as well as college level extension courses, or graduate courses for doctors of medicine or other professional groups. Other program areas are equally varied—documentaries or public affairs forums; children's programing; courses in art, chess, cooking, homemaking, or typewriting; or cultural features (drama, music, ballet, art).

Government agencies, private industry and foundations underwrite costs of providing specialized programs on a variety of subjects, including management training, vocational guidance, preschool programs, welfare projects and cultural and civic events.

In addition to the programs produced locally by the individual stations, most educational television stations affiliate with national educational television (NET) in New York City which produces 5 hours of new programing each week for distribution to its affiliated stations. The local ETV stations contribute nominal fees to affiliate and receive NET programs.

The Educational Television Stations Division of the National Association of Educational Broadcasters, with the cooperation of the Indiana University Foundation, operates the ETS program service at Indiana University in Bloomington, Ind. This service provides an exchange of a variety of educational and cultural programs, selected from the best productions originating at local stations throughout the country. Stations pay a small per program use charge to offset distribution costs. This nationwide program distribution service was made possible through grants from the National Home Library Foundation and the W. K. Kellogg Foundation.

Regional exchange services are also a major source of supply of educational television programs, both for in-school courses and general home viewing. The principal regional services are the Eastern Educational Network in Boston and the Midwestern Educational Television, Inc., in St. Paul, Minn.

EDUCATIONAL TELEVISION STATIONS

To serve the specific interests of educational television in the United States, educational television stations (ETS) was established in January 1964, as a division of the National Association of Educational Broadcasters. ETS has three major responsibilities: (1) The fulfillment of a comprehensive service devoted to matters of mutual concern to all educational television stations now on the air; (2) the encouragement and development of new educational television stations in those areas in which a need and a desire, for such a station exists; and (3) the management of the ETS program service to assure the availability, to the growing number of ETV stations nationwide, of an expanding source of quality educational and cultural programs.

ETS is governed by a station-elected board of directors composed of managers of ETV stations. Financial support comes from the stations, in the form of annual membership dues. ETS services include attention to the specific needs and interest of individual stations; preparation of regional and national conferences on matters of mutual interest to all educational telecasters; compiling of information and reports affecting the national progress of the ETV movement; dissemination of current information to the member stations through news bulletins and special notices of key ETV station personnel; and the operation of the ETS program service.

ETS standing committees continually study, analyze, and report regularly to the membership on matters of vital concern to educational telecasters, such as program practices and policies, interconnection, labor relations, community antenna television, and engineering.

In addition, ETS member stations share in the overall association activities of the National Association of Educational Broadcasters (NAEB) which was founded 40 years ago as the professional association for educational, cultural,

and public service broadcasting in the United States. Other divisions of the NAEB include the Professional Member Division; National Educational Radio, which operates a nationwide educational radio network; and the Instructional Division. Among its other projects, NAEB conducts the American Samoa educational television program and the national project for improvement of televised instruction. Publications include a bimonthly journal, a monthly newsletter and various other special bulletins of interest to the educational broadcaster. Headquarters of the NAEB and the ETS Division are located at 1346 Connecticut Avenue, NW., Washington, D.C., 20036.

The CHAIRMAN. Does this complete your statement?

Dr. BREITENFELD. Yes, sir.

The CHAIRMAN. Mr. Springer, do you have any questions?

Mr. SPRINGER. I would like to congratulate you on your statement. Besides having three commercial TV's in my own area, I also have one of the large educational stations at the University of Illinois. They have done an outstanding job, one of the finest jobs in some programs that I have seen anywhere, even from towns of larger size, especially in the field of news reporting, the depth in which they are doing it. Whereas, some of the States are doing 5 or 15 minutes, they are doing 30 or 40 minutes of news at one time, covering international matters in depth. These are tremendously helpful, may I say, from many standpoints. They are also using closed circuit to transmit classwork. They are also putting some of that on the air.

I think the educational television industry or business is doing a real job in this country. As one of those who helped get additional funds for them 2 or 3 years ago, if you will recall, I think they are showing some of the results we hoped for and I am glad to see that you are concerned about this problem. You have made an impressive statement.

The CHAIRMAN. I want to thank you for coming and giving us the benefits of your views. To summarize briefly, you feel that these should be some regulation and that this should be by the FCC. I believe you are in favor of the FCC bill that I introduced?

Dr. BREITENFELD. Yes, sir.

The CHAIRMAN. Does that summarize the essence of your statement? In order to protect the educational system in this country, CATV must be regulated?

Dr. BREITENFELD. It does.

Mr. SPRINGER. Since you are sort of in the middle on this thing, is it your belief that the Staggers bill as introduced, which is the FCC position, so to speak, is such that all TV and CATV can live under those regulations?

Dr. BREITENFELD. The only opinion I can give you, Mr. Springer, is a personal one, since this was not a consideration of the committee. I believe the Staggers bill is a reasonable start and worth a trial.

Mr. SPRINGER. If you were to express an opinion, would you be in favor of closer regulation that is laid out in the FCC rules, or looser regulations?

Dr. BREITENFELD. Closer.

Mr. SPRINGER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, very much, Dr. Breitenfeld. We appreciate your coming here and sharing with us your views.

I see in the room one of our colleagues from the State of Texas and I would like to recognize him at this time because he is a very valuable

Member of the Congress and member of the Rules Committee, Congressman John Young, of Texas.

John, would you care to make a statement?

I might say that I noticed you sitting with Mr. Vann Kennedy there. Mr. Kennedy was on the witness stand this morning and your colleague from Texas Mr. Pickle gave him a very glowing introduction.

STATEMENT OF HON. JOHN YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. YOUNG. Mr. Chairman, if you don't mind, and members of the committee, I will simply stand here because I am not going to be here long enough to be seated.

I want to thank you for your gracious hospitality. I have always been immensely impressed by the accomplishments of this great committee. I feel I have been particularly in a good place to witness these accomplishments from my own committee, which, as you say, is the Rules Committee. We know from experience that all of these very important matters that come before this committee are handled expeditiously and professionally and extremely ably. I want to compliment you and the committee on the fine work that you are doing.

Mr. Vann Kennedy did testify this morning. He is a respected, well-thought-of citizen of my congressional district. I want to say to the committee that I would have been here in person to hear his testimony but I was busily engaged in a matter that was a direct conflict in my schedule, and I had no choice in the matter.

I thank you for your courtesy and I appreciate very much the hearing that you are giving this important matter, likewise.

Thank you, sir.

The CHAIRMAN. Thank you, Congressman Young. I want to tell you that Mr. Kennedy had a very clear statement. When he got through we all knew where he stood.

Mr. YOUNG. Thank you.

The CHAIRMAN. Our next witness will be Mrs. Dorothy Mugford, of Scranton, Pa., station WNEP.

Will you take the stand? I notice you have a prepared statement.

STATEMENT OF MRS. DOROTHY MUGFORD, SCRANTON, PA.

Mrs. MUGFORD. Yes, sir.

The CHAIRMAN. Do you wish to summarize it for the record or do you wish to read it?

Mrs. MUGFORD. I would like to read it, sir.

The CHAIRMAN. Proceed.

Mrs. MUGFORD. My name is Dorothy Mugford. I appear here today to discuss the benefits of CATV to UHF television station development.

From 1957 to 1963 I was employed by television stations WDAU and WNEP in the Scranton-Wilkes-Barre, Pa., market as promotion director and CATV liaison.

My CATV function was to represent the stations in their relations with area cable systems, to encourage the systems to receive the station

signals, and generally to promote mutual understanding and cooperation between the stations and CATV operators.

In the Scranton-Wilkes-Barre market area there is a concentration of CATV systems greater in number than in any other television market in the country.

I understand that today there are about 93 CATV systems serving 146,000 subscribers within the contours of the three Scranton-Wilkes-Barre stations. Most of these systems have been in operation since the early 1950's.

At the time I was employed by the Scranton-Wilkes-Barre stations, very little was known by broadcasters as to the extent of CATV development in the market. However, through my own knowledge of the area, visits to communities, through word of mouth, television set dealers and servicemen, and from other sources, we knew generally that the development was sizable.

The stations I worked for recognized the potential of these systems in increasing their audiences. They were also well aware of the topography of the region which gave rise to the CATV development, and they recognized the possibility that many of the systems may not be receiving the station signals because of the availability of other signals in the area from other major market areas.

As part of my duties as CATV liaison for the stations, I undertook a complete CATV market analysis to determine the extent of CATV development within and surrounding the market area.

Through visits to CATV locations and through telephone conversations with CATV operators, I determined the name and address of each CATV system, the manager's name, telephone number, the county location, other communities served by the systems, the number of subscribers, the call letters and broadcast channel numbers of all television stations received by the systems, the channel numbers on which they were received by CATV subscribers, and the system channel capacity—to determine whether or not each system was then receiving all the signals it was capable of receiving.

I also made on-site visitations to develop new data, to update previously obtained data, to meet with CATV operators on their home grounds to understand better how the stations could better serve each community, and to improve relations between the stations and the CATV system.

As we assumed, we did find some CATV systems which were not receiving the station's signals. We learned of the existence of these systems through other cable operators, through such published sources as the Television Factbook, through attendance at State and national CATV conventions, from equipment manufacturers, and by going into towns personally to see what the local television situation was, to talk to television dealers, set repairmen, and potential regional advertisers.

I planned systematic visits to the cable operators after versing myself thoroughly about the system: signals received, clarity of the signals, and what may be needed in way of additional services. Sometimes, I went into the community prior to my official visit to view cable TV and to talk to TV set owners.

I then visited the system operator to determine why he did not receive the station I represented—whether it was a fault of his equip-

ment, whether he carried another station with the same network affiliation, and whether our signal was not good over the area or at his antenna site. I would cite the advantages of my station: (1) The fact that we carried a late, late movie to compete with similar offerings from major market stations in Philadelphia or New York City which were receivable in the community; (2) our local news, weather, and sports, which reflected area developments of local interest; (3) the fact that we would supply camera crews to cover local events of newsworthy significance; (4) by creating a desire for our service by calling attention to such things as the local appearance of a Congressman representing the community, citing the shame that it was not available in his community; (5) inviting the operator and his engineer to visit the station so they may learn of our facilities and our problems.

If it was determined that a signal reception problem existed, the station engineer would first check topographic maps to determine the extent of terrain as a factor. He would compare topographic data and engineering contour data to establish the relationship of the location to the station's service contours, and, finally, would examine the technical possibility of making adjustments on the station's special transmitting antenna to determine if the signal could be improved over the community in question.

Then, with permission of the CATV system operator, arrangements were made with his engineer and a CATV engineering firm engaged at the station's expense to find out what could be done to improve reception.

When it was determined that technical adjustments could be made on the CATV system to accommodate reception, the station would loan the necessary equipment to the system, such as receiving antennas, converters, amplifiers, and sometimes the system required complete head-end equipment costing approximately $1,000, which the station provided on many occasions.

Once the technical adjustments were made and prior to the system's adding the signal or replacing another competing signal, the station provided extensive advertising support to introduce itself to the new community as "your local station." Among media used were billboards, radio, newspapers, special mailing pieces and literature for distribution at CATV offices, and—once the station was available to viewers—the television station itself, which for the first full week provided a special "salute" to the new community through on-the-air promotion such as special programs and special "welcomes" during all local news and weather shows.

Why did we go to all the trouble? Well, we had a simple and proven theory that increased audience would eventually lead to increased local and network advertising rates.

Was it worth the continuing effort?

Let me cite a few examples from our success story:

(1) We were able to secure major programing not otherwise available in the market area. One outstanding example was the New York Yankee weekend and holiday baseball games.

Before we were able to be received by certain CATV systems in several large communities, our station coverage did not attract the type of national advertiser necessary to support the cost of this pro-

gram. Once we had arranged to be received by these CATV systems, we secured the program and attracted a national advertiser to sponsor it, who then felt that our station audience was of such a size to warrant his sponsorship.

(2) We secured additional local businesses in the CATV community as advertisers based on our now available signal in these communities where previously an off-the-air signal was not available.

(3) Additionally, and perhaps most importantly, these added homes created a firmer foundation for present advertisers by providing a broader audience base.

These are only a few examples of the success of our efforts.

Now, I began my remarks by stating that I would speak to you about the benefits of CATV to UHF television station development. The thread of events I have briefly touched upon here actually reveals a market story—the story of the country's most successful UHF market.

In this Scranton and Wilkes-Barre area where television is blocked out by economic, technical, or topographic factors, the CATV system becomes an integral part of the broadcasting industry.

The cooperation I have described here today is not impossible of attainment by an aggressive station. It happens constantly. When it does not happen it is usually because of the fact that the difficult and technical problems I have enumerated have been permitted to obscure the wide areas where these two essential parts of the broadcasting industry can cooperate. My personal experience indicates that the television station and CATV system actually are most desirous of working together for the public, to the benefit of all.

The CHAIRMAN. Thank you, Mrs. Mugford, for appearing.

The essence of your testimony is that the CATV and broadcasting can live side by side. By working together they can help bring TV into communities. They can be helpful to each other if they work together?

Mrs. MUGFORD. Yes, sir.

The CHAIRMAN. Of course, when they don't, why, then they can't be.

Mr. Rogers.

Mr. ROGERS of Texas. Mrs. Mugford, I am sorry I was late, but I was very interested in your remarks about CATV complementing UHF rather than from detracting from it. Is that the general import of your feeling, that it helps?

Mrs. MUGFORD. I would say, with regard to my particular association with CATV and broadcasting, that CATV has been a helpful extension of the stations' signals in many areas—in most areas where there was not an available on-the-air signal.

Mr. ROGERS of Texas. Do they carry your UHF broadcast?

Mrs. MUGFORD. Yes, sir.

Mr. ROGERS of Texas. The CATV?

Mrs. MUGFORD. Yes, sir.

Mr. ROGERS of Texas. Did you object to that? Do you claim they were stealing that off the air from you?

Mrs. MUGFORD. You see, sir, I was hired to do a job as CATV liaison. Those were my duties. I don't know——

Mr. ROGERS of Texas. You are not complaining about a CATV station taking UHF off the air without—in other words, claiming that they are stealing property rights? You are not complaining about that? As a matter of fact, as I understand you want the CATV to take the UHF signal?

Mrs. MUGFORD. Well, this, to us, meant increased homes.

Mr. ROGERS of Texas. Yes, that is what I mean. So you would be for it rather than against it?

Mrs. MUGFORD. Yes, sir.

Mr. ROGERS of Texas. Thank you very much, Mrs. Mugford.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. I have nothing, except to compliment the young lady on a very fine statement.

Mrs. MUGFORD. Thank you.

The CHAIRMAN. I think it is a rather unique contribution you have made here. This was accomplished by your work and others helping you, to get these people together and to cooperate; otherwise, it would have been a dead end for both of them. This is very important.

Mr. YOUNGER. I do have just one question.

There has been a lot of testimony about the TV stations going broke. Do you know of any of them that are for sale under the hammer?

Mrs. MUGFORD. None, but if I find out, I will let you know, sir.

The CHAIRMAN. Thank you so much for taking the time to come and give us the benefit of your experience with the industry.

Mrs. MUGFORD. Thank you.

The CHAIRMAN. Mr. Douglas Manship, station WBRZ, Baton Rouge, La.

STATEMENT OF DOUGLAS MANSHIP, STATION WBRZ, BATON ROUGE, LA.

Mr. DOUGLAS. I have given a full statement to the clerk and I would like to summarize this. The statement is not very long, but I believe I can be briefer than the statement is, sir.

The CHAIRMAN. You may proceed.

Mr. DOUGLAS. Mr. Chairman, members of the subcommittee, my name is Douglas Manship, my home is in Baton Rouge, La. I am associated with the operation of two television stations.

One of these stations is in the city of Baton Rouge, La., which is generally regarded as being about the 85th market in America. The other station is operated and located in Weslaco, Tex., which is about as far down the line as you can go in Mr. Roger's State without getting wet. This market, which is generally known as the lower Rio Grande Valley, is generally conceded to be about the 163d market in America. This market is primarily a rural market as opposed to the Baton Rouge area, which is primarily a metropolitan market. Curiously enough, under the present rules as proposed by the Federal Communications Commission, neither of these markets will receive any protection from CATV, because Baton Rouge is within not the grade A but the grade B coverage signals of the stations in New Orleans, which, as you all know, is a city of in excess of 1 million people.

I have with me today, and it is a part of this statement, a telegram that I received this morning from a gentleman who is going to build, he hopes, a UHF channel in Baton Rouge, La. I would like, if I might at this time, to read this telegram:

My name is John M. McLendon. I am a resident of Jackson, Miss. I have been engaged in the construction and operation of radio broadcasting stations for 14 years. In addition, I have previously owned and operated CATV systems in several States. It is my understanding that the CATV franchise in Baton Rouge has publicly stated that it proposed to import into the Baton Rouge market signals from New Orleans, Dallas, and the west coast, particularly the independent stations in these areas. As the applicant for UHF channel 33 in Baton Rouge, it is my sincere professional opinion that unless the proposed CATV system in Baton Rouge is regulated according to proposals made by the NAB, my proposed UHF station will suffer irreparable damage and a possible early demise. In the event the CATV franchisee at Baton Rouge is allowed to import signals from distant cities into Baton Rouge, in all probability I will withdraw my application for the UHF station. It is my further belief that the importation of signals by CATV into any mixed market excepting the top 10 will seriously handicap and definitely discourage the extension of varied free television service to the public by means of UHF.

It is signed by John M. McLendon, McLendon Broadcasting Co., 980 Milner Building, Jackson, Miss.

If I might now, gentlemen, I would like to turn to the other television market which I have an interest in. That is the lower Rio Grande Valley. As I have said to you gentlemen, this is approximately the 163d market in America and it is primarily an agricultural market. By virtue of its being agricultural, it is very sensitive to CATV. The largest city in this entire area, which is approximately 100 miles in length, is Brownsville, Tex., on the southern end, up the Rio Grande River to approximately Mission, Tex., an area of about a hundred miles. This area is year-round agriculture. It is one of the citrus raising areas in America. This entire area, incidentally is served by one other television station, television station KGBT, which is located in Haringen, Tex. The transmitters of these two television stations—our station which is KRGB, and the other station, KGBT—are located just a mile or two apart, in approximately the center of this area. The impact that CATV would have on this remote small agricultural community would be devastating. I would like to trace in a few moments how CATV could seriously cripple, if not actually destroy, either or both of these television stations.

First of all, CATV franchises have been granted to most if not all of the communities served by KRGV and KGBT. All of these CATV systems must use microwave facilities to bring in television as radio signals from distant markets, namely, Corpus Christi and San Antonio, Tex., or even farther.

None of these remote television stations has any reason to be responsive to the purely local needs of the small communities served by KRGV and KGBT. They are responsive, these distant cities, to the community needs, as they should be, of San Antonio and Corpus Christi. One of the facts of life of the broadcasting business is that community needs are most expensive to provide, difficult to produce and small in qualitative amounts in total broadcast hours. But these programs, small though they may be, may mean life or death to a community and life and death from such practical things as tropical storms or other natural catastrophes, which are certainly not unknown

in that area. The economic life of a community can only be given to a community by its local broadcasting stations, not by distant stations brought in by microwave systems.

One of the most important examples of these services provided by the local television stations is the telecasting at certain seasons of the year hourly weather information to the farmers of the Lower Rio Grande Valley. As I have stated this is one of the great citrus growing areas in the United States and a difference in temperature can make the difference between harvesting a successful crop or the loss of many years of investment. There is no other way than through local broadcasting that the farmers of this area can be apprised of the time that they must heat their orchards or take other steps as are necessary to preserve their crops. No newspaper, no word of mouth, nor any other means exists except through local broadcasters. As a matter of fact, our television station, KRGV, on one occasion during the winter just past, stayed on for a period of 36 hours for the sole purpose of bringing weather information to farmers and citrus growers. The situation was that critical. This is to an audience that CATV frankly admits it has no other means of reaching.

It is clear from the above illustration that no Corpus Christi, San Antonio or other station being brought in by CATV can provide these vital services that I have described. This statement is no reflection on the management of those stations, since they have a responsibility to their community, not to the Lower Rio Grande Valley.

Now, all of these activities are supported solely by advertising revenues and from no other source. And advertisers, Mr. Chairman, are hardheaded businessmen. If advertisers find out, as they will, that the Lower Rio Grande Valley can be covered by advertising programs that originate in San Antonio or Corpus Christi, they will simply stop buying advertising on KRGV and KGBT. When advertisers stop buying advertising on these stations, television programs cease to become available to these stations. So these two stations must buy replacement film for Bonanza and Rawhide while their local audiences watch these programs from San Antonio or Corpus Christi.

Here is the double barrel blow of CATV. It cuts off the local programing and revenue by introducing distant signals, in this instance from San Antonio and Corpus Christi, and requires at the same time the local station to go dark or provide old Hollywood films as substitute programing. Thus, CATV reduces local station revenue and increases its operating cost at one fell swoop, all the while making money for itself and paying nothing for its product.

If CATV systems manage to saturate the communitites of this vast area, very substantial numbers of people will never be able to subscribe to these systems because they do not live in the towns of the valley. CATV frankly admits that it has no plans to serve the rural family and in the agricultural area, great numbers of families are rural families.

Gentlemen, it is my considered opinion that there is a serious problem facing television broadcasters in markets such as I have described unless affirmative action is taken in the very near future to arrest the development. For these reasons, I am hopeful that the rules of the Federal Communications Commission can be made effective and

prompt and that they can be extended to cover all markets, not just the top 100 markets.

If this action is taken, it would seem that no legislation would be required. However, your committee's support of the FCC action is all greatly encouraged prompt adoption and implementation of effective regulatory measures in this area by the FCC in the public interest.

Thank you.

(The prepared statement of Mr. Manship follows:)

STATEMENT OF DOUGLAS MANSHIP, STATION WBRZ, BATON ROUGE, LA.

Mr. Chairman, members of the committee, my name is Douglas L. Manship. My home is in Baton Rouge, La. I am associated with the operation of two television stations. One in Baton Rouge, La., and the other in Weslaco, Tex. The city of Baton Rouge is generally conceded to be about the 84th or 85th television market in the United States. The other market, Weslaco, Tex., where television station KRGV is located is a very small market and, in fact the U.S. census of 1960 gives Weslaco a total population of only 15,649 people. Weslaco is part of a geographic area in deep south Texas generally referred to as the Lower Rio Grande Valley. This entire area is regarded as about the 163d television market.

In my testimony today I wish to discuss briefly the effect that uncontrolled CATV would have on both of these markets, one of which is within the first 100 markets and the other which is not.

Curiously enough under the proposed FCC rules both of these markets would receive no protection from the importation of distant CATV signals.

First, let me discuss Baton Rouge. Uncontrolled CATV in Baton Rouge would result in the introduction of at least the signals of New Orleans, La., television stations. New Orleans is a city with a population in excess of 1 million people in its immediate metropolitan area. Baton Rouge is less than one-fourth that size. Baton Rouge is currently served by two VHF stations. It also has available to it one UHF commercial channel and one UHF educational channel. The UHF commercial channel has been applied for and the FCC has this UHF application now under consideration. The applicant for this channel has requested that I make the following statement regarding the introduction of distant CATV signals into Baton Rouge:

"My name is John M. McLendon. I am a resident of Jackson, Miss. I have been engaged in the construction and operation of radio broadcasting stations for 14 years. In addition I have previously owned and operated CATV systems in several States. It is my understanding that the CATV franchise in Baton Rouge has publicly stated that it proposed to import into the Baton Rouge market signals from New Orleans, Dallas, and the west coast, particularly the independent stations of these areas. As the applicant for UHF channel 33 in Baton Rouge, it is my sincere professional opinion that unless the proposed CATV system in Baton Rouge is regulated according to proposals made by the NAB, my proposed UHF station will suffer irreparable damage and a possible early demise. In the event the CATV franchisee at Baton Rouge is allowed to import signals from distant cities into Baton Rouge, in all probability I will withdraw my application for the UHF station. It is my further belief that the importation of signals by CATV into any mixed market excepting the top 10 will seriously handicap and definitely discourage the extension of varied free television service to the public by means of UHF."

While Baton Rouge is not a small market by many criteria, it is a small market in comparison to New Orleans and as always the large metropolitan areas, in this case New Orleans with its more than a million people, will economically gain at the expense of Baton Rouge and I can assure you that Baton Rouge will not gain in reciprocation for no CATV operator that I have heard of would consider the idea of introducing Baton Rouge's television signals into New Orleans.

I would now like, gentlemen, to turn to the other market that I previously referred to—the Lower Rio Grande Valley. This market, as I have said, is ranked as approximately the 163d television market in the United States. It is basically an agricultural area. Its economics are dominated by agriculture and agriculture, as you gentlemen know, is a demanding master with great risk and

quite often small rewards. Geographically the Lower Rio Grande Valley is an area beginning at Brownsville, Tex., at the mouth of the Rio Grande River and extending up this river for about a hundred miles. The towns in this area are all small. Brownsville, the largest, has less than 50,000 people and because this market is an agricultural area great numbers of the people there live on farms or in sparsely settled areas. Yet there are enough small towns to make this area a CATV operator's paradise.

This entire area is presently served by one other television station, KGBT, located in Harlingen, Tex. KGBT serves the same area as KRGV, for all practical purposes. As a matter of fact, the transmitting towers of the two stations are located only a few miles apart.

The impact that uncontrolled CATV would have on this remote sprawling agricultural community would be devastating, and I would like in a few moments, to trace how uncontrolled CATV could seriously cripple, if not actually destroy, either or both of these television stations.

First of all, CATV franchises have been granted by the governments of most, if not all, of the communities of the area served by KRGV and KGBT. All of these CATV systems must use, and in fact propose to use, microwave facilities to bring in television and radio signals from distant markets; namely, Corpus Christi and San Antonio, Tex., or even farther.

The television programs brought into the Lower Rio Grande market from San Antonio and Corpus Christi must substantially duplicate the programs now broadcast by the two local stations for the three national networks (ABC, CBS, and NBC) are represented by three of the four San Antonio stations and by all three of the Corpus Christi stations. Admittedly, there will be some additional programing introduced into the market by these distant stations, but much of this programing will be directed to these stations' local communities, San Antonio and Corpus Christi.

None of these remote television signals (i.e., San Antonio and Corpus Christi) has any reason to be responsive to the purely local needs of the small communities served by KRGV and KGBT. They are responsive, as they should be, to the community needs of San Antonio and Corpus Christi.

Now one of the facts of life of the broadcasting business is that community needs are most expensive to provide, difficult to produce, and small in quantitative amounts in total broadcast hours. But these programs can mean life and death to a community. Life and death from natural causes, such as tropical storms or other natural catastrophes. The economic life of a community can only be given to a community by its local broadcasting stations, not by distant stations brought in by microwave systems.

One of the most important examples of this service, provided by local television stations, is the telecasting at certain seasons of the year, hourly weather information to the farmers of the Lower Rio Grande Valley. As I am sure you are all aware that one of the great citrus-growing areas of the United States is the Lower Rio Grande Valley, and the difference of even a degree of temperature can mean the harvesting of a successful crop or the loss of many years' investment. There is no other way other than through local broadcasting that the farmers of this area can be apprised of the time that they must heat their orchards or take other steps as are necessary to preserve their crops. No newspaper, no word of mouth, nor other means exists except through the local broadcasters. As a matter of fact our television station KRGV on one occasion during the winter just past stayed on all night long for the sole purpose of bringing weather information to farmers and citrus growers. This to an audience that CATV frankly admits it has no means of reaching.

Let me give you one other vital illustration: All of the agriculture in this area is agriculture that depends on irrigation for its moisture. The daily reports, for example, of the saline content of the water is of extreme importance to the farmers. The availability of water on a daily basis is, of course, of extreme importance to the agricultural life. There is no other way that this information can be as successfully given to the agricultural community than by the local television broadcasters. So you can see that the economic life of a community can only be given to the community by its local broadcasting stations, not by distant stations brought in by microwave relay systems.

It is clear from the above illustrations that no Corpus Christi, San Antonio, or other station being brought in by CATV can provide these vital services as I have described. This statement is no reflection on the management of those

stations since they have a responsibility to program for their communities, not the lower Rio Grande Valley.

All of these activities are supported solely by advertising revenues and from no other source, and advertisers are hardheaded businessmen, and if advertisers find out that the lower Rio Grande Valley can be covered by advertising programs that originate from San Antonio and Corpus Christi, they will simply stop buying advertising on KRGV and KGVT. And when advertisers stop buying advertising on KRGV and KGBT, television programs stop being available to these stations. So these two stations must then buy replacement film for their "Bonanzas" and "Rawhides" while their local audiences can watch "Bonanza" and "Rawhide" from San Antonio or Corpus Christi.

And here is the double-barrel blow of CATV. It cuts off the local programing and revenue by introducing distant signals, in this instance from San Antonio and Corpus Christi, and it requires at the same time the local station to go dark or provide old Hollywood films as substitute programing. Thus, CATV reduces local station revenue and increases its operating cost at one fell swoop, all the while making money for itself and paying nothing for its product.

Even if CATV systems manage to saturate the communities of this vast area, very substantial numbers of people will never be able to subscribe to these CATV systems because they do not live in the towns of the lower Rio Grande Valley. CATV frankly admits that it has no plans to serve the rural family and in an agricultural area naturally great numbers of families are rural families. Therefore, if CATV forces either or both of the local stations off the air because of fractionalization of audience and subsequent lowering of revenue, these people, whose very economic life or death depends on local TV information, will be denied all or a substantial part of their television services.

The Congress has within the past several years wisely provided for full local UHF–VHF television service for all of the people of America. The lower Rio Grande Valley has five additional UHF channels available. Perhaps these channels will not be utilized in the next year or two, but they will be utilized for local TV service in the near future if distant TV signals do not snuff out their life before they have a chance to be born. For as a practicing and practical broadcaster, I can assure you that these future local TV stations will never be built if distant TV signals are introduced into this or any other small market of America.

Gentlemen, it is my firm and considered belief that there is a serious problem facing televiison broadcasters in markets such as I have described. Unless affirmative action is taken in the very near future to arrest the development, CATV systems will spread like a cancer and destroy the small market broadcaster. Moreover, in those markets which do not have VHF stations, there will be no incentive to develop the UHF.

For these reasons, I am hopeful that the rules proposed by the Federal Communications Commission can be made effective promptly and can be extended to cover all markets, not just the top 100. If that is taken, it would seem that no legislation would be required. However, your committe's support of the FCC's actions will greatly encourage prompt adoption and implementation of effective regulatory measures in this area by the FCC in the public interest.

I am certain that Congress is interested in preserving a nationwide system of local TV stations, each serving its own particular individual community, and I urge your committee to register its views in support of the FCC's regulations under existing authority over CATV systems.

The CHAIRMAN. You say your Texas station is in Weslaco?

Mr. MANSHIP. Yes, sir.

The CHAIRMAN. Is that in Duval County?

Mr. MANSHIP. I must admit my ignorance, sir. I don't believe it is.

The CHAIRMAN. You mentioned Harlingen. What is the population of Harlingen?

Mr. MANSHIP. It is approximately 40,000, sir. Weslaco, incidentally, is under 16,000 people.

The total area from Brownsville to Mission, which is this hundred-mile area, is under 200,000 people. There are approximately six or eight towns there, none of them—Brownsville being the biggest and it isn't 50,000 people.

The CHAIRMAN. 50,000?

Mr. MANSHIP. It is not that big; no, sir.

The CHAIRMAN. And how many did you say in Weslaco?

Mr. MANSHIP. Under 16,000.

The CHAIRMAN Then the rest of the valley consists of rural communities?

Mr. MANSHIP. Well, there is McAllen, another small community. Edinburg is another small community. Pharr is another small community. All told, I would guess, and I can be proven wrong, that approximately 60 percent of the people in the valley live in these towns.

The CHAIRMAN. You missed one little town there called La Feria.

Mr. MANSHIP. My apologies.

The CHAIRMAN. I used to own property there for a long period of time. I do not any longer.

As you know, it is in Cameron County and I thought Weslaco was in there.

Your whole testimony is that CATV will not supply the rural people in those counties?

Mr. MANSHIP. That is one part of it, sir.

Let me make it plain, sir. I have no objection to what I think is better known as conventional CATV. I do have an objection to the importation of distant signals. As in the case of Baton Rouge, the CATV franchise owner there has publicly stated that he expects to bring in the independent stations from the west coast of the United States. The proliferation of signals is a very serious thing to a local broadcaster and when your audiences have 10 or 5 signals to choose from, only 3 or 4 of which would be purely local in character, you damage yourself very seriously, I think. But I have no objection to the traditional CATV operation. It is the use of microwaves that bothers me, sir.

The CHAIRMAN. Then you think that by working together in a local community, it would serve the purpose?

Mr. MANSHIP. Oh, yes, sir. Certainly so.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Mr. Manship, I am confused about your advocating the FCC moving on into what you call conventional TV—I mean conventional CATV, to which you say you have no objection. Now, most of your statement was centered around a situation in the valley of Texas around Weslaco. Now, all of the CATV that comes into that valley comes by way of microwave, does it not?

Mr. MANSHIP. That is correct, sir. When I speak of microwave, I am not then talking about conventional CATV.

Mr. ROGERS of Texas. I understand that. That is the very point. The FCC presently has jurisdiction over microwave and is asserting that jurisdiction and following it out. That is the reason I can't understand your position.

Mr. MANSHIP. Well, it is my understanding, sir, that the rules as the FCC now proposes them would only prevent the importation of microwave signals into the top 100 markets and it does not do—it does not prevent the importation of microwave signals into the smaller markets.

Mr. ROGERS of Texas. I think you ought to go over this proposed move by the FCC. Frankly, I think the FCC has moved in several

directions at the same time in an effort to confuse a lot of people. But as far as your microwave is concerned, which you say you have some fear of, the FCC could give you relief on any trouble you are having with that right now, on the *Carter Mountain* case. That would be true also in Baton Rouge.

Mr. MANSHIP. Well, Mr. Rogers, I may need a lawyer here. I don't have one, sir.

Mr. ROGERS of Texas. I think this: I think that this whole picture ought to be put into proper perspective all over this country. Not just you, Mr. Manship, because I think your situation is such that you are somewhat confused on what they are doing and what they are trying to do. Because they could grant you relief right now insofar as microwave is concerned. You are on a straight, pure, off-the-air television reception. I understand that is what you are talking about, conventional, and this you have no objection to?

Mr. MANSHIP. None whatsoever.

Mr. ROGERS of Texas. So insofar as Baton Rouge is concerned, the proposed UHF station, conventional CATV and that UHF station could work together.

Mr. MANSHIP. That is my understanding.

Mr. ROGERS of Texas. Whether or not Mr. McLendon wants to do it is another question. But his fear, as I understand his telegram, is what we call leapfrogging; that is, bringing in distant stations. This has to be done by microwave and the FCC now has jurisdiction to protect him on that, if that is what he is looking for, protection.

But I think in this area, we get to the point of whether or not it is more important for the people in the Baton Rouge area to have reception of what they want or to have the UHF station if you have to choose between the two. I don't think you have to choose between the two.

Mr. MANSHIP. Well, actually, when you speak of this, Mr. Rogers, and I do not mean to be rude or irrelevant, but when you speak of the people of Baton Rouge or any other community having what they want, in effect, they have what the CATV operator brings in, not what they want.

Mr. ROGERS of Texas. They don't have to listen to this if they don't want to. They can turn their station off and turn to the local station.

Mr. MANSHIP. Oh, certainly.

Mr. ROGERS of Texas. Now, another thing about this business in Weslaco and down in that general area, I noticed on storms and this sort of thing, Mr. Manship, almost all of that goes by radio, doesn't it? Those farmers and people would never depend on television for their weather?

Mr. MANSHIP. Well, Mr. Rogers, may I say that most of the radio stations in the valley are not powerful enough to bring this information to the entire valley. Furthermore, we have found when we did this last year, our radio station at the same time was broadcasting the same information. But the vast majority of the people that we talked to, and we made an effort to find out how much this was used, the vast majority of the people came to the television station because of the visual aspect of the trend of temperature. There is something that you understand a little bit better if you can see the temperature going up and down.

But the thing that worries me about this, sir, is the fact that if CATV gets into the valley, as it will, it gets into this valley and it affects my operating statement to the effect that I can no longer provide these services. This is what worries me, sir.

Mr. ROGERS of Texas. What I am talking about is this, Mr. Manship: Why are you advocating legislation in this thing? The FCC is taking the position right now that they have the power to do anything they want to with microwave.

Mr. MANSHIP. I wish they would do it.

Mr. ROGERS of Texas. What I am talking about is maybe you are in the wrong court here.

Mr. MANSHIP. No, sir. We have a petition right now—I don't know if "petition" is the proper word—before the FCC on the importation of CATV signals by microwaves. We are opposing the grants of these things. Quite frankly, I am told by my attorney that we have no chance now under the existing rules. Again, maybe I have the wrong attorney.

Mr. ROGERS of Texas. Does he tell you that that is because the FCC does not have the power to do it or because the FCC is dragging its feet in an effort to make it possible to get this additional jurisdiction that they are seeking?

Mr. MANSHIP. He did not tell me either one, but I would be glad to ask him, sir.

Mr. ROGERS of Texas. I wish you would, because I think the answer has already been given to you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. No, sir.

The CHAIRMAN. Thank you very much, Mr. Manship, for appearing and giving us your views.

Our next witness will be Mr. Paul Porter, International Telemeter Corp.

Mr. Porter, I understand that you have quite an extensive prepared statement, sir.

STATEMENT OF PAUL A. PORTER, ESQ., INTERNATIONAL TELEMETER CORP., WASHINGTON, D.C.; ACCOMPANIED BY REED MILLER AND LESLIE WINIK

Mr. PORTER. I do not intend, Mr. Chairman and Mr. Rogers, to read this statement to the committee. I would like to have it included in the record as though read.

The CHAIRMAN. It shall be.

Mr. PORTER. I will undertake, if I may, to summarize it. I would like to comment, if the chairman and Mr. Rogers please, that I am accompanied by my partner here, Mr. Reed Miller, who is a member of our firm of Arnold & Porter.

We appear on behalf of International Telemeter, which I will refer to as Telemeter. This is now a wholly owned subsidiary of the Paramount Pictures Corp. and has for many years been engaged in the development of a system of what might be described as subscription television. Now, the purpose of my statement here today, is to register

some opposition to the provision in H.R. 13286, more specifically, section 331(b) which is set forth in my statement, but which, if adopted, would preclude the use of wired television in the public interest.

In other words, no CATV system, as we read this amendment, could originate programs, could transmit programs for a subscription or for a fee.

Now, it is the burden of my presentation here that it is anticompetitive, it is retrogressive, and it is not making the full utilization of the capacities and capabilities that the conventional CATV system perhaps as modified is capable of.

Now, these present systems, as this committee well knows, now have the capacity for 12 channels. Under rather uncomplicated modifications, they could have the capacity for 20 channels, 20 channels within the consumer's home. Now that seems like an awful lot of television and it certainly is. There are some who think what we have today may be too much. But nonetheless, I have set forth in my statement here what we conceive to be a rather typical breakdown of what a 20-channel cable system could do in a specific community. That is described on pages 2 and 3, if the committee please, of my prepared statement here. This would be prohibited under the present 331(b).

Now, I next set forth some of the history and background of Telemeter's experimentation in this field which has gone on for a period, as I have said, since 1951. We have tested this system in Palm Springs, Calif. We ran a test for some 4 years or so in a suburb of Toronto, of the name of Etobicoke, where we had wired 14,000 homes on a closed circuit, multichannel transmission system.

Now, Telemeter contends, gentlemen, that we got some valuable experience from this Etobicoke operation. And perhaps one of the most important things was a definition of what is pay TV and what subscription television is.

We feel that we have demonstrated that the whole system experimented with there was additive. It added new program choices to the viewer and to the listener. It had no discernible impact upon the so-called free system of television. I have described on page 6 here a number of new programs which were not available on our sponsored system of television that were made available to the subscribers in this Canadian area. I may say that, having terminated the experiment in Etobicoke, we are now restructuring—I learned today from Mr. Les Winik, who is the vice president of International Telemeter, who is with me today, that we are undertaking a similar operation, I believe in Montreal.

Now, I submit that this committee should give very serious consideration before you enact into legislation a restriction on the full utilizational capability of a CATV system. In fact, it is going to be done in Canada, and I think our Canadian friends and viewers and listeners should not have any particular advantage over the viewers and listeners here in the continental United States.

We have developed in this statement certain analyses that have been made by broadcasters as to the saturation of the so-called commercial or the present system of broadcasting and we think that it has about reached the saturation point. We believe that the predictions that were made 10 years ago as to the number of stations that could be supported by the commercial system, both VHF and UHF, has about been reached. The economics of it, of course, is somewhat limited.

So what we are saying, really, is that the elimination of this restrictive provision in the pending legislation would open up, if that is eliminated, some new competitive opportunities for those who want to risk their capital, who wish to make suitable arrangements with the existing CATV systems, to give the viewing public a choice.

Now, on pages 10 and 11, starting on page 10, I develop in some detail here the new additional things that could be made available to viewers on this multichannel system which we believe this restrictive provision will attempt to frustrate. I direct the committee's attention to the new opportunities that are set forth on pages 11 through 14 of my statement.

What we are talking about here, it seems to me, in spite of all the great things that the existing network system of broadcasting has done, is whether this is all that the American public is entitled to view and see. We do not believe that legislation should be used to shelter or protect a previous position.

We also urge that with the enactment of 331(b) you would continue to have the same kind of market dominance, if you please, over the existing program choices that the American public can have.

Also, it may be that if subscription television systems by wire wish to establish their own systems rather than in collaboration with existing CATV systems, that would be an added burden on the consumer.

So our plea is that Congress should not, here in 1966, say to the public, "This is all the television you are going to get from here on, we are going to protect the existing system against all forms of competition."

Now, we all know, everybody on this committee knows as well as any scientist or technician, what the technological breakthroughs have been in this industry, with the development of COMSAT, with satellites. So therefore, to suggest at this stage of the art that Congress should come along and say, "We are going to enact a restriction and say that we cannot utilize the full capabilities of any systems that are available," we believe is unsound public policy.

We disagree with the failure of the Commission in their March 1966 report, which undertook again to regulate pay TV systems, to sanction wired subscription television, even though they did give recognition to the fact that "off the air" subscription television on a nationwide scale can be effectively integrated into the existing TV system.

Now, I have pointed out, which I am sure the committee is aware of here, some I think rather pertinent comments on the new technology that Chairman Henry discussed at the recent broadcasters convention in Chicago, in which he observed—I think this is worth considering carefully—that technology is not standing still.

It will not preserve forever or even until that long tomorrow, the type of broadcast system we have today.

Mr. Henry discussed satellite broadcasting and stated that we will sooner or later be faced with a fully developed satellite, capable of broadcasting directly from sky to home. That being so, we may now neither ignore it nor hide it. Then he makes a plea for progress.

Now, Mr. Joe Charyk, the president of COMSAT, had a somewhat different concept in his remarks made the day after; namely, that as he envisages the future of satellite operation, it is a rather exciting

prediction, in which he pointed out that it seems inevitable, "for example, that we will continue to move forward the effective establishment in metropolitan centers of what will amount in fact to a communications utility."

Then he described this system which will link homes, business offices, stores, through wide-band, high-capacity transmission facilities, to central switching and computing centers, supplying a vast variety of services—color television, stereophonic FM radio, aural and visual telephone, newspapers on television, library reference, et cetera.

We think that subscription television, if there are those who are willing to risk their money to compete in the marketplace, has an important part in this new technological complex, and there are many, many ways in which we believe subscription television can play its part in this technological breakthrough.

So what we are here today saying, gentlemen, is urging the Congress and the Commission to act in a manner so as not to discourage, retard, or thwart the development of these programs.

Now, I have one final comment with respect to 331(b). We think, and I think that my friend, Mr. Rogers, will particularly appreciate that no lawyer likes to testify without raising some constitutional issue—we believe that there is and may be a serious constitutional issue with respect to 331(b). In support of that position, I have, on page 22 of my statement, included some excerpts of the decision in the Supreme Court of California with respect to the well-known referendum that was held there and that was designed to stop in its formative stages a system of subscription television in California. And even though I'm told that there were certain, Mr. Chairman, inquiries made in polls which asked the consumer, "Would you prefer to pay for what you now get free," the answer was an overwhelming negative, which came, I don't believe, as a complete surprise to anyone. Hence, as the product of a massive propaganda campaign, by, I assume, broadcasters, certain theater exhibitors and others, the voters of California went to the polls and in this referendum, they proclaimed by substantial majorities that they did not in fact want to pay for something they now got free.

We think the issue was misstated, was misrepresented, and by the time this case was challenged and came to the Supreme Court of California, a majority of the court struck down this statute enacted by referendum as being an unconstitutional abridgement of the first amendment—not only on the right to speak, but the right or opportunity to transmit new programs, new ideas, new opportunities.

So we suggest very respectfully that this committee should give serious consideration with respect to 331(b) as to whether or not it does not have certain constitutional disabilities and certain infirmities that the California Supreme Court had before it.

Finally, on page 26 of my statement, I have undertaken here to summarize the benefits that a multichannel system will have. We conclude with the plea that neither the Congress nor the Commission should attempt in one guise or another to extend unneeded protection to the existing systems against competition. We say let the consumer, let the viewer, let the public, let the marketplace decide. And we believe that that is the American, and if I may, say, the constitutional procedure.

That concludes my summary of this statement, Mr. Chairman. I would be happy to respond to any questions.

(The complete statement by Mr. Porter follows:)

STATEMENT OF PAUL A. PORTER IN BEHALF OF INTERNATIONAL TELEMETER CORP.

INTRODUCTION

This statement is presented in behalf of International Telemeter Corp. (hereinafter Telemeter), a division of Paramount Pictures Corp. It is directed particularly in opposition to the proposed new section 331(b) of the Communications Act of 1934, as amended, as contained in H.R. 13286, which reads as follows:

"(b) No community antenna system shall transmit over its system any program or other material other than that which it has received directly or indirectly over the air from a broadcast station except that the Commission may, upon an express finding that it would serve the public interest, authorize by general rule limited exceptions to permit such transmissions without any additional charge to subscribers."

If adopted, as proposed, section 331(b) would prevent the full use of wired television in the public interest. CATV systems now have 12-channel capacity and before long expect to operate with 20 channels. If the Federal Communications Commission is to achieve its longstanding goal of establishing a "truly nationwide, competitive system" of television, it must leave the industry free to develop the full potential of the television medium, whether by air or wire. With 20-channel capacity, a CATV system can bring to the public a wide choice of high-quality programing of many kinds which the existing systems of off-the-air telecasting cannot, in the foreseeable future, hope to match. Let me briefly set down the uses that could be made of a 20-channel CATV system. A typical breakdown of a 20-channel cable system could provide for the following:

(*a*) Ten channels in any community, large or small, for the carriage of high-quality black and white and color television programs for existing VHF and UHF television stations;

(*b*) Six channels for the use of local cable TV stations, supplementing the programing of existing VHF and UHF stations, with local public service program offerings of a civic, educational, religious and similar nature, facsimile transmission of newspapers and magazines, and special services for the medical profession and similar interests.

(*c*) One channel for telephone-television use by the telephone company; and

(*d*) Three channels for high quality black and white and color subscription television programs, thus giving the public a choice of superior "box office" attractions.

Undoubtedly a number of the local public service programs mentioned above and none of the high quality, box office subscription television programs would be possible if section 331(b) is adopted. It is with respect to the latter, subscription television, that Telemeter is particularly concerned.

TELEMETER'S INTEREST

Telemeter was one of the first to experiment with both over-the-air and wired subscription television. Telemeter has been substantially owned by Paramount Pictures Corp. since 1951. Since 1959 it has been solely owned by Paramount.

In November 1953, Telemeter inaugurated a 6-month experiment in Palm Springs, Calif., testing a closed-circuit system of subscription television. This test provided initial evidence that, given special entertainment and sports not otherwise available on conventional television, the public would respond and pay for such home entertainment at a rate which would justify the operation from an economic standpoint.

In the following 6 years Telemeter carried on considerable experimentation in its laboratories, refining and improving systems, equipment and techniques for both cable and airlink subscription television operations.

By 1959 Telemeter equipment had been developed permitting simultaneous transmission of three programs over coaxial cable which, feeding through a small converter attached externally to any TV receiver, could be viewed on a single, unused channel of the set. A new dimension was thus added to the techniques of

closed-circuit transmission, opening unlimited opportunities for catering to the varied tastes of subscribers to what Telemeter has called its "theater in the home" service.

In May 1959, Telemeter entered upon its now well-known Etobicoke experiment in suburban Metropolitan Toronto, Canada. On February 26, 1960, Trans-Canada Telemeter inaugurated its closed-circuit, multichannel transmission service to an area wired to reach 14,000 homes.

WHAT IS PAY TV OR SUBSCRIPTION TELEVISION?

Before discussing the results of the Etobicoke wired subscription television system, it is central to the understanding of Telemeter's position to answer the question "What is pay TV or subscription television?"

Pay TV is probably the most widely misunderstood of all forms of television dissemination. The opponents of pay TV—the networks, broadcasters, and theater exhibitors—have been reasonably successful in selling the public and many otherwise well-informed public officials on a wholly inaccurate definition of pay TV. Pay TV, they say, means "paying for what you now receive free" under the existing system.

If this were an accurate definition of subscription television, it would fall flat on its competitive face before it could get started. The definition is fallacious in two respects. First, so-called free television isn't free. The public pays indirectly for the existing television programing through the purchase of the sponsors' products. Moreover, the sponsor dictates, through the network or other program source which he uses, that which the consumer-viewer will see on television. Result: Batman roams the "vast wasteland" not once but twice a week in prime evening time. In the case of subscription television, the viewer pays for superior programs, of his choice, on a per-program basis.

Second, and most important, subscription television, as envisioned and practiced by Telemeter, is designed to make available to the public high quality box office type attractions which are not available and probably cannot, for economic reasons, be made available to the public under the existing system of broadcasting. Consider, for example, the types of programs offered to the public by Telemeter in its Etobicoke experiment.

The Etobicoke experiment continued for a period of 5 years. It brought to the subscribing public not what it already received "free," but rather top quality, otherwise unavailable box office attractions, such as current feature motion picture films, not available on conventional television; a live transmission from the stage of the Eugene O'Neill Theater in New York of a performance of "Show Girl," starring Carol Channing; taped performances of Broadway and off-Broadway productions; especially produced drama for Telemeter viewers; the recreation of the nightclub performance of the McGuire Sisters; an especially produced presentation by Gracie Fields and Stanley Holloway; the away-from-home games of the Toronto Maple Leafs hockey club, never before available locally on television; the otherwise blacked-out home games of the Toronto Argonauts professional football club; blacked-out championship boxing matches; and other attractions not available to the public on conventional television.

When Telemeter terminated the Etobicoke experiment in April 1965, a large percentage of the subscribers responded to a questionnaire, with 96.9 percent of the respondents expressing regret at the termination of the service.

In its 5 years of uninterrupted service, Telemeter established, beyond question that there is a large audience willing to pay for superior entertainment in the home on a continuing basis and thus demonstrated that the Telemeter "theater in the home" performs a service to members of the public who are unable, or find it inconvenient, to avail themselves of facilities away from home.

I repeat that Telemeter has never assumed nor does it now believe that the American public will be willing to pay directly for the type of entertainment which it now pays for indirectly on advertiser-sponsored television.

To the contrary, if subscription television is to be successful, it will be because the vastly larger economic base provided thereby will enable its owners to bring to the public unusual and superior attractions which can never be provided by advertiser-sponsored television because of their prohibitive cost. Sponsored television—even with the giants of industry as its clients—cannot afford, on a regular basis, to bring current feature pictures to the viewer. Sponsored television cannot afford regularly to purchase the rights to otherwise blacked-out major sporting events. Sponsored television cannot afford, on a regular basis,

to bring many of the outstanding events to the viewing public which subscription television can do with comparative economic ease.

Nor can advertiser-sponsored television provide the need for additional station outlets, whether VHF or UHF. As long ago as 1955, CBS presented to the Commission an economic study of the present broadcasting system made by its adviser, Mr. Sidney S. Alexander (see Oct. 17, 1955, issue of Broadcasting magazine). At that time Mr. Alexander predicted that no matter how the Commission adjusted its television allocation plan, the number of stations in the United States will be determined by the ability of U.S. advertising to provide the revenue for television. Mr. Alexander predicted that, by the most generous estimates, not more than 600 stations (two-thirds of the 1,800 channels allocated), whether VHF or UHF, could successfully operate for several years to come. Ten years later it is apparent that Mr. Alexander's predictions were surprisingly accurate. For advertiser-sponsored television has not been able substantially to exceed his prediction.

The economics of sponsored and subscription television systems were fully developed in Telemeter's 1955 comments to the Commission filed in FCC docket No. 11279, to which reference is here made. As was there demonstrated with detailed economic studies, given the economic ability to produce, there is literally no limit to the imaginative and creative ability of America's entertainment industry. With the broadening of the economic base provided by subscription television, the term "spectacular" can become descriptive of the average rather than the best.

Thus, the success of subscription television will not depend upon its ability to siphon off existing programs from conventional television. On the contrary, it will depend upon its ability to provide superior programing—not now available to the public—at a reasonable price which the public is willing to pay.

Moreover, as further developed herein, CATV, employing subscription television for only a small portion of its total channel capacity, can also proliferate the number of local stations and outlets for local programing in a manner impossible of achievement under the existing system of television broadcasting.

The Commission's second report and order in docket No. 14895, et al., paragraph 153(ii), pursuant to which H.R. 13286 was proposed, urges the Congress to prohibit program origination by CATV on the fallacious ground that:

"A hybrid CATV-pay TV operation would be based in an integral and substantial fashion, on use of broadcast signals, and such use of the broadcast industry's signals would appear to be both inequitable and inconsistent with the public interest. It is inequitable because it is clearly unfair to use the broadcast industry's product as a basis for wire pay-TV operation which could adversely affect that industry or indeed supplant it."

Telemeter submits that an entirely opposite result would obtain. If a CATV system were permitted to employ one or more of its channels to originate top-quality box-office subscription television attractions, paid for on a per program basis, the substantial revenue derived therefrom would permit the CATV operator to provide the existing off-the-air broadcast product to the public at a greatly reduced or perhaps no-charge basis, while simultaneously permitting the CATV operator to devote other channels to outstanding local public service programing at no charge to the public.

I have listed some of the local programs which CATV could originate in my introductory statement. Let me now elaborate in some detail.

PROGRAMING IMPROVEMENT VIA CATV

A. Local public service programing via cable

With the continuing suburban proliferation, urban sprawl, and the approach of megalopolis, the need for both local public service and educational programs will continue to multiply. For example, to consider CATV's role in suburban and local areas, certain channels could be used to telecast the local suburban, county, or parish government meeting. In this way, local governmental proceedings could be made available to a wider segment of the public rather than to go unreported by the existing television news media because of "more important" city or State matters. Thus, one channel could bring complete reports of a local school board meeting, and another a city council meeting. Both would probably receive only cursory treatment by existing local television news facilities.

B. Ethnic programing possibilities

Another facet to be considered is that certain channels could be used to telecast events of interest only to a particular section of the city's populace. For example, Chicago's large Polish population could be expected to watch programs and news stories relating to Polish culture and citizenry, but would be uninterested in programs concerning Ireland and Irishmen. Under the existing system of television programing, neither segment of the population would expect to see such a program. Under CATV's multiple-channel capability, both programs could be shown. These programs would roughly resemble special interest or special language newspapers, which currently coexist with the large metropolitan dailies. Indeed, one of the 20 CATV channels could eventually be used for the transmission of facsimile newspapers and other publications directly into the homes of consumers—a development which is now well along in laboratory research.

C. Expanded educational television

Yet another advantage of CATV's multiple-channel selection is in the area of "educational television," the term being used herein in its broadest sense. Public schools—at all levels—could use the channels for in-school programs, such as all-school announcements and awards, and for making available to students in every school within a public school system visual presentation of subjects which could not otherwise be feasible. Another use of the CATV channel could provide college and adult extension courses—including the offering of such courses for college credit through the utilization of a subscription television device or arrangement—a pay-as-you-learn approach to the mounting cost of higher education.

D. Telephone-television

A 20-channel cable system would also provide room for telephone-television, offered by the telephone companies, to permit telephone subscribers to see as well as hear those with whom they are speaking.

E. Special service uses

The multichannel cable system can also be used for special service subscription purposes. Thus, for example, the medical profession could reach physicians and surgeons in their homes or offices with the latest data on advances in medicine. This could be accomplished via scrambled images that could be decoded only by those subscribing to the service.

F. Addition of local cable TV stations

It has long been acknowledged that CATV systems in many instances provide the only service available to many set owners. These owners live far from the densely populated areas, and consequently beyond the service contours of the closest television station. It is equally true that there are large areas which are under the umbrella of metropolitan stations. Using its multichannel capacity, CATV could, for example, in certain areas of Long Island, Staten Island, and New Jersery which, because of their proximity to New York City, have no local television transmission outlets, provide much-needed local outlets of self-expression in the traditional CATV manner. Local controversial issues, for example, which now have little, if any, chance for being aired over the Metropolitan New York stations, could easily be presented via CATV in every sizable community in New Jersey or on Long Island or Staten Island. Local political candidates, who are now virtually foreclosed from television campaigning because of the high cost of time on a metroplitan station, could bring their messages to the public via local CATV facilities.

A multichannel CATV system, permitted to originate programing, could provide all of these worthwhile services to the public in addition to carrying the broadcast fare from existing television stations and, at the same time, provide the box office quality attractions offered through subscription television.

THE PUBLIC INTEREST IN PERMITTING PROGRAM ORIGINATION ON CATV

The public interest will not be served by discriminatory regulations that would inhibit expansion of CATV systems while preserving the status quo of commercial television. Telemeter submits that there is nothing sacrosanct about the existing system of broadcasting. To the contrary, the public interest must be justified upon the basis of the extent of knowledge existing and not upon the basis of what is best for the vested interests involved.

It is Telemeter's firm belief that nothing should stand in the way of the full development and realization of the complete television service which new ideas and new technology can and will provide to the American public. Certainly, the protection of the status quo and the fear of economic damage to the existing system of television broadcasting should not be a bar in the path of the full development of additional television service to the public. Any effort by the Commission or legislation by the Congress designed to protect the economic interests of the established system of television broadcasting at the expense of those who would bring a needed and desirable competitive service to the marketplace would be inimical to the American concept of free enterprise.

The present network system of television broadcasting is a natural outgrowth of the old radio network system. Over the years it has undoubtedly served a laudable purpose in providing nationwide news and other public service broadcasting to the American public. No one would suggest, for example, that its service in times of national crisis, such as the assassination of President Kennedy, in national election coverage and in the coverage of such events as the flights of our astronauts has not been laudable and worthwhile. But, by the same token, few would deny that the public is entitled to the best programing that television technology and economics can make available to it. And few would contend that there is no room for improvement.

Under our present system of broadcasting the three networks—and a handful of individuals—control what the American public receives on television. If section 331(b) is adopted, it would be the same oligopoly that would control what the public sees and hears both over the air and over the cable. The Commission, in its evident approval of such control, has recommended legislation that would shut out cable subscription television and other forms of worthwhile programing by simply not permitting it on CATV systems.

If this should occur, cable subscription television would be forced to install its own independent cable system, coexisting with the CATV cable system. The public, in these circumstances, would be faced with a dual investment which could be avoided if a single, multichannel cable system, with program origination permitted, were used.

Thus, the Congress should not, in 1966, draw a line and say, "This is television and all of its existing components must hereafter be protected against new forms of competition." The technology of the television art will not stand still. Technological developments in CATV and wired subscription television are on the threshold of making dramatic advances in the multiplicity of television services available to the public.

These major breakthroughs in technology, which promise to bring the development of the television art to hitherto undreamed of heights, must not be stunted or aborted by the proposed legislation designed to protect the status quo. There must be no place for "grandfather" rights of the vested interests in the free and unfettered development of the American system of free enterprise. We emphasize again that there is nothing sacrosanct about the existing system of television broadcasting. Just as the horse and buggy gave way to the automobile and the passenger train to the airplane, so must the existing system of broadcasting, if progress and the public interest dictate, make room for the technological and other benefits to flow from CATV, subscription television and satellite communications. In this era of technological change and progress, it is incumbent upon the Congress to assure that the new advances in technology are permitted to benefit all—not just a chosen few whose efforts are designed to preserve and protect the status quo.

Moreover, the Commission's proposal in H.R. 13286 to prohibit program origination by CATV's and thus to eliminate their use for subscription television and other worthwhile local programing services is at odds with its recent action proposing to regularize off-the-air subscription television. On March 24, 1966, the Commission released its further notice of proposed rulemaking and notice of inquiry in docket No. 11279 in which it asserted jurisdiction over off-the-air subscription television and proposed rules to govern its usage. In so doing the Commission said (par. 16):

"The subscription television on a nationwide scale can be effectively integrated into a total TV system, with advantages to the viewing audience, appears to be a reasonably sound conclusion at this point. While, as mentioned, there may be some impact on free TV, we do not believe that this is in itself necessarily bad or that it need occur to a degree contrary to the public interest, particularly if safeguards such as those previously mentioned are adopted. Our concern, as it

must be, is with the overall public interest and not with protection of any existing service as such."

Thus, the Commission recognizes, when dealing with off-the-air subscription television, that protection of the status quo is not its function and that subscription television will be beneficial to the public. Why is the same not true when dealing with the possible use of CATV channels for subscription programs? If subscription television, as such, is in the public interest, and if protection of the existing ssytem of broadcasting is not the Commission's basic concern, then it would seem to be in the public interest to permit the free development of subscription television whether brought to the viewer off the air or over the cable.

The developing technology of television should not be constrained and fettered by the restrictive dichotomy in which the Commission's thinking is apparently compartmentalized. That the burgeoning developments of technology should not be restrained by shortsighted legislative or regulatory provisions was made clear recently in two speeches before the convention of the National Association of Broadcasters in Chicago. On March 29, 1966, in discussing new technological developments and their impact upon broadcasters, Chairman of the Federal Communications Commission, the Honorable E. William Henry, said:

"Technology is not standing still; it will not preserve forever—or even until that long tomorrow—the type of broadcast system we have today."

* * * * * * *

Referring to direct satellite broadcasting, Mr. Henry said:

"* * * this new technology is on the move and on its way. Since its technical perfection is inevitable * * * we will sooner or later be faced with a fully developed satellite capable of broadcasting directly from sky to home. That being so, we may now neither ignore it nor hide from it.

* * * * * * *

"As far as you are concerned, direct satellite broadcasting is now but a tiny cloud on the horizon.

* * * * * * *

"Mountains of unsolved problems—of technology, of international frequency allocation, and of domestic political issues—lie in its path to protect you. But smaller clouds have often traversed higher peaks, and released a torrential downpour of new technology and new service on the ground below. The resultant floods have swept aside the old order, heedless of the anguished cries of those who stood in their path. And later, viewed in the perspective of history, these apparent waves of destruction are noted for the record as waves of progress."

On the following day, March 30, 1966, Joseph V. Charyk, president of the Communications Satellite Corp., expanded upon the concept in pointing out an alternative development. Said Mr. Charyk:

"And as we move into the new age, we will have need to cast aside historical and artificial concepts and organizational frameworks which are being made obsolete and impractical by the advances of technology. We must adjust and adapt to exploit most effectively the fruits of these developments.

* * * * * * *

"It seems inevitable, for example, that we will continue to move toward the effective establishment in metropolitan centers of what will amount in fact to a communications utility. This would be a system which would link homes, business offices, and stores in a community through wide-band high capacity transmission facilities to central switching and computing centers to provide a wide variety of services. These would include color television and stereophonic FM radio, aural and visual telephone service, high speed facsimile data and newspapers, library reference, theater and transportation booking services, access to computer facilities, shopping and banking services of all types, centralized charging and billing. Communications destined beyond this metropolitan area would be directed to a processing and transmission center which, in turn, would be linked through a suitable terminal station to a worldwide satellite system. I believe that this is a far more likely course of development than the one of a direct link between the satellite and the home. It is a more natural and logical development more economical and more compatible with the efficient utilization of the frequency spectrum."

With major technological breakthroughs of this magnitude on the horizon, the Congress and the Commission must not act in a manner calculated to thwart or

curtail development of the television art in any of its many and varied avenues of progress. Subscription television and program origination by CATV's are a part of this development.

Telemeter therefore urges that the television art should not be hamstrung by regulations or legislation which would prevent CATV systems either from originating their own programing or from providing the means through which others may bring new and worthwhile programing fare to the public.

Indeed, a serious question is present as to the constitutionality of the proposed section 331(b). On March 2, 1966, the Supreme Court of the State of California struck down as unconstitutional the "Free Television Act" adopted by the California electorate at the November 1964 general election. The act undertook to bar the business of home subscription television. In a well-reasoned decision in *S. L. Weaver, et al.* v. *Frank M. Jordan, Secretary of the State of California* (Sac. 7682), the Supreme Court of California held the act to be invalid as an abridgment of the free speech guarantees of the State and Federal Constitutions. Said the court:

" 'The right of freedom of speech and press includes not only the right to utter or to print, but the right to *distribute*, the right to *receive* * * *.'

* * * * * * *

"The suppression of the proscribed medium as a vehicle of transmission to the home purports to be absolute; it amounts total censorship, in advance, so far as home viewers are concerned.

* * * * * * *

"Further, the freedoms of speech and of press protected by the first amendment rest on 'the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *.'

* * * * * * *

"The 'act attempts, absolutely and completely, to deprive householders of the *right to receive* communications from home subscription television * * * whereas under no circumstances does it appear that such communications could intrude into their homes absent their request via a subscription * * *.'

* * * * * * *

"We are convinced that the sweeping suppression of home subscription television, as attempted by the act now before us, would, contrary to the act's declarations, encourage and foster monopolistic domination by existing television stations deriving their financial support from commercial advertisers * * *. *Monopoly in the field of communications can best be avoided by permitting the growth of that field of endeavor in directions and through media which will provide the widest possible range and choice of ideas and of expression.*" (Emphasis supplied.)

Section 331(b), proposed in the instant bill, will ban, by total censorship in advance, the worthwhile programing which the public has a right to receive over CATV systems. As surely as California's "Free Television Act," it will, by prohibiting program originations by CATV's foster monopolistic domination by existing television stations and the networks and will proscribe the growth of a new medium which would otherwise "provide the widest possible range and choice of ideas and of expression."

SUMMARY

If CATV's are permitted to originate programing, subscription television will fit into the nationwide cable service in a manner which will serve, not harm the public interest. By way of summary, a multichannel CATV system, incorporating a wired system of subscription television:

1. In no way disturbs existing TV service to the public.
2. Does not obsolete television receivers.
3. Is fully compatible with existing FCC TV standards.
4. Requires no purchase of new equipment by set owners.
5. In comparison with off-the-air pay-TV, wire subscription television does not "black out" air TV channels while wired programs are being televised.
6. Has the potential to alleviate TV channel shortages in crowded metropolitan areas of the Nation by making possible larger numbers of additional program

channels in scores of communities "under the umbrella" of existing air stations, both VHF and UHF.

Thus, "drop-ins" of wired stations in crowded population centers would bring local service to hundreds of localities otherwise deprived of their own local TV stations, both VHF and UHF, through lack of frequencies in the spectrum.

Such "drop-ins" would in no way alter the FCC's fixed cochannel and adjacent channel milage separations, since wired systems can be "spaced" as close as one city block—or less—apart.

7. Provides sound economic foundation upon which every city—even small communities—can build TV stations and supply a local program service.

8. Eliminates total dependence by TV broadcasters on commercial advertising support to keep going—and, in so doing, makes possible quality programing unencumbered with commercial interruptions.

9. Provides a wider diversity of programing at the local level by permitting simultaneous telecasting of local, regional, and national events—with the public having a choice of attractions.

10. Opens broad avenues for expanded public service and educational broadcasting at the classroom as well as the home level.

11. Adds a new dimension to mass communication via television broadcasting and, as such, deserves every opportunity to prove itself in the marketplace—with the public as sole judge—in keeping with the highest traditions of fairplay in business under the American system of free enterprise.

CONCLUSION

In conclusion, the congressional mandate to the Commission has always been to encourage and develop a "truly nationwide, competitive television system." There is every reason to believe that competition to the existing broadcasting system by wired television broadcasting with its multiple-channel television cable will serve to enlarge, broaden and improve television service to the public. In short, multichannel wired television serves the public interest. It should not be destroyed in its infancy, or crippled by restrictive legislative or regulatory action.

The CHAIRMAN. Thank you very kindly, Mr. Porter. You have been very kind to summarize your statement. You have certainly helped the committee save some time.

Mr. PORTER. Mr. Chairman, I have never made any permanent enemies on a congressional committee by saving your time.

The CHAIRMAN. I beg your pardon?

Mr. PORTER. I have never made any permanent eneimies on a congressional committee by saving the time of a busy congressional committee.

The CHAIRMAN. Thank you very kindly. We appreciate your coming and giving us the benefit of your views. This is something different, and we want to get the record as complete as possible.

Mr. Rogers, do you have some questions?

Mr. ROGERS of Texas. Mr. Porter, you have served as a member of the Federal Communications Commission?

Mr. PORTER. Long years ago, Mr. Rogers.

Mr. ROGERS of Texas. That was before some of these things that could not be done were done?

Mr. PORTER. You mean as far as the technical advances?

Mr. ROGERS of Texas. Yes, sir.

Mr. PORTER. Indeed it was.

Mr. ROGERS of Texas. Those things that were impossible at that time, they were for the future, the same as flying.

Mr. PORTER. That is correct, sir.

Mr. ROGERS of Texas. Man can fly, they found out.

You quoted Chairman Henry as saying that the possibility of satellite reflection or broadcasting going directly into the home—I

did not read his speech and did not hear it. Did he enlarge upon that?

Mr. PORTER. I do not think he dwelt upon it in great detail, Mr. Rogers. I think Chairman Henry was just opening new vistas.

Now, this question of direct broadcasting by satellites, as you well know, is an infinitely complicated question. Technically, I am told by my friends at Comsat that it is feasible. It could be done domestically, but in the 46 nations' international consortium, there are questions as to whether it would be an invasion of sovereignty by a broadcast originated in this country. I expect Mr. de Gaulle might have some dim views if we undertook to do that.

Mr. ROGERS of Texas. I am sure he would.

When you were on the Commission, Mr. Porter, was it your understanding that the Communications Act was passed to provide for restrictions and restraint on communications?

Mr. PORTER. My conception, Mr. Rogers, was in the declaration of policy of the statute, to develop a nationwide system of efficient and rapid communication and that competition was the underlying policy of title III, which is the broadcast section.

Mr. ROGERS of Texas. I was interested in your remarks about the constitutionality point that is raised by this proposal. I think you are exactly right. I think that the court in the *Pat Weaver* case was exactly right, because I think they held that along with the right of free speech is a corresponding right or inclusive right that this free speech may be exercised where it can be and probably will be heard.

Mr. PORTER. Right.

Mr. ROGERS of Texas. Free speech would not amount to very much in a closed room where no one would hear it. Sometimes I think that is what we are doing up here.

Thank you very much.

Mr. PORTER. Thank you very much.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. No questions.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. No, thank you, Mr. Chairman.

The CHAIRMAN. Again I must say thank you, Mr. Porter. Thanks for summarizing your statement. You have added to the record.

Mr. PORTER. Thank you very much.

The CHAIRMAN. Our next witness is Mr. Benedict Cottone, attorney for the Television Accessory Manufacturers Institute.

Mr. Cottone, you have submitted your statement for the record. You may summarize it in a few words, or read it if you feel that you can do it better that way.

STATEMENT OF BENEDICT COTTONE, ATTORNEY FOR TELEVISION ACCESSORY MANUFACTURERS INSTITUTE (TAME), WASHINGTON, D.C.

Mr. COTTONE. Thank you, Mr. Chairman. My statement is rather brief. Some of it is a repetition of what we have stated to the committee when it was considering another bill with regard to regulation of CATV, but I will try to make it as brief as possible.

My name is Benedict P. Cottone. I am the attorney for TAME, Inc., which is known as the Television Accessory Manufacturers Institute.

As I stated, the interest of our organization in the matter before you has been set forth in earlier testimony that we have given. In order to conserve your time, I would like briefly to summarize what our position has been and is.

It is our belief that if there is to be any Federal legislation in regard to CATV, it should be legislation which recognizes and affirms the need for effective FCC regulation of CATV operations so that the public will be assured of the benefits of direct local television reception.

We also recognize that the benefits of CATV should be taken into account, but we believe that those benefits should be related to CATV as a supplementary or as an auxiliary service to direct off-the-air television broadcasting.

Now, since it appears that, with all due respect to Congressman Rogers, H.R. 12914 would deny the Commission the authority to regulate CATV so as to effectuate those purposes, we are, of course, opposed to that bill.

We support, as minimum requirements for achieving the benefits of free off-the-air television service, the regulatory measures which the FCC has enacted in the form of regulations and which H.R. 13286 would affirm, at least insofar as the authority of the Commission is concerned.

We still believe, as we always have believed, that the only way that CATV operations can be effectively regulated is to make them subject to substantially the same requirements as are now applicable to broadcasting stations. I have reference to the proposal which we have made and which we submitted during the course of the last hearings by this committee, the proposal that would enact, establish, a licensing system for CATV's.

We believe also that it is not enough that the regulation of CATV should achieve the primary purpose of protection of free direct television broadcast reception, because this protects only those members of the public who are able to obtain such reception. Those who cannot obtain such reception but must rely on CATV and must pay for their television reception are equally, if not more entitled to protection, merely, protection against unreasonable charges, against degraded service, and against curtailment of service. As we have stated before, we believe that under existing law, the Commission now has authority to regulate CATV so as to protect the public in this manner.

Now, that question came up before the court. I refer to the fact that there has been pending a suit involving the Commission's authority to regulate CATV as common carriers. At the time this statement was written—I referred to the fact that the suit was pending. There has now been a decision in that case. I would like to submit for the record a copy of that decision, because I think it will be helpful.

The court did not rule on the question of whether CATV is a common carrier, but——

Mr. ROGERS of Texas (presiding). Which case is that?

Mr. COTTONE. *Philadelphia Television Broadcasting Co.* v. *Federal Communications Commission.*

In a decision handed down on March 28 by Judge Leventhal for the court, the court indicated that the Commission was free to proceed in regulating CATV by either of two routes, that it is a proper exercise of the Commission's discretion to decide that it would attempt to regulate CATV as an adjunct of the broadcasting service, and that the Commission was not unreasonable in exercising its discretion so as to forego regulation of CATV as a common carrier, but to regulate them instead in the manner that they had done—they had just come out with this second report at the time—but that it was a reasonable avenue for the Commission to pursue to regulate CATV in the manner in which they had done.

Now, the court did state in a footnote that they were not deciding the validity of the Commission's regulations, but they gave a fairly strong indication that they felt that that was a reasonable approach.

If I may, with your permission, Mr. Chairman——

Mr. ROGERS of Texas. How long is that opinion?

Mr. COTTONE. It is a very short one.

Mr. ROGERS of Texas. Without objection, it will be included in the record.

(The document referred to follows:)

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 19,577

PHILADELPHIA TELEVISION BROADCASTING CO., PERMITTE OF CONSTRUCTION PERMIT FOR TELEVISION STATION WPHL-TV ET AL., PETITIONERS, *v.* FEDERAL COMMUNICATIOS COMMISSION, UNITED STATES OF AMERICA, RESPONDENTS; ROLLINS, INC., NATIONAL COMMUNITY TELEVISION ASSOCIATION, INC., INTERVENORS

Petition for Review of Order of the Federal Communications Commission

(Decided March 28, 1966)

Mr. Joseph A. Fanelli, with whom *Mr. Benedict P. Cottone* was on the brief, for petitioners.

Mr. Daniel Ohlbaum, Deputy General Counsel, Federal Communications Commission, for respondents. *Assistant Attorney General Turner, Messrs. Henry Geller*, General Counsel, Federal Communications Commission, *John H. Colin*, Associate General Counsel, *Mrs. Lenore Ehrig*, Attorney, Federal Communications Commission, and *Mr. Lionel Kestenbaum*, Attorney, Department of Justice, were on the brief, for respondents.

Mr. Stanley S. Neustadt for intervenor, Rollins, Inc., *Messrs. Marcus Cohn, Paul Dobin* and *Joel H. Levy* were on the brief for intervenor, Rollins, Inc.

Messrs. Robert D. L'Heureux, E. Stratford Smith and *Roger E. Zylstra* were on the brief for intervenor, National Community Television Association, Inc.

Before: WILBUR K. MILLER, *Senior Circuit Judge*, and DANAHER and LEVENTHAL, *Circuit Judges.*

LEVENTHAL, *Circuit Judge:* Petitioners filed a complaint with the Federal Communications Commission seeking an order that Rollins Broadcatsing, Inc. cease and desist from constructing and operating a community antenna television (CATV) system serving Wilmington, Delaware, until Rollins complies with the requirements of Title II of the Communications Act, 47 U.S.C. §§ 201–222, with respect to common carriers. The Commission, being of the view that CATV systems are not common carriers within the meaning of Title II, summarily dismissed the compaint. We affirm the Commission's action, for reasons developed below.

Petitioners urge that CATV systems are common carriers within the meaning of the Communications Act, and that the FCC is therefore required to apply the provisions of Title II of that Act, e.g., requiring CATV systems to obtain certificates of public convenience and necessity, and file charges with the Commission.

In approaching the problem of statutory interpretation before us, we show "great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.'" [1]

We think such deference to the agency's interpretation of its governing statute is reinforced where, as here, the legislative history is silent, or at best unhelpful, with respect to the point in question. Congress in passing the Communications Act in 1934 could not, of course, anticipate the variety and nature of methods of communication by wire or radio that would come into existence in the decades to come. In such a situation, the expert agency entrusted with administration of a dynamic industry is entitled to latitude in coping with new developments in that industry.

The Commission, responsive to the increasing impact of CATV, has undertaken a system of regulation in the public interest. It began with the CATV systems served by microwave carriers,[2] and it now has asserted jurisdiction over all CATV systems under the general provisions of the Act, and issued regulations.[3] The Commission had already announced proposed rules, predicated on such jurisdiction, at the time it dismissed petitioners' complaint.[4] Its holding that CATV systems are not common carriers thus comes before us in a context of regulation of the CATV systems under different provisions of the Communications Act. In a statutory scheme in which Congress has given an agency various bases of jurisdiction and various tools with which to protect the public interest, the agency is entitled to some leeway in choosing which jurisdictional base and which regulatory tools will be most effective in advancing the Congressional objective. It is the FCC's position that regulating CATV systems as adjuncts of the nation's broadcasting system is a more appropriate avenue for Commission action than the wide range of regulation implicit in the common carrier treatment urged by petitioners. This seems to us a rational and hence permissible choice by the agency.[5]

Affirmed

Mr. COTTONE. Now, we are glad to see that in H.R. 13286, which is the bill the Commission has recommended, it is expressly recognized in section 331(c) that no Federal preemption of State regulation of CATV systems as public utilities is intended. As we previously recommended, if it be considered by Congress to be undesirable for the Commission following a court adjudication to regulate the rates of CATV systems, nothing should be done which would indicate Federal preemption of this area of regulation from State regulatory commissions or other State authorities.

Now, to get down more specifically to the provisions of H.R. 13286, that bill contemplates the same approach to CATV regulation which

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[1] *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965), quoting *Unemployment Comm'n* v. *Aragon*, 329 U.S. 143, 153 (1946). See also *Power Reactor Development Co.* v. *Electrical, Radio & Machine Workers*, 367 U.S. 396, 408 (1961); *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315 (1933); *Born* v. *Allen*, 110 U.S. App. D.C. 217, 223, 291 F. 2d 345, 351 (1960).

[2] *Carter Mountain Transmission Corp.*, 32 F.C.C. 459 (1962), *affirmed*, 116 U.S. App. D.C. 93, 321 F. 2d 359, *cert. denied*, 375 U.S. 951 (1963).

[3] See *Second Report and Order*, Dockets No. 14895, 15233, 15971 (March 4, 1966).

[4] *Notice of Inquiry and Proposed Rulemaking re All CATV Systems*, Docket No. 15971, 1 F.C.C. 2d 453 (April 22, 1965).

[5] We of course do not pass judgment on the validity of the broad jurisdictional base asserted by the Commission in its *Notice of Inquiry and Proposed Rulemaking* of April 1965, and in the recently issued rules with respect to all CATV systems. See 1 F.C.C. 2d at 478–82. But the basis is already established insofar as microwave-served CATV systems are concerned. *Carter Mountain Transmission Corp.* v. *FCC*, 116 U.S. App. D.C. 93, 321 F. 2d 359, *cert. denied*, 375 U.S. 951 (1963); *Idaho Microwave, Inc.* v. *FCC*, —— U.S. App. D.C. ——, 352 F. 2d 729 (1965). Certainly the Commission's assertion of jurisdiction over CATV systems by its order of March 4, 1966, is substantial enough to serve as a basis for declining to regulate them as common carriers.

is reflected by the regulations the Commission has recently issued. If you will examine those regulations, you will see that without calling it such, the Commission is, in effect, using a licensing approach to regulate CATV; namely, by requiring applications for permanent authority to operate.

For example, it is provided that no CATV operations may be commenced without prior Commission authority.

Mr. ROGERS of Texas. Would you yield right there while you are on that?

Mr. COTTONE. Surely, sir.

Mr. ROGERS of Texas. You used to be with the Commission, did you not?

Mr. COTTONE. Yes, sir; when Mr. Paul Porter was there.

Mr. ROGERS of Texas. Did you hear Mr. Henry's testimony on this particular subject?

Mr. COTTONE. Yes; I did. I heard the first day of his testimony.

Mr. ROGERS of Texas. Could you tell me why he took the position that they are not trying to license CATV?

Mr. COTTONE. Well, I had a little difficulty with that approach.

Mr. ROGERS of Texas. I did, too.

Mr. COTTONE. I think that basically, the Commission is, and I see no reason why they should hide behind——

Mr. ROGERS of Texas. What is the reason for saying you are going to certificate them but you are not going to license them? You have been a lawyer down there, and I understand a very good one. Is there some underlying reason why the Chairman of the Commission does not want to be calling this a license?

Mr. COTTONE. Frankly, I cannot understand why we cannot be completely open about this thing.

Mr. ROGERS of Texas. I cannot, either.

Mr. COTTONE. If you are going to have to get some kind of authority, I do not care what you call it, certification or licensing. It is true, my position is on the side of recognizing this thing realistically as something which, if you are going to have Federal authority to operate, you should recognize it as a licensing authority.

Mr. ROGERS of Texas. This could be the soft approach by the Commission, could it?

Mr. COTTONE. It could be the soft approach, but somehow, licensing has acquired a sort of dirty connotation. I can see no reason why it should have. I can see the CATV would be better off as a licensed system.

Mr. ROGERS of Texas. It could be a soft approach to spring the trap before you get them in the door.

Mr. COTTONE. That could be. But I get myself in trouble by taking the direct approach.

Mr. ROGERS of Texas. I did not mean to interrupt you, but I knew that you had been a lawyer down there and I wanted to hear what you had to say on that.

Mr. COTTONE. As you recognize, our position has been—and I think I mentioned the last time that when I was at the Commission, it was my position, and I think the position of the staff generally—that the CATV systems should be certificated. We felt that the act did pro-

vide sufficient authority to the Commission. I think in a good deal——

Mr. ROGERS of Texas. But the Commission never would agree with you on that, would they?

Mr. COTTONE. That is quite true, sir. You have the opinion in your record, as a matter of fact.

Mr. ROGERS. Did you write that 1952 memorandum?

Mr. COTTONE. Let me put it this way: I was General Counsel and it was written by many people, one of whom happened to be a gentleman who is now an esteemed attorney for the NCTA. I say that with no intention of being critical.

Mr. ROGERS of Texas. This is a staff memorandum?

Mr. COTTONE. It was a staff memorandum, yes. It was joined in by all of the department heads, as a matter of fact.

But the Commission, I think—that memorandum hung around for a long time, and I think the problem got to be one of having let it grow to such proportion that it was sort of difficult to assert at that time such a jurisdiction.

Mr. ROGERS of Texas. If you owned four or five CATV stations your position might be kind of different, too, might it not?

Mr. COTTONE. May I pass that question and plead some kind of privilege?

Mr. ROGERS of Texas. Yes.

Mr. COTTONE. I do not own any, by the way.

Mr. ROGERS of Texas. I understand.

Mr. COTTONE. Now, we believe that if the Commission is going to get any effective authority to regulate CATV, it is desirable for the legislation to spell out definitively that CATV systems should be required to apply for and obtain renewable licenses for a specified length of time, upon a showing of public interest, convenience, and necessity, with appropriate recognition of "grandfather" rights and exemption of certain systems because of "size or nature."

Unless this approach is followed, it is difficult to see how the Commission can effectively enforce the regulatory measures which it has enacted. In order to do so under the contemplated approach, it must follow cumbersome and time-consuming procedures such as cease and desist orders, imposition of monetary forfeitures, court injunctions, mandamus procedures, or criminal prosecution.

Moreover, it would seem to be of the utmost importance that if CATV is to be recognized as a medium which operates in the public interest, as the CATV interests claim they do, CATV operators should have definitive obligations to serve the public interest. This can only be achieved by assurances that only those owners who have the requisite qualifications may be permitted to operate. Yet nothing in H.R. 13286 purports to confer authority on the Commission to forbid CATV operations by noncitizens, ex-convicts, persons without adequate financial means, persons interested in CATV operations only to make a quick speculative killing, persons found guilty of monopolistic practices or violation of the antitrust or restraint-of-trade laws, persons with heavy ownership concentrations of mass media of communications, or persons who otherwise would be found unqualified to be licensed as broadcast licenses.

Surely, the qualifications of CATV owners should be of equal public concern as the qualifications of broadcast licensees or the question of whether a particular CATV operation will adversely affect free local broadcast service. Without an appropriate licensing system through which qualifications can be carefully screened, and the applicant's representations as to how we will serve the public interest can be carefully examined, it is not inconceivable, for example, for CATV systems to exploit the owners' favored candidacies for public office and favored viewpoints on important controversial public issues to the exclusion of opposing candidates and issues. To say that the printed media may now do so is no answer, because, unlike newspapers, CATV systems normally operate without other CATV competition.

More importantly, CATV's utilize, without paying for it, and they charge the public for furnishing it, program material taken from the broadcast medium, and by thus gaining easier access to the public's attention, they are in a strong position to mould public opinion.

Although the necessity for regulation of CATV operation is now almost universarly admitted, even by the CATV industry itself, licensing has been regarded as a dirty word. Whatever the reason, it has never been articulated. It is to be supposed that one of the reasons is the administrative burden. But with the possibility of so much harm to the interests of the public should entry into CATV remain open to "undesirables," to use Chairman Henry's word at an earlier hearing, the administrative burden argument against licensing is certainly not sound.

Another possible reason is that CATV does not utilize frequencies in the radio spectrum. Still, they have similar potential for capitalizing on radio spectrum use for achieving good or evil. Moreover, other business enterprises which do not use the radio spectrum or other natural resource are required to be federally licensed where they affect the national public interest, as, for example, banks, power companies, natural gas companies, telephone companies, telegraph companies, railroads, bus companies, and trucking companies.

We respectfully submit, therefore, that commendable as H.R. 13286 may be, it falls short of achieving the type of regulation of CATV required for the full protection of the public's interest. We believe and urge that it should be supplemented or revised to provide for a system of licensing and regulatory authority similar to that now applicable to broadcasting. If rate regulation of CATV is not to be a matter of Federal concern, the present provision in section 331(c) of the bill should be retained to the end that protection of the public in this area by the States will not be preempted.

One further comment, Mr. Chairman, if I may be permitted another moment. That is in regard to 331—I think it is (a)(1), the language that speaks about the Commission being authorized to regulate CATV with due regard to both the establishment and maintenance of broadcast services and the provision of multiple reception services. I believe, as MST has testified, that what that is intended to mean is that CATV should be regarded as supplementary, a supplementary or auxiliary service, and that while it may be unnecessary to modify that language, it might be desirable to make clear in the legislative history

that we are not talking about equating CATV with a broadcasting service, but that the purpose of the act is to treat CATV systems as a supplementary or an auxiliary service. Perhaps language might be worked out to make that perfectly clear. Otherwise, it would seem that the legislative history should make that clear.

(The complete statement of Mr. Cottone follows:)

STATEMENT OF TELEVISION ACCESSORY MANUFACTURERS INSTITUTE (TAME, INC.), WASHINGTON, D.C.

The interest of TAME, Inc., the Television Accessory Manufacturers Institute, in the problem before you has been described to this committee in the statements which we presented in the hearings you held in May and June of last year on H.R. 7715, during the first session of this Congress. To conserve your valuable time, I will not burden you with a repetition of our previous testimony but respectfully refer you to that testimony, which may be found in the printed hearings on H.R. 7715 at pages 427 to 456.

Our position is basically the same. Broadly, it may be stated as follows:

1. If any Federal CATV legislation is to be enacted, it should be legislation which recognizes and affirms the need for effective FCC regulation of CATV operations which will assure to the American public, first, the benefits of direct local television broadcast reception on a free basis; and, second, the development of CATV only as a service supplementary or auxiliary to direct television broadcast reception where such reception is inadequate or otherwise unobtainable. As we understand H.R. 12914, it would either deny to the Commission any authority to regulate CATV or would so severely limit the Commission's authority that no effective regulation would be possible. We are therefore opposed to the enactment of this bill.

2. We support, as minimum requirements for achieving these benefits, the regulatory measures which the FCC has recently issued, and the proposal in H.R. 13286 which would affirm the Commission's authority to adopt such regulations.

3. We still believe, as we always have believed, that the only way in which CATV operations can be effectively regulated so as to assure the survival and expansion of direct television reception is by licensing CATV systems and thereby making them subject to substantially the same requirements as broadcast stations. We have consistently urged this. We refer to the specific amendments of the Communications Act which we proposed 18 months ago and which appear at pages 443 to 447 of the printed hearings on H.R. 7715 previously mentioned.

4. It is not enough, however, that the regulation of CATV should achieve the primary purpose of protection of free, direct television broadcast reception. This protects only those members of the public who are able to obtain such reception. Those who cannot obtain such reception but must rely on CATV and must pay for their television reception are equally, if not more, entitled to protection—protection against unreasonable charges, against degraded service, and against curtailment of service. As we have stated before, we believe that under existing law, the Commission now has the authority to regulate CATV so as to protect the public in this manner. Unfortunately, the Commission has taken a different view. The question of whether the Commission does have such authority is now awaiting decision in a case before the Circuit Court of Appeals for the District of Columbia. This case was discussed in our previous testimony before this committee at page 433 of the printed hearings. We are glad to see, however, that in H.R. 13286, the bill now recommended by the Commission, it is expressly recognized (sec. 331(c)) that no Federal preemption of State regulation of CATV systems as public utilities is intended. As we previously recommended, "if it be considered by Congress to be undesirable for the Commission, following a court adjudication, to regulate the rates of CATV systems, nothing [should] be done which would indicate Federal preemption of this area of regulation from State regulatory commissions or other State authorities * * *."

Getting down more specifically to H.R. 13286, that bill contemplates the same approach to CATV regulation as is reflected in the regulations recently issued by the Commission. If those regulations are examined, it will be observed that, without calling it such, the Commission is in effect using a licensing approach to regulate CATV; namely, requiring applications for permanent authority to oper-

ate. Thus, it is provided in effect that no new CATV operation may be commenced, without prior Commission authority, if such operation would extend the signal of a television station beyond the grade B contour of another television station. It is further provided that, unless Commission authority is first obtained upon request therefor, no CATV system in the grade A contour of any television station in the first 100 television markets may extend the signal of another television station beyond the grade B contour of the latter station.

Although the Commission's present regulations limit the situations in which "licenses" (by whatever other name they may be called) for CATV operations are required, H.R. 13286 is much broader in scope. It would authorize the Commission to require prior approval (or licenses) for any CATV operation. In our view, this is as it should be. However, it seems obvious that, in order to enable the Commission to deal most effectively with the CATV problem, it is desirable that any legislation spell out definitively that CATV systems should be required to apply for and obtain renewable licenses for a specified length of time, upon a showing of public interest, convenience, and necessity, with appropriate recognition of "grandfather" rights and exemption of certain systems because of "size or nature."

Unless this approach is followed, it is difficult to see how the Commission can effectively enforce the regulatory measures which it enacts. In order to do so under the contemplated approach, it must follow cumbersome and time-consuming procedures such as cease and desist orders, imposition of monetary forfeitures, court injunctions, mandamus proceedings, or criminal prosecution.

Moreover, it would seem to be of the utmost importance, if CATV is to be recognized as a medium which operates in the public interest (as CATV interests claim), that CATV operators have definitive obligations to serve the public interest. This can only be achieved by assurances that only those owners who have the requisite qualifications may be permitted to operate. Yet, nothing in H.R. 13286 purports to confer authority on the Commission to forbid CATV operations by noncitizens; ex-convicts; persons without adequate financial means, persons interested in CATV operations only to make a quick speculative killing; persons found guilty of monopolistic practices or violation of the antitrust or restraint of trade laws; persons with heavy ownership concentrations of mass media of communications; or other persons who may have been, or would be found, unqualified to be licensed as broadcast licensees. Surely, the qualifications of CATV owners should be of equal public concern as the qualifications of broadcast licensees, or the question of whether a particular CATV operation will adversely affect free local broadcast service. Without an appropriate licensing system through which qualifications can be carefully screened, and the applicant's representations as to how he will serve the public interest can be carefully examined, it is not inconceivable, for example, for CATV systems to exploit the owners' favored candidacies for public office and favored viewpoints on important public issues, to the exclusion of opposing candidacies and issues. To say that the printed media may now do so is no answer, because, unlike newspapers, CATV systems normally operate without other CATV competition. More importantly, CATV's utilize, without paying for it (and charge the public for furnishing), program material taken from the broadcast medium; and by thus gaining easier and greater access to the public's attention, they are in a strong position to mold public opinion.

Although the necessity for regulation of CATV operations is now almost universally admitted, even by the CATV industry itself, "licensing" has been regarded as a dirty word. Whatever the reason, it has never been articulated. It is to be supposed that one of the reasons is the administrative burden. But with the possibility of so much harm to the interests of the public should entry into CATV remain open to "undesirables" (to use Chairman Henry's word), the administrative burden argument against licensing is certainly not sound. Another possible reason is that CATV does not utilize frequencies in the radio spectrum. But they have similar potential for capitalizing on radio spectrum use for achieving good or evil. Moreover, many business enterprises which do not use the radio spectrum or other natural resource are required to be federally licensed where they affect the national public interest as, for example, banks, power companies, natural gas companies, telephone companies, telegraph companies, railroads, bus companies, and trucking companies.

We respectfully submit, therefore, that commendable as H.R. 13286 may be, it falls short of achieving the type of regulation of CATV required for the full

protection of the public's interest. We believe and urge that it should be supplemented or revised to provide for a system of licensing and regulatory authority similar to that now applicable to broadcasting. If rate regulation of CATV is not to be a matter of Federal concern, the present provision in section 331(c) of the bill should be retained to the end that protection of the public in this area by the States will not be preempted.

Mr. ROGERS of Texas. Mr. Cottone, you think, then, that CATV is a reception service?

Mr. COTTONE. Oh, I do not at all, sir. CATV is not a reception service.

Mr. ROGERS of Texas. Then why are you against H.R. 12914?

Mr. COTTONE. Well, because I believe—well, if CATV is not a reception service and H.R. —your bill.

Mr. ROGERS of Texas. 12914.

Mr. COTTONE. If that purports only to regulate reception service, then the bill does nothing, does it?

Mr. ROGERS of Texas. It does not purport to regulate anything. You have read the bill, have you not?

Mr. COTTONE. I have read the bill; yes.

Mr. ROGERS of Texas. Well, it simply says the FCC does not have the right to take control or jurisdiction over the reception of radio signals broadcast into the air. Now, do you think that the FCC ought to have jurisdiction to tell you what you can or you cannot receive?

Mr. COTTONE. Well, I think——

Mr. ROGERS of Texas. It is a simple question.

Mr. COTTONE. Well, no; it is not a simple question, Mr. Chairman. You cannot receive something unless it is transmitted. It seems to me you cannot separate transmisison from the reception. If you are saying that the FCC should be denied the power to decide whether the utilization of the channels of communication in this country——

Mr. ROGERS of Texas. This bill does not say anything about that, Mr. Cottone. It simply says that they do not have control or jurisdiction over the reception of radio signals broadcast into the air. The bill is an amendment, an addition to the noncensorship provisions. That is exactly what I intended it for, despite the great generosity on the part of a lot of people to put into my mind and into my mouth other things.

Mr. COTTONE. Perhaps if that is all you intended, Mr. Chairman, and you simply added to your bill, this is not intended to apply to CATV systems, it would solve everybody's problem.

Mr. ROGERS of Texas. Why should I add that to it?

Mr. CATTONE. Because to me, it is confusing.

Mr. ROGERS of Texas. Suppose a community went together and stuck an antenna up in the air and did not charge anybody anything and got the signals over it; that would be a community antenna system, would it not?

Mr. COTTONE. You mean the people banded together and decided they are going to cooperatively receive broadcast signals?

Mr. ROGERS of Texas. Yes.

Mr. COTTONE. I do not regard that at all as a CATV system.

Mr. ROGERS of Texas. That is one of the big difficulties we have. The FCC say, we do not regard this and we would think that reason would not do this. Well, turning stuff over to a bureau downtown has gotten

this country into more trouble, because what one bureau or one member of the board thinks today, he is not going to think tomorrow. And this business of people changing, the laws ought to be spelled out very clearly.

Now, one other thing that I want to ask. You keep talking about free TV. Do you think that everybody in the country is entitled to free TV?

Mr. COTTONE. Well, I say that TV should be kept as free as it possibly can. If service is not available by free means, then I am not saying that the public should be denied that.

Mr. ROGERS of Texas. Do you think that every citizen of the United States is entitled to free TV?

Mr. COTTONE. I think every citizen in the United States should have the opportunity of having free TV. It may not be possible to give it to them.

Mr. ROGERS of Texas. Do you think the Government ought to buy them all a television set?

Mr. COTTONE. No; I do not think that.

Mr. ROGERS of Texas. How are they going to get free TV if they do not have a television set?

Mr. COTTONE. You might also go on and say that the public does not get free TV because they pay the advertiser for the product.

Mr. ROGERS of Texas. He does not even get to know what the fellow is selling if he does not have a set. If you go this far, you are going to have a lot of complaints, because somebody is going to turn up with black and white and others with color sets. Nobody is going to be satisfied.

Mr. COTTONE. I think what we are talking about, Mr. Chairman, is that we have a traditional concept of broadcasting and free broadcasting has grown over a great number of years. The public has grown to rely on that kind of free television service.

Mr. ROGERS of Texas. Well, suppose the public does not want that. Suppose the public wants something else? You say this has grown up over the years, so you have to take it whether you like it or not, and this is all you are going to get.

Mr. COTTONE. I cannot conceive of a member of the public saying that if he can get free television service and it can be readily made available to him, that he wants to pay for it.

Mr. ROGERS of Texas. I am talking about other services. If the public comes along and says, we want to receive 15 channels and John Doe here will provide that service to us and we want to do it, and the FCC says, oh, no, you do not know what is good for you; we know what is best for you; you are not supposed to get but 3 channels and this is all you are going to get and you will take what is on those 3 channels or you do not get anything. Do you call that free TV?

Mr. COTTONE. I can carry that analogy a bit further and say the public in a community might want 15 television stations and they would rather have 15 television stations.

Mr. ROGERS of Texas. This involves a different thing, and you know it as well as I do. As a matter of fact, you know it better than I do, because you were down there. You are talking about a situation involving the use of public property, are you not?

Mr. COTTONE. Yes, sir. And CATV utilizes what comes out of a public property.

Mr. ROGERS of Texas. Well, you do that, too, do you not?

Mr. COTTONE. You mean me personally?

Mr. ROGERS of Texas. Yes, sir, when you turn your set on.

Mr. COTTONE. Yes, sir.

Mr. ROGERS of Texas. Now, a hotel downtown that puts a color television set in every room and they advertise, "We have color television," they are using this service to promote their business, and the poor innkeeper across the street cannot afford it and he cannot borrow the money so he is at disadvantage. Do you not think we ought to include an amendment to protect him in this bill?

Mr. COTTONE. No. If we were dealing with a situation where that grew to such proportions that it would jeopardize the public's ability to get off-the-air reception, local off-the-air reception, then I say that it might arise at the point where it would be a matter of congressional or FCC concern. It is all a matter of what is, in the broad sense, public interest.

Mr. ROGERS of Texas. This bill says that you cannot put on local on CATV. It forbids the origination of programs. So this is the thing——

Mr. COTTONE. Again for the same basic reason.

Mr. ROGERS of Texas. They say, "We have poor local service, we want local service." Yet they say, "You cannnot have local service on CATV." Now, how do you square that sort of thing?

Mr. COTTONE. Here is the way I would regard that, Mr. Chairman: There may not be anything basically wrong with permitting CATV systems to originate local programing provided that they were subjected to the same kind of obligations. Here they have control of the public mind and they have a very powerful medium for molding public opinion.

Now, in regard to one type of medium for molding public opinion, radio broadcasting, television broadcasting, you—Congress—have stated that they must provide the necessary safeguards to be sure that this medium is not turned into one where he public can only hear and see one side of the question. There is as much free speech involved in the public's right to hear both sides as there is in the right of the broadcaster to broadcast.

Mr. ROGERS of Texas. One fellow suggested to me that if this is carried out, Congress ought to approve an amendment that if any Congressman decided he was rendering proper public service, there should be no opposition to it.

Now, do you think this ought to go on this bill?

Mr. Younger reminds me that I have used my 15 minutes, so I yield to him.

Mr. YOUNGER. Mr. Cottone, on Page 2, you are talking about protection against unreasonable charges. You heard Mr. Henry testify that the Commission has no intention of delving into charges that——

Mr. COTTONE. Yes, I heard that.

Mr. YOUNGER. Do you believe that the Commission ought to go into charges?

Mr. COTTONE. I think Mr. Henry said that he believes that this should not be a matter of Federal concern. I think he went on to

say that he believes that area should be open to regulation by State Commissions.

Mr. YOUNGER. Yes, as a utility.

Mr. COTTONE. But philosophically, I do not believe that Mr. Henry is of the belief that CATV systems should be free of regulation from any source with respect to their charges and with respect to the kind of service they are obligated to provide to the public.

Mr. YOUNGER. I do not know for sure how these CATV's operate. But here is a station bringing in by CATV, say, 15 stations. I gather from your talk that in CATV one could cut all of those signals off and he can go on advocating himself as a candidate for political office, and all of the 15 stations that people would want to listen to would have to listen to him advocating his position to the public as a candidate.

Mr. COTTONE. I did not mean that. I did not mean CATV makes them watch one channel.

Mr. YOUNGER. No; you said the CATV man would be privileged to go ahead and advocate himself as a candidate and publicize himself as a candidate. Now, how can he do that if he has a CATV that is bringing in 15 different signals?

Mr. COTTONE. If you do not have regulation, he can blot out the guy he does not want heard.

Mr. YOUNGER. Can he do that?

Mr. COTTONE. Of course he can. Without regulation, he is free to do anything. If you had no regulation, the CATV operator would be free to bring in whatever programs he wanted. He could blot out the one he does not like.

Mr. YOUNGER. But he could blot them all out and put himself on?

Mr. COTTONE. He could do that, sure.

Mr. YOUNGER. Do you think that is good politics?

Mr. COTTONE. Of course it would not be.

You mean good politics on his part? I doubt it.

Mr. YOUNGER. Then why do you bring up something you know is impossible?

Mr. COTTONE. The same would be true of a broadcast station, Mr. Congressman. It may not be good politics for a broadcaster.

Mr. YOUNGER. No, he would get in trouble with 315.

Mr. COTTONE. That is why you provided 315, because even though it may not be good politics for the broadcaster, he might do it.

Mr. ROGERS of Texas. Will the gentleman yield to me?

Mr. YOUNGER. I have yielded. I am going back to California.

Mr. ROGERS of Texas. The reason 315 applies to this and the only reason you can justify it on is because part of the public domain is being used.

Mr. COTTONE. Yes, that is true. But what I am stating is that it is in there because it is such an important vehicle, instrument, for molding public opinion that you do not want to take a chance that anyone with control of such an important medium can mold the public's thinking in one particular direction.

Mr. ROGERS of Texas. But, Mr. Cottone, that is not all the justification about this. The only way you can support it constitutionally is because part of the public domain is being used; is it not?

Mr. COTTONE. I am not so sure of that. I suspect if you had all the broadcast stations in the world that could be used by as many people, Congress would still insist on having 315 in the Communications Act.

Mr. ROGERS of Texas. But I think they would have to justify it constitutionally by public ownership. Otherwise, I do not think it would stand.

Mr. COTTONE. This is a debatable point, Mr. Chairman, but I believe it could be justified constitutionally.

Mr. ROGERS of Texas. I do not want to take any more time, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I missed your testimony. I hope you will pardon me.

Mr. COTTONE. Of course, sir.

Mr. NELSEN. The question I would like to ask is what is your feeling about duplication of programing, first by a CATV and then by a broadcaster? Do you feel that regulations should include something to prevent duplication of programing? For example, by taking it off the competitive wave length or signal?

Mr. COTTONE. Mr. Congressman, I do. If you had heard my testimony, our position is that the Commission should have even broader authority. When I say "broader authority," I think they should deal with the problem of CATV more directly by providing for a licensing approach. They have taken just a partial licensing approach.

Basically, the reason for regulation of CATV is that they do constitute a fairly serious, a very serious threat to free off-the-air broadcasting by utilizing a product of broadcasting itself. It seems to me that the Commission is entirely justified in trying to promote what I believe is the most basic purpose of the Communications Act, to develop local broadcasting services. A protection against duplication of the local broadcasting station programs is, to me, a very, very important way, if not an essential way, of seeing to it that the public in a particular community is going to be assured of the survival of his own local broadcast station.

Mr. NELSEN. It is my understanding from the testimony of persons who have testified who represent CATV organizations and facilities that they have indicated their support of a rule or a policy of nonduplication. I think that has been subscribed to by several of the witnesses.

Mr. COTTONE. Simultaneous nonduplication.

Mr. NELSEN. Yes, exactly.

Now, another question. In the instance of program origination, I am not sure what the objective of the CATV people is, but in the event of program origination, which would approach more closely a competitive facility within the area, do you have any objection to program origination if the facility is licensed as a TV broadcaster is licensed?

Mr. COTTONE. No, I do not. I think that then, when they perform the same functions as broadcasting stations, they must assume the same obligations, thereby they are on a par with a local broadcasting station competitively; I think you have eliminated a great deal of the basis for a position against program origination by a CATV system. But when they originate programing without any kind of regulation as to what they can do, they are unregulated, whereas the broadcast station is

regulated in a sense with regard to what his obligations to the public are. You put them on a more even competitive level that way.

The other aspect of it which is different, is that the CATV system has an economic—and the Commission has used this expression—an unfair economic advantage in the sense that they are utilizing the broadcast product of someone else.

Mr. NELSEN. One other question. How would we be able to prevent simultaneous duplication without some sort of authority in somebody's hands? You would have to have it, would you not?

Mr. COTTONE. Oh, I would feel that is true.

Mr. NELSEN. Then if we proceeded, as we now do, you could not prevent duplication, could you, except by——

Mr. COTTONE. No, other than by agreements between the CATV operators and the stations, and, of course, you cannot be sure that agreements would be worked out. It seems the only way we can do it is by some kind of regulation.

Mr. NELSEN. Thank you.

Mr. ROGERS of Texas (presiding). The next witness is Albert O. Hardy, director, Radio, Television, and Recording Division, International Brotherhood of Electrical Workers.

STATEMENT OF ALBERT O. HARDY, DIRECTOR, RADIO, TELEVISION, AND RECORDING DIVISION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Mr. HARDY. Mr. Chairman, my name is Albert O. Hardy. I am director of the Radio, Television, and Recording Division of the International Brotherhood of Electrical Workers and an assistant to the international president of our organization. For the purposes of this hearing, I also represent other AFL–CIO affiliates having an interest in the matters before you and in the television industry. I thus speak for technicians and engineers, stage hands, scenic artists, motion picture cameramen and their associates, musicians, performers, announcers, singers, factory workmen, installers, repairmen, linemen, television servicemen—in short, most of the people who work both in front of and behind the scenery of television. These workers are represented by the American Federation of Musicians, the American Federation of Television & Radio Artists, the International Alliance of Theatrical Stage Employees & Motion Picture Operators, and the International Brotherhood of Electrical Workers.

Like the AFL–CIO itself, these organizations are dutybound to speak out on issues which have general and widespread effect upon the American people, as well as to represent the views and interests of their members. The Congressional Record is replete with evidence of the support of the AFL–CIO members for social security, medicare, minimum wage, and many other truly public-interest issues. We hope that you will consider our statement here today in much the same light; our effort is being made both in the interest of the AFL–CIO members employed in the affected industries and the many allied and supporting industries and, we sincerely believe, in the interest of the general public. In the same way, the same unions represented here today have specifically supported the all-channel television receiver

law enacted by the Congress, receiver excise tax repeal, and educational television.

This matter now before you is of very great concern to us. We wholly support the principle of effective, nationwide, and uniform Federal regulation of CATV which is proposed by H.R. 13286. Obviously, we feel that H.R. 12914 is in no way a solution for any of the problems and the controversy now before you.

I would call your attention to the statement to the Subcommittee on Communications and Power on June 4, 1965, relative to H.R. 7715. We offered our opinion in that statement that the Federal Communications Commission's—

> present authority and procedure with regard to rulemaking, coupled with those of the Administrative Procedure Act and title IV of the Communications Act, are sufficient to prospectively protect the public as well as private interests.

The Commission's second report and order affirmatively asserts this jurisdiction as a matter of law, and also concludes that the exercise of jurisdiction is presently required. We believe that the continued rapid growth of CATV systems, in terms of franchise applications and grants, is a further indication of the urgent need for regulation. Much of this franchise activity is now found in large cities which are already served by multiple television signals. Thus, in our judgment, the second report and order comes none too soon.

As we stated in June 1965, only a uniform, nationwide regulatory system will fit this complex situation. Similarly, it seems evident that the present Commission has the expertise required to make comprehensive and equitable rules, and it should be allowed to proceed to do so, without further delay.

Encouraged though we are that the FCC has made efforts to come to grips with the complex issue of CATV regulation, we do think that in some respects its new rules fall short of the mark. We are particularly concerned over the scope of the Commission's rule governing importing of distant television signals. Apart from the doubts which we have concerning the effectiveness of the Commission's approach to the problem—that of attempting to regulate the importation of distant signals through burdensome evidentiary hearings—we think that there is a wide gap in the FCC's rules insofar as they protect local service in the top 100 markets but fail to do so in markets below the top 100. The threat which CATV poses to the development of free, local television service would seem to us to be even more serious in the smaller markets than in the larger markets. Yet the FCC appears to have turned its back on just such small market stations.

It also seems to us that an especially significant gap in the FCC's formulation of its distant station rules appears in the fact that it exempts all systems operating on or before February 15, 1966. Not only are such systems allowed to continue their operations, but they are allowed to expand them. Plainly, the protection-of-investment philosophy which underlies this exemption does not warrant allowing these existing systems to expand at the expense of local broadcast stations and at the great risk and expense of the public who may well, in the long run, suffer from CATV's impact on free broadcast service.

We believe it is in order to comment on the FCC explanation of H.R. 13286.

First, we note that the Commission invites congressional guidance as to appropriate policy. This would appear to be unnecessary. In effect, the policies which are appropriate have long been in force; we assume and trust that if H.R. 13286 is enacted, it will be made clear that it will be in the interests of and will further the longstanding public policy which gives priority to the continuation and development of free and locally oriented television broadcast service over all other competing modes of television service, including wire television and pay television.

Second, we note that the Commission raises the question of whether the Communications Act should be amended to require CATV systems to obtain the consent of stations whose signals are carried. Such a requirement seems to us to be entirely right and reasonable.

We wholeheartedly concur with the provision of H.R. 13286 which saves to local authorities the right to regulate in those respects not in conflict with Federal rules and regulations. Such matters as subscription rates should be clearly within the province of local authorities, but such considerations as technical standards, tampering with program commercials, the rules against program duplication, and so on, should be Federal and uniform.

The desirability of UHF growth, local service programing by local stations, and a sound allocations system—all long encouraged by the Congress—should not be sacrificed in the interest of a new system of television program distribution. The free choice of the citizen, to subscribe to CATV or to refrain from doing so, should not be influenced. The extension of television service by CATV must not be accomplished at the expense of those who cannot, or choose not, to pay for television entertainment, education, and information.

In sum, we urge favorable action on H.R. 13286 and your rejection of H.R. 12914; which actions, in our judgment, would be in the best interests of the majority, if not all, of those concerned.

The CHAIRMAN. Thank you, Mr. Hardy.

Do you have any questions, Mr. Rogers?

Mr. ROGERS of Texas. Yes.

Mr. Hardy, I have news for you. It looks like I have to tell everybody this. I did not introduce H.R. 12914 to solve the problems involved in the present controversy. I introduced H.R. 12914 in order to serve notice on the Federal Communications Commission that when they moved over into full jurisdiction of the reception of what the people in the country hear and see and when they hear it, the Congress was telling them not to do it. That is exactly the reason it was introduced. It was not intended to solve technical problems or anything else.

It is very easy for a person to draw conclusions about what someone else does, but I just want the record completely clear on this. I notice the Associated Press had a release on this the other day, in which they said that my bill would free all CATV stations. That is not true at all. My bill has nothing to do with any jurisdiction that the Federal Communications Commission has, but it does provide that they do not move into the field of reception, and it is put in as part of the censorship thing. I think if people, before they testify, would read and associate these things, we would get along a lot better.

I feel you think they ought to have jurisdiction of reception. Is that correct?

Mr. HARDY. Not over the reception, Mr. Rogers, but over the retransmission of received signals.

Mr. ROGERS of Texas. My bill does not say anything about retransmission; it says over the reception.

Mr. HARDY. You have, I think, made a very good statement. You see, you have confused me. You say you have confused a number of people with the bill.

Mr. ROGERS of Texas. It is because they have not read it.

Mr. HARDY. I think we have two problems. Quite often, you know, a bill is submitted to Congress which is so long and so detailed that it is confusing to the average person, shall I say, the average voter, anyhow, and it would seem in many instances, a lot of proposals made at city councils, before Congress, or wherever they may be, if they were put in shorter form or more concise form, it would be much easier to understand.

You have gone in the other direction. You have made yours so short that they are equally confused.

Mr. ROGERS of Texas. Maybe that is what confused everybody. It was so simple, they could not understand such a thing coming through Congress.

Now, Mr. Hardy, the reason I made that last statement is that you say you would advocate the rejection of H.R. 12914. So I would gather from that that you would support the proposition that the FCC ought to have jurisdiction over reception.

Mr. HARDY. Not reception by the individual or by the individual receiver, Mr. Rogers.

Mr. ROGERS of Texas. Well, that is all my bill says.

Mr. HARDY. It depends on what is done with that signal after that. That is what concerns me.

Mr. ROGERS of Texas. I know, but that is not it. The point is that you are going beyond this. You are giving it work that I have not asked you for, have not sought.

Mr. HARDY. Apparently so.

Mr. ROGERS of Texas. Also there are a lot of questions I would like to ask you about this, but time will not permit.

There is one other question that I had in mind here a minute ago. Do you feel, Mr. Hardy, that the determination of the public interest ought to be determined by the Federal Communications Commission or some group in Washington other than at the local level?

Mr. HARDY. I think in matters of this sort, we have to refer back to the Communications Act, Mr. Rogers, and say that it is in the public interest, convenient, and necessity. These matters are quite often determined by the Congress of the United States and declared to be public policy.

Mr. ROGERS of Texas. Well, I notice you said here that it is unnecessary for the Federal Communications Commission to come to Congress for appropriate guidance. I thought the Federal Communications Commission was supposed to get guidance from the Congress. I am learning a lot more every day. I know some of the actions they have taken would indicate that they did not know Congress was up here.

Mr. HARDY. I think your question or your statement may be just a little bit out of context. What I am trying to say and perhaps did not say very well was that there is, in my judgment, a long standing public

policy relative to broadcasting in general, not just television. For example, I think by public policy in the United States, and this is pretty well set forth by the Congress, we do not want to get into a Government-controlled system of broadcasting, the British system, for example, the BBC, or something of that sort. We do not want to have people who are viewers or listeners pay a license fee to any Government, State or Federal, for that matter.

This is what I meant in terms of the Commission apparently inviting congressional guidance as to appropriate policy, and I think that policy has already been pretty well stated by the Congress. We want a free system of television as we define the word "free" television, and the public policy in the United States, I think, is pretty clear on this point.

Mr. ROGERS of Texas. Then you think there ought not to be any changes regardless of what might be developed if it might provide a better service, although it might compete with present known methods of communication, it ought not to be allowed, that it will interfere with this present system? If you followed that policy, we would not have television today, because the radio people would have stopped it pretty quick.

Mr. HARDY. In retrospect, it might have been a pretty good idea.

Mr. ROGERS of Texas. Let me ask you. You have a few items that you say labor is definitely on record on, the social security program and others. Do you believe that the Federal Communications Commission ought to have economic control over the television and the radio industry in this country to see that they charge proper rates for their advertising and that they put certain things on the air?

Mr. HARDY. No, I would think that again would be against public policy and the system of competitive broadcasting that we have, Mr. Rogers.

Mr. ROGERS of Texas. Well, do you think they ought to have that power over CATV?

Mr. HARDY. No, it is my feeling that there are two very large items: two important items in that respect in CATV. One is the economic level of the community, what is required in order to sustain a CATV system and subscription rates, and so forth, and governed entirely on a local basis, along with what has been referred to here, I think, as the free play of the marketplace, whether somebody wants to subscribe or not.

Mr. ROGERS of Texas. You have underwritten wholeheartedly 13286, so I would gather you would feel that the determination about these factors you have mentioned should be made at Federal level rather than at the local level.

Mr. HARDY. Certainly with respect to all technical standards, to the necessity of the system——

Mr. ROGERS of Texas. Of time of shows and service available, and origination of programs?

Mr. HARDY. Relative to the duplication of programs and the time limit specified for them and so on, yes. The kind of programs, no.

Mr. ROGERS of Texas. Do you think the FCC should not block out the origination of programs, that they ought to let them originate programs if they want to?

Mr. HARDY. Frankly, Mr. Rogers, it would be, probably, at least in the short run, it would be an advantage for the people that I represent to have the CATV system originate programs. This would call for more people, more cameramen, more stagehands, etc.

Mr. ROGERS of Texas. That is not the only thing you have in mind, though. You have the welfare of the country at heart.

Mr. HARDY. Of course not. I think certainly if the CATV originates programs, it is then an even more competitive system of broadcasting information, education, and so forth, and I think it should be prohibited.

Mr. ROGERS of Texas. You think the origination ought to be prohibited?

Mr. HARDY. Yes, I do.

Mr. ROGERS of Texas. Then you believe in economic control for CATV, but not for broadcasting?

Mr. HARDY. If that is economic control. I think you take the definition a little far, yes.

Mr. ROGERS of Texas. Thank you very much, Mr. Hardy.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. The point I was going to make Mr. Rogers has touched on, and that is in reference to the statement by the FCC which, in your testimony, says:

> We note that the Commission invites congressional guidance as to appropriate policy. This would appear to be unnecessary.

I might point out that for me, this was one of the most wholesome suggestions in the entire presentation, because I think any Federal agency is to be complimented if they do come to the Congress with suggestions, and I am sure you would not really disagree with me. The thing that I would point out is that the Federal Trade Commission, a couple of years back, while we were working on legislation dealing with advertising and labeling of cigarette packages, came up with an expressed authority for rulemaking that they thought they already had, and the Congress put its foot down a little bit, and I think justly so.

We were rather pleased to hear that FCC would come up and ask for some guidelines, and I am sure things will work out much better if that course is followed.

May I ask this question with regard to program origination by CATV? If they were already originating programs, do I understand that you feel that when this becomes competitive it should be stopped? Would you oppose program origination if the CATV system were licensed as any other TV broadcasting system would be licensed?

Mr. HARDY. No, I can see no reason to oppose that.

Mr. NELSEN. Thank you.

I have no more questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Hardy, I am delighted that your group has at least put some thought into this problem. Usually, you have been on the other side of the fence, but you at least have put some thought into this problem and brought it down to the committee.

I take it that it is your feeling that the FCC did not go far enough in its rules, is that correct?

Mr. HARDY. I think that is generally so, Mr. Springer, yes.

Mr. SPRINGER. Now, it was your thought that if you were going to apply rules such as they did, there should be no particular reason why the rules should be applied to the top 100 markets and not then to the remainder of the country. In other words, if it is good for the top 100, it is good for the rest of the country?

Mr. HARDY. It is good for all of them; yes, sir.

Mr. SPRINGER. Now, secondly, is it your feeling that CATV ought to be required to obtain the consent of the originating station or system?

Mr. HARDY. Yes, sir. Our feeling there again is that it is a copyright and a property right problem, which is a judicial problem, a problem of law, and so on.

Mr. SPRINGER. There are now two cases pending in the Federal court in New York State, as I understand. This question will be decided at that time. But it is your feeling, with the legal authority that you have at the present time that the Commission ought to act in that field?

Mr. HARDY. Yes, sir.

Mr. SPRINGER. Now, thirdly, I understand from your statement that you believe that the right to regulate in areas which are not specifically covered by the FCC ought to be left to local authority, is that substantially correct?

Mr. HARDY. Yes, sir.

Mr. SPRINGER. And this has to do, I take it, with charters or franchises that are given by cities to various CATV interests that might open in that community?

Mr. HARDY. Yes, sir.

Mr. SPRINGER. Therefore, I take it from your testimony that if there is to be any regulation in the local field, it should be done at the local city level rather than by State regulatory commissions?

Mr. HARDY. Yes, sir, by all means.

Mr. SPRINGER. Now, the fourth thing I think I did get from the reading of your statement is that you have a feeling that UHF will not continue to grow unless the FCC has some means of controling or regulating CATV. Is that true?

Mr. HARDY. I think that is so, sir; yes.

Mr. SPRINGER. Your statement here, and I quote:

> The desirability of UHF growth, local service programing by local stations and a sound allocations system—all long encouraged by the Congress—should not be sacrificed in the interest of a new system of television program distribution.

Does that cover what I have asked you in the previous question?

Mr. HARDY. I think it does, sir; yes, sir.

Mr. SPRINGER. In a general way, that covers it. Outside of that, is there anything left out? I have been trying to summarize these and see if I could not pinpoint them.

Mr. HARDY. I think those are certainly the major points, Mr. Springer.

Mr. SPRINGER. Thank you very much, Mr. Hardy, for this statement of your position. I think you have made an excellent statement of your position.

Mr. HARDY. Thank you, gentlemen, very much.

The CHAIRMAN. Our next witness will be Mr. Frank H. Nowaczek, president, Pennsylvania Community Antenna Television Association.

STATEMENT OF FRANK H. NOWACZEK, PRESIDENT, PENNSYLVANIA COMMUNITY ANTENNA TELEVISION ASSOCIATION, GLENSIDE, PA.

Mr. NOWACZEK. Thank you very much, Mr. Chairman. I will attempt to make my remarks as brief as is H.R. 12914, if I can.

The CHAIRMAN. Fine. Are you going to present your statement for the record?

Mr. NOWACZEK. I will do so at the close of my testimony, and at the present time, make some extemporaneous remarks, if I may, about some issues that have come forth in the testimony in the last several weeks.

Basically, I am interested in presenting some factual information which the committee may not have at the present time. Before I do, let me, for the moment, draw a little picture in your mind of the size and shape of the CATV industry in Pennsylvania. For I sit here as a representative of the CATV operators in that State and have been elected president of the association for this present year.

In Pennsylvania, as I am sure you are aware, the CATV industry really got its birth, and as a matter of fact, started in approximately 1950. Interestingly enough, as a statistical reference for your committee's information, the majority growth of CATV in our State of Pennsylvania occurred in the time period between 1951 and 1953. In other words, some more than 10 years ago in terms of the present date.

Another factor is that there are presently some 200 to 250 CATV systems operating in the State of Pennsylvania. These systems service communities in the order of approximately 500 of the communities now in the State. This would mean that some 300,000 or 250,000 persons are customers of CATV in the State of Pennsylvania. The size and shape of this is that it represents approximately 1 million persons, or, to put it another way, perhaps mentally you get the image that 1 out of every 11 TV homes in the State of Pennsylvania is connected to a CATV facility. This will, I think, mentally put before you the kind of situation we would like to present to you in terms of the factual reference.

The factual references are to the previous testimony here, and some other asides that have been made since that time by other witnesses, of the remarks made by Chairman Henry when he appeared before you and had as a reference a guide and illustration that purported to represent the TV grade B predicted contour of TV station WNEP. He represented before you that the grade B contour of the station was of a certain size. I might add, he injected in commenting that these were not his personal comments. He had received the comments from the television station. There were x number of CATV systems within that contour that did receive it, y number that did not, and another group that carried the television station but did so by duplicating the local station. I think you will recall the references he made.

If I can, just for a moment, step over here, I think we will make the point, sir.

This map represents the State of Pennsylvania and on it are located all of the grade B contours in that State of the television stations presently operating. I am sure that you are probably bleary eyed at the thing called the grade B contour, as I am, after having sat here for several days, and you as well. But you will notice that we have identified, and will be providing for the record a smaller copy for personal reference, every grade B contour. (See exhibit 1, p. 709.) This is a rough outline of the State of Pennsylvania. Our particular testimony bears no particular witness to the area of the entire State, but only references to WNEP–TV, the television station that was used as an illustration. So if I could just dispose of one side of this map for a moment to bring forth the area of TV station WNEP, I think we can do it best with this first overlay.

You will recall that this area represents the grade B signal predicted contour of the UHF television station located in Scranton and Wilkes-Barre, Pa. I think it is very important for me to note for the record that we consider that television station and all of the UHF television stations in Pennsylvania to be doing a remarkably good job. So our next reference is not a matter of criticism except as a matter of factual reference.

This territory is the circumscription of the grade B contour as we have referenced it.

Now, this particular territory that we have just overlaid represents some of the complications that arise in explaining the facts. Having defined WNEP as an ABC television station, affiliated with that network, we find that, in fact, this much of WNEP's total grade B contour area is covered by not just other television stations—obviously, there are many of those—but covered by television stations that are likewise affiliates of that same network, ABC. There are, in fact, as indicated by the blue area, three television stations that extend to the point of a grade A contour. The gray area represented on the map indicates that same television stations' grade B extension into the predicted contour of WNEP.

The CHAIRMAN. Would you point out where WNEP is?

Mr. NOWACZEK. WNEP's predicted grade B contour——

The CHAIRMAN. But where is the station located? Right in the center?

Mr. NOWACZEK. This is correct, sir. Its transmitter is located right in here, sir, slightly to the south and east of the city of Wilkes-Barre.

So we find that factually stated, there are 4 other top 100 ABC-affiliated television stations that place either an A or a B contour over the market area, if you can call market area for this reference the grade B of the initial station. Those stations that place this contour are represented as Harrisburg by channel 27, also a UHF station; by WFIL from Philadelphia, which is a VHF station; by channel WBJA, channel 34, also UHF station, Binghamton, N.Y.; and from New York City, while not presenting an A overlap, it does present a B overlap. We find that WABC, a flagship ABC station also enters that particular grade B contour.

There are 2 other 100 top market television stations that place a signal, although not a contour, of such availability to the public that it is credited to them by the American Research Bureau.

I have to summarize constantly, I think, even for my own assistance as I truck through these particular problems.

So here is what we have, initially, ABC, WNEP, the base station illustration of the FCC channel. We have so far four television stations that literally put a duplicating network grade contour over its grade B contour and, in addition, two other stations, making a total of six, that provide sufficient service to this area that the American Research Bureau credits those stations with that area. Those two stations are WJZ down here in Baltimore, and here is its grade B contour area, referenced by the marker. So you can see the closest you get by grade B is approximately, oh, I would guess here by reference to the scale some 15 to 20 miles from the predicted grade B contour of the Scranton station.

Nonetheless, according to the American Research Bureau, there is somewhere in here (WNEP grade B contour) a sufficient audience to get credit to WJZ, Baltimore.

The same thing takes place over here in Altoona. I think that the map has been cut in such a way that it does not quite come through to show you visually the situation from Altoona.

We show you a very interesting characteristic, that WNEP television does not get credit from the American Research Bureau for approximately this much of its own predicted grade B contour. That information will also be introduced in the record in the form of a report from that bureau. The reason for that, apparently, is that the mountainous terrain over here within its own grade B contour prevents what, I believe from the layman's level, we would have to call viewership. But it is represented in these reports.

So approximately this much of its own territory likewise is not being credited to them in terms of the ARB apparently available.

In fact, having done a little research and burned a good deal of midnight oil in the past week, since this initial thought in terms of presenting the facts to you care to light, we find that of the entire WNEP–TV area, there are in fact only two counties within that total red area, which was the basic illustration given to you initially, only two counties in here that are solely served by that television station in terms of ABC television market coverage. That means, in effect, that in round numbers, only some 70,000 of the total number of TV households in that station's entire grade B contour are exclusive in terms of receivership; 70,000, roughly, of some 430,000 total homes in this area.

The purpose of all of the charts, graphs, statistics, and references is to assist you in assembling mentally some of the information that you have heard presented to you from the perspective, if you will, in this instance of a television station and its grade B area, but in terms of receivership from public perspective is represented also in this fashion.

The statistical figures referenced in the stations' initial showing used by the FCC Chairman, we have found, are approximately correct in terms of our own work. We found, just to give you a mental reaction here, that the initial presentation showed that some 67,000 CATV homes did not carry this station. We have a slightly lower figure, but the reference is marginal, 57,000, a drop of approximately 2,000 homes.

We find that the initial presentation said that some 52,000 CATV homes in this market area carried the local station, but duplicated it. We find instead that a greater number, some 77,000, received it but duplicate it.

Now, in terms of conclusion rather than fact, I think this perhaps begins to explain why the statistics are so. ARB credits in southeastern areas six other television stations, all of which are affiliated with the same television network. In terms of receivership, as you know, in the mountainous areas, we are dealing unfortunately with the laws of nature and not with the contours of the engineering prediction or with the question of an ARB market.

The initial presentation referenced one last statistic, and that is that 23,000 CATV homes received it and did not duplicate it. Our figures represent some 13,000 by comparison.

So we have a situation where there are some 5 overlapping top 100 markets ABC contours. We have seven overlapping coverage areas if we include the two that do not place contours but do get some coverage.

I think, then, in summary, to be brief, we ought first to look at the question of those CATV homes that do not receive WNEP. There are some 57,000 of those homes. They are represented by some 34 different CATV systems somewhere within this grade B area. We find, however, in doing some research, all of which will be introduced, if we are permitted, for the record and your examination, that of the 34 CATV systems, some 21 have what appears to be a reasonable rationale—again conclusion, not fact, I must admit—as to why it is not being received. They follow basically three kinds of answers in a pattern. The first instance is that the system is located in this null area, the null area being that portion of the southern part of the grade B contour that is outside what the station apparently considers its receivable area and in the area that ARB does not credit to it itself.

The second group of systems say they are in the A contour, the three blue segments here, of another ABC network station, and only within the B of the basic WNEP station.

In the third instance, we find a group that say it is simply not available off the air in our community. So those 3 sets of circumstances appear to pertain to 21 systems of the 34 that can't receive this particular television station in Scranton.

I think we can remove the burden from these fine gentlemen and ask them to put the map down, because there is only one other thing that I would like to reference factually about that presentation. That is that while the initial demonstration to you was a factual presentation—I am referencing here the initial testimony of the FCC chairman—as to what happened to certain CATV systems within the grade B contour, I noticed that there was no reference to what happened to CATV systems and public reception beyond the grade B contour. The facts of the matter are that outside of that egg-shaped contour, there are some 30,000 CATV homes on approximately 22 CATV systems that are receiving the Scranton station.

One final reference of a factual nature is that we would have enjoyed having gone through these facts with reference to what happens in view of the second report and order and its characteristics to the sta-

tion's market? Unfortunately, time being what it is, we have not been able to complete it.

I can say this to you, however, for the 30,000 CATV homes beyond the grade B contour of that station not initially referenced, we find that some 22,000 would be lost to WNEP as a result of enforcement in its entirety of the second report and order.

I believe that would conclude the portion of my extemporaneous remarks, Mr. Chairman. It was designed, hopefully, to be constructive, for in Pennsylvania, I think that it is evident that with some 300,000 customers over a 10-year period of time, we have managed rather adequately, and for us, quite thankfully and pleasantly, to reside with the telecasters in our State.

I shall be happy to answer any of your questions, and with your permission, Mr. Chairman, I would like to introduce for the record my initial testimony that I had prepared.

The CHAIRMAN. That will be included in the record.

(The complete statement of Mr. Nowaczek, with references and exhibits, follows:)

STATEMENT OF FRANK H. NOWACZEK, PRESIDENT, PENNSYLVANIA COMMUNITY ANTENNA TELEVISION ASSOCIATION, INC.

INTRODUCTION

My name is Frank H. Nowaczek. I am serving this year as president of the Pennsylvania Community Antenna Television Association, with offices at Meadville, Pa. The association is composed of about 175 operating CATV member systems located in the State of Pennsylvania. Our members represent roughly 10 percent of the CATV industry in the United States.

As you know, Pennsylvania was the birthplace of commercial CATV. Today there are more people getting CATV service in Pennsylvania than in any other State. We serve 1 out of every 11 television homes in the State, or just about 1 million persons. There are some 200 to 250 CATV systems serving more than 500 of the State's communities.

Interestingly enough, with the depth of penetration these facts reveal, the major period of CATV growth in Pennsylvania took place more than 10 years ago. More systems began service in 1951, 1952, and 1953 than have come into existence in all years since that time. That fact is significant in two ways:

1. Our remarks may differ from much of the testimony you will hear about the so-called impact of new CATV systems—because our comments are based upon an established industry with a public service record spanning more than 15 years.

2. The fact that we exist, and the reasons why the Pennsylvania public has accepted us for so long, will provide an insight for you that may be hard to get from other areas of the country.

We hope that insight will, first, be constructive, and, second, bring home accurately the deep concern we have about some of the propositions in the FCC Rules.

The basic regulatory yardstick employed in the FCC rules is that of the grade B contour. We would like to step away from the forest of the individual rules and regulations, and examine with you this basic grade B concept.

We believe regulations based upon the grade B predicted contour of a television station will cause more problems than they solve. Furthermore, we believe the people of Pennsylvania have already provided the proof of that pudding.

In Pennsylvania 300,000 people already use CATV for television reception. The majority live where several grade B contours exist in theory. These 300,000 people are living testimony that:

1. The grade B theoretical contour has nothing to do with whether a station can be received or not.

2. The grade B theoretical contour is no measure of what is local.

3. The grade B theoretical contour is not a certain thing, but a changeable, relative matter.

4. In fact, the grade B contour does not exist, except in theory. If the television service the grade B contour is supposed to represent really existed, there would be no reason for 300,000 Pennsylvanians to ask for our help.

Presentation of the fact situation to support these remarks must start with a people perspective. A people perspective brings to light two essential elements that are only beginning to be understood by persons not familiar with what our service does for people:

1. The first is that CATV represents a problem—but not a television market problem, or a utility problem—we represent a people problem. CATV is the solution to the people's everyday problem of television reception. Think for a moment, and see if you don't agree that this is the best definition you have heard. And all of the why's and wherefore's must come to rest at the point of their impact on the public. And what happens to CATV in regulation, does not really happen to us—it happens to the people who want our service.

2. The second element is, that of all the forces at work in television, CATV is the only one in almost daily contact with the most important man in television today—the television viewer. Examine that for a moment, and ask yourself the question: Who has a more direct, person-to-person contact with the viewer than the CATV operator with, say, 1,000 customers? What person-to-person contact with Joe Smith, television viewer, can any other business force in television boast of—whether it is the television station, network, program supplier, or the FCC?

As a people problem, governmental regulation of CATV appears desirable. When this happens it is also necessary to decide upon a formula to make that regulation workable. We feel we must assess the grade B theoretical contour as the basic regulatory yardstick established by the FCC rules. Only then can we begin to feel that our comments will be constructive.

The proposed rules show the FCC's apparent selection of the station's theoretical grade B contour as the basic regulatory yardstick. With the grade B contour concept the FCC has attempted to develop individual rules and regulations about the issues in CATV. Our concern is not with the development of appropriate rules and regulations, but with the selection of the unworkable grade B concept.

We do not know why the grade B contour was selected as the basic "cookie cutter" of CATV regulation. We prefer to believe it was done inadvertently, because any reference to the facts would reveal that it should be discarded.

We could speculate that it was selected because it was convenient. It already existed although only in the Commission's files—and therefore was readily available to the regulatory administrator. However, I am old fashioned enough to hope that public convenience comes before regulatory convenience.

As you know, the grade B contour is based upon theoretical computations of where a television station's signal should go under certain conditions. The grade B contour is generally used, we are told, as an engineering guide by the Commission staff.

The grade B contour may have some use in Commission administrative decisions when the discussion concerns two television stations—it may even have some use to advertisers in figuring out hypothetical markets. But the important point to the public using CATV service is that a grade B contour has absolutely no bearing whatsoever on television reception.

And a very real practical problem arises. We will demonstrate in a moment that the television service supposedly available on the basis of a predicted grade B contour is not available to many people. When they realize, as they do daily sitting in front of home TV sets, that the signal cannot be reasonably received and contrast that with prohibitions on distant signals and the other factors of the rules, we will have an immense public relations problem. The public will jump to the conclusion that "big brother" is now controlling what they can receive.

No matter how hard we as CATV operators, or you as Congressmen try, the public will seek the easy conclusion: that reception of television is now under control from Washington.

The public will fail to follow the logic that what should exist, and which does not in fact, should be the controlling factor on what they watch. A simpler solution must be found, one that is not only subject to regulatory administration, but also to public understanding.

To compare reception of television signals with theoretical engineering estimates of its broadcast area is to compare apples and bananas. It is here, in at-

tempting to bend one concept (grade B predicted contours) to fit another problem (regulation of CATV reception) that the Commission's concept runs afoul of logic.

Other witnesses have talked about various individual problems raised by the attempt to make the grade B contours the "cookie cutter" within which CATV regulation can take place. I will not repeat those witnesses nor those individual situations.

What I would like to demonstrate is the basic and all-encompassing manner in which the grade B "cookie cutter" violates logic as a regulatory concept when applied broadly across the State of Pennsylvania.

Exhibit 1, attached to this testimony, shows the extent and number of grade B predicted contours that exist now serving Pennsylvania.

Why is this exhibit important? Somewhere along the regulatory road a decision must be made as to what is, and what is not, a "local" television station; or so the present regulatory thinking goes.

The importance of this exhibit is that it shows how an apparently useful premise (the grade B concept) can be employed for an apparently useful purpose (CATV regulation) and in the end cause nothing but confusion; all because the grade B concept is the wrong concept to use in regulating reception.

Examination of the map exhibit will show for example, many points where 5, 6, and even as many as 11 television channels should be getting "local" television service to the people of Pennsylvania.

We believe it follows as logic that the people of Pennsylvania would not use CATV service to the extent they do, unless they had to or felt it was very useful to do so.

I don't believe it is unreasonable to assume that most of the CATV public in Pennsylvania uses CATV to overcome reception problems. I think you would probably agree.

But if the Pennsylvania public uses CATV to overcome reception problems, then we have a very serious problem in rationalizing what good those grade B contours are going to do as the basis for CATV regulation in Pennsylvania.

What it amounts to is this: either the signal is available where shown by those grade B contours, or it is not.

The massive extent of public CATV use in Pennsylvania flies in the face of the use of the grade B contour as a reasoned, useful means of developing regulation. The grade B just becomes a "cookie cutter" impressed on the surface of a map. While you can develop all kinds of hypothetical reasons why grade B should be used, you can only make those reasons stick if you avoid the facts. And we do not believe that avoiding the facts will aid the public or for that matter any of the other participants in these issues.

I cannot imagine anything more dramatic as testimony to the folly of continuing to discuss a set of regulations based upon a premise as inaccurate of the facts as the predicted grade B contour concept.

Our association's major interest in providing testimony is to provide the committee with constructive information, based realisically on our experience. Suggestions have been made that present a more reasonable approach to the problem. H.R. 14201, for example, suggests a policy of identifying "local" television on a pure mileage basis. We believe this approach can work, and more importantly, we believe it can be explained to, and understood by, the viewing public.

Our association believes the 30-mile rule proposed by H.R. 14201 would be satisfactory for certain specific reasons:

1. It would be a broad enough proposal to apply universally to most situations: I believe you will agree that it doesn't make much sense to make a rule that creates more problems than it solves.

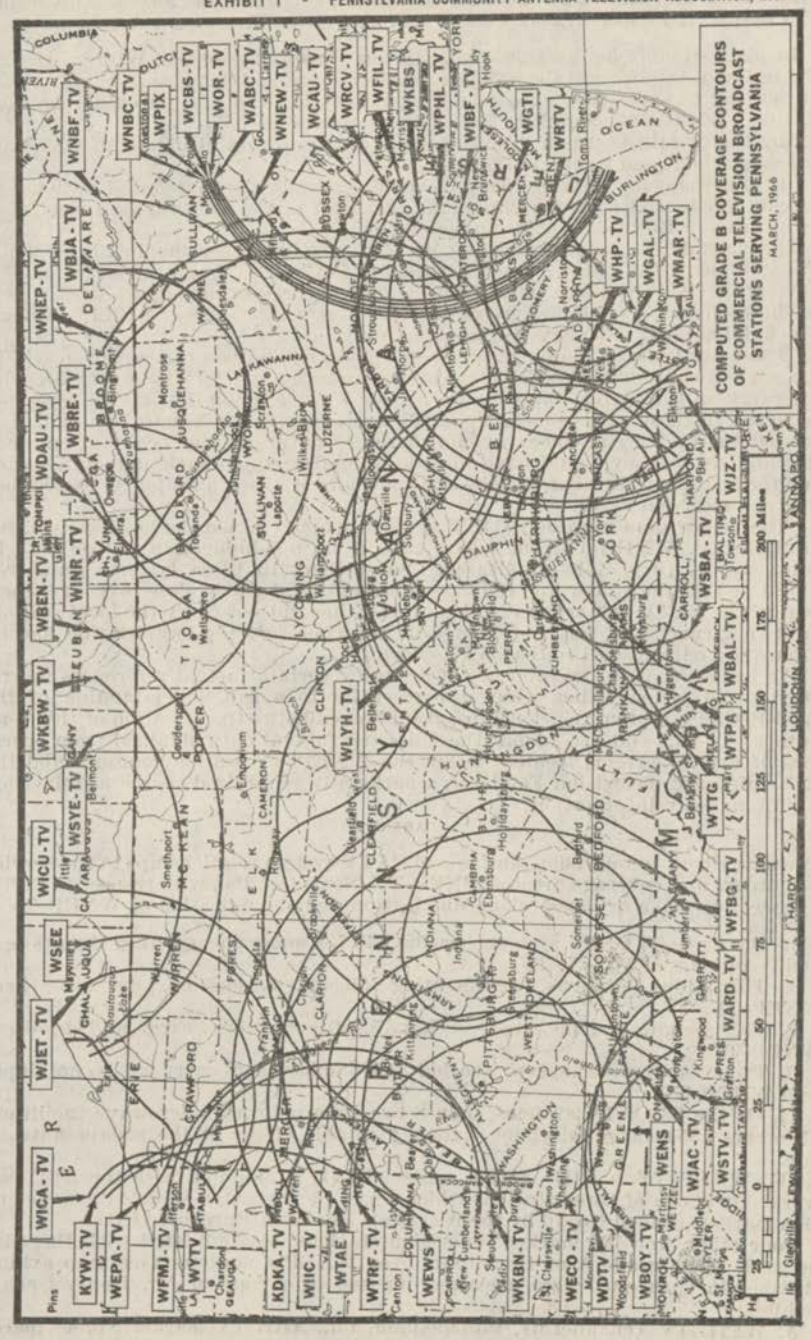
2. It would be easy of interpretation without requiring constant recourse to technical and expert witnesses in extensive and frequently contradictory testimony. After all, 30 miles is 30 miles.

3. It would be as fair to all parties as the public interest will permit.

With your committee's experience in these matters, you may have other and more suitable tests. Yet, as businessmen serving the public daily, we have found that these same types of criteria are entirely workable, are reasonable, and, most importantly, are within reach in this case.

In closing, and on behalf of the members of the Pennsylvania CATV Association, and the public we serve, I want to thank you for the opportunity for this discussion. We stand ready to provide whatever additional information your committee may desire. Thank you.

EXHIBIT 1 - PENNSYLVANIA COMMUNITY ANTENNA TELEVISION ASSOCIATION, INC.



STATISTICAL REFERENCE IN SUPPORT OF ORAL TESTIMONY OF FRANK NOWACZEK, PRESIDENT, PENNSYLVANIA COMMUNITY ANTENNA TELEVISION ASSOCIATION

In his testimony before this committee on March 22, 1966, E. William Henry, Chairman of the Federal Communications Commission, introduced a chart exhibit purporting to show the "extent and impact of CATV operation on a television station," WNEP–TV, Scranton, Pa. (See map exhibit A.)

Mr. Henry said it was a "good example of this potential impact of CATV on a local station," and went on to say:

"It is perhaps an extreme case. I would certainly say that this situation represents a potential impact greater than that that might normally be experienced by a station. But it does point up the problem."

The chart data—acknowledged by Mr. Henry to have been supplied by WNEP–TV—portrayed the grade A and B contours of WNEP–TV and the locations of a number of CATV systems within the contours representing 140,804 subscribers. Of these subscribers, 66,759 were said by Mr. Henry to be served by CATV systems which did not carry WNEP. He went on to say:

"These are represented by red dots on the chart. So you can see, even within the grade A contour of WNEP, there were a great many CATV systems which did not carry on the system those signals. Now if we assume that CATV reception generally in these areas served by CATV systems was inadequate, it might well be that the CATV subscribers would therefore never see the local station, or if they did see it, they would have to make the effort to go back and switch back and forth from on the air to off the air, and there is also a question as to whether they can receive it at all.

"The yellow dots represent CATV systems which carried the local system, the local station, WNEP–TV, but which gave it no nonduplication protection. In other words, they fully duplicated. Subscribers to these systems numbered 51,680, so that the yellow and red bars representing, I guess, close to 85 or 90 percent of the CATV subscribers in this area, either did not carry the local station, or if they carried it, fully duplicated it, and therefore the local station had no exclusivity with respect to the CATV systems."

We believe that in the interests of accuracy certain factual references not related by Mr. Henry, but which are essential to a full understanding of the WNEP/CATV system relationships, should be called to the attention of this committee. To this end, we submit the following factual data obtained from operators of CATV syrtems located within the WNEP–TV station contours and the 1966 edition of Television Factbook, a nationally recognized source of television CATV industry information:

PART I

Facts pertinent to television station and CATV system relationships to the service contours and coverage area of WNEP–TV, Scranton, Pa., with respect to CATV system carriage or noncarriage/duplication or nonduplication of WNEP–TV

I. There are 93 CATV systems serving 145,734 subscribers within the grade A and B contours of WNEP–TV.

A. Thirty-four systems, representing 56,838 subscribers, do not carry WNEP–TV.

B. Thirty-eight systems, representing 75,600 subscribers carry and duplicate WNEP–TV.

C. Twenty-one systems, representing 12,596 subscribers carry but do not duplicate WNEP–TV.

II. Of the 93 CATV systems, only 8 are known to use microwave facilities; all others (85) carry television signals available off-air at the master antenna site.

III. WNEP–TV, a UHF station (channel 16), is affiliated with the ABC network. It is one of three stations which serve the Scranton-Wilkes-Barre television market, ranked No. 70 by the American Research Bureau (ARB).

Four other "top 100 market" television stations, also affiliated with the ABC network, place grade A or B contours over WNEP's contours (see map exhibit B, wherein data cited here are superimposed over copy of Mr. Henry's chart exhibit):

A. WFIL–TV (channel 6), Philadelphia, Pa., ARB TV market No. 4—places both a grade A and a grade B signal over WNEP's contours.

B. WBJA–TV (channel 34), Binghampton, N.Y., ARB TV market No. 82—places both a grade A and a grade B signal over WNEP's contours.

C. WTPA–TV (channel 27), Harrisburg, Pa., ARB TV market No. 33—places both a grade A and a grade B signal over WNEP's contours.

D. WABC–TV (channel 7), New York City (the ABC Network "flagship" station), ARB TV market No. 1—places a grade B signal over WNEP's contours.

IV. A portion of the land area within WNEP's grade A and grade B contours is not credited by ARB as being in WNEP's audience coverage area. (See map exhibit C.)

V. All of the four ABC-affiliated stations whose contours overlap WNEP's contours are credited by the American Research Bureau as having audience coverage extending beyond their grade B contours and further within WNEP's contours.

Two other ABC-affiliated stations from "top 100" television markets are also credited by ARB with providing audience coverage within WNEP's contours:

A. WJZ–TV (channel 13), Baltimore, Md., ARB TV market No. 11.

B. WFBG–TV (channel 10), Altoona, Pa., ARB TV market No. 41.

(For pictorial representation, see map exhibit D, wherein data cited immediately above and below are superimposed over copy of Mr. Henry's chart exhibit.)

As map exhibit D reveals, only four counties within WNEP's contours are exclusively served by WNEP's ABS network offerings—Wyoming County and Lackawanna County, Montour County and Union County.

Within these counties are 81,200 television homes, or 18.7 percent of the total number of television homes—432,000—credited by ARB as being in the WNEP coverage area.

All other counties within WNEP's service area are credited by ARB as being shared by WNEP and 1 or more other ABC-affiliated stations from 6 other "top 100" television markets, with the exception of that portion of the land area within the WNEP contours not credited by ARB as being served by WNEP—this area is exclusively served by ABC stations other than WNEP.

Thus, WNEP has an exclusivity for off-air ABC network service for only 18.7 percent of television homes in its coverage area; while 81.3 percent of the homes are credited as being able to receive duplicating ABC-network service from WNEP and one or more other ABC-affiliated stations.

VI. Facts regarding CATV systems within contours but not carrying WNEP–TV.

A. Within WNEP's contours are 34 CATV systems representing 56,838 subscribers which do not carry WNEP–TV. (See exhibit I.)

B. In his consideration of these CATV systems, Mr. Henry said:

"Now if we *assume* that CATV reception generally in these areas served by CATV systems was inadequate, it might well be that the CATV subscribers would therefore never see the local station * * * and there is also a question as to whether they can receive it at all." (Emphasis supplied.)

C. The facts about these 34 CATV locations are:

1. Thirty-three of the thirty-four systems are in communities credited by ARB with coverage from 1 or more other ABC-affiliated stations from top 100 television markets.

2. Twenty-eight of the thirty-four are within grade A or B contours of other top 100 market ABC-affiliated stations.

3. Sixteen of the thirty-four systems representing 27,346 subscribers are in communities where the WNEP–TV signal is not available for off-air reception, or is available "poor to not at all."

(*a*) Twelve of the sixteen systems, representing 25,093 subscribers, are in communities not credited by ARB as being within the WNEP coverage area.

4. Six of the thirty-four systems—not included in the 16 reported directly above—are within the grade A contour of another top 100 market ABC-affiliated television station. These 6 systems represent 13,052 subscribers.

D. Summary:

1. Of the 56,838 subscribers 55,088 are in communities credited by ARB with coverage from 1 or more other top 100 market ABC-affiliated stations.

(*a*) Some 27,346 subscribers are in communities where the WNEP signal is not available or available "poor to not at all."

(*b*) Another 13,052 subscribers are within the grade A contour of another top 100 market ABC-affiliated station.

VII. Facts regarding CATV systems within contours which carry and duplicate WNEP–TV.

A. Within WNEP's contours there are 38 CATV systems, representing 75,600 subscribers, which carry and duplicate WNEP–TV. (See exhibit II.)

B. The facts about these 38 locations are:

1. All 38 systems are in communities credited by ARB with coverage from 1 or more other ABC-affiliated stations from top 100 television markets.

2. Thirty of the thirty-eight CATV systems are within grade A or B contours of other top 100 market ABC-affiliated stations.

3. Twenty-eight of the thirty-eight systems, representing 66,923 subscribers, are in communities where the WNEP–TV signal is not available for off-air reception, or is available "poor to not at all."

4. Two of the thirty-eight systems—not included among the 28 reported directly above—are within the grade A contour of another ABC-affiliated station and within only the grade B contour of WNEP–TV. These 2 systems represent 6,163 subscribers.

C. Summary:

1. All of the 75,600 subscribers are in communities credited by ARB with coverage from 1 or more other top 100 market ABC-affiliated stations.

(*a*) Some 66,923 of the subscribers are in communities where the WNEP signal is not available or available "poor to not at all."

(*b*) Another 6,163 subscribers are in communities which lie within the grade A contour of another top 100 market ABC-affiliated station and are within only the grade B contour of WNEP.

VIII. Summary of other significant data regarding CATV systems within contours which (1) do not carry, and (2) carry and duplicate WNEP–TV.

A. In his summary of these two CATV situations within WNEP's contours, Mr. Henry noted that "* * * close to 85 or 90 percent of the CATV subscribers in this area, either did not carry the local station, or if they carried it, fully duplicated it, and *therefore the local station had no exclusivity with respect to the CATV systems.*" [Emphasis supplied.]

B. According to published ARB coverage data for the 7 top 100 market ABC-affiliated stations (including WNEP–TV) which are credited with audience coverage in the WNEP–TV service area, *two or more ABC-affiliated top 100 market television stations are receivable in 71 of the 72 CATV communities which either (1) do not carry, or (2) carry and duplicate WNEP–TV, representing 130,688 of the 132,438 CATV subscribers; or, in other words, communities in which no single ABC-affiliated station has off-air "exclusivity."*

PART II

Facts pertinent to (1) CATV systems within WNEP's contours; and (2) systems beyond contours but within coverage area and which now carry WNEP, in relation to carriage and nonduplication requirements of FCC's CATV rules

I. Effect of FCC rules on WNEP–TV and the 34 CATV systems within WNEP's contours which now do not carry WNEP–TV, representing 56,838 subscribers.

A. Twenty-one of the thirty-four systems would be required to carry WNEP–TV and protect the station's exclusivity, representing 38,074 subscribers.

1. At 10 of the 21 system locations, representing 21,634 subscribers, the WNEP–TV signal is not available off-air or available poorly at best.

2. In each of the 10 locations, one or more other signals from top 100 market ABC-affiliated stations are available off the air in the community.

3. The 10 CATV systems referred to in A–1 above are within the grade A contour of WNEP–TV, and within the grade B contour of one or more other top 100 market ABC-affiliated stations.

4. In its reasoning behind the issuance of its nonduplication rules, as set forth in paragraph 99 of its "First Report and Order," issued April 23, 1965, the FCC said:

"* * * the rules will provide for nonduplication, even though a station's signal contour over the CATV system is overlapped by a lower priority signal contour from another station in a different market. (A station with a 'principal community' contour will be protected even though overlapped by grade A's and a grade A will be protected even though overlapped by grade B's.) *In such situations, the CATV system, which can effectively*

render the signals of all stations carried equal in technical quality, is in fact altering the existing off-the-air situation as to exclusivity. [Emphasis supplied to last sentence.]

5. (Comment, based on facts above.) In the communities represented by the 10 CATV systems referred to in A–1 above, a grade B signal of another ABC-affiliated top 100 market station is available off the air to home viewers, whereas the grade A WNEP–TV ABC signal is not available or available poorly at best; thus any alteration by the CATV system to the existing off-the-air situation as to "exclusivity" would be the enforced carriage of WNEP–TV, the grade A signal, which, today, does not have that "exclusivity"—a situation in direct contradiction to the FCC reasoning.

B. Nine of the thirty-four systems, representing 15,245 subscribers would be required to carry WNEP–TV and one or more other top 100 market ABC-affiliated stations, because these system locations are within contours of equal priority. However, being in contours of equal priority, they would not have to provide "protection" to WNEP's ABC programs.

C. Four of the thirty-four systems, representing 3,519 subscribers, would be required to carry WNEP–TV but must carry and protect another ABC-affiliated top 100 market station, because these systems are within a higher priority contour of the other stations.

D. Thus, of the 34 systems, representing 56,838 subscribers, which do not now carry WNEP–TV, WNEP–TV would (*a*) gain 11 systems, representing 16,440 subscribers; (*b*) gain 10 others, representing 21,634 subscribers, but who are in communities wherein the WNEP–TV signal is not available or available poor at best and are in areas where another top 100 market ABC signal is available; (*c*) be carried on 9 or more systems, representing 15,245 subscribers, but which would not be required to give WNEP exclusivity; and (*d*) lose 4 other systems, representing 3,519 subscribers, which would be required to protect another ABC station's exclusivity.

II. Effect of FCC rules on WNEP–TV and the 38 CATV systems within WNEP's contours which now carry and duplicate WNEP–TV, representing 75,600 subscribers.

A. Twenty-nine of the thirty-eight systems would be required to carry WNEP–TV and protect the station's exclusivity, representing 65,675 subscribers.

1. At 26 of the 29 system locations, representing 63,623 subscribers, the WNEP–TV signal is not available or available poor at best.

2. In 18 of the 26 locations, representing 40,463 subscribers, one or more other ABC-affiliated top 100 market stations are available.

3. Each of the 18 locations are within the grade A contour of WNEP–TV and within the grade B contour of one or more other top 100 market ABC-affiliated stations.

4. Summary: At each of the 18 locations (*a*) the grade A WNEP signal is not available or available poorly; (*b*) grade B signals from other ABC-affiliated stations are available; (*c*) WNEP–TV does not have off-air exclusivity; (*d*) [comments based on facts above]. Thus, any alterations by the CATV systems to the existing off-the-air situation as to "exclusivity" would be the enforced carriage of WNEP–TV, the grade A signal, which, today, does not enjoy that "exclusivity"—a situation in direct contradiction to the FCC's reasoning.

B. Six of the thirty-eight systems, representing 1,962 subscribers, would be required to carry WNEP–TV and one or more other top 100 market ABC-affiliated stations, because these system locations are within contours of equal priority. However, being in contours of equal priority, they would not have to provide "protection" to WNEP's ABC programs.

C. Three of the thirty-eight systems, representing 7,963 subscribers, would be required to carry WNEP–TV and one or more other top 100 market ABC–affiliated stations, because the 3 system locations are within contours of these other stations. However, being in the grade A contour of other stations and only the grade B of WNEP–TV, the systems would have to protect another station's ABC programing against WNEP's offerings.

D. Thus, of the 38 systems, representing 75,600 subscribers which now carry and duplicate WNEP–TV, WNEP–TV would (*a*) obtain exclusivity for 3 systems, representing 2,052 subscribers; (*b*) obtain exclusivity for 26 other systems, representing 63,623 subscribers, but who are in communities wherein the WNEP–TV signal is not available or available poor at best—18 of which, representing

40,463 subscribers, are in areas where another top 100 market ABC signal is available; (*c*) be carried on 6 other systems, representing 1,962 subscribers, but which would not be required to give WNEP exclusivity; and (*d*) lose 3 systems, representing 7,963 subscribers which would be required to carry WNEP–TV, but would protect another ABC station's exclusivity.

III. Effect of FCC rules on WNEP–TV and the 21 CATV systems within WNEP's contours which now carry and do not duplicate WNEP–TV, representing 12,596 subscribers. (For listing of 21 systems, see exhibit III.)

A. Sixteen of the twenty-one systems, representing 8,661 subscribers, would be required to carry and protect WNEP's exclusivity.

B. Five of the twenty-one systems, representing 3,935 subscribers, would be required to carry WNEP–TV, but, being a higher priority contour of another top 100 market ABC-affiliated station, would have to protect another station against WNEP–TV. WNEP–TV would, therefore, lose these 3,935 subscribers.

IV. Effect of FCC rules on WNEP–TV and the 20 CATV systems beyond WNEP's contours which now carry (and duplicate) WNEP–TV, representing 29,907 subscribers (CATV systems in Pennsylvania only).

A. Thirteen of the twenty systems, rerpesenting 24,227 subscribers, are within contours of other top 100 market ABC-affiliated stations; these subscribers would be lost to WNEP during times when ABC programs of the other stations were duplicated by WNEP–TV.

B. Five of the twenty systems, representing 5,680 subscribers are also beyond contours of other ABC-affiliated stations and could continue to view WNEP–TV programing.

V. Summary:

A. WNEP–TV, under the rules established in the second report and order, wuold obtain ABC program exclusivity for 112,410 subscribers of CATV systems as against the 12,596 subscribers which it now serves exclusively—a gain of 99,814.

B. However, 85,257 of the 112,410 subscribers are in areas wherein the WNEP–TV signal is not available or available poor at best, and where other top 100 market ABC-affiliated television stations are available.

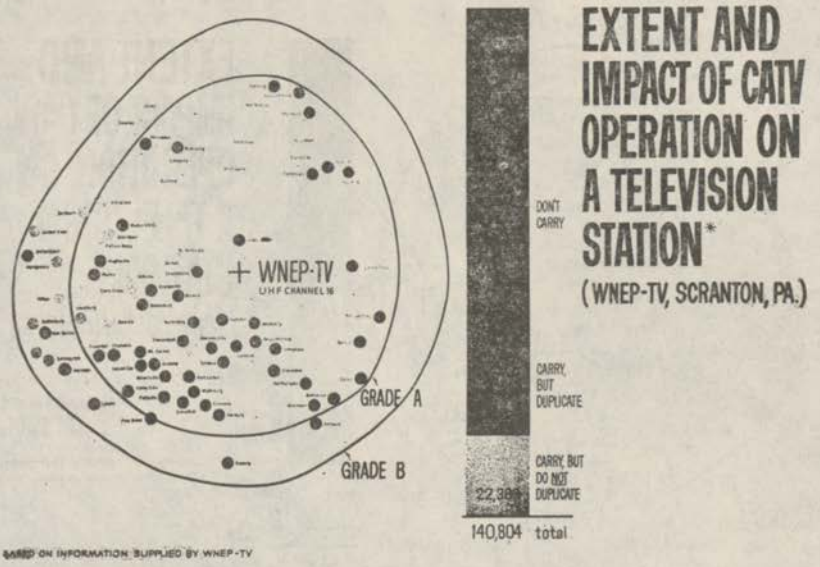
C. The 62,097 of the 85,257 subscribers in communities wherein WNEP's signal is poor or not available are in grade B contours of other top 100 market ABC-affiliated stations, and wherein enforced carriage of WNEP–TV would give the grade A WNEP–TV signal an equality of signal with the grade B signals which it does not now have—thus, any alteration by the CATV systems to the existing off-the-air situation as to exclusivity would be the required carriage and "protection" of WNEP–TV—a situation in direct contradiction to the FCC's reasoning behind its "protection rules."

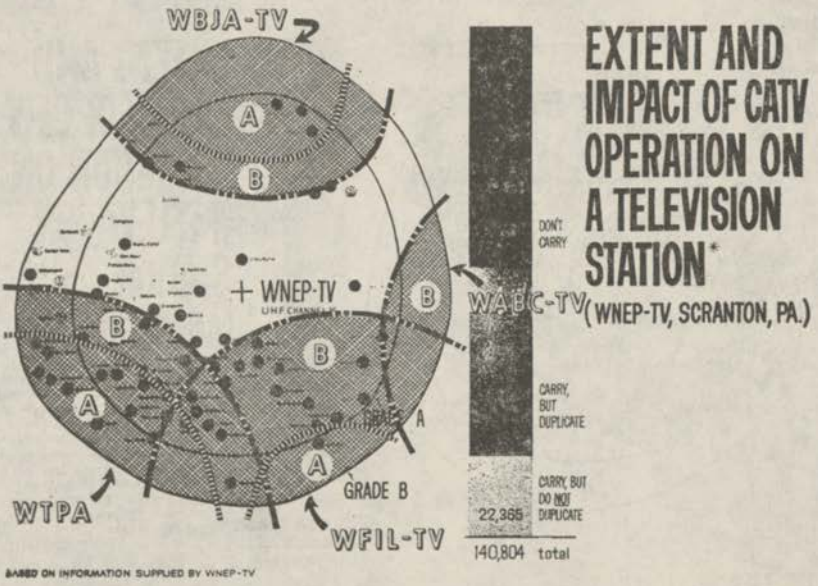
D. The 62,097 subscribers referred to in C directly above, would be lost to the ABC-affiliated stations within whose grade B contours the system locations lie, even though the signals of these stations are available in the communities and the WNEP–TV signal is not available or receivable poor at best.

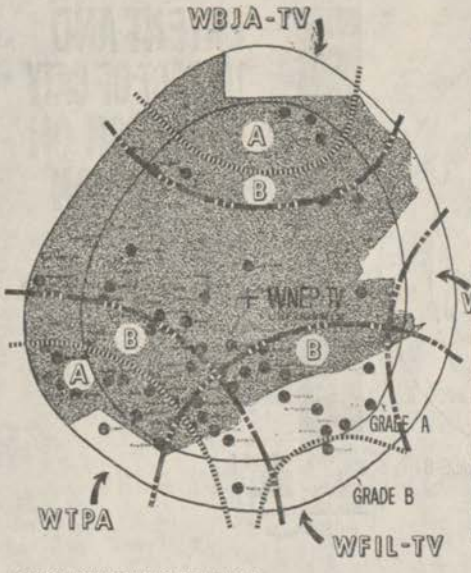
1. In its reasoning behind the establishment of carriage rules (par. 87 of the FCC's first report and order regulating CATV systems) the FCC said:

"In the view we take * * * carriage of a station's signal is desirable wherever the signals brought in by a CATV system compete effectively for the audience upon which the station relies. For, as we have already concluded, *failure to carry the station's signal in such circumstances puts an unreasonable restriction upon the station's ability to compete. From the point of view of national advertisers and program suppliers, it makes little difference where a home in the station's normal audience is located. Signal contours, in this context, are merely useful rules of thumb for determining where a station's basic market area lies. Within that area, the station's right to be carried should not depend upon a showing of specific need in each instance.*" [Emphasis supplied.]

2. Although the FCC says that it is necessary to carry both the grade A and grade B signals because "failure to carry the station's signal in such circumstances puts an unreasonable restriction upon the station's ability to compete," it then takes away from the grade B stations the opportunity to compete for these 62,097 CATV subscribers through its "nonduplication-protection" rules—even though the signals of these grade B stations are available and the grade A (WNEP–TV) signal is not available or available poor at best.


+ WNEP-TV
UHF CHANNEL 16
GRADE A
GRADE B
EXTENT AND IMPACT OF CATV OPERATION ON A TELEVISION STATION*
(WNEP-TV, SCRANTON, PA.)
DON'T CARRY
CARRY, BUT DUPLICATE
CARRY, BUT DO NOT DUPLICATE
22,365
140,804 total
BASED ON INFORMATION SUPPLIED BY WNEP-TV


WBJA-TV
A
B
+ WNEP-TV
UHF CHANNEL 16
WABC-TV
WTPA
WFIL-TV
GRADE A
GRADE B
EXTENT AND IMPACT OF CATV OPERATION ON A TELEVISION STATION*
(WNEP-TV, SCRANTON, PA.)
DON'T CARRY
CARRY, BUT DUPLICATE
CARRY, BUT DO NOT DUPLICATE
22,365
140,804 total
BASED ON INFORMATION SUPPLIED BY WNEP-TV

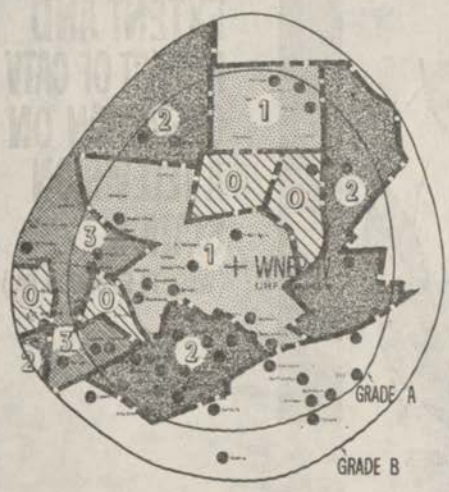


BASED ON INFORMATION SUPPLIED BY WNEP-TV

EXTENT AND IMPACT OF CATV OPERATION ON A TELEVISION STATION*

(WNEP-TV, SCRANTON, PA.)

NOTE: Shaded area within WNEP-TV contours is the only area within contours wherein WNEP-TV is credited with audience coverage by ARB.



BASED ON INFORMATION SUPPLIED BY WNEP-TV

EXTENT AND IMPACT OF CATV OPERATION ON A TELEVISION STATION*

(WNEP-TV, SCRANTON, PA.)

LEGEND: Unshaded area within contours is area not credited by ARB with WNEP-TV coverage (other ABC outlets serve this area); "0" areas are areas served exclusively by WNEP's ABC programming; areas numbered 1-3 show the no. of other ABC-affiliates competing with WNEP-TV for audience coverage in specific areas.

EXHIBIT I

List of CATV systems, by community, located within service contours of television station WNEP–TV (channel 16) which do not provide WNEP service

CATV system location	Subscribers	Relationship to WNEP service contours (within A or B contour)	Call letters of other ABC network stations received by system	Other pertinent data regarding CATV system location with reference to WNEP and other ABC Network stations
Mount Carmel	2,200	A	WFIL–TV	Also in A contour of WTPA.
Hallstead	135	A	WBJA–TV	Also in A contour of WBJA.
Thompson	45	A	WBJA–TV	Do.
Forest City	240	A	WBJA–TV	WNEP signal not available off-air in community. Also in B contour of WBJA.
Monroeton		A		Also in B contour of WBJA.
Muncy Valley		A		
Wilkes-Barre	1,750	A	WFIL–TV	
Buck Hill Falls		A		System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study.
Orangeville	121	A	WTPA–TV	WNEP signal not available off-air in community. Also in B contour of WTPA.
Berwick	1,000	A	WFIL–TV	
Bloomsburg	2,500	A	WFIL–TV	Also in B contour of WTPA–TV.
Herndon		B		Also in A contour of WTPA–TV.
Lykens	2,030	B	WFIL–TV; WTPA–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air in community. Also in A contour of WTPA.
Pine Grove	622	B	WFIL–TV; WJZ–TV.	WNEP signal not available off-air in community. Also in A contour of WTPA.
Reading	1,015	B	WFIL–TV; WTPA–TV; WJZ–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air or poor at best in community. Also in B contour of WTPA and WFIL.
Do	700	B	WFIL–TV	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air or poor at best in community. Also in B contour of WTPA and WFIL.
Emmaus	867	B	WFIL–TV	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air or very poor at best in community. Also in A contour of WFIL.
Allentown	5,000	A	WFIL–TV; WFBG–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. Also in B contour of WFIL.
Easton	7,041	A	WFIL–TV	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal available off-air very poor or not at all. Also in B contour of WFIL and WABC.
Bangor	570	A	WFIL–TV; WABC–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air in community. Also in B of WFIL.
Stroudsburg	1,225	A	WABC–TV; WFIL–TV	Also in B contour of WFIL and WABC.

EXHIBIT I—Continued

List of CATV systems, by community, located within service contours of television station WNEP–TV (channel 16) which do not provide WNEP service—Continued

CATV system location	Subscribers	Relationship to WNEP service contours (within A or B contour)	Call letters of other ABC network stations received by system	Other pertinent data regarding CATV system location with reference to WNEP and other ABC Network stations
Northampton	3,420	A	WFIL–TV; WABC–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air in community. Also in B contour of WFIL.
Slatington	900	A	WFIL–TV	Do.
Nesquehoning	792	A	WFIL–TV	WNEP signal not available off-air in community. Also in B contour of WFIL.
Hazleton	4,727	A	WFIL–TV	
Shamokin	6,300	A	WFIL–TV	Also in A contour of WTPA.
Do	3,500	A	WFIL–TV	Do.
Valley View	478	A	WFIL–TV	WNEP signal not available off-air in community. Also in A contour of WTPA.
Ashland	872	A	WFIL–TV	Also in A contour of WTPA.
Tamaqua	2,800	A	WFIL–TV	Also in B contour of WFIL.
Schuylkill Haven	2,238	A	WFIL–TV	Also in B contour of WFIL and WTPA.
Hamburg	650	A	WFIL–TV; WTPA–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal not available off-air in community. Also in B contour of WFIL and WTPA.
Lansford	2,900	A	WFIL–TV	WNEP signal available in only 1 small section of community and signal is poor in that small section of community. Also in B contour of WFIL.
Gordon	200	A	WFIL–TV	

EXHIBIT II

List of CATV systems, by community, located within service contours of television station WNEP–TV (channel 16) which carry and duplicate WNEP

CATV system location	Subscribers	Relationship to WNEP service contours (within A or B contour)	Call letters of other ABC network stations received by system	Other pertinent data regarding CATV system location with reference to WNEP and other ABC Network stations
Bethlehem	8,000	A	WFIL–TV; WFBG–TV.	System location not considered within WNEP's coverage area, based on 1965 ARB county coverage study. WNEP signal available off-air poor or not at all. Also in B contour of WFIL.
Brockton	950	A	WFIL–TV	Also in B contour of WFIL.
Carbondale	400	A	WABC–TV	WNEP signal available off-air fair or not at all. Also in B contour of WBJA.
East Smithfield	50	B	WBJA–TV	Also in B contour of WBJA.
Honesdale	1,105	A	WABC–TV	WNEP signal not available off-air n community.
Hughesville	260	A	WTPA–TV	WNEP signal available off-air but not usable.

EXHIBIT II—Continued

List of CATV systems, by community located within service contours of television station WNEP–TV (channel 16) which carry and duplicate WNEP—Continued

CATV system location	Subscribers	Relationship to WNEP service contours (within A or B contour)	Call letters of other ABC network stations received by system	Other pertinent data regarding CATV system location with reference to WNEP and other ABC Network stations
Laceyville	114	A	WBJA–TV	WNEP signal available off-air poor. Also in B contour of WBJA.
Lehighton	5,425	A	WFIL–TV	WNEP signal not available off-air in community. Also in B contour of WFIL.
Locust Gap	148	A	WFIL–TV	Also in A contour of WTPA.
Mahanoy City	1,140	A	WFIL–TV	WNEP signal not available off-air community. Also in B contour of WTPA and WFIL.
Do	8,310	A	WFIL–TV	Do.
Meshoppen	100	A	WBJA–TV	WNEP signal available off-air poor. Also in B contour of WBJA.
Middleburg	190	A	WFBG–TV; WTPA–TV.	WNEP signal available off-air poor. Also in B contour of WFIL and WTPA.
Do	155	A	WFBG–TV WTPA–TV.	Do.
Mifflinburg	124	B	WFBG–TV	Also in B contour of WTPA.
Muncy	1,775	A	WTPA–TV	WNEP signal not available off-air in community.
New Berlin	163	B	WFIL–TV	Also in A contour of WTPA.
Nuremburg	450	A	WFIL–TV	WNEP signal available off-air very poor. Also in B of WTPA.
Pottsville	9,900	A	WFIL–TV	WNEP signal not available off-air in community. Also in B contour of WFIL and WTPA.
Do	250	A	WFIL–TV	Do.
Selinsgrove	1,800	B	WFBG–TV; WTPA–TV.	WNEP signal available off-air poor to not at all. Also in A contour of WTPA.
Shenandoah	2,500	A	WFIL–TV	WNEP signal not available off-air in community. Also in B contour of WTPA.
South Williamsport	967	B	WFBG–TV; WTPA–TV.	
Sunbury	6,000	B	WFBG–TV	Also in A contour of WTPA.
Susquehanna	800	A	WBJA–TV	WNEP signal not available off-air in community. Also in A contour of WBJA.
Trevorton	700	A	WFIL–TV; WTPA–TV.	WNEP signal available off-air poor to not at all. Also in A contour of WTPA.
Weatherly	600	A	WFIL–TV	WNEP signal available off-air very poor. Also in B contour of WFIL.
Williamsport	400	B	WFBG–TV	WNEP signal available off-air poor or not at all.
Do	320	B	WFBG–TV	Do.
Do	11,000	B	WFBG–TV	Do.
Do	8,000	B	WFBG–TV	Do.
Wyolusing	129	A	WBJA–TV	WNEP signal available off-air poor. Also in B contour of WBJA.
Minersville	1,600	A		WNEP signal not available off-air in community. Also in B contour of WTPA.
Port Carbon		A	WFIL–TV	WNEP signal not available off-air in community. Also in B contour of WFIL AND WTPA.
New Milford	140	A	WBJA–TV	Also in A contour of WBJA.
Shickshinny	1,200	A	WFIL–TV	WNEP signal available off-air poor to not at all.
Cressona	300	A	WFIL–TV	WNEP signal not available off-air in community. Also in B contour of WFIL and WTPA.
Barbours	135	B	WFBG–TV	

EXHIBIT III

List of CATV systems, by community, located within service contours of television station WNEP–TV (channel 16) which carry WNEP

CATV system location	Subscribers	Relationship to WNEP service contours (within A or B contour)	Other pertinent data regarding CATV system location with reference to WNEP and other ABC Network stations
Benton	200	A	
Danville	3,200	A	Also in B contour of WTPA.
Dushore	150	A	
Eyers Grove	30	A	Do.
Hawley	500	A	
Lewisburg	2,000	A	Do.
Millville	277	A	Do.
Milton	3,020	B	Do.
Montgomery	607	B	
Nicholson	215	A	Also in B contour of WBJA.
Picture Rocks	212	A	
Towanda	850	B	Do.
Ulster	65	B	Do.
Watsontown	1,140	B	
West Nanticoke	100	A	
Do	30	A	
South Gibson		A	Also in A contour of WBJA.
Hopbottom		A	Do.
Hillsgrove		A	
Garden View		B	
Glen Mawr		A	

The CHAIRMAN. Thank you, Mr. Nowaczek.

Mr. Rogers?

Mr. ROGERS of Texas. I have no questions. I want to thank Mr. Nowaczek. I think it is an excellent presentation of the situation.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. How many television stations would be received in Wyoming County?

Mr. NOWACZEK. I would have to have reference to the toll map to give you any idea of that, sir.

Mr. SPRINGER. Is that the toll map?

Mr. NOWACZEK. Yes, sir. It would appear to me, sir, that there are six television contours predicted in grade B over all or part of Wyoming County, Pa.

Mr. SPRINGER. Thank you.

The CHAIRMAN. Thank you very kindly, Mr. Nowaczek. I too, want to compliment you on your chart and explanation of the contours here. It is very helpful.

Mr. NOWACZEK. I appreciate, on behalf of our own personnel, the opportunity, sir.

The CHAIRMAN. I see you have done a lot of work on this and so have those who have worked with you on it. I want to compliment you and say that it has brought something to the committee which I am sure will be helpful.

Mr. NOWACZEK. Thank you so very much.

The CHAIRMAN. Thank you for coming in and giving us the benefit of your testimony.

Our next witness will be Mr. Aaron J. Katz.

Mr. Katz, you are president of the Philadelphia Television Broadcasting Co.?

STATEMENT OF AARON J. KATZ, PRESIDENT, PHILADELPHIA TELEVISION BROADCASTING CO., PHILADELPHIA, PA.

Mr. KATZ. Yes, sir.

The CHAIRMAN. I do not know how long your statement is.

Mr. KATZ. It is very short, sir.

The CHAIRMAN. Do you want to give it in its entirety?

Mr. KATZ. I would like to, sir.

The CHAIRMAN. You may proceed.

Mr. KATZ. My name is Aaron J. Katz, I am the president of the Philadelphia Television Broadcasting Co., channel 17, WPHL-TV, located in Philadelphia, Pa.

Channel 17 commenced broadcasting September 17, 1965. As this committee is already aware, the Federal Communications Commission and the Congress of the United States, in an effort to make greatest utilization of the existing broadcast spectrum in this country, have, with much care and effort, created a table of allotment setting forth, as per community needs, an optimum number of broadcast channels some of which are very high frequency, others ultra high frequency—a large portion of same being reserved for public and educational purposes. Channel 17 is a UHF channel.

In Philadelphia, which has had the unique history of being one of the few major metropolitan areas serviced by only three commercial channels, we have seen introduced upon the scene within the past 6 months three new television stations all anxious to serve the Philadelphia market. Two of these stations are owned by local interests. The nature of the programing offered by these three stations was designed to expressly service the community of Philadelphia. It will not be network oriented; it will have a local look. Tremendous sums of money have been spent, are being spent, and are blueprinted for the future in order that Philadelphians again may have the advantage of local television; since Philadelphia merchants and advertisers have been priced out of the market that the never-ending price escalation of the network owned and operated station, and network affiliates, continue to create.

As to the effect of CATV in Philadelphia, I believe that CATV is a fine and desirable thing as an auxiliary service, that is, insofar as it extends television service into areas that would not otherwise have it. But, when CATV jeopardizes the ability of local stations either to exist or to provide the best possible quality of local service, it is undesirable.

CATV's hurt a local station in two ways: (1) By duplicating its programing and, in effect, forcing it to compete with itself; and (2) by fractionalizing its local audience. My concern is that without appropriate policy guidelines and regulation of CATV, the cable organizations with little regard for the concept of service and need—for, in truth, not one of the many applicants for franchises in Philadelphia at the hearing of the Philadelphia City Council has proffered engineering studies demonstrating present service to be inadequate—will, under the guise of offering improved service and additional programing from the New York independent stations, bring this programing to Philadelphia and destroy, if permitted to proceed

without restrictions, the all-channel program conceived by Congress and the FCC and now hopefully being executed by Philadelphia broadcasters who, I submit, are regulated.

Gentlemen, the three new stations in Philadelphia would be in jeopardy if the signals of New York independent stations were brought into Philadelphia to compete with our audience. The table of allocations did not provide for more stations than presesntly exist. Why bypass it with channels allocated specifically to serve other markets and communities? The new stations in our market will be at a hopeless disadvantage competing with three VHF's in Philadelphia and three New York UHF's if the New York signals—independents: WOR–TV, WPIX–TV, WNEW–TV—are imported into Philadelphia.

Broadcasters are properly regulated now even to the extent that stockholders must be identified as to place of birth, citizenship, source of income, and employment. We are regulated to the extent that the FCC concerns itself with what fraction of the broadcast day deals with public service, agriculture, news, and religious programing. CATV has no such restrictions. I know of no community antenna system presently that could not, if it were to so choose, offer for sale via its own facilities abdominal trusses, firearms, breast development creams, and other horrors that unlicensed vendors might throw in the viewer's face when they enter the American home, without being responsible to the public in some form.

If CATV is only a reception service, as that industry alleges in their effort to avoid paying copyright fees and avoid regulation from the many utility commissions which are concerned with their operations, should they not first prove that a reception service is needed in the community in which they would enter. Is this not especially so where the FCC seeks to create new channels to serve local interest.

When and where the mask of "reception service" is discarded and CATV operators enter into intrastate or interstate commerce either by microwave transmisison or other means, should not an agency more sophisticated than a local municipal council be the appropriate body to both guide and guard this form of commerce; guide it into constructive use and guard against destructive use.

We have created in the 20th century great technological advances. We have achieved a system of signal distribution which is an example of man's capacity to function within a frame of reference which looks forward rather than backward. The staggering implications of gradually exchanging our system, which has already reached out into space, and substituting for it a 19th century system of cables, a technically obsolete concept as anything other than a supplementary service, would invite absolute chaos. Our methods of national communication, available to the officials of the country in times of emergency and need, would be eliminated when over-the-air transmission could not be achieved. Interruption of cable through physical accident could conceivably result in hundreds of thousand of viewers or listeners being denied vital public information. The laws governing such a cable system would be composed of statutes and ordinances of villages and towns all shaped to the needs of a particular vested interest rather than to the total need of the community, the region, and the Nation.

Unregulated control of any CATV system could give the power of denigration of conventional over-the-air signals to undesirable or criminal elements unless CATV ownership were guarded to the same extent as broadcast licensees. CATV systems in existence today solicit business and fees from the public and are under no obligation to maintain standards of service. Their equipment is subject to no regular standards. A system may be so technically inferior as to prevent reception of signals on individually owned antennas. Should there not be technical ground rules? Who will oversee their enforcement? Who will protect the private subscriber when his antenna is torn down? Who will guarantee that the public will be permitted to hear a message from the President of the United States or a program that he desires when his capacity to tune in a signal is eliminated by the attachment of the cable system which nullifies his antenna?

Monopoly in CATV is not only possible but highly likely. At present, there are rigid and unbending limits on the number of TV stations any individual or group may own or control. Obviously, no such restrictions are possible where only local laws are in force and controls, if any, are spread among thousands of governmental bodies. The possibility of one mass media in this country coming under the control of one man or group of individuals has to be a frightening and sobering thought.

I submit that the dangers of unregulated CATV, the motives of the industry, schizoid at best, posing as a reception service but seeking tenaciously to avoid responsibility in order that its own position be enhanced, is a frightening nightmare to contemplate. As I stated previously, the introduction of three New York signals into the Philadelphia market in competition with the existing signals and the three new Philadelphia stations will so splinter and fragment the existing audience as to threaten the survival of Philadelphia's local television stations.

Nowhere has the value of a local television station been better described than in Senate Report No. 923, 86th Congress, 1st session, which discussed the consequences of the demise of local broadcast service in the following terms.

> The community would be left without a local service which is necessary if the public is to receive the maximum benefits from the television medium. This means no local news or weather reports; no outlet for local advertisers; no forum for discussion of local problems; no television medium for the promotion of local civic, charitable, or other community programs or for cooperation with local law enforcement and other public officials; no adequate opportunity for local talent; no programing directed to special local tastes; in fact, none of the locally centered activities which makes it important that a community have its own station rather than simply a satellite interconnected with the owned and operated stations of the three networks in New York City and Hollywood.

CATV's, properly directed, can even further advance our system. They must not, however, be permitted to destroy the very television system on which they rely.

The FCC has, in my judgment, recognized the immediacy and seriousness of the CATV problem and acted with restraint. Congressional reaffirmation of the position adopted by the Commission—a position built on three decades of cooperation between Congress and the Commission—would be most appropriate.

I earnestly request that this committee give cognizance to all of these considerations. I request that the efforts of the Federal Communications Commission to protect and develop the broadcasting system of the United States be reinforced. Delay of a firm position designed to constructively develop one broadcasting blueprint of the Nation could be most harmful. To permit, in the case of Philadelphia, the intrusion of unregulated pseudobroadcasters importing pirated programing from other markets, programing that in many cases has been paid for and licensed for exclusive market use in Philadelphia, will most certainly destroy the value of the program offerings of Philadelphia's new stations, it will dilute and fragment the Philadelphia audience, and it will certainly render impotent the stations as an advertising vehicle for the local business community. This is what CATV in Philadelphia will do.

The proposed CATV venture in Philadelphia will be equivalent to a three VHF station drop in in this market.

The CHAIRMAN. Thank you, Mr. Katz.

Mr. Rogers?

Mr. ROGERS of Texas. I have no questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. I have no questions.

The CHAIRMAN. I want to congratulate you and thank you for coming and giving us the benefit of your views. I am sure Philadelphia is important for the television industry.

Mr. KATZ. We are very concerned.

The CHAIRMAN. At this time, I would like to recognize Mr. John D. Matthews for a statement to be put in the record.

Mr. ROGERS of Florida. Before you do, Mr. Chairman, I understand that Mr. Vann Kennedy is still here. I had a personal discussion with him and I understand Mr. Springer and Mr. Nelson had some questions.

Mr. SPRINGER. Mr. Chairman, Mr. Nelson had no more questions.

I had no questions, except to say that you made a very good statement, Mr. Kennedy.

The CHAIRMAN. Mr. Kennedy, your testimony is no longer desired, so if you care to go, you may. I want to thank you again for expressing your views and for staying around so patiently.

Mr. KENNEDY. Thank you, Mr. Chairman. And thank you for your courtesy and your patience.

The CHAIRMAN. Mr. Matthews.

STATEMENT OF JOHN D. MATTHEWS, ESQ., WASHINGTON, D.C.

Mr. MATTHEWS Mr. Chairman, as I believe your clerk has informed you, I do not intend to read my statement. To identify myself, my name is John D. Matthews of the local law firm of Dow, Lohnes & Albertson, appearing here in behalf of our many clients engaged in the CATV industry I ask you for permission to include my written remarks in the statement.

I might tell you that essentially, this is a summary of the legal cases on the public utility question concerning CATV. The statement essentially urges the committee to reject the proposal by the NARUC wit-

ness earlier this week that CATV be regulated as a public utility, because in our opinion, it contains none of the traditional aspects thereof.

Thank you.

The CHAIRMAN. Thank you, Mr. Matthews, for appearing before the committee.

Mr. SPRINGER. I have had a chance to go through your statement, Mr. Matthews. I think it is an excellent statement. It is in the nature almost of a brief.

Were you referring particularly—as I recall, the witness, I think the one you are referring to—said that it would be regulated as a utility in a State.

Mr. MATTHEWS. Yes, sir; that is correct.

Mr. SPRINGER. You were not talking about the Federal Government? I do not see why anybody should talk about regulating around here as a public utility.

Mr. MATTHEWS. That is correct.

Mr. SPRINGER. You were talking about States?

Mr. MATTHEWS. That is correct.

Mr. SPRINGER. I take it what you are asking here is that this committee do nothing which would formalize or give any permission to any State or any other body to regulate this as a utility insofar as we have any jurisdiction; is that true?

Mr. MATTHEWS. That is correct, sir. This statement does not request any affirmative action on your part. We are asking you to reject or to do nothing with respect to this specific recommendation made to you by the Association of Railroad & Utility Commissioners.

Mr. SPRINGER. I understand. I wanted to be sure I understood that you were referring to the same witness.

Mr. MATTHEWS. Yes, sir.

Mr. SPRINGER. Thank you very much for your statement.

(The complete statement by Mr. Matthews follows:)

STATEMENT OF JOHN D. MATTHEWS, ESQ., WASHINGTON, D.C.

Mr. Chairman, I am John D. Matthews of the Washington law firm of Dow, Lohnes & Albertson. We specialize in communications law and I am appearing here on behalf of a number of our clients who are involved in community antenna television activities.

We urge for the reasons hereinafter set forth that your committee, Mr. Chairman, clearly reject the argument that a community antenna television system be considered a public utility.

REASONS SUPPORTING NEED FOR THIS DEFINITION

This conclusion by the Congress is urgently needed to recognize the basic nature of the CATV industry which is not and cannot be forced into the mold of a public utility and to avoid inevitable conflict between regulation of certain aspects of this young industry by the Federal Communications Commission and State regulation by the public utility commissions in the various States.

We will not deal here with the common carrier problem except to urge that you take no action contrary to the decision of the Federal Communications Commission that a CATV system is not a common carrier which conclusion has been upheld by a decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Philadelphia Television Broadcasting Co.* v. *FCC*, No. 19,577, March 28, 1966.

The criteria for determining whether or not a business is a public utility have variously been stated in the following language:

"A. Whether the business is, or has been, devoted to a 'public use of its service.'

"B. Whether the public has a legal right to the use of its facilities; or

"C. Whether the public has a legal right to the use, 'which cannot be gainsaid, or denied, or withdrawn, at the pleasure of the owner.' "[1]

It seems self-evident that a CATV system is a private business and not a public utility under any of the above-mentioned traditional tests. Who could seriously contend that a multiple-unit master antenna system for a hotel or apartment building, for which charges are made, is a public utility whether such a system is for the purpose of providing television reception otherwise impossible or to improve reception quality or to avoid unsightly multiple-rooftop antennas? Following this same reasoning, a CATV system which is merely an adoption and enlargement of the vertical system, cannot be said to be a public utility.

Community antenna systems are totally dependent for their very existence upon the availability of adequate signals from distant stations at a pickup point called the head end. If a distant station moves its antenna location to a more distant point or if an originating station installs a directional antenna to concentrate its signal over more populated areas, such changes can and will frequently deny the distant CATV system a usable signal. Therefore quite evidently a State public utility commission is powerless to require that such systems carry and provide the public with programs originating with any designated broadcast stations. How different this is from, for instance, an interstate telephone company which can be required under its franchise granted by a public service commission, to provide service of given and specific dimension?

In the case of *Paholis* v. *United States*, 1957, 242 F. 2d 345, the Court of Appeals for the Third Circuit stated that:

"The service (of a CATV system) is supplied as an aid in reception only. The wire and equipment have nothing to do with the origin or the electronic signal which occurs at a television station many miles away and wholly separate from the service supplied by the community antenna company."

The California Supreme Court in *Television Transmission, Inc.* v. *Public Utilities Commission of State of California*, 1956, 301 P. 2d 862, similarly recognized that the sole function of CATV systems is "simply to enable subscribers to receive television broadcasts that might otherwise be inaccessible to them."

Thus, a community antenna system is not any more devoted to the public use or service than is any other television equipment manufacturer or distributor of conventional antennas to the general public.

In addition to the foregoing dissimilarities between a public utility and a CATV system, the industry possesses inherent characteristics of high competition and risk which are totally lacking in public utility industries. Contrary to the assertion of the NARUC witness who has previously testified before this committee, many communities have two or more CATV systems which compete with each other. Appended hereto as attachment A is a list of such communities in only a small portion of one State, Pennsylvania. Also contrary to NARUC statements, it is not only possible to run two cables down the same poles on the same street but several systems have, in fact, been built on the same poles. Additionally, telephone company CATV leaseback tariffs are available to all who desire to install CATV systems in a community. There are many instances where local television stations have been placed in operation subsequent to the establishment of a CATV system in the same community and these situations will increase substantially in number with the passing of time as more UHF stations commence operations. Also, UHF and VHF translator broadcast services provide effective competition for the viewing audience to community antenna systems. Lastly, there are many cases where local and regionally located television stations continue to provide direct service to CATV system customers. In sum, the CATV industry is confronted with a plethora of competition for the viewing audience with other entertainment media. While public utilities are not necessarily entitled to absolute freedom from competition in exchange for the public exercising control over their properties, they must be reasonably protected from unlimited competition.[2] No State legislature can give to community antenna systems the traditional and required protection to which a public utility must necessarily be entitled.

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[1] *Television Transmission, Inc.* v. *Public Utilities Commission of the State of California*, 1956, 301 P. 2d 862; *Tyson & Bros. United Theaters Ticket Offices, Inc.* v. *Banton*, 1927, 273 U.S. 418; *In Re Louis Wohl, Inc.* D.C. Mich., 1939, 50 F. 2d 254; *Chronical & Gazette Pub. Co.* v. *Attorney General*, 94 N.H. 148, 48 A. 2d 478.

[2] *Brady Transfer and Storage Co.* v. *United States*, D.C., Iowa, 80 F. Supp. 110. Aff'd. 335 U.S. 875; *Chicago Ry. Co.* v. *Commerce Commission*, 336 Ill. 51, 167 N.E. 840.

The courts have consistently over the years recognized that regulation of the field of radio and television lies exclusively with the Federal Government. The U.S. Court of Appeals for the Third Circuit in construing certain sections of the Communications Act has held that the States are precluded from any regulation of television because, "The language (of the act) is so inclusive as to leave no doubt that is was the intention of Congress *to occupy the television broadcasting field in its entirety.*[3] The court in this case concluded by stating:

"We think it is clear that Congress has occupied fully the field of television regulation, and that the field is no longer open to the States, Congress possessing the constitutional authority to effect the result."

In still another case the U.S. Court of Appeals for the District of Columbia Circuit in *C. J. Community Services, Inc.* v. *Federal Communications Commission*, D.C. Cir. 1957, 246 F. 2d 660 stated:

"We are satisfied from a reading of the section (47 U.S.C. 301) as a whole that the Congress intended to assert control by the Federal Government of 'all the channels of interstate * * ' radio transmission, and that the sweep of the Commission's authority includes the booster stations here involved."

It is, therefore, readily apparent that as CATV systems obtain the signals they distribute from distant stations transmitted across State boundaries and therefore operate in interstate commerce[4] and as such systems essentially operate as master antennas extending and distributing such signals to household subscribers, they must be regulated exclusively by the Federal Government subject only to the police powers of the several States. Any lack of recognition of this fundamental concept in the enactment of legislation by the Congress can only lead to chaos in this new industry.

With the exception of the State of Connecticut, the various States have consistently held over the years that CATV systems are not public utilities. The Supreme Court of California in the case of *Television Transmission, Inc.* v. *Public Utilities Commission of California*, 1956, 301 P. 2d 862, has held that the Public Utilities Commission of California under the constitution and public utilities code of that State does not have jurisdiction over community antenna systems since the latter do not come within the defintion of a public utility in that code which definition included common carriers.

In the case captioned *In the Matter of Community Television Systems of Wyoming, Inc.* (17 Pike & Fischer RR 2135, Wyoming District Court), the District Court for the First Judicial District of Wyoming on appeal from a decision of the Public Service Commission of Wyoming reversed the commission and held that community antennas, (1) are not public utilities, and (2) are engaged in interstate commerce. The significant aspect of this decision is that the court was interpreting a statute which included within the term "public utility," any "plant, property, or facility for the transmission of intelligence by electricity."[5] This constitutes clear judicial recognition that notwithstanding broad, general language in the statute defining the term "public utility," a community antenna system lacked the basic jurisdictinal characteristics of a public utility, and for this reason could not be so considered.

The Public Service Commission of Utah on December 18, 1956, in a case captioned, *Vetere Perfect TV, Inc.* (Case No. 4172), 14 Pike & Fischer RR 2064, dismissed an application for a certificate of public convenience and necessity filed by Vetere for authority to operate a community antenna system in Utah as a public utility. This action was based upon an opinion (No. 56–129, 14 Pike & Fischer RR 2063) of the attorney general of Utah issued on November 8, 1956, that community antennas are not "subject to control by the public service commission as a public utility."

Attorneys general in numerous other States have also been called upon to render similar opinions as to the status of community antenna television systems under public utility codes in their respective States. The attorney general of Arizona in an opinion (No. 55–206, 12 Pike & Fischer RR 2094) issued October 18, 1955, interpreting article 15, section 2, of the Arizona constitution, ruled that a CATV system is not a "public service corporation" within the contemplation

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[3] *Allen B. DuMont Laboratories, Inc.* v. *Carroll*, 3d Cir. 1950, 184 F. 2d 153, cert. den., 340 U.S. 490. [Emphasis supplied.]

[4] In its report and order in docket No. 12443, the Federal Communications Commission held that community antenna systems are engaged in interstate commerce, since regardless of where the station's transmitter is located, the signal often originates, via network, in New York or elsewhere.

[5] Sec. 64–101, Wyoming Compiled Statutes, 1945.

of that constitutional provision which referred to companies engaged in transmitting messages, etc. An opinion of the attorney general of New Mexico (No. 5942, 10 Pike & Fischer RR 2058) issued April 19, 1954, holds that a CATV system need not secure a certificate of public convenience and necessity from the State. An opinion of the attorney general of Colorado has been cited which follows the view that the States cannot enact legislation pertaining to CATV systems because television regulation has been preempted by the Federal Government. Additionally, the public service commission and court in New York have recognized the nonpublic utility nature of a CATV system operation.[6] Finally, a most recent case has been decided by the public utilities commission of Maine issued September 10, 1965, wherein it was acknowledged that a community antenna system is not a public utility. The Maine Commission stated:

"CATV operators, who may utilize this service, are not public utilities, and, therefore, their practices are not subject to the jurisdiction of this Commission."[7]

For still other State and Federal rulings and cases, see pages 9–12 of the document titled "A CATV System Is Not of a Public Utility Nature" authored by Robert D. L'Heureux, general counsel of National Community Television, Inc., Washington, D.C., which study in depth has provided much of the basic legal research used in this statement. This study was submitted for the record in connection with the testimony of Mr. Benjamin Conroy, chairman, National Community Television Association.

In summation, a congressional recognition that CATV systems are not public utilities subject to State regulation, thereby precluding the States from enacting regulation, will give recognition to an impressive body of law and legal authority compiled over more than a decade supporting such a congressional conclusion.

The committee's attention is particularly directed to pages 19–26 of Mr. L'Heureux's study entitled "The Connecticut Experience." This clearly points out the tragic consequences to the infant CATV industry which will inevitably result from legislation enacted by the various States putting CATV regulation under State public utility commission.

We can see no need for statewide regulation of the CATV industry. The standard range of service charges by existing CATV systems falls between $3 per month on the lower side to $6 maximum. Standard practice in the industry contemplates that for new systems just commencing operations, franchise holders actually underwrite a substantial part of initial connection fees to accelerate the rate of initial connections. There is no recognizable need at the State level to protect the public against excessive rates by the industry. Competition from free off-the-air television signals places a natural restraint upon excessive charges. If the cost of the service is too high, the public usually has the choice of availing itself of free service though admittedly it may provide fewer signals to the viewer.

Beyond that the municipality can provide, and usually does, the limits of both connection and service fees by the local CATV system. Most certainly public utility regulation by the States is unnecessary and unwarranted to protect the public against excessive charges. Likewise, there is no need for technical standards for installations to be provided by the States. The various municipalities through their franchise agreements can and usually do provide for such technical standards as are required to protect the public and to assure satisfactory television picture quality for the viewer. In short, there is absolutely no need for CATV regulation by the States through their respective public utility commissions.

In conclusion, we should like to point out a factor which undoubtedly lies behind the numerous attempts to put the CATV industry under State regulation. The various interstate telephone companies are ambitiously attempting by various tactics and devices to control the further expansion of this industry. It is a known fact that such companies are tremendously powerful at the State regulatory level. Unless the Congress rejects the argument that CATV is a public utility, it is not unlikely that this new industry comprised of some 1,800 small businesses will be, in time, either absorbed by the giants or regulated into oblivion.

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[6] *Re New York Telephone Co.*, 34 PUR 3d 115 (1960), New York Public Service Commission Case No. 19906 and *Ceracche Television Corp.* v. *New York Public Service Commission*, 36 PUR 3d 278 (1960).

[7] *Re Rates and Regulations of Television Transmission Service* (CATV), F.C. No. 1721, Reopened, *State of Maine, Public Utilities Commission*, Sept. 10, 1965.

Mr. Chairman, I appreciate most sincerely this time your committee has afforded me to present our views on this most important aspect of the legislation being considered. We shall look forward to the enactment of legislation which will protect both the public and this small but dynamic new industry.

ATTACHMENT A

List of certain Pennsylvania communities with two or more CATV systems [1]

Community:	*Companies*
Allentown	(*a*) Service Electric Cable Co.
	(*b*) Twin County Trans-Video
Bethlehem	(*a*) Service Electric Cable Co.
	(*b*) Twin County Trans-Video
Pottsville	(*a*) Trans-Video
	(*b*) Wire Tele-View
Williamsport	(*a*) Williamsport Cable
	(*b*) Citizens Cable Co.
Zerbe township	(*a*) TV Extension
	(*b*) D. & R. Radio & TV
Titusville	(*a*) Titusville Cable TV
	(*b*) Master Antenna
Nesquehoning	(*a*) Nesquehoning Electronics
	(*b*) A smaller system serving a portion of the county.
Mahony city	(*a*) Service Electric Co.
	(*b*) City Television
Warren	(*a*) Warren TV Corp.
	(*b*) At least five other (smaller) systems.

[1] This list is not intended to be all-inclusive. It is a sample only taken in several varying sections of the State.

NOTE.—Mount Carmel, Pa. Application granted a few weeks ago to another system which intends to completely parallel the existing system (about 13 or 14 years old).

The CHAIRMAN. Thank you, Mr. Matthews.

Anybody else who has a statement to be put in the record may have the opportunity of putting it in in the next 5 days.

The committee will now adjourn subject to the call of the Chair. I thank all of you for attending and contributing.

(The following material was submitted for the record.)

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 21, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D.C.

DEAR MR. STAGGERS: This letter is to express my overall support of H.R. 13286. I believe that both the FCC and your committee have so far acted wisely in protecting the public interest and assuring orderly and creative development of television in the entire area of community antenna television systems.

There is, however, one question which troubles me. The recent FCC ruling stated in the top 100 television markets existing CATV systems actually serving subscribers were, in effect, covered by a "grandfather clause." My own study of the FCC ruling suggests that similar grandfather protection to communities and CATV systems which were substantially constructed, but inoperative on February 15, 1966, was not provided.

It is my impression that there are a number (10–20, I have been told) of CATV operators which had completed substantial amount of construction on their system by the time of the February 15, 1966, cutoff date. In many cases, telephone wires had been strung for distribution of signal, broadcast towers were built, and other electrical and technical equipment installed. In many cases,

these companies were just on the point of starting operations when the FCC ruling was made.

It is my impression that should community CATV companies in this situation not be protected by a grandfather clause, lengthy and ponderous litigation and hearings before the FCC would result. The public in these communities, which has indicated a considerable commitment to the concept of community television and which is presently in high expectation of the immediate beginning of CATV service, will be denied for an indefinite period of time the service which it has come to expect.

I wonder if either you or the members of your committee would feel it appropriate to raise this point during the hearings which are scheduled to begin on Tuesday? For example, I would be interested in seeing in the record response from informed witnesses about the problem of obligations incurred by community television companies, the fulfillment of which is set back for an indefinite and unknowable period of time by the failure to protect these companies through a grandfather clause in this legislation for consideration.

Should you and your colleagues feel this problem is as serious as it appears to me, perhaps it might be appropriate to add to section 331(a)(1) of H.R. 13286 a proviso to the effect that the FCC shall promulgate no rule, regulation, or policy which would in any way interfere with or restrict or deter the construction and operation of any community antenna system the construction of which was substantially commenced prior to February 15, 1966.

It appears that questions of the public interest, of maintaining the orderly fulfillment of obligations and the sound overall development of a CATV system would be promoted by settling the issue of grandfather protection for this small number of "in being" but not operative CATV companies; litigation, waste and delay would certainly be avoided, and effective service to those communities which now expect it would be hastened.

I would appreciate the benefit of your informed views in this matter.

Sincerely yours,

PAUL H. TODD, Jr.,
Member of Congress.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 13, 1966.

Hon. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I have your letter of March 22, 1966, with which you enclose a letter dated March 21, 1966, from Representative Paul H. Todd, Jr., expressing his views concerning the Commission's failure to "grandfather" CATV systems which were being constructed prior to February 15, 1966. In your letter, you ask for my comments on this matter for inclusion in the record and hearings on H.R. 13286.

In its Second Report and Order in dockets 14895, 15233, and 15971, the Commission provided for the "grandfathering" in the top 100 television markets of CATV systems which were in operation on February 15, 1966, the day on which public notice was given of our plan for the regulation of all CATV systems, including our legislative program. Representative Todd's observation in this respect that "similar grandfather protection to communities and CATV systems which were substantially constructed, but inoperative on February 15, 1966, was not provided" is completely accurate. We acknowledged that this cutoff date, as with any cutoff date, may catch some systems just prior to the commencement of operation, and after the expenditure of substantial sums of money in the course of construction. However, all parties have had knowledge of the Commission's proposals for a major market procedure since April 23, 1965, and were then put on notice that it might apply to off-the-air as well as microwave-fed systems. (See paragraphs 49–51, 65, of Notice of Inquiry, Notice of Proposed Rulemaking in docket No. 15971, 1 FCC 2d 453, copy enclosed.) Our basic desire was to avoid disrupting the service operating systems were affording the public on February 15, 1965, the date our plan was announced. The signals which a subscriber received on that day in any market, he would continue to receive. And, finally, we have provided that in the unusual case, we can consider the matter upon petition for waiver.

We have given very careful consideration to the matter of the "grandfathering" of systems. In our view, our action in this respect is designed to provide for the orderly development of CATV service and to promote such service.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
March 24, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I have been following with interest your hearings on H.R. 13286, the bill introduced at the request of the Federal Communications Commission to develop congressional policy on CATV operations.

I am particularly concerned that the bill make it very clear that CATV's are permitted to originate weather, news, educational, religious, and public service programs. I know that the bill does indicate these exceptions, but I feel they should be spelled out in specific language. I therefore suggest the following substitute amendment for the language in section 331(2)(b):

"(b) No community antenna system shall transmit over its system any program or other material other than that which it has received directly or indirectly over the air from a broadcast station, *excepting news, weather, educational and religious programs and local public service programs made available by the system to the viewer without per-program charge, and any other exceptions that the Commission may, upon an express finding that it would serve the public interest, authorize.*"

I will appreciate the committee's serious consideration of this amendment.

Sincerely,

FRANK E. MOSS,
U.S. Senator.

STATE OF ALABAMA,
OFFICE OF THE ADJUTANT GENERAL,
Montgomery, Ala., January 24, 1966.

Hon. JOHN BUCHANAN,
House of Representatives,
House Office Building,
Washington, D.C.

DEAR MR. BUCHANAN: I understand that the Federal Communications Commission is making urgent plans to restrict the services that are provided by community antenna television systems located throughout the United States. Although the FCC has asked Congress for this power previously, it has never been granted. It is now rumored throughout the industry that the FCC is planning to take this restrictive action without congressional approval.

I have been a subscriber to the community antenna system in Opelika since the day it was installed and I would like to go on record as being bitterly opposed to any FCC action restricting the number of stations that these antenna systems can carry.

I understand that Congressman Walter Rogers heads this subcommittee, and I would certainly like for you to convey my opposition in this matter to him.

With kind personal regards, I am

Yours very truly,

ALFRED C. HARRISON,
Major General.

FALLBROOK, CALIF., *March 28, 1966.*

CHAIRMAN, INTERSTATE AND FOREIGN COMMERCE COMMITTEE,
House of Representatives, Washington, D.C.

GENTLEMEN: I would like to tell the opinions of myself and many others in regard to the CATV question. I live in San Diego County and am a stanch supporter of the Try San Diego First movement; however, I live in a fringe area for even the San Diego television stations and the CATV service would enable my family to receive San Diego stations better as well as Los Angeles. The fear

of one of the San Diego television stations that San Diego would become a "suburb or satellite" of Los Angeles is baseless. Anyone living in San Diego County would naturally prefer to listen to San Diego news reports and programs of local interest. The network programs can be seen on San Diego stations as well as Los Angeles and the San Diego channels would be chosen because viewers are more interested in local business offers than in those of Los Angeles.

Los Angeles stations offer an escape from the entrapment of only network programs. A choice of movies is offered on some Los Angeles stations in time that would be vacant for many of the audience because the network programs are not appealing to them.

AFL Commissioner Joe Foss states that CATV would cut down spectators at games. What about the loyal Charger fans who are unable to attend games? They are entitled to some way of seeing the games if possible. The AFL championship of 1965 was played in San Diego and we were unable to attend but we worked for 3 hours to get channel 4 (Los Angeles) so we could at least see some of the game. We finally got a picture of the game but no sound so we watched TV and listened to a transistor radio, just so we could see what we hoped would be a Charger victory. Perhaps he feels that this took money out of the audience at the game but don't you feel that fans as loyal as that would sweeten the purse of the TV contracts or the stadium when it is possible for them to get there? If we could see the Charger games and other sports events on TV when we were unable to attend, the interest in San Diego sports would increase immensely.

San Diego would never become a "suburb or satellite" of Los Angeles because of the very fact that Los Angeles does not cover San Diego events and problems.

I felt that I must write to the committee and give the views of a "middleman" one whose future entertainment via TV is at your mercy. You are hearing the views of the "plaintiff" and the "defendent" and it is only right that the viewers affected be heard.

Thank you for your courtesy in reading this lengthy statement of mine and I hope that you will consider what I have said when you make your decision.

Sincerely,

Mrs. LOYD A. PINLEY.

FORT WAYNE, IND., *April 6 1966.*

Hon. H. O. Staggers, Chairman, and Committee Members, House of Representatives, Committee on Interstate and Foreign Commerce, Washington, D.C.

GENTLEMEN: As the general managers of two of the TV stations in Fort Wayne, Ind., we urgently request your committee to recommend legislation to effectively regulate the initiation and operation of CATV systems. The dangers of uncontrolled infiltration of CATV to our national policy of maintaining local free broadcasting and encouraging the development of UHF are most poignantly exemplified by the situation in the Fort Wayne broadcast area. Fort Wayne is the second largest, exclusive UHF island in the United States. The three local stations, WANE, WPTA, and WKJG, reach 265,900 of the 286,900 homes in the 117 communities of the area. All three national networks are given more than adequate coverage in these communities, each being represented by one of the local stations. More importantly, they provide these communities with ample local coverage, public service, and special events: 45 hours of WANE's and 47 hours of WPTA's broadcast time per week is devoted to locally originated programs. This coverage encompases 24 Indiana and Ohio counties, most of which would be without television coverage except for the development of these Fort Wayne stations.

The slow but even development of Fort Wayne, television over the past 10 years was made possible by the free, but fair, competition which gave each the incentive to minimize their costs and increase their local service. The success of this competition has placed Fort Wayne 99th in the ARB ratings, and permitted a 15-percent increase in local and public service programing over the past 5 years. The ability of a television station to provide local coverage and public service is directly related to the number of viewers that station can command. If VHF network and independent stations from Chicago, Detroit, and Indianapolis were offered to the viewers, the result would be obvious. As our circulation ratings decreased, and thus our revenues, we would have to reduce our costs accordingly by eliminating the only expendable items in a television operation: the personnel. For example, WANE has a staff of 65, 10 of whom are in the news department, 10 in local production, and 6 in local talent. The

technical, sales, maintenance, and administrative staff which make up the remainder are essential with or without local programing. Therefore, any reduction in revenue would necessarily be reflected in a reduction of the news staff, local production and local talent.

If our ability to present local programing decreased, there would be little difference between programs available from Fort Wayne, Chicago, Detroit, and Indianapolis, and little reason for viewers to select a Fort Wayne station over one of the others. Eventually the three local stations in Fort Wayne would become merely relay stations for the networks and thus no reason to be.

As suggested at the outset the problem in Fort Wayne is critical. Unlike larger metropolitan areas in the ARB ratings, our weekly circulation is too marginal to afford much reduction without a comparable reduction in costs. Unlike more remotely located communities, Fort Wayne is located between Detroit, Chicago, and Indianapolis—all of which can be conveniently cabled into the area. About 12 separate CATV operators have sought franchises in approximately 20 communities in the Fort Wayne area. Six applications have been filed in the city of Fort Wayne alone. Most of these applications proposed to bring in the network stations from Chicago, Detroit, Indianapolis, and South Bend plus many independent stations from distant cities. One proposal offers its subscribers CKLW from Windsor, Canada. Although some of the CATV proposals indicate they would carry the three Fort Wayne stations, they also indicate they would carry them on VHF channels, which would cause the local stations to lose their identity.

Also of serious concern to us is the fact that the attorney general of the State of Indiana has rendered the opinion that until Congress acts, neither the Federal Government nor the Indiana Public Service Commission has any authority to alleviate the situation.

We ask your committee to seriously consider the dangers of CATV to a medium-size community, like Fort Wayne, with adequate UHF facilities to present full national and local coverage to the viewing public. We believe these communities are most able and willing to support the development of free local and regional television broadcasting, and the most suspectible to the retardation of that development by CATV. We urge you for ourselves and on behalf of other communities similarly situated, to recommend legislation sufficient to permit the further development of UHF local broadcasting.

Very truly yours,

VICTOR STERLING,
General Manager, WPTA–TV (ABC).
REID CHAPMAN,
General Manager, WANE–TV (CBS).

NATIONAL BROADCASTING CO., INC.,
New York, N.Y., March 30, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: This letter is submitted in response to your committee's invitation for comments on certain bills relating to regulation of community antenna television systems now under consideration by the Committee on Interstate and Foreign Commerce.

In the proceedings before the Federal Communications Commission, NBC stated at some length its views on the various principal issues at that time before the Commission and now present in the considerations of the committee. NBC's views have not changed since that time, although we have in the interim acquired our first CATV system, in the Kingston, N.Y., area. For your convenience, a copy of those NBC comments is enclosed herewith.

These comments show that the Federal Communications Commission does not have the authority to regulate nonmicrowave CATV. While NBC believes that CATV should be integrated into the national system of free television broadcasting, the proper procedure would be for the Commission first to obtain from Congress the necessary authority to regulate all CATV systems.

NBC further stated in its comments that the authority to regulate, and regulation of, CATV should be based on the following principles:

1. All CATV systems should be required to obtain the consent of the stations whose programing they pick up and redistribute. The stations in turn would obtain the agreement of their respective program suppliers to such redistribution. This would fulfill the objective of placing CATV systems on an equal competitive footing with broadcast stations, including translators and boosters, and would integrate CATV into the television program distribution system.

2. CATV systems should be required to carry all the programs of the local television broadcast stations, at the stations' request or with their consent.

3. CATV systems should be prohibited from using the audience created by free television programing as the base for a pay-television service. Therefore, CATV systems should be limited to the distribution of free signals of broadcast stations, without alteration or addition. The only exception should be for noncommercial time and weather services and locally originated programs on behalf of nonprofit organizations, which could be carried on an otherwise unused channel.

4. All signals should be carried by CATV systems without material degration and where practicable on the channel on which the originating station is transmitting.

5. Broadcast station licensees should not be discriminated against in the ownership and operation of CATV systems. If anything, they should be encouraged to own and operate them.

NBC believes that, if the above principles are adopted in legislation applicable to all CATV systems, more detailed regulation would be unnecessary; CATV could flourish as an integral part of the national television system; and the economic forces of the marketplace could operate without unnecessary government intrusion and regulation.

We appreciate this opportunity to give you our views.

Yours sincerely,

DAVID C. ADAMS,
Senior Executive Vice President.

[Before the Federal Communications Commission, Washington, D.C.]

COMMENTS OF NATIONAL BROADCASTING CO., INC.

(In the matter of amendment of pts. 21, 74 (proposed subpt. J.), and 91 to adopt rules and regulations relating to the distribution of television broadcast signals by community antenna television systems, and related matters; docket No. 15971, RM Nos. 636, 673, 742, 755, and 766)

National Broadcasting Co., Inc. (NBC) hereby files its comments with respect to the notice of proposed rulemaking (pt. I) and paragraph 50 of the notice of inquiry (pt. II) released by the Commission in this proceeding on April 23, 1965 (both referred to herein as the "notice"). These comments also discuss some of the other questions raised in the notice, where such a discussion is necessary for a fuller understanding of NBC's views concerning the subject matter. It is therefore respectfully requested that these comments also be considered in connection with part II of the notice, although this does not necessarily mean that NBC may not file additional comments on that part of the proceeding.

Briefly, NBC's comments are to the following effect:

NBC does not believe the Commission has authority to adopt the rules proposed with respect to nonmicrowave community antenna television systems.

NBC believes that community antenna television (CATV) should be integrated into the national system of free television broadcasting. However, the Commission should not adopt regulations in this area until it is authorized to do so by the Congress. Accordingly, Congress should be asked to give the Commission the authority to regulate all CATV systems, whether they obtain their programing by microwave relay or off the air from broadcast stations. However, such authority and any regulation should be limited to that necessary to confine CATV systems to their role as an integral part of the national system of free television broadcasting. Where possible, this result should be achieved by enabling the economic forces of the marketplace to operate. NBC therefore urges that such authority and regulation be based upon the following provisions:

(1) All CATV systems should be required to obtain the consent of the stations whose programing they pick up and redistribute. The stations in turn would obtain the agreement of their respective program suppliers to such redistribution.

This would fulfill the objective of placing CATV systems on an equal competitive footing with translators and boosters, and would integrate CATV into the television program distribution system.

(2) CATV systems should be required to carry all the programs of the local television broadcast stations, at the stations' request or with their consent.

(3) CATV systems should be prohibited from using the audience created by free television programing as the base for a pay-television service. Therefore, CATV systems should be limited to the distribution of free signals of broadcast stations, without alteration or addition. The only exception should be for noncommercial time and weather services and locally originated programs on behalf of nonprofit organizations, which could be carried on an otherwise unused channel.

(4) All signals should be carried by CATV systems without material degradation and where practicable on the channel on which the originating station is transmitting.

(5) Broadcast station licensees should not be discriminated against in the ownership and operation of CATV systems. If anything, they should be encouraged to own and operate them.

If the above provisions are adopted with regard to all CATV systems, more detailed regulation would be unnecessary: CATV could flourish as an integral part of the national television system; and the economic forces of the marketplace could operate without unnecessary Government intrusion and regulation.

NBC believes that no distinction should be made between the relationship of CATV to translators, satellites, boosters, or other repeaters and its relationship to regular broadcast stations. There is also no need to adopt rules to preclude translators from duplicating the programs of local stations.

I. THE COMMISSION DOES NOT HAVE AUTHORITY TO ADOPT THE RULES PROPOSED WITH RESPECT TO NONMICROWAVE CATV SYSTEMS

The Commission's present view that it has authority to adopt detailed regulation of nonmicrowave CATV systems is contrary to its prior decisions.

(1) It is contrary to the Commission's decision in *Frontier Broadcasting Co.* v. *Collier*, 16 RR 1005 (Apr. 2, 1958), decided by a 5–0 vote. That decision held that CATV systems were not common carriers within the ambit of title II of the Communications Act, and added that it was doubtful that the radio licensing provisions of title III applied.

(2) It is contrary to the Commission's decision in *Inquiry Into The Impact Of Community Antenna Systems, TV Translators, TV "Satellite Stations" and TV "Repeaters" on The Orderly Development Of Television Broadcasting*, 18 RR 1573 (Apr. 13, 1959), also decided by a 5–0 vote. That decision held that the Commission had no jurisdiction over CATV systems either under title II [1] or title III of the Communications Act. While the Commission subsequently modified that portion of this report and order which stated that it could not inquire into the effect on broadcast operations of common carrier microwave service to CATV (*Carter Mountain Transmission Corp.* v. *FCC*, 321 F. 2d 359, 25 RR 2055 (D.C. Cir. 1963), *cert. den.* 375 U.S. 951 (1963)), that modification did not apply in any way to nonmicrowave CATV systems.

(3) It is contrary to the Commission's recommendations to Congress in 1959 and 1961 that legislation in the CATV field be enacted, on the ground that such legislation was required in order for the Commission to have the necessary authority. (Letter of Apr. 22, 1959, from Chairman John C. Doerfer (by direction of the Commission) and attached explanation of proposed amendments to secs. 3 and 325(a), and proposed new sec. 330 of the Communications Act of 1934, as amended (47 U.S.C. 153, 325(a) and 330); explanation of proposed amendments to secs. 3 and 303 of the Communications Act of 1934, as amended, adopted by the Commission Jan. 4, 1961.)

The legislation recommended to Congress by the Commission in 1959 would have (*a*) required that CATV systems, upon the request of any local television station, carry the programs broadcast by the local station; (*b*) authorized the Commission to promulgate rules to assure taht CATV systems would take reasonable measures to provide a picture of reasonable technical quality; and

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[1] See also *WSTV, Inc.* v. *Fortnightly Corp.*, 23 RR 184 (1962) where the Commission repeated its conclusion that it lacked authority to regulate CATV systems under title II.

(*c*) required that CATV systems obtain permission of stations whose signals they redistribute. Both (*a*) and (*b*) are central to the rules which the Commission here proposes to adopt *without* there having been any enabling legislation since 1959 when the Commission found that such legislation was necessary to the adoption of any such rules.

The legislation recommended to Congress by the Commission in 1961 would have added as a "general power" of the Commission under section 303 of the Communications Act, the authority to adopt such rules with respect to the CATV systems "as may be necessary or desirable to the maintenance of broadcast stations providing locally originated television program service in the area served by a community antenna television system, with due regard to the public interest in the provision of multiple-television program services."

It would be noted that the purpose for which the Commission requested Congress to amend section 303 to give it the necessary authority over CATV systems is precisely the justification the Commisison uses for its present proposal—without legislation.

(4) It is contrary to the Commission's decision released as recently as July 30, 1962, denying a petition for rulemaking, stating the "feeling that the Commission lacks clear, direct authority over CATV operations" and citing the Commission's recommendations to Congress for the legislation referred to above (*Distribution of Television Programs By CATV Systems*, 23 RR 1624 (July 30, 1962)).

It is interesting and surprising to note that the Commission's memorandum on its jurisdiction and authority attached as appendix B to the notice, completely ignores these prior Commission decisions. This may have been due, as Commission Chairman Henry stated to the Subcommittee on Communications and Power of the House of Representatives Committee on Interstate and Foreign Commerce, to the change in membership of the Commission and the Commission's staff (transcript of hearing, May 28, 1965, p. 148).

Certainly decisions of the past taken on so many occasions and after much study should not be so lightly overruled.

The sections of the Communications Act declaring its application to all interstate and foreign communication by wire or radio (2(a)), or defining communication by wire in terms which include CATV transmissions (3(a)), do not give the Commission *authority* to regulate CATV systems, but merely establish the scope of the act in broad terms, with the language as to the Commission's substantive *authority* contained elsewhere—title II for common carriers and title III for radio.

The Commission's memorandum on its jurisdiction and authority in effect acknowledges this by referring to six other sections of the Communications Act as being the sections "crucial" to the Commission's authority to adopt the proposed rules for nonmicrowave CATV systems: sections 1, 4(i), 303(f), (h) and (r) and 307(b) (Commission's memorandum, p. 2). Each of these sections will be considered briefly here.

Section 1 states the broad general "purpose" of the Communications Act, but does not attemp to define the Commission's "authority" except to say that the Commission shall "execute and enforce the provisions of this act." Therefore, there must be some provision of the act which confers the necessary "authority" on the Commission as distinct from announcing the "purposes" of the act. If this section itself is to be correctly construed to constitute an affirmative grant to the Commission of authority to do anything it believes reasonable to regulate communications "so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications," (sec. 1), it would mean that the Commission's authority in the fields of communications, national defense, and safety regulation would be limitless and such legislation as the Communications Satellite Act of 1962, the all-channel receiver legislation of 1962, many of the other provisions of the Communications Act, and many other statutes have been unnecessary. Thus, the requisite Commission *authority* in this area—as distinct from Congress' statement of its *purpose* in creating the Commission—must be contained in the other sections of the act.

Sections 4(i), 303(f), and 303(r) merely authorize the Commission to make rules and regulations as may be necessary to carry out the provisions of the act, and absent other provisions of law applicable to the conduct attempted to

be regulated, these sections cannot themselves confer authority (*Federal Communications Commission* v. *American Broadcasting Company, Inc.*, 347 U.S. 284, 10 RR 2030 (1954); *Regents of the University System of Georgia* v. *Carroll*, 338 U.S. 586, 5 RR 2083 (1950); *Inquiry Into the Impact of Community Antenna Systems, etc.*, 18 RR 1573, 1600 (1959)). As exemplified by the Commission's request for CATV legislation in 1959 and 1961, the Communications Act must give the Commission authority over a particular area before these sections may apply to permit the Commission to adopt rules and regulations with regard to that area.

Section 307(b) is also claimed as the basis for jurisdiction on the ground that the Commission has authority to take any "reasonable and appropriate" action to provide a fair, efficient, and equitable distribution of broadcast service. But this argument proves too much. If section 307(b) were to be so broadly interpreted, many, if not most, of the other provisions of title III would be tautological and unnecessary, and certainly the all-channel receiver legislation of 1962, which was important to a fair, efficient, and equitable distribution of broadcast service, would have been unnecessary because the Commission under section 307(b) could have ordered manufacturers to produce only equipment capable of receiving all 82 television channels.

When section 307(b) itself is examined more closely, it is clear that all it does is direct that "in considering *applications* for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of *licenses, frequencies, hours of operation, and of power* among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same" [emphasis added].

Since the CATV systems proposed to be covered by the proposed rules have not applied for licenses and no distribution of licenses, frequencies, hours of operation or power is here required, section 307(b) just does not apply to the situation.

Nor can section 303(h), empowering the Commission to establish areas or zones to be served by any station, apply. In the first place, this section by its terms speaks of the area or zone served by a *station*, which is defined in section 3(h) as meaning a "station equipped to engage in *radio* communication or *radio* transmission of energy" [emphasis supplied]. Therefore, if CATV systems provide nonradio transmissions, their service cannot fall within section 303(h).[2]

In the second place, many of the proposed rules are not based upon limiting the areas or zones to be served by stations, but are designed affirmatively to *require* CATV systems to carry the signals of stations, and cannot be justified under section 303(h).

Thus, when the sections which the Commission's memorandum claim to be "crucial" are specifically examined, it is clear, as the Commission in the past has consistently ruled, that the Communications Act has not given the Commission jurisdiction over these nonmicrowave CATV systems.

II. CONGRESS SHOULD BE ASKED TO GIVE THE COMMISSION THE AUTHORITY TO REGULATE ALL CATV SYSTEMS. SUCH AUTHORITY AND ANY REGULATION SHOULD BE LIMITED TO THAT NECESSARY TO CONFINE CATV SYSTEMS TO THEIR ROLE AS AN INTEGRAL PART OF THE NATIONAL SYSTEM OF FREE TELEVISION BROADCASTING

CATV should be integrated into the national system of television broadcasting. It is one of many means of distribution of television programing, along with regular broadcast stations, satellites, translators, and boosters. An integrated national system of broadcasting could well be composed of all of these various means, including CATV systems.

The National Community Television Association (NCTA) has stated its support of such an approach (e.g., address of Frederick W. Ford, president of NCTA, before the International Radio & Television Society in New York, Feb. 19, 1965, and the statement of Mr. Ford before Subcommittee No. 3 of the House of Representatives Committee on the Judiciary, June 24, 1965).

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[2] If CATV systems are encompassed within the definitions of "stations" or "radio," then sec. 325(a) requiring the express authority of the originating station would also apply, since "broadcasting" is defined in sec. 3(o) as "the dissemination of radio communications intended to be received by the public, directly or through the intermediary of relay stations."

While NBC believes that Congress should be asked to give the Commission the authority to regulate all CATV systems, whether they obtain their programing by microwave relay or off the air from broadcast stations, such authority and any regulation of CATV should be limited to that necessary to confine CATV systems to their role as an integral part of the national system of free television broadcasting. CATV would supplement the distribution of television programs over broadcast stations by filling in areas which do not receive the service of local or area stations and by extending their service to areas not receiving service.

As Chairman Oren Harris of the House of Representatives Committee on Interstate and Foreign Commerce stated in a recent speech:

"Community antenna systems are designed to supplement existing broadcasting services. In order to assure that this supplementary service fits into rather than adversely affects or even destroys the underlying broadcast services, authority should be granted to the Commission by the Congress to take appropriate regulatory steps" (speech to 14th Annual Convention NCTA, Denver, Colo., July 19, 1965).

NBC therefore urges that such authority and regulation [3] be based upon the following provisions:

(1) *All CATV systems should be required to obtain the consent of the stations whose programing they pick up and redistribute*

NBC believes that the most essential provision of any regulation of CATV systems would be to require them to obtain the consent of the stations whose programing they pick up and redistribute. The Commission agreed with this approach in 1959, when it asked Congress to amend section 325(a) of the Communications Act to require such consent. (See also *Inquiry Into the Impact of Community Antenna Systems, etc.*, 18 RR 1573, 1601–2, 1609, 1611 (1959).)

In its first report and order in dockets Nos. 14895 and 15233 (first report), adopting with respect to microwave relays the rules here proposed to be adopted with respect to nonmicrowave CATV systems, the Commission considered the "basic conditions under which competition occurs" (par. 49–57). The Commission decried the fact that CATV systems violate the exclusive rights of stations serving the same area; neither bid in the program market nor pay for their programing; and disrupt the markets served by stations without any consent of the originating stations.

Basically, the broadcasting industry is engaged in providing programs to the public. The distribution system of the industry is based on acquiring the right to distribute programs from those who create the program or those to whom they license or assign the program rights. This is the case with networks, syndicators, stations, translators, etc.—except for CATV systems. Only CATV systems have taken the position they can redistribute programing without making arrangements with the owner of the television distribution rights.[4]

The requirement of consent of the originating station would, of course, in turn require the station to obtain the agreement of its program suppliers to such redistribution. However, this is entirely consistent with the public policy to protect property rights in television and radio programs which underlies section 325(a) of the Communications Act (e.g., see report and order in docket No. 9808, I RR pt. 3, 91:1131, 1133–1134 (1952), amended 1 RR pt. 3, 91:1136 (1952)).

The consent requirement would cause none of the admnistrative problems for CATV systems claimed by the CATV interests. When the originating station negotiates for the television distribution rights to programs to be broadcast by the station, it could readily negotiate for the right to consent to the redistribution

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[3] If, contrary to I, above, the Commission concludes that it already has the statutory authority to regulate all CATV systems, it should base its regulations on these provisions rather than the complex and detailed rules proposed.

[4] If the increased circulation provided by CATV systems is to an area beyond the normal market served by the originating station, the station may not be able as a practical matter to sell that increased circulation to advertisers in the form of increased rates. However, the fact that the station's programs are being furnished to this additional area may cause program suppliers to charge the station more money in order to make up for their loss of sales to broadcast stations in the additional area served by the CATV systems. Thus, unless the originating station's consent is obtained, CATV systems which unauthorizedly redistribute the station's programs may unilaterally be forcing the station to compete as a different type of station in the program acquisition market, to pay more for programing, and to change its sales policies.

of those programs by the CATV systems carrying its signal. Just as a national or regional network now acquires the rights for itself and its affiliates, the station would arrange for the rights on behalf of the CATV systems to all network, syndicated, and local programs carried by the station.

For example, a New York area station might obtain in a single contract with a New York baseball team the rights to widespread television distribution of broadcasts of its games, including distribution by CATV systems as well as other broadcast stations. Or a New York area station buying a film series might at the same time obtain a film syndicator's consent to distribution of the series by CATV systems filling in poorly served portions of the market area normally served by the station's broadcast signal. On the other hand, a distributor of feature films who was interested in making sales to stations in both New York and Philadelphia would probably not grant a New York station the right to authorize CATV distribution in Philadelphia. The normal bargaining which occurs in the case of any program rights transaction between a rights owner and a distributor would be permitted to take place. CATV would be integrated into the regular free enterprise system of television program distribution.

Under such a system, such issues as the "leapfrogging" issue would be solved by the economics of the situation. New York baseball games would be seen on CATV systems in Philadelphia or Hartford or Dayton only if the additional revenues from such distribution could provide a rights fee acceptable to the baseball club.

The procedure of requiring CATV systems to obtain the consent of the originating station would also obviate the need for the Commission's complex and hard-to-administer rules against duplication by a CATV system of a local station's programs. Nonduplication is a critical problem mainly with respect to network programs. The protection against duplication which a local station (L) desires is to prevent the local CATV system from carrying the programs of its network (N) as broadcast by a station (O) in another community. Under the consent procedure, the CATV system would have to obtain station O's consent before it could duplicate the programs of network N as carried by station L. In turn, by virtue of the provisions in the usual affiliation contract, station O could not grant its consent without the approval of network N. Following the same principles it uses in deciding whether to affiliate with another broadcast station in the community or area, the network would not give its consent if carriage by the CATV system would conflict with, i.e., duplicate, broadcast of the same network program by station L. Thus, station L would have the same protection against duplication by CATV systems that it now has against duplication by broadcast stations. The economic forces which are at work in the present system of distribution of network programs would be extended to CATV systems, helping make them an integral part of the national system of broadcasting.

The examples just discussed could be extended to show how many of the most troublesome problems in the relationship between stations and CATV systems would be resolved by an amendment to section 325(a), requiring CATV systems to obtain the consent of the originating station before distributing its programs. NBC urges the Commission to seek legislation accomplishing this as the most efficient and least troublesome method of regulation of CATV systems.

(2) CATV systems should be required to carry all the programs of the local station, at the station's request or with its consent

The purpose and objective of CATV systems is to supplement the service of available stations by carrying other stations whose signals are obstructed by terrain or other physical considerations. This purpose would be defeated if a CATV system did not carry the service of consenting stations in the area.

There would be no substantial program rights acquisition problem, as the CATV systems would merely be providing service within the distribution area of the local broadcast station, and such rights could generally be obtained from the program rights owners.

Consistent with the requirement that CATV systems obtain the consent of the originating station, carriage of the local station would only be required upon the request or consent of the local station.

(3) CATV systems should be prohibited from originating programs not generally available to the broadcast audience

In its filings and statements, NCTA constantly compares the service of CATV systems with that of a television antenna which could receive these free television

signals directly out of the air from regular broadcast stations if only the customers desired to do so and wished so to spend their money.

NBC does not believe that the programing available on free television should be used as the base for the creation of a pay-television service. NBC has opposed the use of broadcast frequencies for pay television and does not believe that the antenna systems primarily designed as part of the distribution system for free broadcast programs should also be used to provide a form of pay-television service.

Therefore, CATV systems should be confined to distributing free broadcast signals without alteration or addition, just as a television antenna would receive the signal. Although there have been attempts to define pay television in terms only of putting money in a coinbox or paying for it program by program (testimony of Frederick W. Ford, president of NCTA, on H.R. 7715, before Subcommittee on Communications and Power of House of Representatives Committee on Interstate and Foreign Commerce, June 2, 1965, pp. 267–268; testimony of Mr. Ford on H.R. 4347, etc., before Subcommittee No. 3 of the House of Representatives Committee on the Judiciary, June 24, 1965 (pp. 1504–1507, 1524), it is clear that payment of a monthly connection charge for a program service without regard to the programs actually watched, as in Bartlesville, Okla., is equally a form of pay television (statement of Chairman Oren Harris at hearing on H.R. 7715, June 2, 1965, p. 268).

Programs not generally available to the audience for free television programs should not be made available to the customers of the CATV system, even though the charge for receiving the total service of the CATV system is not ostensibly increased, as this would be merely another device to promote pay television through the inclusion of the additional charge as part of the cost of the total CATV service. This is the case whether the programs not generally available are furnished on a separate channel not used to bring in a broadcast signal or are placed on channels used for broadcast signals during periods when those signals are not being carried by the CATV systems.

The only exception should be for noncommercial time and weathr services and locally originated programs on behalf of nonprofit organizations—activities which generally cannot be regarded as the type of service which would be profitable from a pay-television standpoint but would provide an additional service to the CATV system's customers. These could be carried on an otherwise unused channel and would not interfere with the transmission of the regular broadcast stations' signals.

(4) *All signals should be carried by CATV systems without material degradation and, where practicable, on the channel on which the originating station is transmitting*

NBC believes that legislation with regard to CATV systems should empower the Commission to establish technical standards to assure that all signals are carried by CATV systems without material degradation and where practicable on the channel on which the originating station is transmitting. Such a requirement would in most cases not be burdensome, and would contribute to the value of CATV systems' distribution of broadcast signals on a basis convenient to the audience.

There does not seem to be much dispute with regard to either of these general requirements.

(5) *Broadcast station licensees should not be discriminated against in the ownership and operation of CATV systems*

Broadcaster ownership of CATV systems should be permitted and encouraged. CATV is a form of providing the signals of broadcast stations to the public, rather than of originating programing.

Broadcasters have a special incentive to provide as intensive television service as possible within the service areas of television stations licensed to them and on the fringes of such service areas. In this way, the audience to their regular broadcast stations would be increased, and their regular broadcast operation would benefit. As Commissioner Loevinger has stated:

"This policy is consistent with antitrust principles, for the relationship between television broadcasting stations and CATV's, in economic terms, is vertical, or complementary, rather than horizontal, or competitive. Thus, common ownership of television stations and CATV's is vertical integration, which is permissible so long as there is no threat of foreclosing the market to competitors.

With the degree of Government supervision now existing in this field, it seems clear that there is no possibility of excluding competitors from access to a market." ("The Future of Television," address by Commissioner Loevinger to the Colorado Broadcasters Association, June 11, 1965, p. 12.)

Nor should there be any prohibition against broadcasters owning and operating CATV systems in areas other than those served by stations licensed to them. Persons who are licensed in the public interest to operate broadcast stations are certainly qualified to engage in the operation of CATV systems. Insofar as any danger of concentration of control of the area of communications through the ownership of CATV systems is concerned, CATV systems increase the number of broadcast signals provided to an area, contribute to the diversity of communications, and reduce any possible danger of concentration of control.

NBC believes that if the above provisions were adopted as the base for regulation of all CATV systems, whether served by microwave relays or not, more detailed regulation of the type proposed in the notice would be unnecessary; CATV could flourish as an integral part of the national system of free television broadcasting, serving its purpose as a supplement to the broadcast service; and the economic forces of the marketplace could continue to operate without unnecessary Government intrusion and regulation.

III. INSOFAR AS CATV IS CONCERNED, NO DISTINCTION SHOULD BE MADE BETWEEN TRANSLATORS, SATELLITES, BOOSTERS OR OTHER REPEATERS AND REGULAR BROADCAST STATIONS—THERE IS ALSO NO NEED TO ADOPT RULES TO PRECLUDE TRANSLATORS FROM DUPLICATING THE PROGRAMS OF LOCAL STATIONS

In paragraph 36 of the notice, questions are raised with regard to the relationships of CATV systems to translator stations, and the relationships of translators to other types of local broadcast stations.

As NBC stated in its comments in dockets Nos. 14895 and 15233, insofar as CATV is concerned there is no basis for a distinction between television stations which originate local programing and satellites, boosters, repeaters, or translators.

Satellites in particular sometimes broadcast very few hours of local programing at the start and then gradually develop a number of locally originated programs. Translators, boosters, and repeaters often fill in holes in a regular station's coverage area. All of them provide free service generally over substantial areas. It should be noted that the Commission in *Black Hills Viedo Corporation* (FCC 65–584, July 2, 1965) recently accorded the same treatment to CATV systems operating in communities served by satellite stations (even though the satellite originated no local programing) if the parent station of the satellite is not carried on the CATV system.

The Commission also poses the question of whether there is a problem warranting action in connection with the duplication by translators of the programs of local stations. No such problem exists, because section 325(a) already requires translators to obtain the consent of the originating station, which in turn requires the originating station or the translator to obtain the consent of any program suppliers.

In October 1960, NBC adopted a general policy, applicable in most situations, of granting its consent to translator or repeater stations to rebroadcast NBC television network programs provided the translator or repeater station was located closer to the transmiter site of the television broadcast station whose programs it was rebroadcasting than to the transmitter site on any other television broadcast station affiliated with the NBC television network.

In a few recent situations where the translator operated in a community or area served by another television broadcast station which carried some, but not most, of the NBC television network programs, NBC limited its rebroadcast consent so as to exclude from that consent all programs carried by the local station.

These nonduplication provisions have, so far as NBC is aware, never caused any difficulty. This is another indication that the amendment to section 325(a) urged above to require CATV systems to obtain the consent of the originating station would solve many of the important problems caused by the operation of CATV systems, just as that requirement now does in the case of translators and other repeater stations.

CONCLUSION

The Commission does not now have the authority to adopt the rules proposed with respect to nonmicrowave CATV systems.

Based on provisions outlined above, the Commission should obtain the authority to regulate all CATV systems, but such regulation should be limited to that necessary to integrate CATV systems into the national system of free television broadcasting and to confine them to a role supplemental to the broadcast service.

Respectfully submitted.

THOMAS E. ERVIN,
Vice President and General Attorney,
National Broadcasting Co., Inc.

NEW YORK, N.Y., *July 26,1965.*

HOWARD MONDERER,
Washington Attorney,
National Broadcasting Co., Inc.

WASHINGTON, D.C., *July 26, 1965.*

TAFT BROADCASTING CO.,
Cincinnati, Ohio, April 11, 1966.

HON. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: As president of Taft Broadcasting Co., I am writing this letter with respect to the current hearings of your committee on CATV bills H.R. 13286 and H.R. 12914. I am sorry that I have not been able to be with you during the hearings. I would, however, appreciate it if this letter and the accompanying speeches are printed as a part of the hearings record.

Taft is the licensee of seven television and five AM and FM radio stations in Cincinnati and Columbus, Ohio; Buffalo, N.Y.; Scranton-Wilkes-Barre, Pa.; Lexington, Ky.; Birmingham, Ala.; and Kansas City, Mo. As broadcasters, in particular, but also as members of the public, we at Taft are most interested in and concerned about the work your committee is doing in the most important area of CATV.

The two bills now before your committee relate intimately to the new Federal Communications Commission rules with respect to CATV's. In my view, those rules are a good start toward the fostering of development of CATV and the protection and perservation of the public's interest in free television. Although those rules are not entirely adequate and while it would have been advantageous to the public interest had the Commission acted more promptly, nonetheless most aspects of the new rules deserve the support of Congress and the public.

I cannot support H.R. 12914. In my judgment, both the intent and the effect of that bill, were it to be enacted into law, would be to prevent effective regulation of CATV by the FCC. This would, in turn, pave the way for the substantial impairment or destruction by burgeoning CATV of free broadcasting as we know it today. CATV unregulated can only lead to the American people paying, tomorrow, for what they enjoy free, today.

I support H.R. 13286. It is my understanding that the FCC already has the necessary authority to regulate CATV insofar as it affects broadcsting in the public interest. However, I am not a lawyer. If there is any doubt as to whether authority to regulate CATV's has been delegated by Congress to the FCC, it should be dispelled.

In addition, as the two attached speeches show, I oppose CATV's taking for nothing and without permission the programs for which broadcasters pay a great deal. The essential unfairness of permitting a broadcaster to be shot with his own gun must be eliminated. There is no possible justification for permitting such CATV larceny. The equitable and necessary minimum requirement for CATV's should be that they obtain the consent of the originating station before retransmitting its programs.

These aspects of the new Commission rules seem to me to particularly warrant careful consideration by your committee.

Six of Taft's seven television stations, including one UHF station, WNEP–TV (Scranton-Wilkes-Barre, Pa.), are located in the top 100 markets. Our large market VHF stations are the most profitable facet of Tafet's broadcasting operations. As a broadcaster operating a UHF station in a market well below the top

100, however, I am not at all satisfied with the FCC's determination to provide more effective CATV regulations in large markets than in small. I see no justifiable reason why small broadcasters should be considered second-class citizens.

The Commission is convinced that substantial regulation of CATV's in major markets is necessary if new UHF stations are to be encouraged. But it surpasses my understanding why encouraging a fourth or fifth station in a big city is more important than encouraging a first or second station in a small town. It would appear that the Commission has not only made small-town broadcasters second-class citizens, but also the persons they serve.

Moreover, in the top 100 markets, the Commission has adopted a scheme of evidentiary hearings upon the mere request of a CATV operator who wants to import distant city signals into the local station's market. Rather than prohibiting such inmportation * * * which will transform 3 station markets into 10 to 12 station markets * * * with a provision for waivers only after a clear showing that the public interest in free broadcasting will not be impaired, the Commission has adopted a scheme by which CATV operators can wrap the Commission's staff in procedural redtape. Protracted hearings, petitions for reconsideration, court appeals, and other delay tactics by hundreds of CATV operators can and I fear will delay for years the effective implementation of the new rules.

We are at the CATV crossroads, largely because of past Commmission delays. We cannot wait until the 1970's to insure that free broadcasting is not strangled in a noose of coaxial cable. I would urge you, therefore, to call upon the Commission to close this delay loophole in its new rules and to meet its responsibility to American viewers now.

With regard to the need for prompt and effective FCC regulation of CATV importation of distant signals, I commend to you the testimony at these hearings of Thomas P. Shelburne, general manager of WNEP–TV in Scranton-Wilkes-Barre. Nowhere is the threat of CATV transforming local broadcasting into a television suburb of New York City more imminent than it is in northeastern Pennsylvania.

In its new rules the Commission has also done away with almost all nonsimultaneous nonduplication protection. It seems to me axiomatic that prebroadcast duplication is even more injurious to local broadcasting than simultaneous duplication. A local station can hope to split the audience with a simultaneously duplicating distance signal piped in by CATV. But when a program is carried by CATV 1, 2, or more days before the local station broadcasts it, most of the local station's potential audience is gone.

Eliminating nonsimultaneous nonduplication protection hurts the little broadcaster more than the big city broadcaster. Most cities with three or more stations have three full-network affiliates carrying almost all network programs on a nondelayed basis. But in small towns with only one or two stations, network programs frequently must be delayed if the people are to be able to see the best network programs available because the local stations must carry more than one network.

One of the most serious weaknesses of CATV is that it does not serve rural Americans. This same kind of weakness should not be included in the rules of the FCC. At basic principle of FCC regulation in this vital area should be that small-town broadcasting is entitled to the same encouragement and protection as big-city broadcasting. Free local broadcasting is important to all Americans and must not be allowed to be subverted by CATV or any other form of pay television.

Respectfully yours,

LAWRENCE H. ROGERS II,
President.

CATV: THE EQUITIES OF REGULATION

(An address by Lawrence H. Rogers II, President, Taft Broadcasting Co., before the International Radio & Television Society, Inc., Waldorf-Astoria Hotel, New York, N.Y., January 19, 1966)

It's hardly necessary to say what a pleasure it is to share this platform. Everyone knows that every broadcaster considers it a pleasure whenever he can get anyone to listen to him on any subject from any platform.

Nevertheless, I am especially pleased with this opportunity to set the record straight concerning my presumed opposition to CATV.

Last year at this time, IRTS extended this platform to my friend, Fred Ford, to expatiate upon the merits of unregulated CATV. I was among those who called to the attention of IRTS that they might perhaps invoke the "Fairness Doctrine" in order to present a more balanced opinion on the subject. I am grateful indeed the suggestion has been followed.

However, as a broadcaster who has had considerable experience in the field of editorial comment, I live in almost daily communion with the "Fairness Doctrine." If I were to follow the insistent demands of many vocal listeners to Taft station editorials, I should have to point out that this cycle of fairness is still incomplete. Last year Fred Ford got the whole hour. This year I get to share it with Ben Conroy.

Perhaps this is what is meant by traveling "half-fair."

Having started with a couple of puns, I may as well make it worse. The fact is the continued burgeoning growth of CATV with no vestige of regulation is not only "half-fair" * * * it's not fair at all.

Carrying on this play on words, one might say that as an infant industry CATV was probably entitled to a free ride; but as it grew up it should have gone on half-fare. And now the time is long past due when CATV ought to pay full fare for its free ride on the program property of others.

I am not opposed to CATV. What a ridiculous notion. I welcome it as a valuable adjunct of broadcasting. I welcome it as a legitimate entry into the marketplace, adding diversity to the Nation's already incredible complex system of mass communications. I welcome the opportunity to participate in it as a legitimate and lucrative business.

I came here to appraise CATV; not to bury it. I came here to represent the public's interest in CATV, and the interest of maintaining property rights. Maintenance of property rights is absolutely inseparable from the public interest.

It is widely supposed that on February 10, next, the Federal Communications Commission will formalize the proposed rules governing CATV which it published last year. I strongly support these proposals. I urge your strong support of them. They are a minimum set of standards that must be applied as a matter of simple equity pending the ultimate outcome of litigation to establish property rights in the field of television programing.

With the behemoths of proregulation and antiregulation locked in their titanic struggle, there is frequently more heat than light generated by the subject. I believe the issue in a very few years without application of sensible regulation could best be clarified by a simple story now in vogue:

It concerns a poor fellow breathing nearly his last in an oxygen tent. His physician found his condition so grave he called for a priest to administer the last rites. After some difficulty a monsignor was located who could come at once to the hospital. As he stood by the bed in his long black robe, the patient, much impressed by the high rank of the cleric, raised up on his elbows to greet him. But, as the poor wretch tried to speak, he only turned purple in the face; no sounds escaped his lips. He tried again, coloring deeply, but could not even whisper.

The monsignor, well-equipped, reached into his robe for a pad and pencil which he thrust into the tent.

"Easy my son," he said. "Don't tire yourself. Just write what you want to tell me."

With an enormous effort, the man scribbled on the small white pad, then collapsed on his pillow and died.

Aghast, the monsignor reached for the pad. Crudely written thereon was the following message:

"You are standing on my hose."

Broadcasters are charged with the responsibility of determining and then fulfilling the needs of our communities and providing a viable program service in order to justify our licenses. We believe we are entitled to the minimum assurance that the sanctity of our contracts for program material can be preserved. As the matter of programing becomes daily more difficult, more expensive, and more competitive, we believe we are entitled to a minimum of legal protection for our program storage tanks. We believe we should have some safeguards to keep the CATV industry from standing on, or cutitng off, our hose.

We seek only equity in the assurance that the availability of our signals to be picked up off the air—free—and sold to parts of our potential audience, does not become the means of cutting off the very supply of programs that makes CATV possible in the first place.

Nobody is really fooling anybody about the ultimate purpose of unregulated CATV. Not when Milton Shapp of Jerrold and Leon Papernow of H. & B. American have gone on public record predicting that they would one day have the Nation wired coast-to-coast, enabling them to compete at the source for their own programs.

For a decade and more, CATV quietly developed as a supplemental service to broadcasting, bringing signals into remote areas, deep valleys, and large New York buildings—in situation where reception was difficult or impossible.

Nobody paid much attention.

Nobody, that is, execpt the entrepreneurs who saw in CATV a major economic force. Nobody, that is, execpt the manufacturers of distribution equipment who had a weather eye on the possible future gold mine of pay TV.

Then, all at once, the great awakening.

It was apparent that television signals were in the air, free for the taking. They could be gathered up without so much as a "by your leave," amplified, distributed, and sold direct to the public. No rights charges. No written permission. No utility regulation. No questions asked. It was like hitting a gusher without digging a hole. It was like selling consumer goods without the necessity of buying or making them. It was the dream of Midas come true.

In fact, it reminds me of the classic story of the kid from the Lower East Side who made good. The old neighborhood threw a welcome-home party for him. He arrived in a chauffeured limousine, with a tailored suit, refined jewelry, and a genuine Havana cigar.

"How is it, Izzy," one of his boyhood chums asked, "you could make it so big out of just a little junk business?"

"Easy," said Izzy. "I just found out I could make something for $1 I could sell for $5. You'd be amazed how that 4 percent mounts up."

No wonder the big money was attracted to CATV.

It's conceivable that, in the absence of regulation, a maze of wires could blanket the entire Nation with a home potential that would outdraw the very broadcast stations whose free service has made the installation possible in the first place. Indeed this is what has been predicted by the Shapps and the Papernows.

It will not be long, in the absence of regulations, before the owners of the wires can compete directly for program material which can then be sold directly to the subscribing public on a per-program basis.

This would eliminate entirely the messy business of trying to sell politically the concept of allowing on-the-air pay TV using broadcast channels.

By the time broadcasters find themselves staring down the wrong end of a gun barrel, it will be too late.

This, then, is the essence of my argument for immediate and sensible regulation. Along with licensees of some 700 TV and 5,000 radio stations, I simply do not wish to be shot with my own gun.

Last year the FCC, realizing that something must be done to resolve this dilemma, proposed certain rules designed to foster the orderly growth of CATV, while insuring the continued growth, expansion, and diversification of the free broadcast medium.

The FCC is under congressional mandate to see that the still unused UHF channels are developed and made viable. The cornerstone of our national telecommunications policy is diverse broadcasting outlets for local and area service and self-expression. A national wire system—especially one without regulation—would clearly frustrate that policy. The all-channel received law clearly supports that policy. The explosive growth of color TV has begun to implement that policy since every new color set adds another UHF home to the marketplace. New stations are taking the air. A fourth network is in its foetal stages. The FCC's CATV regulation proposals are critically needed to insure the continuation of this growth.

Predictably, pressure is being applied both ways. Broadcasters generally are saying, "Go ahead and regulate;" CATV investors are saying, "Go away and leave us alone." Broadcasters are warned repeatedly that they should not seek CATV regulation because it will only lead to Federal program control. This is a cruel and cynical deception, designed to perpetuate a gigantic raid on the property rights of others.

NCTA, in its filing in this FCC action, started its brief with a Biblical reference, instead of basing the case on relevent fact. I'd like to quote from the opening paragraph of the NCTA brief.

"Contrary to the comments of NAB and AMST," it begins, "when Moses descended from Mount Sinai, he did not hold in his hand the table of allocations."

It's a good line; and I don't deny the statement is true on its face.

But in response to NCTA's negative, I believe it only fair to examine the positive. If Moses did not bring down the sixth report and its allocation table, what did he hold in his hands?

Scripture tells us he carried stone tablets upon which were graven the 10 commandments.

The sixth commandment is akin to the sixth report. Both of them tell us thou shalt not murder the public's free television. But the seventh and eighth commandments are really germane to unregulated CATV.

The one tell us "Thou shalt not commit adultery," and the other says "Thou shalt not steal."

This, in its simplest form, is the case against the unrestricted proliferation of CATV, without regard to FCC technical regulation, and without regard to the property rights, inherent in an exclusive contract for a program license paid for in good faith by a broadcaster or an advertiser.

No, it's not CATV I'm against. But I am foursquare against a legal permit to adulterate another man's business, to put it in its most delicate terms, and I am unalterably opposed to stealing.

Much of the argument with the FCC's proposals is semantical. But the greatest argument in favor of it is practical. The Commission has an uneasy majority of 4 to 3. But even the spokesman for the minority expresses the same concerns as I do.

Lee Loevinger, most articulate member of the FCC minority, had this to say in a recent article in Television Quarterly:

"It seems to me the proper role of CATV's is to act as a supplementary mode of transmitting television programs. In performance of this function, CATV should transmit and deliver programs without degradation or alteration."

Judge Loevinger embraces the very regulations the Commission proposes; but he wants an act of Congress to authorize them.

"CATV should be defined so as to differentiate it from pay television," the Commissioner continues, "* * * [this] may be clearly established by defining CATV as a service which transmits television programs but does not originate programing or charge customers on a per-program basis."

He concludes, "We should require the permission of the originating station for either a CATV or a translator to transmit programs of that station."

I am in complete agreement with Commissioner Loevinger on these requirements.

But it is my belief that the FCC can, should, and will adopt such measures without waiting for additional enabling legislation from Congress. To delay any longer would be to invite wholesale destruction of the progress already made in developing a nationwide competitive broadcasting system.

Now let's examine Judge Loevinger's comment that CATV should be defined "to differentiate it from pay TV." This is where we find out that every person in this room is a participant in what has previously been considered a family fight. Advertisers, agencies, networks, film producers, and every other facet of the broadcasting complex; you are all equally involved in this critical regulatory vacuum.

When the FCC enunciates that a CATV must be a service that transmits, but does not originate, programs; when the FCC suggests rules designed to require programs to be delivered without degradation or alteration, the implication is perfectly clear. If not, I'll spell it out.

The need for such regulation stems from the fact that degradation, alteration, and origination are already facts of life in CATV. In the absence of reasonable restraint, a CATV operator is now perfectly free to do with a program what he pleases. If you are an advertiser, you must be content for him to pick up your expensive and highly popular network program, delete your commercials, and insert any material he chooses including commercials for your competitor. He is even perfectly free to delete your program altogether, if he doesn't like it, and replace it with weather reports, local traffic conditions, or even a nightly bingo game with cash prizes.

Are you outraged? Then join the club. This is your debate. And these are your property rights which remain unprotected.

Much criticism of the FCC proposals claim that they are too harsh and unnecessary. Particular venom has been directed at the so-called nonduplication

rule, and the distant stations proposals. The claim is made that prohibition of duplication by CATV of a TV program for 15 days before and after local telecast is unduly burdensome.

It's my contention these rules are not only not burdensome but they don't even go far enough to cure the problem. These proposals will generally protect network programing, it's true. But who is worried that networks are in need of much protection these days? Where a station operator really needs legal recourse is to protect his stake in the programing he must buy in addition to network programs. This gets scarcer and more expensive every day.

The most expensive and most desirable of this nonnetwork programing is first-run feature film. A prime-time first-run feature in New York alone, if you could find one, will cost you more than $50,000. How would you like to pay $50,000 for exclusive use of a top quality feature, only to find that 16 days before and after you telecast it, a CATV system could pipe the same show into thousands of New York homes by picking it up off the air from a TV station in New Haven or Philadelphia?

And how good would it make you feel to be told that your problem would probably eventually be solved by decisions in the courts, or even by an act of Congress? This problem will still exist, even if we do get tough regulation by the FCC on February 10.

Fred Ford says these are not really problems, because all NCTA members are lovely fellows who want no part of originating programs. Ben Conroy is typical of a good neighbor who wouldn't think of altering a program. Milt Shapp says CATV is nothing to be concerned with; because it is, after all, nothing but a long antenna cord. Maybe so.

But the fact remains that programs are being altered by CATV's. The fact is that CATV's do originate programs. And the fact is that Milt Shapp has also freely predicted that he will put together an irresistible nationwide web of wire.

The public is entitled to have its stake in free broadcast television protected. And the licensees are entitled to have their property rights at least as safe as they are against unwarranted theft by other licensees. The licensees are entitled to at least the same restraints upon CATV as are already firmly settled upon their own necks.

Unregulated proliferation of CATV constitutes the biggest public raid on another man's property since the rape of the Sabine women. And it is clear both the purposes and the results are exactly parallel to those of the ancient Roman warriors.

A CATV ceases to be a harmless instrument in the hands of an innocent country boy as soon as that long antenna cord becomes long enough to carry a television program into an area for which the exhibition rights have not been bought or sold; or into an area for which those rights have been bought by a person other than the owner of the long cord.

At that point, the owner of the long cord begins to transgress both the seventh and the eighth Commandments. He adulterates a property right and steals its benefits.

The FCC already has the power to regulate such abuses. The sixth report contains all the law we need to protect the public, the program owner, and the licensees from adulteration and theft.

The public is entitled to have the FCC prevent unregulated CATV from standing on its television hose.

TWENTY-SEVEN RATTLESNAKES

(An address by Lawrence H. Rogers II, president, Taft Broadcasting Co., Cincinatti, Ohio, before the Broadcast Advertising Club, Chicago, Ill., May 11, 1965)

Probably few, if any issues that have arisen in the perennially controversial field of broadcasting have been the subject of so much heat and so little light as community antenna television.

We live in such a competitive atmosphere all of us, advertisers, agencies, and media people alike that we tend to cast everything within our ken into a competitive concept. Accordingly, it is perfectly natural, whenever a new subject arrests our attention, to choose up sides. We seem to have a congenital spirit of competition that demands we be either for something or against it, often before we have a clear picture of what it actually is.

A very few in our midst occasionally drift to the surface who can view a new subject with equanimity. Some even have been known to say there is merit on both sides of some arguments. These people we call statesmen. Nevertheless, there is one basic problem that seems to afflict us in the communications field that is more serious than all the others: our seeming inability to communicate.

Now let's take this subject of CATV, for example, since that's what you asked me here to talk about. Last week in Louisville I had the opportunity to share the platform with the president of the National Community Television Association in what was billed as a debate over CATV. I made my remarks, my colleague made his remarks, and there ensued some 30 minutes of discussion and debate. Finally, after about an hour and a half, a hand went up very near the front row and the voice attached to it, which belonged to a Kentucky radio broadcaster, said: "Before we go on with any more of this, fellows, just what the hell is a CATV?"

To lapse into the jargon of the chroniclers of ad alley, we had smeared the cat with axle grease instead of strawberry jam; and we had hauled it up the flagpole in the dark; so nobody licked it off; and nobody saluted.

Reminds me of the classic West Virginia story of the mule trainer who, being presented with a recalcitrant beast that wouldn't stand for harness or bit, picked up a stout length of timber, wound up like Ernie Banks, and clouted the animal right between the eyes. The owner was outraged and cried, "I asked you to train him, not kill him."

"Wal," said the muleskinner, "Ef'n yer gonna teach a mule somethin', fust you got to git his attention."

That fellow in Louisville got my attention.

Just what is a CATV?

Anyone who has ever seen television in a large Chicago or New York hotel or apartment house has seen CATV. It is simply a master antenna to pick up signals off the air from television stations and then redistribute them by means of long wires, with amplifiers every so often, to a large number of TV receivers. When it's in a hotel or an apartment house, it's called a master antenna. When it's in an urban community and the wires run up and down the streets to different houses, it's called a community antenna.

So what's all the shooting about? Why is it good or bad? Why should we be for it or against it? The simple answer is that it is not good or bad; it's a plain fact of technological development.

Why I am supposed to be against it has been amply, and inaccurately, reported in the trade press, and elsewhere. The simple answer is I'm not against CATV.

Then what is the objective of CATV, and why is it so all-fired important?

Let me tell you a true story.

Before I was fortunate enough to be associated with Taft Broadcasting Co., I had lived some 15 years in West Virginia, during which time I happened to construct and operate the first television station in that rugged and sparsely populated State. As you can well imagine, trying to survive on less than 5,000 sets in an unknown area in 1949 with no network and little programing was a raw struggle for survival.

Even after we built our own long distance relays to bring in major league baseball, it was difficult to convince anyone we were there. My biggest problem was getting to talk to people like Paul Schlesinger or Frank Silvernail. When I would call for an appointment and identify myself by name and market, the receptionist would always reply in faultless Bronx: "Is that Hunt-ting-ton, Long Guy-land?"

Well, it was pretty apparent what we really needed was a market.

So, in addition to that long-distance microwave system, we had to build many things: including the world's most powerful TV transmitter up to that time; a 1,250-foot tower; a two-city news program that was actually the forerunner of Huntley-Brinkley; and many other innovations. All this was aimed at providing a major television market where none had existed before. In the process, I spent considerable effort visiting the far reaches of the mountainous terrain, trying to determine just how far a TV signal would go and how best to get it there.

On one such field trip, I ventured into a "holler" called Buffalo Creek, which is as I recall in Mingo County, W. Va., on the east side of the Tug Fork which separated the Hatfield clan of feud fame from the Kentucky McCoys.

Anyway, there was a coal camp, a rather neat little village of some seven or eight white painted frame houses, way back in the cleft in the hills, whose only access was the creek bottom itself. As long as the creek was dry, it made a

serviceable, if rough, road. But when it rained well, you've no doubt heard a hillbilly entertainer end a radio show with "Wal, frens an' nabors, see yew same time same station nex' week, the Lord willin' and the creeks don't rise." That's what he meant.

One of these houses was bigger and a little more pretentious than the others. It had a white picket fence around it. It had an "open wire line" leading off the hill into the back of it a sure sign it had a television set. ("Open wire line" was the designation of an uninsulated pair of copper wires that were used to carry TV receiver signals a very long distance from the antenna. Unlike the plastic encased "twin-lead," these were often manufactured by hand, and used bobbipin curlers to keep the separate wires the proper distance apart.)

I walked up on the porch and rapped on the door. It was opened by a neat young thing in an apron with one infant visible. Behind her in the front room was a television set, tuned to my station. The transmitter was pumping out the maximum under the license then, something like 18 kilowatts, ERP and that transmitter was about 90 miles away. And the picture was almost indistinguishable in quality from a studio monitor.

The young lady was a recent Vassar graduate. Her husband was an MIT engineer, getting a few years seasoning as a mine foreman. The girl hadn't been out of those hills in a year; and to her that TV set was the most important single thread she maintained with reality.

Her neighbors, some of them, had never been out of those hills before. So to them, television represented their first really significant break with the 19th century, with feudalism. No, they were not very selective viewers; but they were seeing things and learning things they had never known existed. And they would have parted with their lives before they would have parted with their television sets. And everyone of them owned a set; and every one of them was hooked into the same open-wire antenna lead. It was a homegrown community antenna system, engineered and built by the young graduate and his neighbors.

I asked the young lady how it was possible for her to receive such truly marvelous reception so far from the station and so deep in the canyon. She took me to the backyard which was literally up against a nearly vertical slope. She said her husband and his friends had spent the entire summer clearing a break in the solid forest and undergrowth 4,000 feet up that sheer slope to hook that wire to a directional antenna in the top of a tree on the summit.

Aghast, I pointed to the fence and said, "What's this?"

"Those," she calmly replied, "are the skins of the 27 rattlesnakes my husband killed putting up our television antenna."

That was the day I learned what America's free television service really means to the public.

You know, it's a wonderfully humbling experience to see what necessity will do for people.

Throughout those mountains those people would go to any length to gain access to television. Even 90 miles away they knew how to fix those sets to get pictures of amazing brilliance and clarity.

But we American city slickers have been spoiled. We take as miraculous an invention as television for granted, and we take it for granted it will always be free for the asking. If the set doesn't work the first time, like a toaster or a waffle iron, we kick it and call for the dealer to come take it away.

Can you imagine a Chicagoan or a Cincinnatian or a New Yorker killing 27 rattlesnakes to put up his antenna?

There is no essential difference between that crude community antenna in Buffalo Creek and the CATV's we're talking about today except that that was a community effort; today's systems are commercial entities which charge a connection fee and a monthly service charge. That homemade system had one channel. The new ones bring in 12 channels, with the promise of many more.

Whenever I hear the snide intellectual critic of television say, "Oh, we never turn it on anymore, since there's never anything of high enough quality for us," I think of those 27 rattlesnakes.

And when I hear a prophet of the brave new world of pay television, I think of these 27 rattlesnakes.

And this is exactly what the promoters of unregulated CATV are looking for: the brave new world of pay-as-you-see.

Milton Shapp, founder of the first company to make CATV equipment, said recently: "The day is not too far distant when almost all American cities—small and large—will be wired for television."

And President Leon Papernow of H. & B. American Corp., reputed to be the biggest owner of CATV's, told his stockholders in his latest annual report: "The successful development of pay TV would carry us along in its engulfing tide and companies like H. & B. American would be among the first to take advantage of this vital new way of marketing entertainment."

Both Mr. Shapp and Mr. Papernow are right; and both those statements remind me of those 27 rattlesnake skins.

No, ladies and gentlemen, I am not against CATV. Indeed, I owe the success of my first venture in television 16 years ago in large measure to the community antenna. And today, at least one Taft television station derives about 20 percent of its audience potential through community antennas.

Community antennas fill a necessary gap in the Nation's broadcast service as a supplement to broadcasting. I am not anticommunity antenna. But I am propublic interest. And the public interest lies in preserving, expanding, and diversifying the free competitive broadcasting service that is the envy of the rest of the world.

The public interest does not lie in permitting unfettered, unbridled use of this service by any sort of wired TV service without so much as a "please," or a "thank you," or any form of payment. The objective, and result, of such uncontrolled reuse of radio and television broadcasting service will be the creation of a nationwide pay-as-you-see television and radio service by wire, which must in turn cannibalize the public's free TV and radio service until it withers and dies.

None of this has anything to do with opposition to CATV.

My opposition is to the inequity of a situation in which an entrepreneur can take a product, free for the asking, which belongs to someone else, then use it to create a monopoly in the area of public communications. There is no question that Congress has jurisdiction to regulate all CATV's. CATV's are in the business of transmitting and selling communications in interstate commerce. There is likewise no question that this jurisdiction has been passed on by Congress to the FCC under the Communications Act.

The FCC has on many occasions been reluctant to exercise its jurisdiction over various areas of communications. Having been admonished by the Commerce Committees of the House and Senate on several occasions, the Commission has been understandably gun shy. However, in this case their legal right to take action was so clear they felt no need to be timid. Indeed to paraphrase Senators Pastore and Magnuson of the Senate Commerce Committee, if the FCC had any doubt about its authority to act to protect the public's free broadcasting service, then Congress should immediately pass resolutions to erase that doubt. Chairman Harris of the House Committee was not so enthusiastic about the newly announced FCC proposals. In fact, the House Committee held a closed door session last week to discuss with the FCC its new rules and proposed rules. We don't know yet what are the results of these deliberations.

However, one member of the House Committee has taken me to task for suggesting that the FCC has the power to assume jurisdiction over CATV. He says, in effect, that broadcasters who seek such regulation are inconsistent, because if the FCC has the power to regulate CATV's, then it should also have the power to regulate networks, and we are both opposed to the FCC's power to regulate networks.

Well, this is not as difficult to answer as it sounds because there is a very real and serious distinction between FCC regulation of CATV and similar regulation of networks.

Essentially, I believe, it boils down to this: A network is a program origination source whose product is disseminated entirely through regulated facilities: a CATV is (until now) an entirely unregulated facility for the distribution of programs which are the property of others, including networks. If the FCC regulates CATV's, it does nothing more than it is already doing with regard to the stations whose programs are being redistributed and the networks whose lines and relays are leased from the common carrier regulated by the FCC.

Don't misunderstand me. We are no more interested than the next fellow in any extension of FCC power. What we do say, and our legal counsel has so stated formally to the FCC, is that the Communications Act (sec. 307B) already provides for the regulation of CATV's as it does the licensees like us whose regulated service is the only basis for CATV.

Network facilities, that is to say their own licensed stations and their affiliated stations, and the A.T. & T. facilities which interconnect them, are already sub-

ject to that same regulation. But the networks' product; namely, programing, is specifically excluded from regulation by the Communications Act, and many of us feel by the first amendment as well.

The kind of regulation most telecasters seek, which the FCC has adopted, and which we hope they will extend to all CATV, involves principally the matter of protection of a broadcaster from having to compete with his own programs in his own market. In addition, we believe that the unlimited use by CATV's for any purpose of any broadcast signals will choke off the further development of local television, especially UHF, and radio broadcasting as well.

Really, all these questions become nearly academic if only the same law which applies to broadcasters were also applied to CATV's with regard to the pickup and rebroadcast of off-the-air signals. If, as a licensee, I do this without the permission of the station whose program I pick up, I violate the law, and I'm subject to a fine. And I agree this is as it should be. But if a CATV does the same thing to me, he gets paid for it. There is hardly any equity in this.

There is actually a case on record where a television operator, with an off-the-air pickup network contract, took the baseball game of the week without permission of the originating station, since he had a network order for it. The originating station complained, and ultimately the offender paid a $250 fine. No question here. But had exactly the same thing been done in exactly the same town by a CATV operator competing with this same telecaster, then at that time the FCC would have said, "Sorry, we don't have any jurisdiction." This despite the fact that the CATV operator is making a direct charge to the public for this, in this instance, pilfered service.

Thus there is only one question of major significance dividing the proregulation and the antiregulation forces in the matter of CATV: this is a matter of equity.

All the broadcaster wants is a normal bit of American frontier justice—not to be shot with his own gun.

In any station AM, FM, or television, the licensees are all subject to one common problem: to provide programing. No matter what sort of programs you provide, no matter what their source, no matter who is the ultimate owner, there is one common denominator: you must pay for them. You pay for programs in announcers' salaries, in free hours to networks, in direct licensing fees to film and transcription companies, or in royalties to music licensing firms even though in some instances you don't even use the music. For us there are no free programs.

Now here comes a CATV operator who pays absolutely nothing for any program service he takes off the air from you. He doesn't even have to ask your permission. To the extent this CATV extends your signal to an area otherwise without service, he is a welcome appendage, and you are happy to have him carry the programs to additional audiences. But to the extent he competes with you by using the service for which you have paid to this extent, I maintain, and I think any fair-minded person should maintain, you are entitled to some kind of protection. This position is not anti-CATV. In fact it is supported by the National Community Television Association itself.

There is one major difference of opinion between the broadcasters generally and the NCTA: That is the matter of extending the protection from duplication of the local broadcaster from simultaneous nonduplication to nonduplication for 15 days before and after the event.

My argument is with the predators in the CATV business who press for no regulation at all, because their objective is an all pay-TV system.

Every proponent of "pay-as-you-see," from the early days of Gene MacDonald's Phonevision down through the latter day Genghis Khans masquerading behind the mask of CATV, has clung to one prophecy in common: that the American people are waiting with bated breath for the marvelous new program services, public services, and cultural explosions that await them in the golden land of "pay-as-you-see." Time after time this has proved to be false. The only fellow who is waiting with bated breath is the guy who owns the coinbox.

CATV equipment manufacturers are now boasting that their 12-channel systems are even now obsolescent, and that soon 30 or 40 or even 50 channels will be available to people of every city from coast to coast. These claims are perfectly true; although there is still the matter of the billions of dollars of investment necessary to wire up all the major cities. This investment virtually demands the unlimited access to free program material off the air without interference by the broadcaster or the FCC.

Now I do not decry these marvelous technological breakthroughs. They are awe inspiring. But I do respectfully point out that no matter if there are a hundred channels from coast to coast, there is no amount of money and no amount of equipment in the world that will create more talent and more quality entertainment product. Genius and creativity will continue to be among man's rarest treasures.

I defy you, here in the great metropolis of Chicago, one of the cultural and entertainment centers of the world. I defy anyone in the audience to find more ballets, symphonies, and living and historical excursions into the worlds of art and culture, here, live, than you can find in any given month, free, on your Chicago television stations.

Throughout this discussion I have attempted to make clear that I favor regulatory protection for the public's free broadcasting service.

Until recently, there have been many radio-only licensees who have watched in high glee the discomfort of their chief tormentors: the TV operators. After all, wasn't it television that created the biggest upheaval in the radio business and took most of its national advertising revenues? Not surprising that many radio licensees took the problems of their TV brethren a trifle philosophically.

But let's look deeper into Milton Shapp's proposal for 40-channel CATV's in every town in the Nation. This is something of vital concern to every AM and FM licensee in the Nation not just the major market TV broadcaster. Technically feasible in every multiple-channel wire-TV system, and actually in operation in many areas in addition to distant television services, are all-classical music services, noncommercial background music channels similar to Musak, all time signal and weather report channels, and round-the-clock news service channels.

One major broadcaster-CATV operator told me last week that he has such an embarrassment of riches in extra channels on one of his new systems that he is actually going to feed the market with 30 additional FM stations.

And the best part of it is that up to now the operator could provide these multiple services without paying for them and without securing permission to use them. No wonder some of the CATV entrepreneurs are ecstatic. It's almost like waking up to find you are really King Midas.

The key point is that, besides providing the golden touch to operators of metropolitan CATV's unlimited TV by wire must result in the fragmentizing of audiences to the point where advertising becomes either too costly or too difficult. With the economic base removed, the public will find that it has had its free television service replaced by exactly the same service on a see for a fee" basis. The $600 million a year now spent by networks for programing will seem pale by comparison with the gate receipts possible when the charges can be made on a "per program" basis. But the condition for this fantastic gold rush is the elimination of the existing local free TV service.

Now let's relate all these facts to you, here in Chicago. Why should not the advertiser be happy to know that his message, picked up unrestricted by CATV's from coast to coast, will provide him with such coverage as to render unnecessary either a spot or a network purchase? If the only stations which survive this change are the giants in New York, Chicago, and Los Angeles, why doesn't this provide a more economical medium? If WGN–TV or WBKB are going to be piped into homes in Cincinnati, or Austin, Tex., or Pasadena, why doesn't this make them national media with fantastic advertising dollar potential?

Well, these are perfectly good questions; and all the answers could take time for several more speeches. In the first place, if your advertising message, picked up by CATV's is carried from coast to coast, then you can expect exactly the same thing of other messages coming from other places into Chicago. Marshall Field might love the impact in Kansas City, but how are they going to feel about Macy's in Chicago?

Yet even this is beside the point. Without any form of legal restriction, there is nothing to stop unlimited wire TV, in the form of CATV, from taking a Marshall Field program and deleting the Marshall Field commercials or those of Toni, of Wrigley, or Alka Seltzer, or Pure Oil, or Swift, or any others you can name.

Here's another true story. And it's happening right now. One of our TV stations is in a market made up of many small towns and cities. The sales manager succeeded in getting something like five out of the six Sears, Roebuck stores in the area to agree to run the same Sears film commercial at the same time,

and to share the cost. The sixth Sears manager said, "Heck no! I'm going to run my Sears film on the local CATV where I can get exposure to only my customers for a fraction of the cost."

And, I might add, in such a case there is nothing in the world to stop him from running it right in the middle of "Bonanza," in place of those silly old Chevrolet commercials. Or, if he's selling bicycles, he can run that spot right in the middle of "Yogi Bear," in place of that noisy cereal commercial.

You see, ladies and gentlemen, it's not CATV I am against. It's larceny. Especially when the larceny is protected by the absence of laws or regulations, but at the same time you and I are prevented from putting zippers on our pockets.

The problem of figuring out what you are buying, and from whom, and where, and when, is something else again. I am quoting now from the Rate Guide and TV Station Location Guide of the Panther Valley Television Co., Inc., of Coaldale, Lansford, and Hauto, Pa. It lists nine TV channels and five FM channels in use.

Numbered notes 2, 3, 4, and 5 read as follows:

"New York channel 5 is received on PVTV 2 in the early morning until New York channel 11 begins telecasting. New York channel 5 is also received for a time on PVTV 5 in the late afternoon.

"New York channel 9 is received on PVTV 5 at all times except in notes 2 and 4.

"Philadelphia channel 10 is received on PVTV 5 in the late afternoon for the "Early Movie Show" and from 11 p.m. until "signoff" except when a baseball, football, basketball, or other sports program is telecast by New York channel 9.

"Occasionally sports telecasts are "blacked out" from stations located in or near where the sports event is being held. If a station (other than those normally received over the PVTV system) telecasting the event can be received at the PVTV antenna receiving site, arrangements are made to receive it on PVTV 5 for the duration of the sports event."

Is that entirely clear?

Even the loss of all our advertising business—yours and mine—is only a matter of self-interest regardless how painful it might be to you and me, and perhaps 10,000 other highly skilled unemployed. But where is the public interest in all this? In the final analysis this is where the determination must be made.

My good friend, Ward Quaal, who deserves every accolade he has received as an outstanding citizen of your city and my industry, has most dramatically demonstrated the public interest ramifications in the regulation of unlimited use of all broadcast programs by CATV. Ward has made WGN–TV perhaps the preeminent nonnetwork television station in the United States. His programing would add diversity and scope to the TV fare in Dayton or Duluth, Savannah or Seattle. And one CATV operator at least has planned to take his shows on microwave and cable as far away as Texas.

But Ward says "No."

WGN–TV is licensed—as are all licensed broadcasting stations—to its home city and to the Chicago area. Ward is in the forefront of the effort to insure that the programs of WGN–TV may not be used to form the basis of a paid service that will prevent the growth or the existence of local, free, broadcast television in other communities in other parts of the Nation.

For as soon as unregulated wire TV and radio can make unrestricted use of all existing broadcast fare from coast to coast, local stations and networks will become unnecessary. And the primary declaration of Congress in the Communications Act "to provide a diverse local free broadcasting service to as many communities of the Nation as possible" will be forever frustrated.

Ward Quaal knows that WGN–TV could be one of the four or five biggest profiteers of unlimited CATV. But he has chosen instead to be among the leaders of local broadcasting in the public interest who are striving to protect the people's interest in the world's most elaborate and successful broadcasting service, free of the bridles of censorship, and free of charge to the public.

CATV is a legitimate, and in many areas, a necessary extension of the American broadcasting service. That the public interest in broadcasting should be protected from the abuse of CATV, as well as other forms of interstate radio and wire communications, is neither sinister nor surprising.

Failure to control CATV as set forth by the recent FCC rules and proposals is to endanger the continued existence of a truly nationwide, competitive system of

local radio and television stations as contemplated and prescribed by Congress for more than a generation. Anyone who tries to tell you that unlimited CATV will not result in the replacement of free broadcasting by a pay-as-you-see system speaks to you with a tongue as forked as those of 27 rattlesnakes.

WNEP–TV,
Wilkes-Barre, Scranton Airport, Avoca, Pa., April 14, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: I am general manager of WNEP–TV. WNEP–TV is one of the three UHF television stations now on the air in Scranton and Wilkes-Barre, Pa. It is an ABC–TV network affiliate and is licensed to Taft Broadcasting Co.

Three witnesses at your recently concluded hearings on proposed CATV regulations (H.R. 12914 and H.R. 13268) testified at length (1) about CATV impact on local television broadcasting in the Scranton and Wilkes-Barre area; (2) about WNEP–TV; and (3) about information furnished to your committee by FCC Chairman Henry, which dealt with CATV in the Scranton and Wilkes-Barre market and which was based on data furnished by WNEP–TV. I wish to comment briefly on a few aspects of their testimony, and respectfully request that this letter be made a part of the printed record of your committee's hearings.

Mr. Frank H. Nowaczek, who identified himself as the president of the Pennsylvania Community TV Antenna Association, testified before your committee on April 7, 1966 (transcript, pp. 1173–1184). He presented extensive statistics dealing primarily with coverage of the northeastern Pennsylvania area by various television stations. Mr. Nowaczek showed that several television stations placed calculated grade B signals over part of the area served by WNEP–TV. He concluded that there are only two counties served by WNEP–TV which do not receive at least some theoretical service from another ABC–TV affiliate (transcript, p. 1179).

While Mr. Nowaczek is vague as to the significance of this fact, he seems to suggest that it shows that importation of distant signals by CATV into the Scranton-Wilkes-Barre service area is not so bad because a number of the stations imported, at least in theory, get into part of that area off the air.

The fact that the Scranton-Wilkes-Barre market is squeezed in between a number of stations, many of which are VHF and located in larger cities, magnifies, not diminishes, the importance to local broadcasting of prompt, effective CATV regulation by the FCC. WNEP–TV's (and the other Scranton-Wilkes-Barre stations) potential market is limited by off-the-air competition from surrounding stations. Further limiting caused by CATV noncarriage and duplication of the local Scranton-Wilkes-Barre stations has an even greater impact on local broadcasting in our area than it does in markets where such off-the-air overlapping does not exist.

Moreover, the closeness of Scranton-Wilkes-Barre to New York City and Philadelphia makes it easy for CATV to reach out for New York City and Philadelphia stations and retransmit them into the very heart of our market, frequently even without the use of microwave. This is, in fact, what is happening.

The regular function of CATV in our area was to provide service which would otherwise not be available because of mountainous terrain. But CATV has been transformed into a service which imports distant signals into our market, changing parts of our market from 3-station service to 10- or 12-station service.

Mr. Nowaczek also stresses the importance of the mountainous terrain in northeastern Pennsylvania. He correctly points out that a great many persons located within the calculated grade B contour of local Scranton-Wilkes-Barre stations are unable, because of the mountains, to receive their signals, but he infers from this fact that WNEP–TV and the other Scranton-Wilkes-Barre stations are not really local stations for such persons. This is incorrect. The "localness" of a station is determined by the service it provides. News, weather, sports, and other public affairs programing provided by WNEP–TV and the other Scranton-Wilkes-Barre stations are specifically prepared for the people of northeastern Pennsylvania. The fact that a television viewer is prevented, by an interfering mountain, from receiving our local service makes that service

none the less local, and makes it none the less important that he not be prohibited from receiving it by CATV's failure to carry local stations.

Mr. Nowaczek does not seem concerned by, in my view, the staggering fact that about 15 percent of all the television homes located within our service area are unable to receive WNEP–TV because the CATV to which they subscribe does not carry it. Nor does he seem impressed by the fact that, according to his figures, there is even more CATV duplication of WNEP–TV than was estimated by WNEP–TV itself. I believe that Mr. Nowaczek's own figures dramatically show the desperate need for prompt, effective regulation of CATV if free and local broadcasting is to be preserved. Nowhere is the danger of a local market becoming a wire TV suburb of New York City greater than in northeastern Pennsylvania. Nowhere is the need for effective FCC regulation without further delay more essential.

Mr. Nowaczek also discussed material said to be contained in a report from ARB (transcript, p. 1178). That material, however, is not included in the transcript. I cannot, therefore, comment either on its accuracy or its significance.

Mrs. Dorothy Mugford also testified to your committee on April 7, 1966 (transcript, pp. 1104–1106). The questioning of Mrs. Mugford by committee members suggested that the committee may have been misled into believing that Mrs. Mugford is presently employed by one or more of the Scranton-Wilkes-Barre TV stations. This is incorrect. Mrs. Mugford was employed by WNEP–TV from October 1960 to May 1963. While her statement does not indicate her present employment, it is my understanding that after leaving us, she worked for another broadcasting company, helping it to make CATV acquisitions, and that now she is employed by the Pennsylvania Gas & Water Co. In any case, let me stress that she does not speak for WNEP–TV.

Mrs. Mugford's basic position is that CATV helps local broadcasters. This may be true insofar as CATV makes possible the reception of local stations by persons who, because of topographical or other reception obstacles, could not otherwise receive them. But insofar as CATV duplicates local programing and imports distant big-city signals, thereby transforming a relatively small market such as ours into a market with more TV signals than the big cities themselves, CATV hurts local broadcasting.

Mrs. Mugford stated in her prepared statement that most of the CATV systems in northeastern Pennsylvania have been there since the early 1950's, implying that CATV is now relatively static in our area. This is incorrect. Not only are there many new systems, but many of the existing systems have grown rapidly, both in number of subscribers and in number of channels. As I pointed out to your committee in my prepared testimony, about 70 percent of all the CATV homes in our area subscribe to CATV systems with between 7 and 12 channels. I do not believe that any such CATV system even existed in the early 1950's.

Indeed, the rate of CATV growth in our area may well be on the brink of substantial acceleration. In the first 6 months of 1965, for example, 90 applications for CATV franchises were filed in 54 municipalities, including Scranton and Wilkes-Barre, within our metropolitan area alone. All of these new applications proposed to bring in New York City stations.

Cecil Woodland, manager of Semit Cable TV Co., testified before the committee on April 6, 1966 (transcript, pp. 909–914). He pointed out that a CATV system in Wilkes-Barre itself does not even carry the signals of the Wilkes-Barre-Scranton stations.

Mr. Woodland argued that the importation of distant stations into a local market was a "two-way street" (transcript, p. 912), implying that local stations object when distant stations are imported into their service area, but do not object when their signals are exported to the service areas of distant stations.

WNEP–TV has never taken such an inconsistent position. It attempts to provide local service for the people of northeastern Pennsylvania. Our service, by its very nature, is not designed to serve the residents of New York City, Philadelphia, or their suburbs.

Mr. Woodland's argument, I believe, is specious on its face. The likelihood that WNEP–TV's signal will be exported to New York City for example, is, to say the least, remote. The importation of New York City station signals into the heart of our market, on the other hand, is an everyday occurrence.

Finally, in his prepared testimony, Mr. Woodland argued that the National Association of Broadcasters and the Association of Maximum Service Telecasting do not reflect the unanimous opinion of their members. Certainly, I would not controvert this point. I call to the committee's attention that Mr.

Woodland says that he believes local stations should be carried by local CATV systems. However, he does not appear to speak for the operators of the CATV systems which serve nearly 70,000 TV homes in the Scranton-Wilkes-Barre area and which do not carry the local stations.

I have not, in this letter, attempted to analyze in detail the testimony of the three witnesses mentioned above, but rather only to bring out the few points which I feel may not have been made clear to the committee, and which are necessary to a fair evaluation of that testimony. For this reason, I ask that this letter be included in the printed hearing.

Respectfully submitted.

THOMAS P. SHELBURNE,
General Manager.

BLUE MOUNTAIN TV ASSOCIATION,
North Powder, Oreg., March 13, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR MR. STAGGERS: We wish to comment to the House Commerce Committee on the FCC's plan to regulate the CATV systems as proposed in bill H.R. 13286. We are a nonprofit translator association which operates UHF translators rebroadcasting the Spokane, Wash., TV stations to Union and Baker Counties, Oreg. We are dependent on our viewers for their volunteer contributions to operate our translators.

The population of Union and Baker Counties, Oreg., is about 34,000. The cable companies claim to have something over 5,000 subscribers in our towns. The balance of the population use off-the-air signals for their television from translators and our local TV station, KTVR of La Grande. Better than half of our total population use off-the-air signals. The rural people and small towns are completely dependent on off-the-air signals, and would be without television if the broadcast stations were to fail.

Ours is a typical fringe area where duplication of the network programs is now out of hand. The cables and translators both carried the three Spokane channels early in the game. Early in 1961, the Boise, Idaho, broadcasters proposed to provide free TV to our area via translators provided the cables would carry them also. They told us that if they could include Union and Baker Counties in their coverage area that they would realize an additional $50,000 from national advertising revenues.

Between the two Boise stations, our people would have realized 98 percent of the network programs on a free TV basis.

The cable company refused to carry the Boise stations and proceeded to microwave the Portland, Oreg., stations into here to make it unprofitable for any broadcaster who proposed to provide free TV to our area. In 1964, KTVB–TV of Boise built KTVR–TV here as a satellite of Boise with a studio in La Grande. Today, the cable carries five Portland channels, two Spokane channels, and KTVR. In addition to this, we have three Spokane channels via UHF translators, and Baker County has two VHF translators and two UHF translators rebroadcasting the Boise stations. So, we have the network programs duplicated three different times within our area. The translators and our local station are all in trouble financially due to the unwarranted duplication of network programs.

When the FCC first proposed to apply nonduplication rules to areas such as this, the Union County Farm Bureau filed comments with the FCC and requested that rules be drawn up using the following guidelines:

1. A local station with studio should hold the rights to their programs within their class B contour over translators, satellites, and cable systems.

2. Translator and satellite TV stations should hold a secondary position and have the rights to their programs over a cable system within their coverage area.

3. Cable systems should hold a third position and should not be allowed to microwave duplicate programs into the coverage area of the local station, translator, or satellite station; but should be required to carry these stations on the cable system.

The Union County Farm Bureau in its comments maintained this would encourage the broadcasters to build and maintain broadcast stations in areas such as ours as to provide the rural and urban areas alike with the network pro-

grams on an impartial basis. It was obvious that the advertisers were paying the broadcasters enough to provide our area with free TV provided a plan of nonduplication could be administered by the FCC so as to provide the broadcasters a franchise to their programs.

The Blue Mountain TV Association supports the Union County Farm Bureau in its position and we would further add that inasmuch as broadcast stations serve everyone impartial of economic status as well as the geographic location of the viewer, that the FCC and Congress should make rules and regulations that would preserve our American system of broadcasting. We feel that it is the viewers right to subscribe to a cable system if he wishes, however the cable systems should not be allowed to jeopardize the people who do not wish to pay or who cannot afford a subscription fee. It is our observation that there are thousands of elderly people who are living on pensions who cannot afford a subscription fee. These are the people who benefit most from our free TV and radio and it is not the right of any group to jeopardize these people's means of communication with the outside world. For these people's sake, we plead with Congress to see to it that our American broadcasting policy of free radio and TV is preserved.

We ask that Congress pass bill H.R. 13286 and request that the law be written with nonduplication provisions along the line proposed by the Union County Farm Bureau that will protect and provide a franchise for local stations, translators, and satellite TV stations. Without this protection, we cannot see how our American broadcasting policy of free radio and TV can survive. Without it the rural people stand to lose their television altogether.

Respectfully submitted.

HARLOW A. SPECKHART,
President.

UNITED TRANSMISSION, INC.,
Kansas City, Mo., January 20, 1966.

Hon. OREN HARRIS,
U.S. House of Representatives,
Washington, D.C.

DEAR SIR: On February 7, 1966, the Federal Communications Commission proposes not only to make the same stringent rules now governing microwave-served CATV systems applicable to all CATV systems, but will even profess to tell a community that it cannot grant a franchise to a CATV system if the Commission "guesses or surmises" that this may discourage a UHF or other television station from being constructed in that area "in the future." The Commission has also indicated it will enforce a distance requirement upon CATV systems, thereby prohibiting importations of highly desirable programs. This, in effect, will result in the Federal Communications Commission spelling out in no uncertain terms what and when the public may view.

We propose to operate a CATV system in your State. The adoption of the proopsed rules would not only restrict the programing available to our customers, but would also have a serious economic impact on existing systems that could cause the termination of an industry that has been in existence for over 15 years.

Congressional action is needed now to clearly define the responsibility of the FCC in the area of CATV. I solicit your support in the defeat of the rules as proposed by the FCC pertaining to this industry and encourage you, together with other Representatives, in the establishment of the status of the CATV industry with respect to the FCC rules and regulations.

Very truly yours,

L. B. HALLETT,
Vice President, Operations.

BUTTE, MONT., *March 20, 1966.*

Chairman HARLEY O. STAGGERS,
House Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: The following is for your consideration and for your committee record regarding H.R. 13286 and S. 3017.

The writer has no financial interest in any part of the broadcasting industry.

The writer is retired and is a resident of rural America, living beyond the delivery area of any CATV system although directly under a microwave path

which carries Salt Lake City TV signals from the top of the Continental Divide to a cable CATV system in Anaconda, Mont.

I have read a copy of S. 3017 which it is my understanding is identical to H.R. 13286.

First, why should CATV subscribers be treated as "preferred citizens"?

Second, why should anyone, just because they have money, get the same programs on his TV, two, three and even four times a day, on that many different channels—at the expense of restricting television service to other people?

Attached hereto is today's schedule of TV in the city of Great Falls, Mont. Great Falls has two TV stations.

KRTV has only 9 hours of unduplicated programing today on the Great Falls cable. Station KFBB–TV has only 3 hours of unduplicated programing today on that cable. Some of the programs are found duplicated only once, others twice. Some of the unduplicated programs on Sunday, will be duplicated on other days.

Montana has only eight TV stations. It would have had 16 TV stations today if it were not for CATV cable. See testimony of Robert Scanlan, page 857, VHF Booster and Community Antenna Legislation, part 2, 1959, U.S. Senate, Interstate and Foreign Commerce Committee. The additional eight stations mentioned by Mr. Scanlan added to the eight stations Montana already had would make a total of 16.

How can TV stations develop in a sparsley populated area if most of their programs are going to be duplicated in the station's hometown?

How do stations get income enough to serve the public when their audience is diluted through program duplication?

How do first-class stations survive as such when CATV cable turns them into less than a second or third or fourth run movie house?

It is obvious the general language of the Communications Act of 1934 was for the establishment of a complete system of broadcasting, studio to home. The writer has been told this time and again by former Senator C. C. Dill, who was chairman of the Senate Interstate Commerce Committee in 1934. Reading of the act indicates the same.

The Commission, long ago should have made rules and regulations for any and all kinds of TV repeating devices for the filling in of dead spots or underserved areas created through establishment of its television broadcast system under its "Sixth Report and Order."

H.R. 13286 and S. 3017 are confirming Commission actions, taken 10 years too late, to have aided an orderly development of our U.S. television broadcast system.

I would like to call the committee's attention to two sections of the proposed bill.

Section 331 (a) 1, last 3 lines: Strike all of the wordage beginning with the word "both" and reading: "both the establishment and maintenance of broadcast services and the provision of multiple reception services;".

As a substitution for this wordage insert: "the establishment and maintenance of multiple broadcast services for all people;".

By this change in wordage the Congress will be telling the Commission, all members of the public must be treated equally, there shall be no privileged class, particularly at the expense of others. It is up to you, the Commission, to get busy and encourage the development of all the unused TV channels in the broadcast spectrum. This can easily be accomplished through the use of high-powered, unattended, station owned, TV translators, as used in other countries to supplement TV station coverage.

In paragraph (b) of section 331 the comma on line 24 should be changed to a period and all the rest of this paragraph should be eliminated, thus, paragraph (b) would read:

"(b) No community antenna system shall transmit over its system any program or other material other than that which it has received directly or indirectly over the air from a broadcast station."

This change is suggested so Congress will be telling the Commission it must do everything possible to make the U.S. system of television broadcasting the very best in the world. It must see that all programing is available to all people, rich or poor, country or city. The Congress would be telling the Commission that it must create that system with TV stations and other aids to reception. The system must be created and protected as a free reception, advertiser-supported system for all people.

Respectfully submitted.

E. B. CRANEY.

(The TV schedule for March 20, 1966, referred to, has been placed in the committee files.)

WESTINGHOUSE BROADCASTING CO.

Hon. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: The Westinghouse Broadcasting Co. (group W) respectfully requests permission of the Committee on Interstate and Foreign Commerce to submit its comments on H.R. 13286 as follows:

Group W is licensed to operate the following radio and television stations:

WINS, New York City.
WBZ/AM/FM/TV, Boston.
KDKA/AM/FM/TV, Pittsburgh.
KYW/AM/TV, Philadelphia.
WOWO, Fort Wayne.
WIND, Chicago.
WJZ–TV, Baltimore.
KPIX, San Francisco.

In addition, Clearview of Georgia, Inc., a related company, operates or is in the process of constructing four community antenna television systems in Georgia and has a franchise for a fifth system in Georgia. Micro-Relay, Inc., another related company, operates a microwave relay system in Georgia serving Clearview of Georgia, Inc., and other community antenna television systems (CATV) not owned by Westinghouse.

Group W welcomes congressional consideration of the subject of CATV and endorses the proposed CATV bill submitted by the Federal Communications Commission to Congress. For the reasons discussed in this statement, the potential impact of CATV on the present system of free, over-the-air television is staggering, and we believe it should be regulated by the FCC.

The FCC has been charged by Congress, in the Communications Act of 1934, "to provide a fair, efficient and equitable distribution" of broadcast service to all people of the United States. National television policy was more specifically defined in the report of the House Committee on Interstate and Foreign Commerce to the Congress at the time of enactment of all-channel-receiver legislation in 1962:

> The goal is thus a commercial television system which will (1) be truly competitive on a national scale in all large centers of population; (2) provide at least three competitive facilities in all medium-sized communities; and (3) permit all communities of appreciable size to have at least one television station as an outlet for local self-expression.

Community antenna television (CATV) has become a successful business in hundreds of communities throughout the country because it has responded to the desire of the public to be able to see a wide selection of programing not otherwise available. CATV has done this up to now by bringing television to homes where before there was none at all, or by bringing the three full network services to homes where before only a portion of the total network program service was received.

The proposition is now being urged by some, and essentially this was the issue before the Federal Communications Commission, that CATV should be permitted to go beyond its traditional role of a service supplemental to free, on-the-air television and become a service competitive with television, by bringing to areas presently receiving the great majority of television programing available, the signals of television stations hundreds of miles away.

On the face of it, it would seem that maximum utilization of VHF and UHF television combined with unrestricted expansion of CATV would result in the greatest diversity of television programing service. Unfortunately, the economics of television are such that this approach to the problem of satisfying the public appetite for a wide selection of programs would inevitably result in less, not more, programs from which to select. Probably the most important immediate effect would be the crippling, and, quite likely, destruction of UHF television.

It was the hope of Congress and the FCC that enactment of the all-channel-set law in 1962, and subsequent encouragement of UHF by the FCC, would enable UHF to bring a third network service to many two-station markets, and to bring

a fourth station as an independent station or perhaps as part of a fourth network to three-station markets. CATV could have an extremely destructive effect on the realization of this goal. There is no possibility that a UHF station struggling for existence against three VHF stations, or even two VHF stations, will not be adversely affected by the importation of the programs of several television stations from other cities and the necessary resultant fractionalization of audience.

While a CATV system may give a UHF station immediate access to a larger audience than might otherwise be the case, it will still be competing for actual viewers with established stations from outside major markets whose primary appeal is to that same segment of the total audience which represents the local station's viewer opportunity; i.e., those viewers who watch independent television station programing. Not only is this bad in terms of the simple arithmetic of audience fractionalization, but the outside stations, especially if they come from a market like New York or Chicago, will have an established audience position and thus economic base which will enable them to spend much more for programing than the local UHF station and thus enable the outside stations to preempt even more of the local audience from the local station. Since the audience for independent television station programing normally is much smaller than that for network programing (the audience for the three New York independent stations as a group normally runs from 24 to 27 percent), any injection of outside stations competing for the same audience (i.e., the audience for independent television stations) is bound to hurt. The local UHF station, competing with these major stations for this limited audience, will be unable to get a share of this audience large enough for it to produce the income necessary for the station to buy programing with which it can in fact compete for viewers with the other stations on the system.

Furthermore, although the UHF station's competition for audience is with local television stations and stations imported from other cities by the CATV system, its competition for economic life is with the CATV system itself as well as the other local stations. From the viewpoint of the UHF station versus the CATV system, this competition is basically unfair to the station because the programing it needs to compete for audience against the system (i.e., all of the other stations on the system) must be purchased in competition with other stations. On the other hand, the CATV system obtains its programing without having to enter into any competitive market for it.

In short, the UHF station will always be caught in a vicious circle from which it cannot escape without the direct injection of large amounts of outside capital, and perhaps not even then. And the availability of large amounts of capital in such a situation is obviously extremely uncertain.

CATV also has the potential of directly affecting television programing itself. Most CATV operators have contended that they have the legal right to pick up signals and relay them to areas where CATV would not be a service supplemental to television but, rather, would constitute an invasion of separate, integral television markets. This is a direct assault to the economic base of all television programing, and, conceivably, could have a disastrous effect on it. The economics of television program production obviously become impossible if a program, licensed for a fee to be broadcast in one market, can be carried in other markets without the corresponding return on investment represented by fees from those markets.

Furthermore, the somewhat troubled position of attendance at major sports events in relationship to home viewing, etc., would be seriously aggravated if CATV were permitted to vitiate the blackout rule. The results promise serious, negative public impact if the courts permit the blackout rule to be thus avoided. If the courts do not permit this, one of the major reasons for CATV (i.e., the availability of previously unobtainable programing) is eliminated.

CATV in big cities also has the obvious potential of transforming itself into pay television (i.e., a system where the subscriber must pay a separate fee for each program he wishes to see). Not too long ago, for example, there were news reports of a company which undertook a pay television experiment in Canada and was withdrawing apparently in failure. According to the report, this company planned to take over a major CATV system in another city and convert it to pay television in whole or in part. In another instance, in a public hearing on applications for a CATV franchise in Akron, Ohio, one applicant, in describing programing which his system would bring to Akron, stated that if he could not

legally take professional football games off the air from a television station in a nearby city and bring them to Akron on his CATV system when they were blacked out locally, he would probably buy the right to carry the games direct from the owners. The next obvious steps are the elimination of professional football from free television and the delivery of it over cable to homes for specific per program fees—in other words, pay television.

The collective impact of these factors would be the destruction of UHF as an additional service to the public, and, quite possibly, a serious, negative effect on all television programing. The congressional directive to the Commission, "to provide a fair, efficient, and equitable distribution" of broadcast service to all the people of the United States, and, specifically, to encourage the growth of UHF television, would be thwarted. We agree with the conclusion of the FCC that "community antenna television serves the public when it acts as a supplement rather than a substitute for off-the-air television service."

Granted that CATV brings in a selection of programs not otherwise available to local viewers, from the viewpoint of residents of markets already receiving the full three network services, however, this additional selection includes very little new programing. Furthermore, CATV only brings this service to some viewers—those fortunate enough to live in areas with a large enough local population to furnish an economic base for the laying of CATV cable, and then only to those living in such areas who can afford to pay CATV fees. The rest of the local population not only does not get the UHF programing destroyed by CATV, these families do not even get the television service for which it was exchanged. This latter problem could become particularly acute if, as at least one major applicant for a big city CATV franchise has predicted, all television will be on cable in 10 years. And, perhaps most important of all, the locally oriented television programing of the UHF station destroyed by CATV is lost to everyone, since it is not replaced by the CATV system.

Group W supports the FCC decisions in dockets 14895, 15233, and 15971. These decisions represent a practical compromise between the encouragement of UHF and the preservation of free, on-the-air, locally oriented television on the one hand, and, on the other, satisfaction of the public demand for a wide variety of programs. The millions of Americans throughout the United States living in areas not served by three or more strong television signals, and therefore unable to receive satisfactorily the major programing services, should not be compelled to wait indefinitely for this service. CATV can fill the television needs of such areas today and should be allowed to do so, particularly since there is little, if any, real opportunity for the early development of economically viable television service in those areas beyond that presently existing. In almost all of the top 100 markets adequate service is already available, and the contribution of CATV is necessarily minimal. In these areas, CATV can offer the viewing public not much more than a duplication of programing which either has been or soon will be available via the local stations. The one significant additional service would be sports events not otherwise available if, and only if, the courts do not uphold the right of the owner of such events to control or prohibit their presentation on CATV (i.e., there is no reason to suppose that the owners of a professional sports team now blacked out of an area on free, on-the-air television will permit it to be presented in that area on CATV). The conjectural loss of some sports events and the loss of immediate availability of rerun programing via CATV is a small price to pay for the development of additional, local, free, on-the-air television through UHF.

On the issue of whether the Communications Act of 1934 in fact gives the FCC jurisdiction over CATV, this question has been extensively examined already, and there is little purpose to be served in adding to the material already before the committee. CATV plays a necessary and active part in the transmission of television signals to, and the reception of such signals by, television receivers which cannot receive such signals at all or cannot receive them in usable form without the expenditure of considerable sums of money. The CATV system receives the signal of a distant television station, "handles" it electronically (i.e., amplifies it) and retransmits it, over a cable system constructed by the CATV operator, to subscribers. The CATV system, with respect to the community it serves, is obviously an essential factor in the broadcast of television programs to that community. Accordingly, group W is of the opinion that CATV, whether or not microwave is used, is clearly interstate communication by wire and group W subscribes to the Commission's memorandum on its jurisdiction and authority,

set forth as appendix B to the notice of inquiry and notice of proposed rulemaking, docket No. 15971.

Turning to the matter of proposed legislation, although group W is of the opinion that the FCC already has jurisdiction over CATV systems, whether or not they are served by microwave, we believe it desirable that this jurisdiction be confirmed by congressional act so that all doubts are resolved, and, accordingly, group W supports H.R. 13286.

Group W is opposed to the use of CATV as a vehicle for pay television, and for that reason is not opposing the proposed prohibition on the origination of programing by CATV systems, although a more direct consideration of the problem, its causes, and ramifications would appear to be desirable.

The Commission has raised the question as to whether the provisions of section 325(a) of the Communications Act should apply to CATV systems so that a CATV system would be required to get the permission of any station it proposed to carry before it could carry that station. Group W is strongly opposed to such a requirement. The public interest, which is obviously of primary concern here, is involved in two respects in this situation: how it may be affected in relation to (i) the people of the community served by the CATV system, and (ii) the ability of any television station carried by the system to serve the people in its own community.

As for the television station, we are unable to see how the mere fact of the carriage of its signal by a CATV system, wherever located, will in any respect impinge upon the ability of that station to serve the people in its coverage area. In fact, to the extent that the CATV increases the size of the station's audience, the ability of the station to serve its community will be enhanced.

On the other hand, in determining what the public interest requires in the way of television programing to be made available to the residents of a community, it would seem to be clearly unwise to leave that decision to a television station located many miles away which does not have the primary responsibility for serving the public interest in that community. Furthermore, a television station granting permission under section 325(a) could require the system to make some sort of payment. The station's idea of what a system should pay and what the system can, in fact, pay can be totally different, with the results that a system could be put out of business or its customers could suffer a loss of service or increase in cost, perhaps to the point where many of them could not afford it.

One final point: even though the FCC may have the authority to act, there always remains the question as to whether it should act, and, if it should, what action should be taken.

No one has disputed the proposition that as many Americans as possible should get as much and as good television service as possible. The issue before the FCC was, What is the best means to accomplish this objective? The FCC believes, and group W agrees, that locally oriented television programing is vital to each community, and such programing can best grow through the encouragement of UHF. Given the impact of CATV described above, this means that, in balancing the various needs and interests in the situation, UHF should be protected, at least initially, in areas where the local residents are receiving the three full network services, and CATV should be encouraged to continue on its original basis—as a service supplemental to television broadcasting, not in competition with it.

Group W believes the second report and order represents a good balance of the various public needs found in this situation and for that reason supports it and recommends congressional support through enactment of H.R. 13286.

Respectfully submitted.

WESTINGHOUSE BROADCASTING CO., INC.,
CHARLES C. WOODARD, JR., *Vice President*,

D. C. HEATH & CO.,
HEATH DEROCHEMONT DIVISION,
Boston, Mass., March 18, 1966.

To: The chairman and members of the Committee on Interstate and Foreign Commerce.

Subject: A statement of position on legislation before the Committee on Interstate and Foreign Commerce, special hearings on H.R. 13286 and H.R. 12914.

Health deRochemont Co., as an independent film and TV producer/publisher, wishes to make this statement for the record before this committee.

SUMMARY

To summarize, we support in general the proposed legislation with regard to FCC regulation of CATV. We strongly urge, however, that the committee incorprate in this legislation a requirement that the FCC in its regulations spell out specific prohibitions, going beyond the limited carriage and nonduplication protection provisions presently existing. CATV stations or networks should be required to pay the producers for the rights to disseminate their programs, or should be prevented by legislation from disseminating these programs in an ETV area.

STATEMENT OF POSITION

1. There is need in the proposed legislation to express definitively that it is the intent of Congress to afford protection to the owners of program property (copyright owners) with respect to all CATV operations, particularly in the light of existing copyright law and the custom of the TV industry in general.

2. The FCC's second report, 66–220 80218, which serves as a precursor for the legislation now under consideration, indicates the need for the regulation of CATV operations. We concur in many of the findings of the FCC. We are in favor of including CATV operations in the overall jurisdiction of the FCC as proposed in this legislation, or as an amendment to the Communications Act per se.

3. The aforementioned FCC report does not take sufficient cognizance, however, of the problem of the independent producer of programs confronted with the facts of CATV operations. In fact, what little protection existed under the former "15-day rule" has now been further diminished by the substitution of the "same day rule." There are, therefore, in our opinion no valid protections or remedies afforded the independent program producer in the regulations and procedures, at least as outlined in the FCC's second report. This is a most serious deficiency when one considers that CATV stations or systems have absolutely no right to pick up and retransmit programs that they do not, in fact, pay for, while at the same time offering these programs to the general public for a fee.

4. The FCC has, in effect, as outlined in its report, treated all the TV interests involved in one category and has hardly considered the program producers. We concur in the arguments presented in the FCC preliminary hearings by representatives of the NAEB, the EEN, and the representatives of independent stations. It appears to us that the arguments of these organizations have been summarily rejected on the basis that CATV presents no major hardship to this segment of the TV industry. We must disagree with the FCC's findings even though we have no operational affiliation with any of these organizations, and suggest that mere convenience or expedience has motivated the FCC's majority rule.

5. It appears to us that the FCC is overly preoccupied with expanding its own province and justifying its own extensive prerogatives. Therefore, let Congress make it clear to the FCC and the CATV operators that the protection of the producers property rights in the form of program material is of primary importance and that the FCC has, insofar as its jurisdiction extends, a duty to protect the interests of the copyright owners, even at the expense of the continued existence of, or expansion of, CATV. It would seem to us that quality programing is more important to the growth of the ETV industry and better serves the general public interest than does the mere erection of antennas which pirate the signal of others.

6. The independent producers usually cannot, as a practical matter, afford to present his case, perhaps time and time again, before the FCC or to sue in the courts of law for violations of his copyright. The producer would not have the time or funds to do much else. We suggest that Congress act in this instance. The hardships of seeking redress under existing remedies weigh particularly heavy on those producers of quality educational programs who derive their revenue largely from tax-supported institutions, at rates far below those existing in the general commercial TV market.

7. As producers/publishers of important quality educational programing, utilized today by several million American schoolchildren, programs created at considerable expense and effort, we cannot allow our programs to be disseminated by CATV operations without some remuneration being afforded us. Schools are required to pay us or the ETV station for the use of our programs.

Moneys derived help to repay our original investments and provides us with funds to create more programs as the need of the schools demand. Furthermore, a large share of our revenue for repayment is derived from the sale of our TV rights to the educational TV network, NET, and from other fees incidental to the telecasting of our programs via independent educational and commercial TV stations. Attached hereto is a copy of our policy with regard to open circuit telecasting of two of our programs. These policies are designed to afford us some measure of exclusivity by putting the TV stations and networks on notice that they must be licensed to use our copyrighted programs.

Without these requirements written into law and regulation, independent producers are faced with the likelihood of such serious loss of revenue as a result of CATV operations as to result in discontinuing creation of production of quality programs for education altogether, thereby withdrawing from participation in the development of educational TV to the eventual detriment of our schools' curriculum.

The FCC should be allowed to regulate those communication agencies who, for their own benefit, either treat lightly or ignore the rights of others. The FCC exists to afford a measure of regulation within its jurisdiction and thereby to protect the special rights of all concerned. We trust that Congress will require the FCC to broaden the protection in its reguations and that, by so doing, put the power of the Federal Government behind the legitimate protection of private property.

Respectfully submitted.

HERBERT W. PLIMPTON,
Vice President.

WTTV,
Indianapolis, Ind., April, 11, 1966.

Chairman HARLEY O. STAGGERS,
House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: Thank you for the opportunity of stating our views in support of the FCC's regulation of CATV.

As a nonaffiliated television operator we cannot stress too strongly our concern about the dilution of audience which would occur if CATV systems were permitted to bring into our market in Indianapolis the programing of other independents.

Therefore, we most urgently recommend that phase of regulation which prohibits the importation of distant signals. We think this prohibition should also be extended to all CATV systems operating within the grade B, as well as the grade A contour of the station being protected.

As you know, there is no effective way of giving an independent television station nonduplication protection, for no two independents schedule their programing at the same hour, or the same day, or even the same week.

Therefore, the only way an independent can be protected is if the CATV systems are prohibited from bringing into the market other independent program services.

I would urge you, in your discussion of proposed legislation, to give strong consideration to the peculiar problems of independent television stations. Most of the new UHF stations which the Commission is hoping to foster will be independent nonnetwork stations. They, like the independents already on the air, operate with much smaller audiences and much smaller margins of profit than do the network affiliated stations. For that reason they are much more vulnerable to the fragmenting and diluting effect of the additional programing which CATV makes available.

Sincerely,

ROBERT G. HOLBEN, *Manager.*

WDAU,
Scranton, Pa., April 15, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: WDAU–TV feels it necessary to reply to the testimony offered before your committee by Mrs. Dorothy Mugford on legislation with respect to community antenna television systems.

Mrs. Mugford based her testimony in large part on her employment by WDAU–TV during the years 1957 to 1960. We wish to make clear that her views with regard to alleged benefits of present-day CATV proliferation to UHF television are not shared by this station or any other station in the Scranton-Wilkes-Barre market.

We believe it is also pertinent to note that Mrs. Mugford was employed in a promotional capacity by a large CATV developer following her association with two UHF stations in this market—a fact that was not disclosed to the committee according to the transcript we have examined. It is our understanding that Mrs. Mugford continues to have an interest in CATV expansion.

In any case, Mrs. Mugford's testimony founded on observations 6 to 9 years ago as an employee of WDAU–TV can hardly be considered relevant to the issues now before the committee. It is precisely the changing character of CATV during more recent years that has alarmed so many licensed broadcasters and the Federal Communications Commission and led to the hearings of your committee.

WDAU–TV strongly believes that no community should be denied a basic television service of three network affiliated stations and we have no quarrel with CATV systems which are providing this service in areas without access to the signals of the licensed, free stations. As a matter of fact, we have cooperated with these systems to the extent of supplying some of them with electronic gear and technical advice so that they might improve the quality of their service to subscribers.

The new CATV that has emerged, however, has no relationship to the original community antenna concept and it is indeed unfortunate that it has been permitted to masquerade under that heading. We believe that it would be much simpler to deal with the overall problem if some method could be found to distinguish between those CATV slstems which are providing a needed service and the systems which are in the field to reap a profit at the expense of the free television system and the American public.

We can tell you most emphatically that unless the rules and regulations recently promulgated by the FCC are permitted to stand there is very real danger that more than 1.5 million persons in the Scranton-Wilkes-Barre television market will lose their basic, free television service. The struggle of the three UHF stations for economic survival has been an uphill one and unrestrained CATV entrepreneurs can quickly force one, two, or all three stations off the air. The 161,570 set owners in Lackawanna and Luzerne Counties alone would be compelled to pay almost a million dollars a month at going rates for cable television service.

The seriousness of the problem is indicated by the fact that there have been almost 100 applications for CATV franchises in some 50 communities within the contours of the local stations in the past 2 years. Many of the operating systems within the contour refuse to carry the local stations and have duplicated their programing. In fact, the system in Hazleton—third largest city in the market—has repeatedly refused to carry the local stations while duplicating their network programing from distant points and is at the moment seeking a waiver to continue this harmful practice. Many subscribers, it should be noted parenthetically, with substantial outlays in CATV installation fees and monthly charges are reluctant to spend additional money for set modifications or antenna equipment necessary to receive the local news and other local programing.

The CATV picture in the Scranton-Wilkes-Barre market has, in summary, changed quite drastically from the rosy one painted before your committee by Mrs. Mugford. Developments in the 6 years since she has been employed by WDAU–TV pose a grave threat to the local stations and open up the possibility of enormous monthly bills for television service for the people in this area.

WDAU–TV fully supports the action of the Federal Communications Commission and believes it is the minimum step necessary for the preservation of UHF and free television in the United States.

We hope that this statement can be made part of the record of the hearings on legislation with respect to community antenna television systems.

Sincerely,

MADGE MEGARGEE HOLCOMB,
General Manager.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Kansas City, Mo., April 9, 1966.

Hon. HARLEY STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: The NCAA Television Committee and its members have been following with interest the recent hearings conducted by the House Committee on Interstate and Foreign Commerce, particularly those developments having to do with the general subject of CATV systems.

Our committee is primarily concerned with the operation of a television plan first adopted by the National Collegiate Athletic Association in 1951—and revised and renewed at intervals ever since—in an effort to preserve intercollegiate football despite the threat posed for it by competition with televised sports. In this connection the policy of benevolent restriction embraced from the outset by our organization has produced beneficial results, and college football, learning to live with TV, has continued to prosper and continued to provide the advantages of participation to college undergraduates everywhere.

Two objectives of the NCAA TV Committee have been to hold to a minimum the adverse effects of live television upon football game attendance, and to provide football television to the public to the greatest extent possible without damaging that attendance—attendance which, incidentally, assures through resultant gate receipts that vital support will be given to the multisports college athletic and physical education programs so beneficial to entire student bodies. One of the means to the latter end has been the telecasting on Saturdays, in addition to the regularly programed game or games, of other contests whose exposure does no appreciable harm to games being played simultaneously. Obviously, because of their very nature, these latter events must be shown only in certain limited areas where no other games are taking place.

With the spread of CATV systems it is becoming extremely difficult to administer this part of the program, since the areas of release can be extended by CATV into places where the aforementioned damage results. This situation suggests that we may have to abandon the practice of authorizing these extra telecasts, a move which our committee would be most reluctant to make. It is CATV which has created this problem for us, since the extension of the authorized areas of coverage for these additional telecasts is tending to destroy some of the essential protective features of the NCAA plan of procedure.

In view of the foregoing, you will understand that the NCAA Television Committee is pleased by the prospect that the Federal Communications Commission's exercise of jurisdiction over all CATV systems may become permanent. In addition, we are hopeful that it will become regular practice for CATV systems to seek consent from the principal parties to a telecast before such program can be carried by them.

Please be assured that the NCAA and its television committee stand ready to cooperate fully in this matter, in any and all ways possible, with the House Committee on Interstate and Foreign Commerce, and also with the FCC.

Sincerely yours,

ASA S. BUSHNELL.

ALABAMA PUBLIC SERVICE COMMISSION,
Montgomery, Ala., April 14, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
House Office Building, Washington, D.C.

DEAR SIR: I am well aware that those of our fellow citizens who operate on a national level, such as our Congressmen, Senators, and Federal civil service employees, have a tendency to feel that Federal regulations for everything is best. Being a part of the Federal Government, they feel that it is benign and will do the right thing.

Unfortunately, this centralization of control is dwarfing initiative and destroying any practical application of the time-honored principle that local government most nearly conforms to local well being. Since the country as a whole consists of the aggregate of its localities, this means, in the long run, the best interests of the country not only locally but as a whole.

As chairman of the Alabama Public Service Commission, I urge you to leave to the States the maximum area of regulation of the CATV industry. I am aware

that the National Community Television Association, Inc., opposes State participation in their regulation. I can only say that those to be regulated should not be the ones to determine the identity of their regulator.

This burgeoning industry should be carefully observed not only through Federal eyes but through local eyes closer to the scene of the activity of the industry.

Very truly yours,

EUGENE "BULL" CONNOR, *President.*

ILLINOIS COMMERCE COMMISSION,
Chicago, Ill., April 11, 1966.

Re State and local CATV regulation.

Hon. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: Your committee is now considering H.R. 12914 and H.R. 13286 relative to the above subject.

The National Association of Railroad & Utility Commissioners have proposed an amendment thereto which would reserve unto the State legislatures the determination of whether or not the rates and services of the CATV industry should be regulated.

I personally feel that this is vital. True, many State legislatures may not pass such legislation, but I believe that the CATV industry is bound to become so large that eventually such regulation will be necessary and public demand will result in the State legislatures passing such laws. Presently, Connecticut is the only State with such laws.

I know that it is true that the CATV resists such regulation, but I believe that any action taken by Congress should not be such as would deny the power of decision in this matter to the respective States.

I would therefore solicit your support for the aforesaid amendment to the bill.

Respectfully yours,

JAMES W. KARBER, *Chairman.*

LITTLE FALLS VIDEO,
Little Falls, Minn., April 6, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN STAGGERS: As manager of Little Falls Video (a CATV system), a division of TeleVision Communications Corp., of New York, I should like to respectfully urge that your committee explore all the aspects before a decision is made which may hamper CATV systems in what the FCC refers to as "locally originated TV programs."

Little Falls is only a tiny part of the viewing audience using CATV facilities. However, the 1,000 families subscribing are proud people and would resent, I believe, strongly, if the Federal Government should deprive them of the opportunity to check on their local weather conditions when they wished to do so. They would resent, too, the loss of public service announcements furnished to them on our time-weather channel through the courtesy of our leading bank.

For instance, on March 8, the service flashed the local residents the results of the city elections as they came in, 9 hours before the local radio station could get on the air the next morning and 16 hours before the only local paper was on the streets.

There have been occasions (and often) when our local weather channel was helpful to mothers who wished to know about disrupted schoolbus schedules and salesmen concerned with road conditions. You are aware, I am sure, that in Minnesota such things happen during the winter.

This weather channel, used by the bank for public service announcements as well as advertising, does not compete with anyone or any type of news or entertainment media. It is simply a means whereby a local resident may check out weather conditions anytime he wishes and see at the same time that the Red Cross needs volunteers or where the next church bake sale is to be held.

Therefore, I ask that before your committe may be tempted to render an adverse decision that it give serious consideration to the day-to-day pleasures in which we feel the people should be unrestricted in their enjoyment.

Most sincerely,

LOU ANGELL, *Manager.*

LINE MATERIAL INDUSTRIES,
Milwaukee, Wis., March 21, 1966.

Hon. JOHN H. BUCHANAN, Jr.,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BUCHANAN: Recent action of the Federal Communications Commission indicates an attempt by the FCC to regulate the CATV industry by usurping powers specifically delegated to the Congress of the United States. It is not the advent of regulation which is our concern, but the fact that the FCC is approaching this important step in a highly irregular way, without congressional direction or approval.

As a constituent of your district, I urge that you support recent action taken by Congressman Walter Rogers of Texas, chairman of the House Subcommittee on Communications, to have regulation of CATV handled properly through congressional action.

Thank you.

DANIEL P. LEACH,
Regional Vice President.

BIRMINGHAM, ALA., *January 21, 1966.*

Mr. E. WILLIAM HENRY,
Chairman, Federal Communications Commission,
Washington, D.C.

DEAR MR. HENRY: For many years those of us in Birmingham and the surrounding territory waited rather patiently for the FCC to allot a third television channel to one of several operating companies who were bidding for the channel. Early last year UHF channel 42 was awarded to a group who have since started transmitting and as a result of this, many thousands of people have invested a great deal of money purchasing television sets with UHF tuners, updating old sets by the addition of converters, and in the purchase and installation of the necessary antenna systems to receive this station.

Prior to the advent of channel 42, WAPI transmitting on channel 13 apparently had contracts with both CBS and NBC and did a very effective job of selecting which programs, transmitted by the networks, would or would not be seen in the area and at the same time giving us a full diet of Monday through Saturday night movies. Many of us had hoped that the assignment of a third channel to Birmingham would end this practice. However, sad but true, this does not appear to be the case. As evidence of this, I am attaching just one of several articles which have appeared in the Birmingham News during the week of January 10, 1966, illustrating how programs are being changed from channel to channel with utter disregard for the public. This is borne out by the fact that we are being subjected to up to 6 days' delay in the transmission of some programs and must view many programs, if we are to see them at all, in black and white when they are originally distributed by the networks in color. In the meantime, we are still being subjected to our diet of Monday through Saturday night movies, many of which are being shown for the second or third time, while the new UHF station is left with a meager selection of the less popular network programs to transmit.

It was my understanding that the Government is interested in the formation and operation of UHF stations on a nationwide basis and certain laws have been passed forcing television manufacturers to include UHF tuners on all television sets produced since July of 1964 or 1965, to facilitate this program. This being the case, I feel quite strongly that the situation in Birmingham should promptly be investigated and the present situation alleviated to the point where the present "public be damned" attitude of stations is corrected and we will be able to view network programs when they are transmitted, be it in color or black and white,

even if it requires the deletion of a few old movies from the present program schedules.

Very truly yours,

C. E. BRACKETT.

WHTN–TV,
Huntington, W. Va., March 24, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Interstate Commerce Committee,
House Office Building, Washington, D.C.

DEAR REPRESENTATIVE STAGGERS: As a citizen of West Virginia and as general manager of television station WHTN–TV, I would like to express to you my deep concern about the apparent efforts being made toward stifling the growth of CATV. Whether by reasons of terrain, which is the case in West Virginia and the Appaliachian area or just because of distance alone, many communities which now enjoy a wide choice of television programs would be without these services were it not for CATV.

We know from letters we have received, from conversations we have had, and from firsthand knowledge that CATV has made it possible to better serve all of our communities. It seems apparent to us that what is available in the larger metropolitan areas should be made available to everyone. That is, a wider choice of programs and a broader choice of ideas.

It goes without saying that if television is to serve the needs of people it must be able to make available to them the service of all networks as well as the additional variety of local programing that only a number of stations could provide.

In our immediate area, for example, there are many blind spots in which the signal of one or more of the local television stations is either very poor or completely impossible to receive. Were it not for CATV many of the people in our area would be without the wide choice that is available to them now. In other communities which are far distances from larger metropolitan areas and therefore unable to receive and because of size to support television stations on their own, CATV has brought the same quality of television, the prerogative of choice and most important the same opportunity for the desseminating of information.

It is our feeling that because of CATV our programs and the programs of other stations have been made available to many in spite of distance or terrain problems, and we are promulgating the basis for television's existence that of service to a wider community.

It is my hope, sir, that in rendering any judgment or opinion you will keep in mind that as a broadcaster we feel that CATV has a definite place because of the service it renders. We endorse it without limiting regulations.

I am delighted to know that you will be speaking at the West Virginia Broadcaster's Convention in April, and I will look forward to meeting you and perhaps discussing this further at that time.

Respectfully,

O. W. MYERS,
Executive Vice President.

OTTAWA TV CABLE CO., INC.,
Ottawa, Ill., March 21, 1966.

Hon. CHARLOTTE T. REID,
House of Representatives,
Washington, D.C.

DEAR CONGRESSWOMAN REID: Thank you for your personal reply of March 18, 1966, along with a copy of the House of Representative bill 13286. You solicited any statements I might wish to make. I would like to offer the following comments:

(1) The proposed amendment is simply asking for power of complete regulation without showing need for or method and practices planned. To date there has not been one shread of evidence that any regulation of CATV systems, either microwave fed or without would be in the public interest. The only industry that can possibly be served by regulation of CATV would be the interest of the now operating broadcasters and that certainly is without conclusive proof.

(2) Television transmission is supposed to be in the public interest, convenience, and necessity. No television station can claim true local service for all the communities in its coverage area. This is especially true in the fringe area where CATV has been so predominant. I contend that origination by CATV systems is very definitely in the public interest simply due to the fact that they are local in nature and are of content that is of interest to the public being served by the CATV system. I might add that the morality and quality level of the CATV originated programs, I have seen, rate far above some of the regularly scheduled programs of the networks and the local TV stations.

As a conclusion it is my opinion that the FCC has overstepped its jurisdictional boundaries by issuing orders regulating CATV.

The mere fact Congress is still studying the matter and bills are now being introduced for committee and floor discussion is very definite proof of this point.

I would certainly appreciate anything you might be able to do to correct this situation and any action that could be taken to prevent reoccurrence either by the FCC or by other staff bodies of the Government.

I remain,

Very truly yours,

CLARENCE E. ROSS, *Manager.*

MONTGOMERY, W. VA., *March 22, 1966.*

Representative HARLEY STAGGERS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR SIR: I am the president of the Montgomery Television Association, Inc., a nonprofit cooperative corporation which was formed in 1952 for the purpose of providing our members with better television reception than they would otherwise be able to receive individually. We provide service from the three major networks, NBC, ABC, and CBS to a total of 225 members. We do not have any fixed fees, and our operation is financed by equal assessments against all members. At the present time our assessment rate is $32 per year per member.

It is my understanding that your committee has two bills up for consideration dealing with the regulation of CATV systems by the FCC, which agency recently ruled that they had the authority to regulate all such systems, whether microwave or not. While I do not have the text of the two bills, it is my understanding that H.R. 13286 embodies the proposals given by the FCC in their second report and order (FCC 66-220), while the other bill, H.R. 12914, would prohibit the FCC from exercising jurisdiction over nonmicrowave CATV systems.

On behalf of myself as an individual and also on behalf of the members of the association, I would like to present for your information and consideration the following comments on the problems involved as they might apply to our system and to our area.

In the first place, in areas like ours, if off-the-air signals of reasonable quality were available to all persons, there would be no need or demand for CATV systems. Even if one were installed, it would be difficult for it to survive for many would not subscribe to the service, even thought they might be able to do so. The FCC seems to feel that the growth of CATV systems will tend to prevent the establishment of so-called community stations on UHF, and thus stunt the growth of a nationwide system of UHF television stations. The Commission chooses to ignore the hard fact that in the majority of the smaller communities there simply would not be enough advertising revenue to support any kind of television station, either UHF or VHF. I am the engineer at a local AM broadcasting station, and if someone would present us with a fully equipped television station free, it would be impossible for us to take in enough money to keep it operating, let alone show a profit. They are always talking about the growth of UHF in the smaller markets, yet nobody has the answer to the question of how such a venture can be financed.

Antenna reception in our area is spotty, with the average signal level less than 50 microvolts. This would be adequate for fair reception were it not for the ghosting problem which is fairly common, and the various forms of electrical interference which are always present to some degree in any build-up area. CATV antennas are, as a rule, located in areas where such disturbances are

not normally present, and if the distribution cable is properly installed, it will pick up little or no interference, even in a noisy location.

In their Report and Order, the Commission shows a degree of discrimination in that they exempt systems with less than 50 subscribers and apartment house systems with no limit on the number of outlets from the requirements of their rules. Thus in the larger cities it is quite possible that there will be some apartment house systems serving more people than we do, yet we will be required to do things that the apartment house system is not required to do. It would seem to me that if regulation is required that it should apply equally to all.

I feel rather strongly that it is not right to prohibit a CATV system from offering its customers reception from certain stations that might be available to the individual from his own antenna, yet in some cases that will be what will happen if the proposed rules are enforced as written. In our area there is a possibility that this will happen due to the combination of the "local station" rule and the nonduplication rule. We have two CBS signals available here, one from Oak Hill and the other from Charleston. At present we carry the Charleston signal because most of our members prefer it and our community is more closely allied with Charleston than with Oak Hill. Yet it may be that we will have to deny our members reception of the Charleston signal if we are required to carry the Oak Hill signal.

In effect any CATV system is merely an extended lead to a common antenna array, and in receiving and distributing the signal to its customers for a fee, it would seem that the system is merely acting as agent for the individual set owner, and as such an agent, he would be more or less guided by the set owner's desires in the way of reception. If there are to be no restrictions placed on the individual set owner, then why should restrictions be placed on his agent?

Another great fear of industry and the Commission seems to be that they think the CATV industry will gradually grow into some sort of a "pay TV" affair. I must admit that there is such a possibility, especially if the quality of the "free" TV programs continues to decline. So, if the CATV system can offer an attractive program schedule day in and day out and the public is willing to support it, what could be wrong with it? However, in all frankness, I must admit that if I were called upon to decide the question as of now, I would vote to bar a CATV system from originating programs on their own other than the usual time and weather channel so widely used on the larger systems.

In the majority of cases I feel that the public interest would be best served by placing as few restrictions as possible on CATV systems not using microwave, for in most cases off-the-air pickup would be limited to stations not more than 125 miles away at the most. Any signals from stations at a greater distance would likely be too unreliable to be offered as a regular service. In the case of microwave systems, it might be in the public interest to limit the distance over which signals might be imported, with exceptions being made in cases where only one service or none at all was available off-the-air.

To sum up, I feel that nonmicrowave CATV systems should be allowed to carry any signals that they are able to pick up off the air without restriction and without being subject to the nonduplication rule. After all, a network program will be the same no matter what the station, and let the rules of competition apply to the local shows—if they are good, people will watch them, even if they originate in Dogpatch.

I trust you will give my comments on this subject your closest attention. I am enclosing an extra copy for your convenience.

Sincerely yours,

MONTGOMERY TELEVISION ASSOCIATION, INC.,
J. C. CRAVER,
President.

BLUEFIELD TELEVISION CABLE,
Bluefield, W. Va., February 7, 1966.

Hon. JAMES KEE,
House of Representatives,
Washington, D.C.

MY DEAR CONGRESSMAN KEE: So far, all proposed rules to regulate our industry are for the sole benefit of the television broadcasters. If our industry is handcuffed by the present proposed rulings, the people we serve are the ones really being hurt.

The two most prominent rulings I object to are the "15 days before and after" clause and the microwave limitation being presently studied.

Here in Bluefield, our system is presently undergoing a modernization to convert our present four-channel system to a high-band system. We had begun our plans last summer. Included in our plans were to bring the three independents from New York City to Bluefield for our subscribers. By obtaining the three independents from New York City, we would be able to offer our subscribers their choice of the three major networks plus the variety offered by the nonduplicating independents. Without the additional choice of the 3 independents, we could put up to 12 channels on our new system and still only have the 3 basic programs offered by the networks.

I sincerely cannot understand why, as long as we are willing to pay for the microwave service, we cannot increase our subscribers' viewing potential from three programs to six at any given time of the broadcasting hours.

In simple basic terms the FCC will be telling the people of West Virginia that they cannot watch programs from New York City, even though they are completely different from the regular network programs and would certainly add to their television viewing pleasure.

In our case, the microwave limitations are the most objectionable rules proposed to regulate our industry.

I surely hope that you will agree with me, especially on the microwave rulings, and with your aid something can be done to preserve the freedom of television viewing here in West Virginia.

Thank you.

Respectfully yours,

W. F. HEINBACH, *Manager.*

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., March 22, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR HARLEY: At the annual meeting of the American Farm Bureau Federation in December 1965, the voting delegates of the member State Farm Bureaus adopted the following policy on regulation of community antenna television systems:

"We urge that the Federal Communications Commission promptly adopt regulations governing community antenna systems to insure that such systems do not impair free radio and television broadcast services to rural areas. New legislation in this area should not preclude the Commission from taking those actions authorized under existing legislation."

We commend the Federal Communications Commission for its recent adoption of regulations to regulate CATV in the public interest. This is a step forward in helping to keep free local and area broadcasting service available to our rural people.

The American Farm Bureau Federation expresses its support for H.R. 13286, which authorizes the Federal Communications Commission to issue rules and regulations with respect to CATV systems. We believe practices of CATV which tend to undermine free local and area broadcasting services should be subject to reasonable regulation by the Federal Communications Commission. This bill will provide that authority. We stress, however, that any legislation should be in conformity with the longstanding policy of preserving and developing free television service through local stations.

We are opposed to H.R. 12914 which would prohibit the Federal Communications Commission from regulating CATV. This legislative proposal is contrary to AFBF policy and offers no comfort to rural Americans who cannot, or do not, choose to pay for television service.

Our concern is for the large number of farmers and ranchers who cannot be served economically by CATV. These citizens depend heavily on local and area broadcasting for news, education, and entertainment. Any impairment of these free services caused by the unregulated growth of CATV would be contrary to the best interest of rural people. Local broadcasting remains the lifeline of most rural communities.

Again, we would request that your committee favorably report H.R. 13286 and defeat H.R. 12914. Such action will serve the best interest of rural America.

We respectfully request that this letter be made a part of the hearing record.

Sincerely yours,

JOHN C. LYNN,
Legislative Director.

MCGINTY'S ATLANTIC COAST TV CABLE CORP.,
Atlantic City, N.J., April 4, 1966.

NATIONAL COMMUNITY TV ASSOCIATION, INC.
Transport Building, Washington, D.C.

GENTLEMEN: Atlantic City, long known as one of the Nation's leading convention cities, the home of the Miss America Contest, the summer vacation land, is, in truth, also among the top 10 economically depressed cities in the United States.

As you well realize, a stable economy cannot be developed in our city based on 3 months of summer tourist trade, leaving a large share of the city's labor force inactive for 8 to 9 months out of the year.

National conventions are the lifeline of our economy and our program has been geared to generate greater interest in our city as a year round convention center.

Atlantic Coast TV Cable Corp. is playing a vital role in attracting more conventions to Atlantic City by making available its facilities for closed circuit television which originate at Convention Hall and transmit convention programing to delegates throughout some 12,000 TV sets in motels and hotels in Atlantic City. Atlantic Coast has been lauded for its efforts by virtually all the leading city fathers, our Congressmen, the convention bureau, and 93 percent of the leading hotels and motels for its efforts in attracting new interest in this city as an important convention city by the availability of its closed-circuit television facilities.

Atlantic Coast is currently performing a serivce that could not be performed by any other media. It does not and will not interfere with originating television stations locally or nationally. This 24-hour-per-day, closed-circuit programing cannot be accomplished by any other means than by our local CATV system.

It must be clearly understood that the extent of our program origination is only within the complex of the convention headquarters and delegates in various hotels and motels in Atlantic City. It is not a local consumer product, competing with TV time. Further, all program origination is effected by the convention group, such as the recent American Association of School Administrators who telecast vital new educational information to some 12,000 delegates throughout the city. This important convention has come to Atlantic City for the past 3 years because of the vital communication link that our system offers.

As we interpret recent FCC rulings regarding CATV, it is necessary to secure permission to originate and telecast programing over our closed-circuit system.

We are concerned about this ruling, as are many city administrators who look hopefully to a more prosperous year of conventions to stir our depressed economy. Therefore, we would like to know:

(1) Does this rulemaking affect a closed-circuit system such as our convention service?

(2) If so, may we have your permission to continue such programing?

As you can appreciate, it is necessary to plan our convention programing far in advance. Arrangements have been made to extend our service to the American Psychiatric Association for May 9 through May 13. It is imperative that we hear from you in the very near future to accommodate this convention.

Very truly yours,

HUGH MCGINTY, *President.*

RADIO JOE'S RADIO & TV SERVICE.

DEAR MR. CONGRESSMAN: In view of the desperate campaign now being waged by the pay cable television (CATV) industry to flood Congress with letters and telegrams requesting you to order the FCC to postpone or even abandon regulation of CATV, I respectfully request you lend your full support to the FCC in performing its duty to protect the public interest by passing much needed regulations for CATV.

CATV systems, most of them monopolies, have grown so rapidly, taking programs off the air without anyone's permission, and in many cases charging such

exorbitant rates, that they are threatening the full development of American free television, as envisioned by the Federal Communications Commission's table of frequency allocations. Particularly menaced are plans for new UHF stations which hundreds of communities expected to see built after Congress gave UHF a boost by passing the all-channel receiver law. Free broadcast television, if encouraged according to FCC rules and with the aid of the all-channel legislation, could vastly multiply the number of local stations to cater to local needs; provide a forum for discussion of local issues; encourage local talent; and serve local consumers and local business. But this possibility of local TV stations is gravely threatened by unregulated CATV which seeks only to skim off the cream.

I am sure you must be deeply concerned, as I am, by the fact that CATV systems are under no obligation to present both sides in a political campaign or in the discussion of controversial issues, although the FCC requires this in broadcasting. CATV can present only one side if it so chooses.

Moreover, most of the channels reserved for noncommercial educational stations are in the UHF band, and the plans for new stations on these channels, are seriously threatened by CATV.

I am sure you are familiar with the fact that the Interstate Commerce Committee of the House held extensive hearings on this subject and that the FCC is acting—or is expected to act—only after years of study.

I respectfully urge you to support the FCC in its statutory duty to protect the public interest and exert proper control over CATV, so that American may have the fullest possible development of its system of free television.

(While this a former letter I have read it carefully and am in funll agreement with its sentiment).

Sincerely,

JOE L. SMITH.

CHILLICOTHE TELCOM, INC.,
Chillicothe, Ohio, March 17, 1966.

Representative HARLEY O. STAGGERS,
Chairman of the House Commerce Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We are a community antenna television system (CATV) which is extensively involved in program origination; and since your Commerce Committee is considering an investigation of CATV, we want to apprise you of our operations. We feel your committee will be interested in knowing about our particular type of CATV program origination and the potential such originations hold in those small communities having no other television station.

In the way of background information, Chillicothe Telcom, Inc., is a wholly owned subsidiary of the local independent telephone company, the Chillicothe Telephone Co. We began operations in September 1964, and today have almost 2,400 subscribers. Chillicothe has a population of 26,000, with about 8,400 homes, and has one newspaper, two radio stations, but no television broadcast station. We offer nine (9) "off-air" television signals (none of our signals are via microwave). Our subscribers pay the same monthly rental as do most CATV subscribers in the United States; i.e., $5. As an extra service, Telcom operates channel 2, a closed-circuit television station which concentrates almost exclusively on the local scene, programing about an average of 3 hours per day, 5 days per week. The programing is noncommercial in the sense that there are no commercials or sponsors.

In the bill submitted to both Houses of Congress, the FCC is recommending that no CATV be permitted to originate programs, except upon an express finding that it would serve the public interest, in which case exceptions could be made. We are quite concerned about this proposal since any blanket prohibition would rule out our channel 2. Furthermore, the FCC in explaining its ruling has said that exceptions would necessarily have to be limited, and has cited as examples meriting such exceptions only "time and weathercasting."

We realize that the problems and potential of CATV originations are complex, and vary greatly from system to system and from city to city, but we feel qualified to speak for CATV's in small communities. In these communities, we think the FCC and Congress should encourage, not prohibit, CATV's to provide the local public affairs type of program origination we attempt to offer. Chilli-

cothe, as most towns our size, has no TV station, but certainly Chillicothe benefits as much as do larger cities by having TV coverage of local news, government, education, etc. The FCC has indicated that their real concern over CATV program origination is the eventual possibility of pay TV. This would seem to be a valid concern, but is there not just as valid a distinction between "pay per program" pay TV and CATV program origination of local affairs offered as an extra service at no extra charge? The public interest is an ideal to which the FCC requires broadcasters pay energetic and diligent attention. We feel this same public interest exists in small communities as well, and deserves just as energetic a pursuit, even if it be by a CATV which voluntarily attempts to cater to it.

In an attempt to give you a good idea of channel 2's operation, we have made up the enclosed brochure. Please let us know if you would like more information, or if it would help the factfinding efforts of the committee to have us participate in future hearings you might have.

Of course we extend to you, your committee and/or staff, an invitation to visit Chillicothe. As you possibly already know, CATV program origination such as ours is not typical of CATV operations in the United States. Bue we feel strongly that the committee should be aware of our type of programing because it represents a unique potential for real and valuable community service by CATV's, particularly in small towns having no television station.

Thank you for your consideration.

Yours truly,

J. T. HOEY, *Manager.*

STAMFORD, CONN., *March 29, 1966.*

Re CATV.

Hon. DONALD J. IRWIN,
Old Senate Office Building,
Washington, D.C.

MY DEAR CONGRESSMAN: Recently the FCC decided to regulate CATV systems. I read their proposed regulations in the newspapers, and the thought occurred to me, "Aren't they going beyond their powers? Aren't they assuming for themselves powers which belong to and should remain with the Congress of the United States? If Federal regulatory agencies in general continue to expand their power in this manner, aren't we moving, step by step, toward a police state?"

I always thought that Congress makes the rules and that the FCC (SEC, FAA, etc.) merely enforces those rules. Thus, rather than let the FCC lay down a set of rules, such as it did recently, the Congress should do it.

I would like to emphasize that I personally do not own any CATV systems, nor do I have any interest in radio or TV broadcasting. I am just a member of the listening public. However, as an engineer with a doctor's degree from MIT, I see CATV as a technological breakthrough in the art of communications and that it has possibilities far beyond the improvement of the reception of television signals (many of which aren't worth improving).

I think it is in the public interest that the development of CATV systems be encouraged and that Congress, State legislatures, nor the FCC should put roadblocks in the path of its progress.

In discussions with some of my friends here in Stamford, their immediate comment was, "For us in Stamford the question is academic. We can receive all the New York TV stations—even on indoor antennas." I answered saying that the following advantages could accrue:

1. I could pick up Hartford and listen to the New York Giant football games. More seriously, I could listen to stations that present the news from Connecticut's viewpoint, instead of listening to squabbles over New York politics.
2. We could get better television and FM reception, particularly in color (less electrical interference, ghosts, etc.).
3. The neighborhood would look more beautiful with all the ugly TV antennas removed from the individual homes.
4. If Stamford had a CATV system, it would be possible for the local board of education to present all sorts of educational programs over closed-circuit television, using the cable system to distribute the program to the homeowners (making use of one of the vacant channels, such as channel 10 or 12, etc.).

5. The mayor of Stamford, police chief, fire chief, public works commissioner, etc. could communicate by direct-circuit TV with the Stamford residents. Public hearings and meetings, planning board, zoning board, board of education, etc., could be broadcast over the CATV system at low cost.

6. Local religious programs and services could be transmitted over the CATV system.

7. Finally, candidates for local public office (such as yourself) could talk to the local residents over closed-circuit TV and discuss the various issues. Today, if you wanted to talk to the citizens of Stamford by means of television, you would have to rent time on one of the big New York TV stations. Not only is this prohibitively expensive, but it is impractical in that the majority of the listeners to one of these stations would not be interested.

The arguments that I have heard to date about CATV systems revolve around items 1, 2, and 3 above. Yet, it is items 4 to 7 which are the really important advantages of CATV systems in metropolitan areas like Stamford.

CATV systems obviously require some regulation, and it is the Congress which should do it—not the FCC. The regulations should be simple. I would propose the following:

1. No CATV operator should be allowed to censor any program he rebroadcasts.

2. No CATV operator should be allowed to tape or record any programs he receives for later transmission, in whole or in part, without permission of the station which originated the program.

3. The CATV operator should be required to transmit, free of charge, educational, religious, and political programs over one or more of the normally unused channels available.

4. The CATV systems operator should be required to rebroadcast all TV signals above a certain level, or originating within some distance—say, 100 miles from the center of the area being serviced by the cable system—and not preempt one of the channels occupied by such a station for its own use.

Some of the opponents of CATV systems, such as the broadcasting companies, seem to oppose it, fearing that it will pave the way for pay TV.

I have difficulty understanding why there should be such objections to pay TV or why it is undemocratic. Why must I be denied the privilege of paying a small sum of money in order to avoid the constant barrage of advertising messages (some of them extremely offensive) when I want to watch a show, movie, etc.?

CATV does permit the coexistence of both free and pay TV at low cost, and without preempting the use of scarce channels from free to pay TV. The way CATV can accomplish this is simple: All pay TV signals would be transmitted over wires only (thereby avoiding any interference with broadcast signals, private, public, or military), using that portion of the electromagnetic spectrum which lies between channels 6 and 7 (excluding the FM band which is also located there). A converter or translator would be installed at the customer's set, enabling him to switch the pay TV signal to one his set can receive, thus giving the customer the freedom of making his own choice between a pay TV signal or a free one.

Very truly yours,

ROBERT B. EGBERT.

KLTF, LITTLE FALLS BROADCASTING CO.,
Little Falls, Minn., April 18, 1966.

HON. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: It has come to my attention that you have received a letter from the local cable television company commenting on the possible limitation of program origination by CATV systems.

I believe that you are well informed on this subject and I will not bore you with a repeat of the arguments on this important issue, but I do feel that facts, rather than fancy, are important in reaching any decision on this important matter.

The letter in question made reference to coverage of local election results and use of the local weather channel (often) to inform mothers who wished to know about disrupted school bus schedules and salesmen concerned with road conditions.

These statements stretch the elasticity of the human mind beyond the realm of truth or fact, and only lend further credence to the fact that existing broadcast facilities, both radio and television, provide the services people rely on in this area.

Only one case of disrupted bus schedules has taken place in our area this year and that event happened this morning. I find no evidence that the local CATV did anything about it because they knew nothing about it and this service affected only rural people beyond the reach of CATV.

Complete election results were carried locally only by the radio and newspaper, local school officials utilize our facilities for official school closings, traffic reports, road conditions, and weather forecasts are widey listened to on radio and a CATV board that provides time and temperature only cannot serve the needs of the public.

A free broadcast system has given the American people the privilege of being the best informed in the world. An ultimate nationwide wired system will take away these freedoms.

There has been so much emotion on this entire issue that facts have gotten mixed with fancy. The broadcaster has proven record of factual performance.

Sincerely yours,

JOHN H. LEMME, *President.*

CUMBERLAND TELEVISION, INC.,
Cumberland, Ky., April 17, 1966.

Hon. HARLEY O. STAGGERS,
House Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR MR. STAGGERS: Attached herewith is a group of letters from all our civic groups stating their feelings in regard to program originaton on our CATV system. We use the CCTV on a noncommercial basis, in the strict interest of the people.

Here are a few ways we have used CCTV:

1. Civil defense alerts.
2. Local floods (night—no all-night radio station available) three occasions.
3. Paging for doctors or alerts for missing children.
4. In the absence of nighttime radio, we give election returns.
5. Local football games broadcast (audio only).
6. Government agency information to the public.
7. Auctions for worthy causes. Recently helped save our one local hospital from closing.
8. Local talent shows for the youth.

The above are only a few of the items of interest insofar as CCTV is concerned that we have done.

It is suggested that individual control on an individual basis be made rather than a group control.

Very truly yours,

WM. RISDEN, *General Manager.*

CUMBERLAND CHAMBER OF COMMERCE,
Cumberland, Ky., March 28, 1966.

To Whom It May Concern:

We are very proud of our cable TV system and would like to see the service continued in the future as it has in the past.

We are able to pull in the best network programs by choosing the stations and also have color available.

Another feature of our community system that has proved valuable is the closed circuit part of the system. This has been utilized for charitable auctions and emergencies at not cost to the community. We would like to see this continued.

We believe that present regulatory restrictions are sufficient and that additional rules and regulations would only hamper the operation.

Very sincerely,

VERNON J. COLE, *President.*

CUMBERLAND LIONS CLUB,
Cumberland, Ky., March 24, 1966.

WM. RISDEN,
Cumberland TV, Inc.,
Cumberland, Ky.

DEAR MR. RISDEN: The Lions Club of Cumberland views with concern the possibility that we might lose the distinct privilege of access to closed-circuit programs via our cable system as it now exists.

The club, in a unanimous body, protests such a possibility and if we as a club, or as individauls, can do aught to prevent this action don't hesitate to call.

For your cooperation in working with the local civic groups and the community at large, our sincere thanks.

Regards,

LARRY N. CRAFT, *Secretary.*

CUMBERLAND TELEVISION, INC.
Cumberland, Ky.:

We have been reading in the papers where the FCC is trying to control the TV cable system and possibly cut off your closed-circuit programs. We feel that this would be a great loss to our school system and to our community. Your closed circuit has made many school announcements related to our schools being closed when the weather is very bad, and this is a great help since we have no local nighttime radio.

Your closed circuit has really helped the senior class of Cumberland High School by giving us free time for our annual TV auction which helps us make our money for our senior trip. The closed circuit is always giving free time to some community drive such as Heart Fund, senior citizen, rescue squad. We feel that if the FCC cuts out our closed circuit this will be detrimental to our community and to our schools. If there is anything we can do to help in any way feel free to call on us.

We thank you for your interest in our community and schools.

Sincerely yours,

ROLAND S. CORVETT.
MRS. EUNICE CARRUBA.
Senior Sponsors:
MRS. LAURA C. GLUCK.
S. METCALF.
BOB R. MORRIS.
C. ELLISON.

CITY OF CUMBERLAND, OFFICE OF CIVIL DEFENSE,
Cumberland, Ky., March 14, 1966.

CUMBERLAND TELEVISION,
Cumberland, Ky.
(Attention of Mr. William Risden).

DEAR SIR: As your civil defense director in Cumberland for the past 5 years, I have probably been able to use the communication system your station has furnished free to our city more than any other agency in our town.

Through your facilities, we were able to give specific instructions to the majority of our citizens through the numerous flood crises we have had. Especially valuable was your help during the 1963 March flood, when a large section of our town was under water. By having your setup, we were able to warn people to evacuate certain sections in time, also by having contact with the individual citizens who were in need we were enabled to aid people who would have been in much worse condition.

Our agency has used your system for promotion of public interest in preparedness programs several times each year, and you were kind enough to allow me to have a series of instruction periods for several months. Along with our radio and telephone systems, we have considered your assistance, in any type hazard, a very valuable part of our overall preparedness posture.

I might add that your personal contribution to the welfare of our town has been fine and the fact that this service has been freely given without stint or hope of reward makes you a very valuable citizen.

In my view any threat to this facility would be a grevious loss to our community.

Allow me to thank you for your help in the past, and I'm sure we will be working together for the protection of our people many times in the future.

Very sincerely,

U. FITZHUGH CRAFT.

CUMBERLAND ROTARY CLUB,
Cumberland, Ky., February 28, 1966.

CUMBERLAND TELEVISION, INC.,
Cumberland, Ky.

GENTLEMEN: It is our understanding that soon two of your cable TV stations may be "blacked out" in favor of a so-called local station (channel 5, Bristol, about 60 miles distant). We would like to go on record as being against such a move. Channel 18, Lexington, Ky., is our only Kentucky channel and channel 3, Huntington, W. Va., gives a much better quality color picture than the other NBC station (channel 5, Bristol).

Now, regarding the possible loss of your closed-circuit facilities, we personally feel that this would be detrimental to the community and the many worthwhile projects which you work with from time to time. Too, the warning system during natural emergencies (floods, etc.) makes this system of warning all important. In the absence of nighttime radio, this service is a must. Other services such as giving election returns, local football games (audio), the many auctions for the civic clubs, and the tie-in with the civil defense local group makes the possible loss to the community a great one if you have to give up the use of your closed-circuit facilities. The fact that you do not use the facilities commercially should be an important factor in the decision by Congress or the Government agency, the Federal Communications Commission.

If there is anything we can do in the problem before you, please let us know.

Very truly yours,

CUMBERLAND ROTARY CLUB BOARD OF DIRECTORS,
———— ————,
ELMER MAGGARD,
L. R. HOGUE,
GENE MARTIN,
G. W. GALLAGHER, D.D.S.,
ED. FRENCH (out of town),
DARREL ROBERTS (leave).

UNIVERSITY OF KENTUCKY,
SOUTHEAST COMMUNITY COLLEGE,
Cumberland, Ky., February 28, 1966.

MR. WM. RISDEN,
Cumberland TV Corp.,
Cumberland, Ky.

DEAR MR. RISDEN: We hope that the FCC will continue to permit you to carry all of the stations that you now carry and permit you to continue to have closed-circuit programs.

The closed-circuit programs are needed very badly in this area for emergencies such as floods and for other programs that are of interest to the community.

Since there is no nighttime radio station available in Cumberland, the TV station is the only source of getting information to the people at night.

Cumberland TV, Inc., has been very helpful to the college and to the people of this area. We hope that no one will do anything to take away or decrease these services offered by the station.

Sincerely yours,

J. C. FALKENSTINE, *Director.*

HARLAN COUNTY PLANNING & DEVELOPMENT ASSOCIATION,
OPERATION MEDICARE ALERT,
Harlan, Ky., February 24, 1966.

Mr. WILLIAM RISDEN,
Cumberland Closed-Circuit Television,
Cumberland, Ky.

DEAR MR. RISDEN: We wish to thank you for your kindness in permitting the use of your closed-circuit television broadcast facilities February 23.

Mr. Thomas Dyer, Social Security representative, who appeared with me on this broadcast was highly pleased with the opportunity to get advanced medicare to your subscribers prior to the public meeting which was held in Cumberland later in the afternoon.

Again thanking you and with kindest regards.

Yours very truly,

E. S. JACOBS, Jr., *Director.*

CUMBERLAND, KY., *March 4, 1966.*

CUMBERLAND TELEVISION CORP.,
Cumberland, Ky.

GENTLEMEN: I would like to take this opportunity to express my appreciation on behalf of the Tri-City Emergency and Rescue Squad, for your fund drive on closed-circuit TV, February 15, 1966, which netted us well over $1,100. This same service, rendered by you at no cost to us on previous occasions, has enabled us to provide the equipment to carry on our work.

It has been brought to my attention that possible changes in the policies of the Federal Communications Commission may restrict future programs of this kind. In this area where occupational hazards and the possibility of floods are so great we feel that to curtail this service would be a serious detriment to the personal safety of the people.

Furthermore, with the limited recreational facilities available here, any reduction in the number of channels carried by your station would be an unnecessary and unjust penalty on the welfare of our community.

Congratulations on the splendid service you are providing and we trust that you will be permitted to continue.

Yours very truly,

MEMBERS OF THE TRI-CITY EMERGENCY AND RESCUE SQUAD,
By C. H. SHERMAN, *Secretary.*

VETERANS OF FOREIGN WARS,
Cumberland, Ky.

BILL RISDEN,
Cumberland Television, Inc.,
Cumberland, Ky.

DEAR SIR: We wish to extend our thinks to you for the very important role you and your television facilities played in helping to raise funds for our Christmas basket program.

Thanks to your efforts and generosity we were able to raise over $2,300 which enabled us to prepare Christmas baskets for over 400 families.

Your closed-circuit facilities reach many people that we do not have a chance to contact personally in our solicitations for this worthy cause and thus enable us to make our program more successful.

Thank you again for your valuable assistance in our program for this year and years past.

Sincerely,

KENNETH DIXON,
Commander, VFW Post 5171.

KENTUCKY FEDERATION OF WOMEN'S CLUBS,
CUMBERLAND WOMAN'S CLUB,
Cumberland, Ky., March 8, 1966.

CUMBERLAND TV INC.,
Cumberland, Ky.

GENTLEMEN: We, the Woman's Club of Cumberland, want you to know how helpful your organization has been to us over the years in which you have operated.

We, members of the Woman's Club, are a part of PTA; we are band mothers; we are wives of Rotarians and Lions; we are a part of every worthwhile organization in town. We are members of all the church and school groups and fraternal organizations.

So when we say that we feel that your organization is almost indespensable in the service you are rendering us. We feel that we are speaking for every group in town as well as our own.

Through your help and cooperation (which is gratis) we are able to inform the people of our community about the things these organizations are doing for our community, our State, and our country.

Your company has been most helpful in raising funds for scholarships for our students at Southeast Center Community College, in raising funds for Girl Scouts.

Through your closed circuit you have helped us in so many ways.

For all these things we are most grateful.

Sincerely,

Mrs. J. R. HUGHES, *Secretary.*

CUMBERLAND, KY., *March 8, 1966.*

CUMBERLAND TELEVISION, INC.,
Cumberland, Ky.

DEAR BILL: I hear that, due to a ruling by the Federal Communications Commission, our Lexington and Huntington stations might be blacked out because of duplication on other stations.

We have enjoyed these stations, particularly the Huntington station, for years and too, the Lexington station will furnish more pertinent news of interest to Kentuckians.

Since I have called a meeting of all civic clubs, school heads, and ministers of the different faiths for this coming Friday, the 11th, I am sure they will be concerned over the possible curtailment of your closed circuit TV broadcasts which you have donated as a public service to assist all the organizations in our area to raise funds for their various endeavours for the common good of all the people in this area.

The main reason this particular meeting is being called is to try to have the clubs plan their drives for the coming year, so there will be no conflict of interest when they ask for the free use of your closed circuit TV facilities.

To verify the acute need of your closed circuit TV in this community you may use my letter as you see fit or deem necessary.

I will certainly ask the other clubs to verify the justification of our need for your closed circuit TV.

Respectfully,

G. W. GALLAGHER, D.D.S.,
Chairman Cumberland Advisory Committee.

FEBRUARY 15, 1966.

DEAR BILL: This is a letter of appreciation for your wonderful and unique service to our community during times of crisis. It is not only a community service but a personal service to each of us who are anxiously waiting.

I'm sure that every person in the Tri-Cities feels the same way that I do at these times, and would like to tell you so but somehow we just never do. We never forget it, but we just don't remember to thank you. So please accept the thanks of an old friend, and may God bless you.

Sincerely,

RENA WILLIAMS.

[Telegram]

ROBINSON, ILL., *March 22, 1966.*

Representative HARLEY O. STAGGERS,
House Commerce Committee,
House of Representatives, Washington, D.C.:

I have a peculiar situation in regard to my company which may be of use to you.

The House Commerce Committee has been discussing regulation of daylight saving time. A combination of the abuse of an individual city's manipulation of the clock and the proposed "same-day" nonduplication rules could have a disastrous effect on my CATV system.

We are located about an hour's drive from Terre Haute, Ind., although we are in Illinois. When we went into business there was only one station there, although now there are two, and the FAA made them locate south of Terre Haute so that they are now covering us with a grade A signal.

As you may know, the dividing line between eastern and central time zones is supposed to be in Indiana. However, Indianapolis chose to be on the same time as the eastern cities, and Terre Haute chose to go on the same time as Indianapolis. In the summer this makes all the network programs appear an hour later for the citizens of our community; it puts the noon news at 1 p.m., when we have all gone back to work, and it puts the 6 o'clock news at 7 p.m., and all the people who were accustomed to watching the late news at 10 p.m. have to stay up until 11 to watch it. After the second TV station came into operation, we were able to retain many subscribers due to the fact that we could provide them with an Illinois-oriented station, Champaign, upon which they could watch the programs at an earlier hour.

This has a far greater effect than is realized by either NCTA or the FCC. I used the news as an example, but if the argument is advanced that I am not to be prevented from showing the news from Champaign at its regular local hour, do you realize that in order to do so, they would have to miss regular network programs, run, say, an hour earlier in Indiana, in order to watch this news program? And the protected station is the only station upon which we are to be permitted to run this network show, so it will be impossible for them to see the shows. It will also be impossible for them to see the shows such as "the world turns" that they have been watching all winter during the noon hour, because by the time the Terre Haute stations get around to carrying them our people would be back to work.

Can't there be a rule to protect small systems that can't afford to go through FCC procedures in order to effect what is needed in certain areas? The Terre Haute stations couldn't be any less interested in our town; but we give our customers public service telecasting by the schools, the churches, the civic organizations, and many others simply because they are at the mercy of the big city and can't get the stations to carry their message.

I don't see why it is unfair for us to "build an economic base for local public service telecasting by using stations signals" as Mr. Bartley says, if this service is not available anyway. Why don't they restrict us from charging for the service, or make a direct rule against us charging by the program, if that is what they are afraid of, instead of making a blanket rule against origination and then making us go through the expense and delay to prove that we need it? The FCC has to require that stations donate time in order to make them do it, so why not make some rules as to just what we can, repeat can, do for our communities and churches in regard to live origination and then let us proceed to help our communities to the best of our ability? Without the cable we have absolutely no coverage of our own State of Illinois, and the Indiana stations to whom we would have to answer are not even telecasting on the proper time for their zone.

Please let your committee take the time to set up a more detailed legislation and not throw us into a general situation with the FCC under which we are too small to protest or successfully obtain variances.

JOHN GWIN TV CABLE CO.

[Telegram]

EASTON, PA., *April 5, 1966.*

Congressman HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.:

Understand that Congressman Rooney has presented a petition calling for a 6-month postponement of the effective date of FCC regulation over CATV. Although Congressman Rooney represents our district he does not speak for Pennsylvania radio and television broadcasters when he urges such postponement. Unregulated growth of CATV is a very real threat to the orderly development of free broadcasting. And FCC regulation of cable TV is definitely in the public interest. Importations of distant signals and fractionalization of audience could seriously affect Pennsylvania radio and television stations ability to serve the public interest. Regulation is needed now and petition should be denied.

THEODORE W. PIERCE,
Manager, Radio Station, West Easton, Pa.

YORK, PA., *April 5, 1966.*

Congressman HARLEY STAGGERS,
Chairman, House Interstate Commerce Committee,
House of Representatives,
Washington, D.C.:

This is in respect to the petition signed by certain members of Pennsylvania congressional delegation asking for a 6-month stay of the effective date of FCC regulation over cable television. Such postponement is definitely not in the public interest and the petition does not represent the views of most radio and television stations in Pennsylvania. FCC proposal is results of over 2 years study and would in fact hold the line against uncontrolled growth of cable TV so that orderly study and effectuation of CATV legislation can be pursued by Congress. Audience fractionalization and importation of out-of-State signals could seriously affect stations ability to serve the public. Therefore, FCC jurisdiction is needed now to protect public interest.

RADIO STATION WORK,
ELWOOD C. ANDERSON, *Station manager.*

LANCASTER, PA., *April 5, 1966.*

Congressman HARLEY O. STAGGERS,
Chairman, House Commerce Committee,
House of Representatives, Washington, D.C.:

Please be advised that petition of certain Pennsylvania Congressmen calling for 6-month stay of FCC regulation over CATV does not represent viewpoint of great majority of Pennsylvania radio and TV broadcasters. FCC issuance of second report and order was not a quote precipitous action unquote but rather the result of over 2 years careful study by that Commission. Congress and Commission have determined that the continued orderly growth of free radio and television broadcasting is in the public interest imperative that this public interest be protected against unregulated and controlled growth of cable TV. FCC regulation proposed does not usurp possible legislation in CATV but rather insures that Congress may proceed in an orderly manner without pressures of uncontrolled growth petition should be denied and FCC jurisdiction affirmed.

CLAIR R. MCCOLLOUGH,
WGAL–TV, Lancaster, Pa.

HARRISBURG, PA., *April 5, 1966.*

Congressman HARLEY STAGGERS,
Chairman, Interstate Commerce Committee,
House of Representatives, Washington, D.C.:

Understand that certain Pennsylvania Congressmen have signed petition calling for 6 months' postponement of FCC regulation over CATV. Such a postponement would be a serious threat to Pennsylvania radio and TV sales. Continued uncontrolled growth of cable TV is not in the public interest. FCC proposed regulation will preserve present status of industry pending possible legal action. Respectfully urge your committee reaffirm FCC jurisdiction over CATV so that radio and TV service to the public will not be impaired.

R. H. ELLIOTT,
Station Manager, WKBO.

HOUSE COPYRIGHT SUBCOMMITTEE RELEASES PROPOSED RECOMMENDATIONS ON CATV

The Copyright Subcommittee of the House Committee on the Judiciary today made public the following letter sent by Acting Subcommittee Chairman Robert W. Kastenmeier, Democrat, of Wisconsin, to Chairman Harley O. Staggers, Democrat, of West Virginia, of the House Committee on Interstate and Foreign Commerce, dealing with the subcommittee's proposed solution of the community antenna television issue under the pending copyright law revision:

MAY 5, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, Subcommittee No. 3 of the House Committee on the Judiciary is engaged in a series of executive sessions on H.R. 4347, a bill for the general revision of the copyright law, title 17 of the United States Code. One of the most important and controversial of the issues posed by the revision is the copyright status of transmissions by community antenna systems.

Under H.R. 4347, as introduced, commercial CATV systems would be fully liable for copyright infringement whenever they retransmit without permission a broadcast containing copyrighted material. After extensive consideration of the arguments made during the hearings and the legal and public policy issues involved, the subcommittee has reached agreement on certain amendments which would substantially change the bill to be recommended to the full committee.

The subcommittee is, of course, aware that your Committee on Interstate and Foreign Commerce has been engaged in hearings and study of the problems of communications law presented by CATV activities. It has been our purpose, as far as possible, to resolve the copyright issues raised by CATV without trenching upon the area of communications problems. Because of the importance of this question and its relationship to the active consideration now being given by your committee to measures that would define the status of CATV systems under the Communications Act, we have decided to announce our conclusions on this particular question at this time. The following is a broad simplified summary of what will necessarily be a complex statutory provision.

For the purpose of this summary, "CATV" refers to commercial services that intercept off-the-air transmissions of programs originated by others and retransmit them to paying subscribers by wire connections or the like, without altering their content, originating programs themselves, or making special charges for particular programs.

The subcommittee's proposal would divide CATV activities, upon the basis of geographic and other characteristics, into three broad categories or "areas" which we call white, black, and gray. In very general terms, the subcommittee proposes to exempt CATV operations from copyright if they are entirely in the white area; make them fully liable if they are in the black area; and subject them to limited liability in the nature of a "reasonable license fee" if they are in the gray area.

Under the subcommittee's proposal, the white area embraces CATV retransmission solely within the radius of the area served by the primary broadcaster (in effect, its grade B contour) to fill in gaps or improve bad reception caused by technical interference. Example: A system operating solely within New York City and retransmitting New York City stations only.

The black area embraces retransmission beyond the area served by the primary broadcaster into an area already served by one or more other broadcasters, none of whom is licensed to carry the same program. Example: A system bringing a New York City station's broadcast of a motion picture to Philadelphia subscribers when no Philadelphia station is licensed to broadcast it.

The gray area embraces retransmissions beyond the area served by the primary broadcaster into an area already served by another broadcaster who has a license to carry the same program; or into an area not served by any primary broadcaster.

The subcommittee believes that in the so-called white area where the CATV operation is merely a "fill-in" or "master antenna" service, operating solely within the area served by the primary broadcaster, the impact of the CATV

operation is primarily to expand the audience by which the value of the copyright owner's license to the primary broadcaster is measured.

Where, on the other hand, the CATV operation occurs in a black area i.e., where it extends into an area within which there are broadcasting facilities but the copyright owner has not granted his authorization for any transmission, the unauthorized retransmission by CATV could destroy a market and result in direct, immediate damage. Here the Subcommittee would impose full liability for infringement of copyright, including injunctive relief.

Intermediately, in the gray area situation, where the copyright owner has already licensed the use of his work in the areas, or there is no broadcaster to license, there is no direct loss of market exclusivity. There is, however, an uncompensated "free ride" at the owner's expense. Advertisers will not pay for viewers living outside their area, and CATV service in these areas may keep out local broadcasters who would pay. Here, the Subcommittee believes that a reasonable license fee best meets the equities.

Beyond this allocation of different rights and remedies for the white, black, and gray areas, the subcommittee's proposal takes into account the arguments of the CATV operators as to the difficulties of obtaining advance clearances and the dangers of unlimited liability for statutory damages in this field. It proposes, with respect to CATV operations in the black area, to impose full liability only if the operator proceeds with the unauthorized retransmission after having received advanced notice from the copyright owner. If the owner does not provide advance notice, the retransmission would be treated as if it were in the gray area.

As for CATV operations in the gray area, the subcommittee proposes to withhold the possibility of an injunction or statutory damages, and limit the operator's liability to a "reasonable license fee" to be fixed by the court in the absence of agreement. However, in order to induce negotiations, the proposed amendment would provide the court with discretion to triple the recovery if it finds that the infringer failed to accept a reasonable offer, or to withhold any recovery if it finds that the copyright owner had refused to accept a reasonable offer.

It should be emphasized that the subcommittee's proposal is directed solely to a prospective solution to the community antenna problem under the general revision of the copyright law. It is not intended as the expression of any opinion as to what the present law is under the 1909 statute or as to how the courts should ultimately decide that question.

With best regards.

Sincerely yours,

ROBERT W. KASTENMEIER,
Acting Chairman for Copyright Revision Subcommittee No. 3.

§ . Limitations on exclusive rights: Secondary transmissions.

(a) CERTAIN SECONDARY TRANSMISSION EXEMPTED.—

(1) Notwithstanding the provisions of subsections (b) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is not an infringement of copyright if:

(A) the secondary transmission consists entirely of relaying the primary transmission to the private rooms of a hotel or other public establishment, and no direct charge is made to the occupants of the private rooms to see or hear the secondary transmission; or

(B) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 109; or

(C) the secondary transmission is made by a common carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others.

(2) Notwithstanding the provisions of subsection (c), but subject to the provisions of subsection (b), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is not an infringement of copyright if the secondary transmission is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without any charge to the recipients of the

secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(3) Subject to the provisions of subsections (b) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is not an infringement of copyright if the secondary transmission is made for reception solely within the limits of the area normally encompassed by the primary transmission.

(b) CERTAIN SECONDARY TRANSMISSIONS FULLY ACTIONABLE.—Notwithstanding the provisions of subsection (c) and of clauses (2) and (3) of subsection (a), the secondary transmission to the public of a primary transmission embodying a performance of display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if:

(1) the content of the particular primary transmission is in any way altered by changes, deletions, or additions during its secondary transmission; or

(2) the secondary transmitter, within one month before or after the particular secondary transmission, originates any transmissions to those members of the public to whom it also makes the secondary transmission, except for no more than one transmission at any one time of whether and news reports; or

(3) the secondary transmitter, within one month before or after the particular secondary transmission, makes any separate, direct charge for any particular transmission it makes to those members of the public to whom it also makes the secondary transmission; or

(4) the secondary transmission is made for reception wholly or partly outside the limits of the area normally encompassed by the primary transmission, and

(A) the secondary transmitter, at least one month before the date of the secondary transmission, has not recorded in the Copyright Office, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the identity and address of the person who owns the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter; or

(B) the secondary transmission is made for reception wholly or partly within the limits of an area normally encompassed by one of more transmitting facilities, other than the primary transmitter, if:

(i) within that area no such facility is authorized to transmit the same performance or display of the work, and

(ii) the copyright owner has given written notice to the secondary transmitter, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, at least ten days before the primary transmission, that the copyright owner's authorization is necessary for the secondary transmission.

(c) LIMITATIONS ON LIABILITY FOR CERTAIN SECONDARY TRANSMISSIONS.—

(1) Subject to the provisions of subsection (b), in the following cases involving a secondary transmission to the public of a primary transmission embodying a performance or display of a work, liability of the secondary transmitter for infringement under section 501 does not include the remedies provided by sections 502, 503, and 506, and its liability for the remedies provided by sections 504 and 505 is limited as provided by clause (2) of this subsection:

(A) Where the secondary transmission comes within the scope of paragraph (i) of subclause (B) of subsection (b)(4), but the copyright owner has not given notice as provided by paragraph (ii) of that subclause; or

(B) Where the secondary transmission is made for reception wholly or partly outside the limits of the area normally encompassed by the primary transmission, not including an area covered by subclause (B) of subsection (b)(4), and

(i) the secondary transmission is made for reception wholly or partly within the limits of an area normally encompassed by a transmitting facility, other than the primary transmitter, if such facility is authorized to transmit the same performance or display of the work on the date the secondary transmission is made, whether or not such authorized transmission is made on that date; or

(ii) the secondary transmission is made for reception wholly or partly within the limits of an area not normally encompassed by any transmitting facility.

(2) In any case coming within the scope of subclauses (A) or (B) of clause (1) of this subsection, the infringer's liability under section 504 does not include any of the infringer's profits or statutory damages, and the copyright owner's right to recover actual damages is, except as provided in subclauses (A) and (B) of this clause, limited to recovery of a reasonable license fee, as found by the court under the circumstances of the case.

(A) Where the court finds that the infringer has refused or failed to accept an offer of a license, in writing and signed by the copyright owner, in which the license fee stated was reasonable under the circumstances of the case, it may in its discretion increase the recovery under section 504 to a sum of not more than three times the amount of a reasonable license fee, to which may be added a discretionary award of costs and attorney's fees under section 505;

(B) Where the court finds that the copyright owner has refused or failed to accept the written offer, accompanied by a tender, of a license fee that was reasonable under the circumstances of the case, it may in its discretion award costs and attorney's fees under section 504 to the infringer, and may reduce or withhold an award of a reasonable license fee under section 504.

(d) DEFINITIONS.—As used in this section, the following terms and their variant forms mean the following:

(1) A "primary transmission" is one made by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

(2) A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission.

(3) The "area normally encompassed" by a transmission comprises the entire geographic area within the radius that the transmitter's signal is expected to reach effectively under normal conditions, including any parts of the area within that radius that its signal fails to reach effectively because of terrain, structures, or other physical or technical barriers. Where such geographic area has been designated by Federal statute or regulation for other puposes, the Register of Copyrights may, by regulation, make such designation applicable for purposes of this section.

STATEMENT OF GEORGE L. SISSON, JR., PRESIDENT OF WESTERLY CABLE TELEVISION, INC., WESTERLY, R.I.

The case for local origination of programs by (CATV) cable television systems is strong, compelling, and durable.

The base of this case rests on two substantial arguments: local needs and valid public interest.

Cable systems by their very nature are prime local service organizations. To a large degree they are similar to, and share the public service responsibilities of the local small daily (or weekly) newspaper and the local, low-powered radio station.

Community and civic programing by cable television systems offers American communities another dimension to American public service on the local level.

Congress and the Federal Communications Commission should encourage the development of this new concept of local public service.

Most CATV communities are now served by television broadcasting stations located many miles away. The television station is charged with the responsibility of "serving" hundreds (and often thousands) of communities, large and small, that lie within its coverage area.

It surprises no one that "local service" to many of the smaller communities located on the fringe of the television station's signal contour is often superficial and seldom frequent.

Distance alone creates an obstacle not easily overcome. Community groups are reluctant to travel 50, 75 miles to appear on a daytime bulletin board show. Thus while the station would undoubtedly provide the time, if asked, few requests are received. Indeed, few know that such time is available to residents of fringe communities.

Cable television on the other hand is a permanent local fixture, a definite community possession, accountable on a daily basis to the locale that it serves and the quality of its wares.

Moreover, the CATV system has the facility, the time, the motivation, and the exciting opportunity of providing its one and only community with a visual service that gives a new and valid meaning to "local public service."

All the subscribers of a cable television system share a number of common interests.

As members of the same community they are concerned with the local tax rate, the quality of education in "their" schools, local political affairs, local charities and bond issues, roads, zoning, beautification of their neighborhoods, water problems, and so on.

The cable television system offers the opportunity of presenting local officials, local citizens, and local groups on the cable for discussions of these matters.

To the mass audience of a powerful and far-reaching television station that serves thousands of homes in three different States, these subjects are of little concern.

Locally, however, they enjoy the highest ratings.

Consider the facility of cable television.—The facility exists in the modern equipment at the control room or headend at the CATV system where a camera keeps a 24-hour watch on the weather dials of the community it serves. That same, small, industrial camera is ready for instant use for local talks, panel discussions, events, etc.

Consider the time of cable television.—Time is what CATV systems have a lot of.

Does a local organization want to schedule a speaker at 7 p.m. on Monday night? No problem.

Does the League of Women Voters wish to interview all candidates for office over a period of several nights and the need is for 2 hours each night starting at 8 p.m.? We'll arrange it.

Would the cable television system arrange for a weekly safe-driving series of talks on safety on our streets, to be sponsored by the police department? Certainly.

During Fire Prevention Week the local fire department wants to conduct some special demonstrations. Would 6 p.m. night be OK? Yes, it will.

Prime time, 6 p.m. to 11 p.m. on cable television is available to the local community.

Consider the motivation of cable television systems.—It is apparent to me that the vigorous use of its civic channel will redound to the credit of the cable television system.

Extensive use of the cable system will generate more interest in the service and result in increased subscribers.

In addition, the Commission's assumption of control over CATV will undoubtedly result in the requirement of periodic reports similar to those filed by radio-television stations.

Like their fellow services, cable television systems will want to get good credit where it is deserved.

And finally consider the exciting opportunities of cable television public service.—Cable television systems can provide prime time and direct the programs to the very audience for which it is intended—where the need exists. With cable television, small communities of 5,000 to 15,000 residents can have television coverage of local events, town council and school committee meetings, panel discussions of community issues, in-person reports and interviews with local, State, and Federal officeholders.

The superintendent of schools and his staff, the chief of police and the chief of the fire department have a valuable tool ready at all times.

Interviews with interesting local personalities, local feature stores, and a platform for local charity fund drives—cable television offers a great deal to a great many interests.

IN SUMMARY

Cable television systems should be allowed and encouraged to program locally.

There is too much to be gained by the local community through such increased service. And there is nothing to be lost.

The local self-expression programing described by me is of the general type of program that television stations, concerned with viewer ratings as they must be, call dial twisters.

Cable television systems are blessed with a freedom of a civic channel that is not concerned with the size of the particular audience but simply that there is a local interest.

If cable television systems are to be governed by the Federal Communications Commission, I urge that CATV be allowed to serve their communities by exercising to the fullest the opportunities of local public service. I would assume that CATV systems would be subject to the same fairness doctrine that guides radio-television.

In his speech before the National Association of Broadcasters, Chairman Henry of the Federal Communications Commission, stressed the importance and need of more creative local programs by the television stations of the Nation.

I requested that the Congress encourage cable television systems to provide more local programs for the communities that they serve.

RADIO AND TELEVISION BACKGROUND OF GEORGE L. SISSON, JR.

1947–62: FM station WCFR, AM station WALE, founder, owner, and manager.
1962–65: Television station WTEV, channel 6, director, public affairs.
1965 to present: CATV system, Westerly Cable Television, founder, owner, and manager.

STATEMENT OF THE NATIONAL GRANGE, HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE

Mr. Chairman and members of the committee, my name is Harry L. Graham, and I am legislative representative of the National Grange.

Our organization represents over 800,000 members in 40 States, most of whom live on farms or in small rural towns. In these rural areas, our members rely upon and benefit from the invaluable services of free, off-the-air television broadcasting. Without such services a farmer would be deprived of one of his major sources of immediate information on local weather conditions, market prices, and other data vital to the operation of modern farming.

We have viewed the increasing proliferation of community antenna television (CATV) systems across the country with concern. In the course of providing multiple television services to those living in more populous regions, many of whom are already well served with off-the-air television, CATV poses a substantial danger to the economic well-being of local and area TV stations upon which rural residents rely, and even threatens to destroy these important local stations. If this is allowed to happen, rural residents face not only the loss of free, locally oriented programing, but the loss of television service entirely. CATV cannot and will not serve citizens living in sparsely populated areas.

For these reasons, the National Grange has urged that the Federal Communications Commission promptly adopt such rules and regulations as are necessary to prevent CATV from impairing the ability of local and area stations to serve the Nation's farmers.

The FCC has recently issued its second report and order which does represent a much-needed effort to come to grips with the wild growth of CATV. But, while we are encouraged that the Commission has taken this step with its second report and order, we feel that it has not gone far enough. It has not adopted fully adequate safeguards for the free television service relied on by the millions of Americans living in rural areas and sparsely populated communities.

For instance, the Commission's failure to provide in its rules for those markets below the top 100 a reasonable protection against the audience fragmentation caused by CATV's importation of many distant stations, seems to put into the gravest danger those stations which can least afford a loss of audience. Furthermore, it is upon these smaller market stations which the bulk of the National Grange membership relies for its television service.

Likewise, the Commission's concern for UHF growth in the top 100 markets does not justify a discrimination against the smaller market stations. The National Grange is fully in accord with the goals of the Commission and the Congress in fostering UHF development. We actively supported passage of the all channel received bill in testimony before this committee 4 years ago. We had hoped however that our support of the all-channel legislation would result in an increase—not a decrease—in television service to our members.

The FCC's decision to distinguish between the top 100 markets and all others with respect to distant station importation by CATV, seems to have been the result of a belief that "you have to draw the line somewhere." This premise apparently led the Commission to weigh equally the needs of 2 million CATV subscribers and 60 million nonsubscribers and the "top 100 decision" was the resulting compromise. Although the Nation's 3 million farm families are statistically a part of the 60 million nonsubscribers, in reality their dependence on off-the-air television—CATV cannot provide substitute service—marks these farm families as a group unto itself. Certainly their needs for some service should have been weighed equally with the needs of 2 million CATV homes for additional program choices. Had this been done, it is doubtful that the smaller market stations would have been cut out of the herd and left to fend for themselves.

Thus, while we are pleased that the Commission has taken action, our concern is that the Commission has not done enough to protect the interest of rural America in adequate television service.

Insofar as H.R. 13286 makes clear the Commission's authority to proceed to bring CATV under reasonable control, we support its enactment. We believe, however, in enacting legislation in this area, Congress should underscore that such legislation is intended to reaffirm the public policy which gives free television service, as provided by local broadcast stations, priority over all other competing modes of television service. Wire television must be confined to the proper role as a supplement to the primary broadcast service.

We are disturbed by one feature of H.R. 13286 however; this is the provision in the bill which would allow program originations by CATV. There is no pressing need for program originations by CATV, and we believe that to allow such originations could be the first step down the road to a system of pay television—a system which would not be in the interest of rural America. The insertion of local programs and commercials is, in our judgment, an invasion of a field already strictly controlled by the FCC. If CATV wants to originate programs, then they should operate as a regular TV station.

We are opposed to enactment of H.R. 12914, insofar as it would prevent the Commission from regulating CATV. Such a prohibition would simply grant to CATV operators a blank check in the conduct of their operations. With CATV operating at such a regulatory void and concentrating its efforts only on expanding its service in highly populated areas to the detriment of those local stations which provide service to the rural areas, we would be deeply concerned over the future of television for rural America.

We thank you for the opportunity of appearing before this distinguished committee.

STATEMENT OF ARTHUR BAUM, PRESIDENT, VIKING INDUSTRIES, INC.

Mr. Chairman, my name is Arthur Baum. I am the president of Viking Industries, Inc., with offices located at 830 Monroe Street, Hoboken, N.J. We manufacture a complete line of CATV equipment and also engineer and construct CATV systems. We have in our employ over 600 people engaged in the manufacture of this equipment. I have never been here to testify before, nor have I at any time stated my opinions regarding this matter.

In reading over the testimony of others, however, it strikes me that the most important people interested in CATV are the taxpayers of the United States—the people who pay to support this grand Government of ours. I have probably traveled as much as, perhaps more than, anyone else in the CATV industry. During the past 3 or 4 years, I have covered well over 1 million miles. I have visited hundreds of CATV systems during this time and have spoken with the many people involved in this industry. My wife and I have spent countless numbers of days and nights in small towns and hamlets throughout this great country. Many of these towns do not have CATV systems. In many cases, the hotels and motels we stayed in were not connected to a system even though there may have been one operating in that community.

When you have traveled as I have, day after day, week upon week, you begin to realize what a wonderful thing television is for the people who have no other form of entertainment—not even a local movie showing a first-run film.

The economic impact on the broadcasters seems to be the main issue of

discussion. May I point out, however, that the competition created through CATV's will be the greatest thing for CATV subscribers, as well as for those who do not have CATV. Competition will stimulate local programing and will insure better programing for the public. In the end result, we are offering the public a television service—a service to which they are happy to subscribe. This is good American business, and is a true example of free enterprise.

The Commission assumes the economic impact on the broadcasters as one of its most important grounds for its decision, besides the effect on UHF. Without CATV, it would seem to me that the market for UHF would be very, very limited. The average person, like myself, who turns on his television, will not take the time or trouble to switch to UHF and then focus on the local UHF station. Also, since most of today's television receivers are not "all channel," the public must buy a converter plus a UHF antenna. These costly inconveniences are eliminated when the UHF channels are carried on the cable.

I could go on and on about the technical and economic considerations of cable television. Most of these arguments and observations have been submitted.

I would not like to think that the American public was left out of these discussions. After all, the people must decide what is best and what they choose to watch on television. Let's get some fair legislation that helps everyone concerned and, most of all, let's give the American people a choice.

STATEMENT OF HAROLD R. SUGERMAN, PRESIDENT, H. & B. AMERICAN CORP.

My name is Harold R. Sugerman. I am president of H. & B. American Corp., a pioneer company engaged in the community antenna television (CATV) business. I am grateful to you for the opportunity to appear before you and express my views and those of my company on the subject of CATV regulation.

The CATV industry developed because Americans living in small communities were anxious to be first-class citizens with respect to television, enjoying the same television privileges that were available to the more fortunate persons living in large cities. This has been a historic urge. For a large part of our history rural residents and those residing in small towns could not, of necessity, enjoy the same benefits of culture as did the residents of the large cities. If rural residents wanted to see a play, enjoy a concert, tour a museum, they had to travel to the large city. For their news they had to rely upon the newspapers published in the large city whose delivery to the rural areas was subject to the vagaries of the postal and transportation systems.

The advent of motion pictures solved a part of the problem. For the first time it became possible for residents of small towns to enjoy in their own community some of the same entertainment available in the large metropolitan communities.

Radio broadcasting was another major step forward. This enabled almost all Americans to enjoy in their own homes first-class entertainment, drama, good music, and to tune in first-hand on news events as they occurred. However, rural listeners did not even in this area achieve complete equality with city dwellers. Since broadcast stations from the beginning have been dependent upon advertising revenue for their support, broadcast stations have tended to gravitate to the larger communities. Accordingly, the rural listener has had fewer stations to choose from than did the city dwellers, and, in many situations, the quality of the signal was substantially inferior to that enjoyed by the city residents.

When television came onto the American scene, it created an excitement unparalleled in all previous experience. Never in our history has a new medium made such a tremendous impact upon the American public. Here was sight and sound combined. Here was a medium that could bring to every home in America the sights and sounds of important news event as they occurred. Great dramas, music, entertainment became the heritage of every home with a television receiver. It was only natural that all citizens should demand equal opportunity to share in this new experience. However, economics of station operation was a hindering factor. The costs of constructing and operating television stations are much greater than for radio stations. Only the largest cities can support television operations and the stations are concentrated in these cities. Small towns have no stations of their own. However, their residents have not been content to remain second-class citizens; they were unwilling to be told that television service was available only to those living in or near the large

metropolitan communities of the country. A tremendous demand arose for television service and in community after community businessmen pioneered and risked their money to develop CATV, a new industry which made it possible for the residents of small towns to become first-class television citizens. CATV did for the poor and medium-income residents what rich people had already done for themselves. People living in isolated areas were spending large sums of money to erect their own receiving antennas on high poles so that they could pull in the signals from distant communities. The CATV entrepreneurs in the best of American business tradition undertook to meet the great demand for television reception. They risked their money and created a whole new industry. They erected master antennas and from these master antennas distributed the signals thus captured so that for a modest fee television service could be made available to all residents, poor and rich alike.

I am not trying to tell you that CATV has been able to take care of all people living in rural areas. CATV also has its problems of economics. In order to be economically viable a CATV system must be able to serve subscribers who live in a fairly contiguous area. The stringing of cables is extremely expensive. It is not economically feasible to undertake this expense where people live at great distances from each other. But admitting that CATV has not been able to do the entire job does not detract from the fact that CATV has done a big part of the job and has made possible to residents of small communities television service equal to metropolitan standards—a service these residents would never be able to receive if it were not for the ingenuity, daring and risktaking by the CATV industry.

In view of the great benefits which we have brought to so many Americans, the question quite naturally suggests itself to you—why is there opposition to CATV? Whence does it come? In my opinion there are three separate bases for this opposition and I would like to address myself fully and frankly to each one of them.

The first ground is the oft-repeated statement that CATV is a parasite. The charge goes that we appropriate the property of others for our profit and then use it to strangle the industry which is our host. To the extent that this argument is directed at the problems of copyright, it has no place in this hearing or before the Federal Communications Commission. Our industry sincerely believes that the reception of signals from broadcast stations does not constitute any infringement of copyright. However, this is a technical subject which is now being litigated. The courts will decide the issue. If we are correct in our argument that no infringement is involved, the matter will be at rest. If the opposite point of view prevails, we will of course abide by the court's decision. We would hope that if such an eventuality occurs, Congress would establish appropriate machinery to protect the interests of the viewer as well as of the copyright owner.

But the copyright issue has nothing to do with the free and unfettered reception of broadcast signals. Whether the person using the signal has to obtain licenses, permits, or other authorizations from the holder of copyrights, performing rights, or similar class of persons does not in any way affect the obligation of the broadcaster to make his programs freely available to all who can receive them. There is no justification for the imposition by the broadcaster or restrictions on the reception of programs or for requiring any user to obtain the consent of the broadcaster qua broadcaster.

A somewhat similar controversy relating to restrictions on users occurred during the early days of broadcasting. I am referring to the litigation concerning the use of broadcast programs by hotels. Whether such use requires separate performing rights by the hotel has been a much mooted point. But throughout all this litigation there has never been the suggestion that if hotels are indeed required to pay for their own performing rights, there is a correlative obligation on their part to obtain consent from the broadcast station to receive the programs. The issue of copyrights and performing rights are distinct and different from freedom of reception in the case of hotels. The issue is equally separate in the case of CATV.

There is good reason in policy why this should be so. Television stations are permitted to use without charge a large segment of the public domain. This use is justified on the public policy that stations are required to operate in the public interest and to make their signals freely available to all persons who are capable of receiving them. The broadcaster is not permitted to restrict his signal;

he is not free to address his transmission to one segment of the audience and withhold it from another. His obligation as the name "broadcasting" implies is to make the signal universally available.

The argument is made, however, that this obligation is limited by the authority of the Federal Communications Commission to classify stations and to prescribe the areas or zones to be served by stations. This has nothing to do with CATV. The FCC needs the cited authority in order to make sure that a single station does not occupy an unduly large part of the pectrum. The Commission is authorized to limit the area or zone to be served by a station so that other stations can be assigned on the same channel in other communities. But this has nothing to do with the right to receive signals. If the FCC prescribes areas or zones to be served by a station in such a way that two stations can be placed on the same channel within 200 miles of each other, the normal area or zone to be served by such stations would probably be under 80 miles. But what public policy is violated by a homeowner located 100 miles from the station erecting a tall tower to which he attaches a complex receiving antenna so that he can watch the television station? What public policy is violated if 100 residents in the same community do the same thing? What public policy is violated if the 100 residents pool their efforts and cooperatively erect a single tall tower with receiving antenna and distribute the signals so captured to the 100 cooperators who would share the expense of the operation? What public policy is violated if an entrepreneur does the job for the 100 residents? I see no public policy violated by any of these actions. I see only public good.

The argument of parasitism has an interesting counterpart in the early history of broadcasting, where the interests of radio stations were on the other side from that urged now. We all know how important phonograph records are to radio stations. In the 1930's there was a good deal of litigation concerning the right of phonograph companies to restrict their records to home use, thus preventing broadcast stations from using them without paying an additional fee. The broadcast industry argued that once a phonograph record was sold, its use could not be restricted; the purchaser could use it at home, on his station or any other place of his choosing. The phonograph companies argued for restrictions on use, making many of the arguments now adduced against CATV. Fortunately most of the courts agreed with the broadcast industry, with the result that today broadcast records are available in plentiful supply to broadcast stations. I venture to point out that this policy of unfettered use has been good not only for the broadcast industry but also for the record industry. I am sure that many millions of records have been sold because of their use on radio stations. The overall income to the record industry has undoubtedly been augmented because of a policy of full availability of records. By the same token, I earnestly believe that the free availability of television signals which CATV makes possible will help build the entire television industry.

The second ground for opposition to CATV is the fear that it is an entering wedge for pay TV. This is a red-herring issue. I know of no CATV operator who is pushing for pay television. The whole subject of pay versus nonpay TV is a complex one which the Commission is now studying both with respect to off-the-air transmission and wire transmission. The subject is of fundamental importance and is of such significance that a determination on this score should be made by Congress. I urge the committee to appoint a special study group for the purpose of looking into this matter so that a consistent and sound policy can be adopted, applicable to all media. I assure you that our industry will cooperate wholeheartedly with such a study. Pay TV is not a pressing problem so far as CATV is concerned. Legislation can wait until a thorough study is made and Congress has had an opportunity to legislate on the subject.

The third ground for opposition is the unfortunate predilection of the Commission to concentrate on a policy of encouraging a system of television allocations which is based upon a series of high-powered stations in large metropolitan areas coupled with a hope that by some trickle-down theory people living in isolated areas will be able to receive television service. This has not proved to be the case. The Commission has shown no real understanding of the needs and desires of rural residents for television service. The Commission's antipathy to CATV has been fully documented. But this is not the entire story. In many isolated regions citizens were so anxious for television that they constructed their own boosters. These boosters were illegal under the Communications Act, but in many regions they represented the only hope for television.

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Despite the illegality of boosters, the legitimate craving of these citizens for television led many Members of Congress to urge the Commission to do something to take care of pressing needs of these citizens for television service. The Commission turned a deaf ear. It attempted to prosecute the operators of such boosters and to take them off the air without making any alternative provision for television service. Even the courts were reluctant to apply the law strictly. I do not condone illegal boosters. I point out the experience with respect to the boosters because it shows the tremendous drive in the American people for the right to be able to receive television service and the unwillingness of the Commission to make adequate provision for such needs in rural areas. It was only after a concerted campaign that the Commission finally and reluctantly addressed itself to the needs served by the illegal boosters. I did so first by providing only for UHF translators and then only belatedly for the use of VHF translators.

I recite this history to you to underscore the unfortunate fact that you cannot rely upon the Federal Communications Commission to be the guardian of the rights of listeners. Its objective is to protect the large television stations and their extensive service areas. Little wonder that the strongest supporter of the Commission in the CATV area has been the Association of Maximum Service Telecasters.

I am here not to argue against any regulation of CATV. We can live with reasonable regulation. We believe that the Federal Communications Commission which is not rural-listener oriented should not be entrusted with the unrestrained authority which it seeks by its recommended legislation. Accordingly, I urge that if you give to the Commission authority to regulate the CATV industry, the areas within which the Commission operates should be clearly spelled out and specific limitations should be clearly written into the law to make sure that the rights of listeners and viewsr are as fully protected as are the economic interests of the large television stations. It is for this reason that I support the bill suggested by Frederick W. Ford, president of the National Community Television Association.

I will not cover most of the points treated in the testimony of Mr. Ford. However, I do desire to cover four subjects as follows:

1. Carriage.
2. Nonduplication protection.
3. Program origination.
4. Amendment of section 325.

1. *Carriage.*—In my opinion, it is reasonable for community antenna television systems to carry the signals of local stations before they start importing distant signals. However, I do not believe that the definition utilized by the Commission for identifying a local station is realistic. The Commission would require carriage of all grade B signals available to the CATV system. This is an unrealistic definition of a local station. In the first place, we all know that the grade B contour is a theoretical contour, and that in many instances a usable signal is nonexistent in practice where theory indicates a grade B signal is present. In the second place the grade B contour of many VHF stations extends out for as much as 70 or 80 miles. In our view it is stretching things to tell a community that a television station 80 miles away is its local station . In the third place, the grade B contour of VHF stations is much more extensive than tha of UHF stations. Under the Commission's rules a CATV system located 60 or 70 miles from a large city with both VHF and UHF stations would be required to carry the VHF stations but would not be required to carry the UHF stations. The grade B contour of the VHF stations reaches that far; the grade B contour of UHF stations falls short. The Commission asserts that it is interested in helping UHF, but its own rules are VHF oriented. Again there is little wonder that with this VHF orientation on the part of the Commission, MST is found vigorously supporting the Commission.

I recommend that the Congress write into the act a definition of "local station" which is based upon reasonable mileage distance. The figure of 30 miles suggested by Mr. Ford seems to me eminently fair to all concerned. This figure will be capable of exact measurement and will result in treating UHF stations equally with VHF stations.

Turning to the other aspect of carriage, should there be any restrictions on the number or location of stations carried by a CATV system? In my opinion, this is a matter which should be left entirely to the business judgment of the CATV and of its subscribers. There is no reason why a subscriber should not receive

as many signals as the company is willing to bring to him. There is no basis in policy for the Federal Communications Commission imposing an artificial restriction on the number of signals CATV systems may be bring into a home. Certainly, no one would support the action of a local city council in granting a franchise to a CATV company on the condition that the system be permitted to carry signals only from stations located in that State; signals from stations located outside that State could not be carried. Such a narrow parochialism would be universally condemned. Is it any less narrow parochialism when similar restrictions are imposed by the Federal Communications Commission rather than by a city council?

The Commission justifies its system of restrictions because of the fear of fractionalizing the audience. This is a fancy word but in plain English it is protectionism. It represents the desire of the local television stations to have the markets to themselves. This is not a new phenomenon. During the 1930's the Commission followed a philosophy of protectionism by requiring an applicant for a new station to prove a need for the new service. Under this philosophy the country had fewer than 1,000 stations. During the 1940's the narrow philosophy of protectionism was repudiated and the Commission embarked upon a policy of free competition over the strong objections of the existing stations. The new policy was successful. The choice of services available to the public was increased manifold. Did the fractionalization of the audience create chaos in the industry? On the contrary, increased competition helped to create a strong, vigorous industry. New stations meant increased stimulus to creativity and hence to listenership. More stations were established, but the profitability of the entire industry also increased. This is the American way. We should eschew narrow parochialism in the CATV field. The public is entitled to the maximum number of signals entrepreneurs can bring to them. Local stations will find that the increased service will stimulate increased audience interest, to the benefit of all concerned.

2. *Nonduplication protection.*—At the outset, I point out that while I do not oppose some nonduplication protection, I urge Congress to consider most seriously the desirability of avoiding any system of protection. The broadcasting industry is one of free competition. Stations survive and prosper only on their ability to compete with all other stations. An independent station without a network affiliation must compete for viewers against a station in the same market which not only originates its own programs in the same manner as the independent station but also receives outstanding programs from distant markets as a result of its network affiliation. How much poorer would television be if the independent station were protected against this outside competition.

There are some areas in the country without CATV where viewers have the choice of the same program from two separate cities. For example, residents in Laurel, Md., can watch both the Washington and Baltimore stations. Stations in both communities are affiliated with the same networks. Whether the viewer watches programs from one city or another is his choice. I do not believe that the Commission under its authority to prescribe areas or zones to be served by a station should have the right to tell the viewer in Laurel that he must watch either Washington or Baltimore stations but not both. It would not be good public policy so to restrict a viewer in order to protect the economic interests of a television station. It seems to me that television stations should welcome the opportunity of competing for viewers on the basis of their programs and their signals without artificial protection from the Government. This should be equally true when the additional signals are made available by means of CATV.

However, if some area of protection is deemed necessary, the maximum protection which should be accorded is simultaneous duplication. Of course, this is still an undesirable form of protectionism, but at least its disadvantages are limited so far as the viewer's freedom to watch is concerned. Under a system of simultaneous-only protection, viewers are not deprived of their right to view programs. Such freedom, however, is impaired under the Commission's rules and regulations. Under the Commission's protection rule, whether it is 15 days or same day, the viewer is told by the Government which hour he may watch a particular program. For example, suppose a local station A is carrying a network news program at 6:30 p.m. and a distant station B is carrying the same program at 7 p.m. Both A and B are on the CATV system. Without Government intervention, viewers who can watch at 7 p.m. but not at 6:30 p.m. can

see the program. Under the Commission's rule, 7 p.m. viewing of that program is prohibited. The Constitution protects the right of the people to read, to listen, to view. The Constitution protects the right of the people to read, to listen, to view. The Commission's rule restricts and controls that right. This is an inappropriate area of Government action. The Government could not in the interest of protecting local publishers require the residents of a small town to read only the local newspaper and not the Chicago Tribune or the St. Louis Dispatch, or to require the local distributor of newspapers to deliver the out-of-town newspapers a day late. The reader obviously has free choice as to his newspaper-reading habits. Similarly, a television viewer should have his choice of whether to watch a television program at 6:30 p.m. or 7 p.m.

I repeat when I say that Congress should show its confidence in our system of free enterprise by providing no protection for local signals as against distant signals. But if some protection is to be accorded, it should be made clear that only simultaneous nonduplication can be ordered. In this way, we will at least preserve the freedom of the viewer to watch.

3. *Program origination.*—The Commission has asked you to write into the law a prohibition against any program origination by CATV systems except with the permission of the Commission under general rules and regulations prescribed by it. I oppose this suggestion most vigorously. In the first place, program origination by CATV systems presents no problem requiring attention. Congress should not be called upon to act in this very important field where there is no present problem. I fail to see any data or showing in any of the testimony before this committee as to how program origination (nonpay TV) adversely affects the public.

In the second place, control of program origination by a wire system raises the most serious constitutional problems. Even the Commission would admit to a lack of constitutional authority on its part to control program origination by a closed-circuit system devoted exclusively to such origination, i.e., with no programs on this system from broadcast stations. There is no constitutional basis for such control. The control over program origination in the broadcast field is tied to a licensing system necessitated by a scarcity of facilities. No such scarcity exists in the closed-circuit field. There is no more constitutional reason for requiring a license to enter the closed-circuit business than to publish a newspaper, a new magazine, a new periodical, or to utilize any other medium of communication.

Is a different result required where a closed-circuit system performs two functions—on some of its channels it carries signals received from broadcast stations while on other channels it carries programs originated by itself or by a company leasing the channel from the CATV system? I fail to see how the Constitution would permit a different result. The closed-circuit would still be a nonscarce facility capable of being utilized as a medium of communication. Its right to first amendment protection would be unimpaired and no constitutional basis coud be found for a licensing system. If the CATV part of the enterprise requires Government regulation, Congress can act in the field without invading the field of licensing. A newspaper can be made subject to the Wage and Hour Act, the Labor Relations Act or similar requirements but the legitimacy of such regulation cannot be used as an excuse for licensing or regulating the publication end of the business. By the same token I see no basis for an argument that if a person desires to enter the CATV business, he can be forced to give up constitutional rights with respect to origination of programs on his closed-circuit system.

The Commission's requested legislation is an extreme case of constitutional invasion. It not only seeks a measure of licensing authority over a communications medium, but it also seeks authority to supervise and control the program content of such medium. The precedent would be most unfortunate. Permit me to give you an extreme example. We know that in the past the Federal Communications Commission has raised the question as to whether it is in the public interest for newspapers to own radio and television stations. I do not hold a brief for such assertion of jurisdiction. But let us assume that the Congress or the Commission were to hold that it is incompatible with the public interest for a broadcast station to be owned by a newspaper. Whatever constitutional basis might exist for such a policy, I am sure that no one would urge the next step; namely, that newspaper ownership of a broadcast station should be permitted only if the newspaper were confined to publishing such matters in its newspaper as the Federal Communications Commission ascertains is in the

public interest. Yet this is precisely the type of authority the Commission is seeking by its amendment. It urges the Congress to enact a statutory scheme providing that the closed-circuit system (not subject to Commission regulation) be prohibited from originating programs if the closed-circuit system also carries programs from broadcast stations except in those program areas permitted by the Commission's rules and regulations.

4. *Amendment of section 325.*—The Commission does not affirmatively recommend that section 325 of the Communications Act be amended so as to require CATV systems to obtain permission from originating stations in order to carry their programs. It does, however, somewhat wistfully suggest that such an amendment might well solve the whole CATV problem. I disagree. Such an amendment is entirely inconsistent with the philosophy of broadcasting. It would create the anomalous situation of a broadcaster being able to choose which segment of his potential viewing audience should receive his signal and which segment should not. If the broadcast station can require the consent of the CATV system, why can it not also require the consent of a hotel, or an apartment house, or indeed of an individual owner who decides to erect a hundred-foot receiving antenna? The requirement of section 325 consent for CATV would introduce a species of pay television into broadcast operations. If the broadcaster's consent is necessary, you can be sure that he will demand a price therefor. It is difficult to see why a broadcast station should be able to command a price from part of its audience for a service which is made available without a price to the balance of the audience. The broadcast station is permitted to use without charge the public domain because his program service is made available on a widespread basis to all those who are capable of receiving it. We should not have a system whereby the broadcaster dedicates his programs only to part of the public but not to the entire public.

Moreover, there is a certin amount of insincerity in the Commission's flirtation with a section 325 amendment. The Commission has declared that the regulation of CATV operations is necessary in order to protect the local station, not the distant station. The section 325 amendment would have precisely the opposite effect. If the amendment is adopted, the consent required will be that of the distant station, not that of the local station. The interest of the distant station is to obtain as much circulation as possible. If a CATV system requests consent of a distant station, it will be a matter of plain dollars and cents with it as to whether to say yes or no. It could not care less what effect its decision would have on a television station located in the community of the CATV system. The Commission protests that it is interested in protecting the local station. A section 325 amendment would strengthen the distant station and do absolutely nothing for the local television station. Is there any surprise that MST, the association of powerful distant stations, is supporting the Commission in its efforts?

In closing, I would like to say a word for the American system of free enterprise. We all talk about it; we all express our loyalty to it; but all too often business concerns abandon it when their privileged position is threatened. There are many illustrations of this tendency in the radio field. When the Federal Communications Commission first proposed its chain broadcasting regulations, the networks complained that the regulations would mean the death of the networks. The network reglations were adopted; the courts sustained them. The networks today are stronger than ever. When television came on the scene, AM stations were concerned that television would ruin AM radio. Today we have a healthy television industry and also a healthy AM industry. The illustrations can be repeated many times. However, the point is clear. American business enterprise never suffers from competition; it thrives on it. Let not the television stations draw a wall of protectionism around themselves. The increased viewing which CTAV makes possible will benefit the entire television industry.

STATEMENT OF PAUL A. PORTER, REPRESENTING THE COMMISSIONER OF BASEBALL

My name is Paul A. Porter, of the law firm of Arnold & Porter, Washington, D.C. I appear here at the request of and as counsel for Gen. William D. Eckert, the commissioner of baseball.

Baseball's interest in H.R. 13286 is limited to one area of concern: whether live, play-by-play telecasts of baseball games will be protected from retransmis-

sion by CATV's without the consent of or without remuneration to the baseball interests who produce the exhibitions.

Baseball does not contend that CATV's should be prohibited from program origination as proposed in H.R. 13286, but rather that the prior consent of baseball be required before CATV's be permitted to retransmit major and minor league games in the home territory of the member club on the day when the club is playing at home. The reason for the requested protection is as follows:

Revenues from the sale of television rights are a major source of income for the major league teams. Unless baseball can continue to control the live telecasts of its games by appropriate contractual arrangement, this valuable property right could be substantially impaired. For example, in the 1965 season, baseball's TV revenues exceeded $20 million. One of the networks paid in excess of $5 million to the 18 major league teams for the rights to broadcast the "Game of the Week." Moreover, certain teams have individual contracts covering the telecast of home games within their local area for substantial sums, in some cases for more than $1 million per season. Minor league teams have similarly valuable contractual arrangements.

In 1961 Congress recognized baseball's proprietary interests in their broadcast rights when, in adopting the sports broadcast bill, it specifically excepted from the antitrust laws league TV contracts which prohibited the contracting network from broadcasting the "Game of the Week" into the home territory of the member club of the league on the same day that the club plays the game at home.

These protective arrangements are indispensable to baseball—both in the major and minor leagues—if the gate attendance at its live exhibitions is to be maintained. Although baseball welcomes wide television exposure, it must, at the same time, be able to fill its ball parks with paying fans if the game is to prosper and survive.

CATV's are capable of seriously harming baseball if permitted indiscriminately to pick up, via long-range microwave hops or directly off-the-air, without remuneration to baseball, the live telecasts of games from distant cities and to transmit the same via cable lines into the homes of the viewers in the very town and surrounding area on the day and date in which a game is being played. Unless restricted by FCC rule or congressional legislation, CATV's will continue to ignore the contractual rights between the leagues and the networks and between the networks and their affiliated stations which are designed to protect the substantial financial interest of baseball in its program rights.

Baseball therefore urges that this committee and the Congress, in considering any legislation directed toward the regulation of CATV's assure that such legislation requires CATV systems to honor the contractual arrangements between the baseball teams and leagues and the networks and stations under which baseball's television rights are protected. To do otherwise will seriously threaten the continued viable existence of the "national pastime."

I feel it appropriate to call to the attention of this committee the fact that the problem of protection of baseball's exhibition rights, as well as those of other organized team sports is also pending before Subcommittee No. 3 of the Committee on the Judiciary, which is considering copyright law revision.

On September 1, 1965, I appeared before that committee and stated in another context baseball's position with respect to the CATV problem. I would request leave to have that statement included as a part of my testimony before this committee. I am certain that your committee will wish to consider this problem in all of its aspects. In the event copyright protection is extended to play-by-play broadcast of sports events, this would give to the owners of such rights some additional protection. Hence, it is our position that the subject matter covered in H.R. 13286 should be coordinated and reconciled with the provisions urged by organized team sports in H.R. 4347.

The statement of baseball's position before Subcommittee No. 3 of the House Committee on the Judiciary follows:

STATEMENT OF PAUL A. PORTER, COUNSEL TO BASEBALL RE H.R. 4347 BEFORE SUBCOMMITTEE NO. 3 OF THE HOUSE COMMITTEE ON THE JUDICIARY, 89TH CONGRESS, 1ST SESSION

My name is Paul A. Porter of the law firm of Arnold, Fortas & Porter, Washington, D.C. I am counsel to baseball and appear here today at the request of the commissioner of baseball, Ford Frick.

Baseball's interest in H.R. 4347 relates to a narrow and specific question: whether live, play-by-play broadcasts of sport events will be protected from unconsented retransmission by community antenna television systems.

We understand that the Copyright Office's position is that there is some question whether the bill, as now drafted, extends copyright protection to live broadcasts of sports events, even though the Copyright Office acknowledges that all prerecorded, taped, or otherwise copyrighted broadcasts will receive protection against CATV retransmission. Further, we understand that the doubt and ambiguity is founded essentially on conceptual grounds: whether there can be copyright infringement under section 102 of the bill in circumstances where CATV retransmits a live sports broadcast since there is no copying of a work which has been reduced, in the terms of section 102, to a "tangible medium of expression."

To distinguish between live and prescripted or prerecorded broadcasts would mean that a tape of the San Francisco Giants playing the Tokyo Giants which is replayed on a sports spectacular cannot be picked up by CATV without infringement. However, in contrast, a live, play-by-play transmission of a contest between the San Francisco Giants and the Los Angeles Dodgers is fair game for CATV.

For the reasons set forth below, we believe that any such artificial and economically meaningless distinction should be rejected and that this subcommittee should explicitly extend the scope of copyright protection to cover CATV's retransmission of live sports broadcasts.

One of the commendable elements which runs generally thorughout the draft of the copyright bill is the constant effort to deal with the commercial realities of the modern world of ideas and communications. It was the recognition of CATV's impact upon the producers of television shows, television broadcasters and local stations which led the Copyright Office to propose that CATV transmission constitutes a copyright infringement. We endorse those findings and this proposal inasmuch as they are particularly applicable to organized baseball. This committee is well aware that only through the investment of great sums of money, time, and effort—extending over the course of decades—has baseball attained the status of the national pastime. In such circumstances, it is grossly unequitable to give CATV a free ride and to permit CATV to broadcast, without consent or compensation, any game which they please.

Thus, solely upon conceptual grounds, the entire area of live sports broadcasts—which involves millions of dollars of revenue annually—might have been left unprotected by the bill for expropriation by CATV. Significantly, to date, there has been no justification whatever presented to this subcommittee which would support—as a matter of policy—the failure to extend protection to live sports broadcasts.

This omission can cause serious and substantial problems for baseball. As this subcommittee is well aware, revenues from the sale of television rights are a major source of income for the teams in the American and National Leagues. Of course, it is the ability to control live sports broadcasts which makes this such a valuable asset. This year's total TV revenues from all sources will exceed $15 million. On a league basis, ABC–TV is paying $5.4 million to 18 major league clubs to broadcast "The Game of the Week." CBS–TV is paying the Yankees $550,000 for its weekend national network broadcasts. Further, individual major league clubs have contracts to broadcast home games within their local area for substantial amounts, in some cases exceeding $1 million per season.

These figures demonstrate the value that sponsors attach to the rights to broadcast live sports contests. However, baseball will be able to realize these revenues only as long as the member teams or the league possess exclusive control over such broadcasts. Congress has recognized this fact of life in 1961 in the sports broadcast bill when it specifically exempted from the antitrust laws a league package TV contract which provided that the concerned network would not broadcast "The Game of the Week" into "the home territory of a member club of the league on a day when such club is playing a game at home."

This valuable right to control the broadcasting of sports performances may well be destroyed unless the copyright bill is expanded to protect live sports performances from expropriation by CATV. CATV will be able to wreak havoc in a home team's market. For example, many teams—Washington is one—have decided against televising their home games so as to protect gate attendance. Assuming Washington is playing the Yankees here at D.C. Stadium and that the

game is being broadcast back to New York City, under the bill as now drafted, it is possible that CATV could—without any financial obligation—bring into Washington that very game, as well as any number of competing games, which all could substantially cut into the Senators' box office attendance.

Further, CATV will threaten the potential TV revenues in circumstances where a team decides to broadcast all its games. As an example, Atlantic Refining has contracted to pay the Philadelphia Phillies a very substantial sum—running into the millions—for the exclusive right to broadcast in the Philadelphia market. However, if CATV is permitted to bring into Philadelphia all Yankee and Mets games from New York City without regulation or control, necessarily the amount Atlantic Refining will be willing to pay in this diluted market for sponsorship of the Phillies will plummet. Further, neither the Mets nor the Yankees would be compensated for the unconsented use of their broadcasts.

These examples could be repeated in all the cities presently housing major league baseball teams for, as the subcommittee is well aware, CATV applications presently are blanketing all the major metropolitan markets.

Moreover, CATV poses a threat to the continued vitality of minor league clubs. These minor league clubs are, of course, the proving grounds for most major league players. However, unregulated expropriation of live major league games by CATV could decimate minor league gate attendance, and organized baseball would be powerless to respond in any fashion. Baseball must have the right to control in a proper fashion the broadcasts of its games in order to protect such minor league teams.

In sum, one of baseball's most valuable economic assets—its revenue from the sale of TV rights—can be substantially destroyed by unregulated expropriation by CATV. This very situation has prompted the Register of Copyrights to recommend broad CATV protection in H.R. 4347 which will extend to all taped or prerecorded programs. However, the Register's proposed bill apparently stops short of protecting live sport broadcasts.

This artificial concept of the Register could force equally artificial responses on the part of baseball, its individual teams, and the networks to protect their product. For example, conceivably, every live sports event could be placed on tape and rebroadcast a few seconds later. The program would then unquestionably be protected against CATV expropriation. But, this procedure is extremely complicated and expensive.

Further, the language of the bill, as now proposed, produces this curious result: Should CATV pick up "The Game of the Week," those portions of the game which are broadcast live would fall without any copyright protection. However, under the interpretation suggested by the Copyright Office, if there would be a video tape replay immediately following any given play, CATV could not pick up that portion without infringment because the play had been reduced to a tangible medium of expression, which was rebroadcast by the station. We assert that this illogical fragmented result does not comport with the regulatory purposes of this bill which attempt to protect broadly and generally, for good and sufficient reasons, against unconsented retransmission by CATV.

In order to remedy this serious defect in the bill now before the subcommittee, baseball supports the amendments proposed by Commissioner Rozelle here today. By redefining "motion pictures" in section 101, to provide that:

"The term 'motion pictures' includes live telecasts of sports events which are recorded simultaneously with their original transmission."

This critical defect in the bill can be cured. We urge adoption of these amendments.

STATEMENT OF WILLIAM N. UDELL, MARION, IND.

My name is William N. Udell, and I am president of GENECO Broadcasting, Inc., licensee of UHF television station, WTAF, in Marion, Ind.

As I understand it, this committee is contemplating the adoption of certain legislation concerning the community antenna television industry. I am advised that one of the considerations in forming the legislation, will be the committee's opinion as to the effect that CATV has upon the successful operation of UHF television stations. As the owner, operator, and controlling stockholder of UHF television station WTAF, for over 3½ years, I have more than a passing interest in this legislation.

Accordingly, if the committee please, I shall offer my comments as to the effect of CATV upon UHF television operation.

Generally speaking, there are three major problems impeding the development of UHF television. They are as follows:

(1) Insufficient programing.

(2) Poor signal propagation in the grade B areas.

(3) Insufficient UHF converters to permit reception on VHF-only television receivers.

CATV systems have been and are of considerable value to many UHF stations in correcting the above-mentioned problems. In my own case, consider the following:

(1) While it is still impossible for station WTAF to obtain an amount and quality of programing, that, in the long run, will make the station a financial success, we have earned considerable profits by developing special programs for carriage by specific CATV systems. For example, after extensive discussions with the Logansport, Ind., CATV system, we decided to broadcast several programs of interest to those in the Logansport area. These programs included high school basketball games and others. We were able to glean $5,000 from adverstisers, for these broadcasts. To complement our efforts, the Logansport CATV system expended a considerable amount of time, effort, and funds in promoting the carriage of these special Logansport programs. These developments, and others like them, have helped offset WTAF's program void and have provided additional revenue.

(2) As the committee is well aware, UHF television signals lack the strong propagation characteristics and quality of VHF television signals. As a result, in the grade B areas of most UHF television stations, there are numerous "weak signal" spots. This problem has been alleviated greatly, for many UHF television stations, by the advent of CATV systems within their grade B contour area. In my specific case, due to the advent of numerous CATV systems, we no longer consider our signal to be a significant problem to the economic progress of our television station.

(3) Since the passage of the so-called all channel set law, the problem of insufficent converters—to permit reception of UHF television signals—has been alleviated somewhat. However, the changeover from VHF-only sets to VHF–UHF sets, has not taken place with the speed expected. Obviously, when a UHF television station is carried on a CATV system, there is no further need for a "converter" as such. In this respect also, CATV systems have been a "boon" to the UHF television stations.

As I understand it, the Federal Communications Commission has evidenced great concern over the fact that UHF television development, because, with the advent of a CATV system in the area, the audience of the UHF television station will be diluted due to the availability of numerous television signals from outside the immediate area. Frankly, I fail to comprehend the reason for this concern.

In my own case, prior to the operation of several CATV systems within my service area, I was competing with six television stations. Subsequent to the introduction of these systems, I had been forced to compete with 11 television stations—an increment of 5 television stations. Has my audience been diluted? Has my balance sheet suffered? Will it put me out of business?

While my audience has been somewhat diluted by the addition of five more stations, this dilution has more than been offset by the addition of homes which I can reach only through the CATV systems. In effect, many of the subscribers on these CATV systems cannot receive my UHF signal without cable, because my television signal will not reach that far, and many of these people lack UHF converters. While my balance sheet is far from what I would like it to be, it has not suffered from CATV; on the contrary, it has improved somewhat. Finally, I am confident that the CATV systems now in operation, and those which will go into operation in the future in my area, will not constitute the "death knell" of WTAF, but should rather improve the economic prospects of its operation.

We have worked successfully, hand in hand, with several CATV systems. At the outset, it was our job to convince these CATV operators that our programs would be of value to their subscribers. Once so convinced, these CATV operators have not only carried our broadcasts, but have spent time, money, and effort in publicizing our programings.

It is our hope that additional CATV systems, as established in the future, will choose to carry station WTAF and provide us with further opportunities to

expand our viewing audience. In summary, it is not correct to assume that a CATV system will render injury to the local UHF stations. From my personal experiences, I can only conclude that, under the proper circumstances, a CATV system can be of great value and assistance to a small, independent telecaster.

WILLIAM N. UDELL.

STATEMENT OF ARCH L. MADSEN, PRESIDENT OF BONNEVILLE INTERNATIONAL CORP., SALT LAKE CITY, UTAH

As president of Bonneville International Corp. (BCI), I am pleased to comment on our national television policy in the context of the pending legislation to deal with regulation of community antenna television systems (CATV).

SUMMARY OF VIEWS

As a group of broadcasters with ownership in four television stations (in both urban and rural areas) BIC urges that the public interest would be served by the enactment of H.R. 13286 to affirm the action of the FCC in regulating CATV. Regulation of CATV by the FCC is required to protect the public interest in free television. The FCC regulation, as proposed, should be enlarged to protect the public in the "bottom 130 markets" and in other respects. The enactment of either H.R. 12914 or H.R. 14201 would be inimical to the public interest, and would give preferential protection to unfair and unproductive pay cable broadcasting at the expense of the public. A free television service to many areas not now adequately served could be provided by more liberal rules and encouragement of translators.

BIC BACKGROUND AND INTEREST

So that you will know the orientation from which I speak, I would like to furnish a little background concerning Bonneville International Corp., which is a Utah corporation with headquarters in Salt Lake City. BIC is majority owner of KSL, Inc., licensee of KSL, KSL–FM, and KSL–TV, Salt Lake City, Utah; of KIRO, Inc., licensee of KIRO, KIRO–FM, and KIRO–TV, Seattle, Wash.; and International Educational Broadcasting Corp., licensee of international radio station WRUL, with studios in New York City, and transmitters in Scituate, Mass. In addition, through its subsidiary, KSL, Inc., BIC has substantial but minority interests in Idaho Radio Corp., licensee of KID, KID–FM, and KID–TV, Idaho Falls, Idaho, and in Boise Valley Broadcasters, Inc., licensee of KBOI, KBOI–FM, and KBOI–TV, Boise, Idaho.

The personnel of BIC have extensive broadcasting experience in both radio and television in diverse markets. For example, KSL radio has been operating since 1922 and is one of the class I–A 50-kilowatt clear channel stations. KIRO has been operating since 1927 and is a 50-kilowatt station of prominence in the Northwest. KID has been operating in Idaho since 1928 in the Idaho Falls area and KBOI since 1947 in the Boise, Idaho area. WRUL is a pioneer in international radio broadcasting and has been owned by the BIC affiliated group only since December of 1962.

As is indicated, our stations range from the urban Seattle-Tacoma market to the more rural Idaho markets. Two of the stations (KSL–TV and KIRO–TV) are within the "top 100 markets" and the other two (KID–TV and KBIO–TV) are within the bottom 130 markets." The diversity of our interests and the extensive CATV development in our markets makes us at BIC aware of the many critical factors and considerations in these different size markets affecting the public interest and the future of television stations and CATV.

INTRODUCTORY STATEMENT

BIC believes FCC regulation of CATV is necessary and should become effective promptly. For that reason we urge enactment of H.R. 13286 with amendments.

A very highly organized and vocal group of CATV operators and other opponents of this view suggest that broadcasters seek to have CATV subjected to regulatory control for their private benefit and, it is argued, broadcasters will regret doing so because such regulation will increase the power of the Federal Communications Commission to regulate the broadcast industry. BIC does not share these views. We believe control over CATV is necessary in order to protect the

long-range public interest in free television and to assure both the orderly allocation of television service throughout the United States and the continued expansion of UHF and VHF service by local television stations which will best satisfy the particular programing needs of their viewers.

It is an oversimplification to say that if the public wants to pay for cable viewing, it should be permitted to do so. This line of reasoning fails to reach the real problem—free local television will be destroyed by the unregulated "piping in" of distant big city signals (usually by large outside corporations who are taking over the CATV businesses formerly operated by small local businessmen). The advertising revenue necessary to sustain the free local broadcaster, will be fractionalized or lost to the local television broadcaster. Free television will be lost, or seriously impeded and deteriorated, before the public knows what is happening, if uniform Federal regulation is avoided.

BIC advocates a reduction and not an expansion of regulatory control over the broadcast industry, especially in the area of program content. BIC has never sought to avoid competition with CATV on an equal basis. However, BIC is strongly opposed to being subjected to substantial regulation not also applicable to a competitive force such as CATV.

Unlike CATV, each broadcast licensee is encumbered with overwhelming reporting requirements by the FCC. They cannot increase power, assign facilities, obtain renewals, sell stock, transmit to neighboring communities or perform many other activities without reporting to and/or obtaining the consent of the FCC. Television broadcasters are precluded from invading the area served by other licensee by either increasing power or by using translators. They are required to assure that other stations are protected by installing directional antennas or reducing power. Their income, profits, ownership interests, and other pertinent data are constantly filed with the FCC and is frequently a matter of public record. The owners of broadcast facilities are properly restricted in presenting their views because of the Commission's fairness doctrine, sections 315 and 317 of the Communications Act of 1934, as amended, and the necessity to convince the Commission that the public interest would be served by renewing the licenses. CATV is certainly under no such discipline and we feel it should be.

Certainly the rules of the game should be the same for those using public tools for communication. It comes as a shock to me, and I am sure to many like me, that a broadcaster should be licensed and regulated as some measure of assuring that the public interest will be served, while those who profit from—indeed would not exist without—the broadcast licensee's endeavors, should be free to do as they please with the product of competitive enterprise broadcasting, regardless of the consequence to those who willingly carry the burden and responsibility of public accountability.

CATV has been described as an auxiliary and supplemental service. So long as it remains as such, we encourage it. However, as it is developing in most places, CATV is often a parasite; it takes the program material of others without compensation and charges its subscribers for the service. (Often, many of the subscribers reside in areas served by a television station which pay for the same program material.) It is essential for the public interest, we believe, that this preferred mode of operation should be ended by equal regulation and requirements.

In the interest of brevity, we will not repeat what has been said by the National Association of Broadcasters and the Association of Maximum Service Telecasters Inc. We concur with their views, in general. We agree that the FCC rules in the "Second Report and Order" will assist in protecting the viewing public, but as hereinafter discussed, we feel the FCC regulations do not go far enough, particularily in the smaller markets.

We shall confine our discussion to three points on the legislation as such and to four points on the Commission's "Second Report and Order" on CATV.

A. LEGISLATION

(1) *Desirability for legislation affirming Commission jurisdiction over community antenna television.*—Appendix C of the Commission's "Second Report and Order" contains a legal memorandum reliably substantiating the Commission's contention that it has jurisdiction and authority to regulate community antenna television. BIC previously urged before the Congress and the Commission that the FCC has jurisdiction to regulate CATV (see *Clarksburg Publishing Co.* v. *F.C.C.*, 225 F. 2d 511 (1955), and *Citizens TV Protest Committee, et al.* v. *F.C.C.*,

No. 18738, decided May 7, 1965). The Commission's memorandum clearly establishes that the Commission has jurisdiction over all CATV, based on existing provisions of the Communications Act of 1934, as amended.

However, inevitably, the Commission's determination is going to be subject to judicial review. The time taken to get a final determination on the various contentions will be a substantail detriment to the broadcast industry, including the CATV systems. This court litigation and period of uncertainty could be obviated by a congressional mandate affirming FCC jurisdiction.

(2) *CATV systems should be required to obtain rebroadcast consent.*—Section 325(a) of the Communications Act of 1934 has been construed to require that television stations obtain prior consent from stations whose signals they are desirous of rebroadcasting. CATV systems are not subject to this condition. *Cable Vision, Inc.* v. *KUTV, Inc.* (211 F. Supp. 47 (D.C. Idaho 1962), remanded on other grounds, 335 F. 2d 348, cert. den., 379 U.S. 989). However, programing constitutes the greatest expense to broadcasters and to permit CATV systems to transmit the signal of a station without obtaining consent from said stations clearly violates the intent and purpose of section 325(a).

Section 325(a) is identical to section 28 of the Radio Act of 1927 (44 Stat. 1172). Congress adopted this rebroadcast provision because it was of the opinion it would be unjust for any station to intercept and rebroadcast programs from originating stations without said stations' permission. See hearings on S. 1754 before the Senate Committee on Interstate Commerce (69th Cong., 1st sess., pp. 71, 85). Senator Dill, in commenting on this provision, stated as follows:

"As to section 28 [now sec. 325(a)], providing that no person, firm or corporation shall rebroadcast the material broadcast by a station without the station's consent, it is, I think, a very necessary provision. Otherwise, we would have a broadcasting station spending a large amount of money to prepare and present a program as a program from that station, and then under the modern methods of rebroadcasting, it could be picked up and broadcast from other stations and, particularly over the *wired wireless, and money charged for listening to it.* * * *" (68 Congressional Record, 2880.) [Emphasis supplied.]

Obviously, the unregulated CATV operator does not think this applies to him.

However, we would caution against any conclusion that making section 325(a) applicable to CATV would solve all problems. It may be relatively easy for a CATV operator in Pocatello to get consent of a Los Angeles independent to broadcast his signal in Pocatello. Section 325(a) alone will not protect the local viewer or the local broadcaster from destruction of local free television broadcasting, in our view.

(3) *Program origination by CATV systems should be prohibited.*—Program origination by CATV systems can be completely prohibited, completely permitted, or permitted subject to limitations. We believe that origination by CATV systems should be completely prohibited. To achieve this end, Congress should amend section 3 of the Communications Act of 1934, as amended (47 U.S.C. 153), as follows:

"(gg) A 'community antenna television system' means a service which transmits television programs but which does not originate programing or charge customers on a per program basis."

An alternative sound approach would be that suggested by MST with respect to section 331(b) of H.R. 13286.

When community antenna systems originate programs they certainly cease to be antenna systems. No antenna ever originated a TV program. Yet, the whole basis of CATV's claim to absolute freedom from any regulation or restraint is based on the plea "we are only a community antenna."

CATV, in originating programs, becomes pay television. It is providing a program for a fee. To the degree it originates its own programs, it becomes destructive of free off-the-air television, whose signals they were conceived to receive. In other words, when CATV originates programs, is destroys the audience for programs for free TV, upon which it now totally depends. This is the ultimate of parasitism.

In the event CATV systems are permitted to originate programing without restriction, they should also be subjected to the identical regulatory obligations imposed upon television stations. That is, CATV systems should be required to make the same showing required of prospective television licensees and, in addition, be subject to all provisions of the Communications Act and the Commission's rules presently applicable to television licensees. This is because CATV systems endowed with an unlimited right to originate programing would, in fact,

be broadcasters competing on an equal basis with television stations, in that such systems would be able to rebroadcast network and other program fare, originate local programs, and advertise. Otherwise, CATV would have all the advantages or privileges afforded television licensees but would not be subjected to the obligations imposed on television licensees for the purpose of assuring the public interest is protected.

Also, in the event CATV systems are permitted program origination without restriction, the systems should be permitted to originate only local news and weather and only if the concerned community is not served by a local television station.

We believe that the Supreme Court decisions in such cases as *National Broadcasting Co.* v. *United States* (319 U.S. 190 (1943)), regarding restrictions on free speech, give the Congress and the FCC ample authority to make such a valid restriction.

B. COMMISSION'S SECOND REPORT AND ORDER

This committee's consideration of CATV legislation, of course, demands an appreciation of the CATV rules the Commission has recently adopted. Although some of these rules should, in the opinion of BIC, be left to the discretion of the committee, their effect on the development of CATV is such that Congress may wish to make its views known by legislative enactment or legislative history. Accordingly, BIC will direct its comments to (1) the discriminatory procedural provisions of the Commission's rules as concerns television stations outside of the top 100 markets, (2) CATV service to areas within the grade B contour of television stations located in the top 100 markets, (3) the Commission's same-day nonduplication requirement, and (4) the tremendous potential of television translator stations.

(1) *The Commission's procedural rules as they apply to stations outside of the top 100 markets are arbitrary.*—A serious deficiency in the CATV rules adopted by the Commission concerns the degree of protection afforded to television stations located outside of the "top 100 markets." A new procedural rule (sec. 74.1007) relating to the expansion of CATV systems has placed television stations in large metropolitan areas in a position of preference when compared to stations operating in the "bottom 130 markets." Specifically, as concerns stations in the "top 100 markets," section 74.1007 requires an evidentiary hearing and places the burden of proof on any CATV system which proposes to transmit the signals of a television station into the "top 100 markets" if said station does not place a grade B contour over the community to be served by the CATV system.

Conversely, a television station located outside of the "top 100 markets" (i.e. the "bottom 130") has a burden of proof and must file a petition to deny and attempt to prevent a CATV system from importing any number of distant-city signals into the communities said station is serving. The "bottom 130 markets" do not get the same consideration. CATV must justify its entering into the "top 100 markets." The poorer stations of the smallest communities face costly legal procedures to get the same protection for themselves and their communities.

This discriminatory and seemingly arbitrary procedural rule will have a substantial adverse impact on both UHF and VHF television stations in the small markets. There are approximately 200 television stations in these markets, including 33 UHF stations. In addition, construction permits have been granted for 13 new UHF stations and applications for over 30 new UHF stations are pending before the Commission in markets below the "top 100." The Commission, in referring to the procedural preference afforded UHF and VHF stations in the large metropolitan areas, stated:

"Finally, the top 100 markets include roughly 90 percent of the television homes in this country. Our policy (i.e., selecting the top 100 markets for special attention) therefore focuses on the critically important areas." ("Second Report and Order" in dockets Nos. 14895, 15233, and 15971. (Par. 144) 31 F.R. 4540–73.)

We don't think people living in small towns should have any less consideration. We don't think a 90-percent solution is sufficient in this case.

We submit that the small markets are also critically important and need even a greater degree of protection from CATV penetration because they serve marginal markets and cannot compete with the growing large CATV monopolies importing numerous distant city signals. The effects of this procedural discrimination will include (*a*) deterioration of local programing, (*b*) the demise of some

existing stations and (c) an indefinite freeze of the development of new UHF and VHF stations in the "bottom 130 markets." We submit that it is in the public interest to preserve and foster the development of television stations in the small markets because an important portion of the programing needs and desires of every community can only be satisfied through locally originated television programs. Congress has recognized this as a national policy. It should not be changed.

It is critically important to note that this discriminatory procedural rule may result in entire States being without any local television service. For example, there are seven States which do not have one city within the "top 100 markets" (Idaho, Nevada, Montana, North Dakota, Vermont, Hawaii, and Alaska).

(2) *Protection afforded stations in larger markets.*—The service area of television stations extends to and beyond their grade B contours. The "local programs" of stations are, for the most part, geared to their entire coverage area. In most instances, the programing needs, interests, and desires of those within the coverage area of a station are similar. The political, social, religious, economic, and cultural interests of each particular area are unique and are not restricted to those viewers residing within the grade A contour of the local station or stations.

The amount of public service programing presented by local stations is dependent upon their financial ability to present programs which, in turn, is dependent upon their revenue or ability to attract advertisers. To permit unlimited CATV penetration into the grade B contour of stations located in the "top 100 markets" can reduce the number of local programs geared to the particular interest of the area served. That is, penetration of CATV into the grade B contour of a television station can reduce its income because of audience fractionalization and thereby reduce its financial ability to present public-service-type programs.

The public need for CATV, i.e., a legitimate supplemental service to upgrade signals and reception, does not always exist in the grade B contour of a television station. It is more often beyond that contour that CATV has an important purpose coupled with the public interest.

(3) *The Commission's nonduplication rules are ineffective.*—The nonduplication rules adopted by the Commission in its "Second Report and Order" afford the local stations "same-day" nonduplication protection in a limited area. This protection is effectively restricted to network programing because prime time programs must be broadcast entirely within prime time. BIC is of the view this provision will prove inadequate and ineffective in that it will not achieve its purpose, which is to provide protection to local television stations. The prior 15-day nonduplication rule of the FCC ("First Report and Order" on CATV) was much more realistic.

For example, "same-day" nonduplication will not protect the local station's presentation of nonnetwork programs or feature films because such programs are infrequently scheduled on the same day by different stations. Accordingly, CATV systems could invade a small market and present a feature film the day before (and under certain circumstances, on the same day) the film would appear on the local station. A practice such as this would substantially undercut the income-producing potential of feature film programs: especially, since feature films attract the greatest advertiser revenue when they are presented to a given market for the first time.

Also, nonduplication protection which is restricted to the same day will be contrary to the policies of the Commission and the intent of Congress in the most important area of public service programing. That is, this limited restriction which, as concerns network programs, relates only to prime time will force the local broadcasters to sacrifice public service programing during prime time out of economic necessity. Why should a broadcaster present a sustaining public service program of substantial local interest, while the competing CATV system presents the deleted network program? The broadcaster will incur a loss in presenting the local public service program and will lose income because the network show is not presented by him. This is especially applicable to the small-market areas where stations are making marginal profits or, in some instances, sustaining losses with the hope to prosper in the future through sound programing practices.

BIC suggests that television stations be afforded complete nonduplication protection for at least 15 days and that CATV systems be required to justify to the FCC that it would be in the public interest to waive or shorten such a requirement.

(4) *Television translator stations.*—Congress and this committee have been most concerned with the formulation of a national television policy. BIC is of the opinion too little attention has been paid to another supplemental television service—television translators.

Television translator stations are and have been critically important in fostering the development of UHF and VHF television and in providing a free television service to rural areas and other areas of poor reception. Most important, the expense of providing this service is incurred by the broadcaster or independent translator groups, including municipalities and other cooperative groups. No expense is incurred by the viewer and television service is thereby not conditioned upon a CATV installation fee and indefinite monthly assessments (which could be increased once the subscriber is committed). There are many families where a payment of even $5 or $6 per month constitutes an economic hardship. In Utah, for example, an outstanding translator system has been developed. It reaches many areas that cable systems eschew because of inadequate revenue.

The Commission is beginning to appreciate the tremendous potential of translators. Recently completed and pending translator proceedings before the Commission include:

(*a*) Docket No. 15858 (July 9, 1965): This proceeding amended the Commission's translator rules to permit 100-watt VHF translators on any channel listed in the Commission's table of assignments which is unoccupied by radio or television stations or satellites. It also permits 100-watt UHF translators on all unoccupied UHF channels in the table of assignments.

(*b*) Docket No. 16424: This is a pending rulemaking proposal which, if adopted, would permit the use of microwave frequencies to relay television programs to translators. Now, CATV systems which have an installation fee and monthly charge are permitted to utilize microwave relays. We hope this permission will be extended to television translators.

(*c*) The Commission's "Second Report and Order" will now require for the first time that CATV systems carry the signals of commercial and educational translators operating in communities served by the system if they have power of 100 watts or higher.

(*d*) The Commission has stated that it will consider granting waivers of provisions of its rules to permit the use of VHF translators by television licensees beyond their grade B contours and also permit station-owned translators which will provide reception within the grade A contour of another station in order to improve the reception of said station subject to certain duplication provisions.

(*e*) In addition, the Commission recently expanded its inquiry in docket No. 14229. In this proceeding, the Commission will consider whether it should permit (1) operation of nonassignment translators on all 70 UHF channels, as is now the case with the 12 VHF channels and (2) the reservation of channels 70–83 for the exclusive use of translators.

BIC is of the opinion television translator service should be considered on at least an equal basis with CATV service by this committee. Translator stations provide a free multiple television service, whereas CATV systems provide a multiple television service for a specified consideration for an indefinite period of time. We submit that the rules adopted by the Commission in its "Second Report and Order" are insufficient—CATV is given an advantage under present rules compared with translators. The "Second Report and Order" defers corrective action. We consider it a waste of natural resources not to use translators wherever feasible to provide free off-the-air television. We urge the Congress to express a policy in favor of at least equalization of the rules applicable to translators.

STATEMENT OF GARY KENNEDY, HARVARD TOWERS, WASHINGTON, D.C.

I, Gary Kennedy, and an associate, organized, controlled, and built WBUF–TV, the second television station in Buffalo, N.Y. I am the former committeeman from the 46th district, having built a home at 417 Getzville Road, Buffalo, N.Y. The station is a success and our Barton Street studios now house channel 2. I am a pioneer in the television industry, and I have a personal desire to keep it nationwide and competitive.

Community antenna services are ancillary and should be treated as such. However, certain legislation should be enacted whereby we protect and encourage

more integration of management and control; more diversification in media and television ownership in the same market area thereby to strengthen the sinews of America; more local live studio television operations which encourage the business and political life of a community; more economical use of the spectrum so that a more competitive system may emerge.

Community antenna service or CATV at this time should not be allowed to have a deleterious effect on free and unobstructed television and develop into a system that could be controlled or operated without local emphasis. Integration of management and control to encourage (more and more local participation) has been an objective of ours and it should continue to be.

The Communications Act of 1934 laid out the ground rules and the sixth report has been more specific in their interpretation. Now let us have a bill that could perhaps help improve more economical use of the spectrum we have to work with.

The motion picture and certain other industries are "licking their chops" to beat down this bastion of America and it should be protected and fostered so that it can mature into what we all want.

Worldwide television with worldwide compatible color should be a strong foot forward into more understanding and less language barriers in the future. We are blessed with the technical genius and spiritual ideals to take television to higher levels. However, we can destroy those things with equal dexterity. Prosperity is the key to sound construction of a healthy and competitive system.

We face not just the United States of America but with the use of Comsat world responsibility for television for all people coupled with compatible color (homogenous) throughout the world should be encouraged.

Again, CATV is ancillary and should be subjected to minimum regulation at this point; it should be watched and kept local in its orientation and not allowed to be national in its scope ownershipwise; not allowed to smother TV as we know it today.

We should plan to economize our spectrum (NAM report June 4, 1965) to provide for four networks and condense TV to more practical terms.

The mere charging for entertainment has not enhanced the product that we have had for entertainment and free television has produced many, many fine displays of American genius.

We have the wherewithal of lift this country up, the world up, if you will, but we need more restraint, perhaps more guidance through more desirable channels to attain the goal we all aspire.

The eyes of the entire world are on us; let us begin. We can with greater diversification of media:

Limit the number of stations in the VHF (54–216 megacycles) to four, the number any one group may own or control. Again more economical use of the spectrum can promote competition in the area where it will do the country the most good. I call your attention recently to a city TV sale where the station was not even in the top few markets in the country and still sold for upward of $20 million. This is alarming.

When we consider CATV we should stop and coodinate our resources so that the very wonderful potential of TV in the courtroom where properly handled and controlled TV can give the public air of equality and justice to allow a light into an area where so few to date have bothered to acquaint themselves. A TV camera is a powerful weapon for good but it will take much to develop its potential. Let us encourage it, not restrict it or ever place a price tag on it. The free and unfettered dissemination of news and public service aspects do much to outweigh the other aspects.

In the Lindow report our progress to date has been portrayed; however, the responsibility is up to the Commission and to the broadcasters to make full intent of that original hypothesis come true.

I would like to see this done with a minimum of regulation; however, I believe the dissemination of news and the public impact in the years to come should determine any action.

I have interests in the motion-picture field as well as having built a pioneer station; therefore, I feel particularly well versed in parts of the phase which we are about to pursue channeling the CATV to what we want in the years to come.

As a complement to UFH it can be an asset, and as a method to put a dozen services, including Sullivan and football, into the living room it be an asset; and as an avenue to get time, weather, entertainment, and other data 24 hours a

day it can be an asset. However, the commercial aspects can threaten our goals and should be assessed.

We can produce plays, innocuous as they may be, from one end of Broadway with "Guys and Dolls" to "Here's Love"; however, the play will not be able to bail itself via CATV.

In summary, I would like to see: the spectrum used with more efficiency (more advantage and usage); the diversification of station control to a greater degree (newspapers should not own a TV in the same market); more local live studio-type stations capable of providing a finer service; more integration of management and control.

I thank you.

STATEMENT OF AMERICAN BROADCASTING COMPANIES, INC., RESPECTING H.R. 13286

American Broadcasting Companies, Inc., (ABC) supports enactment of H.R. 13286, introduced by the Honorable Harley O. Staggers, Congressman from West Virginia. In support of this position ABC, the licensee of television stations in New York (WABC–TV), Chicago (WBKB), Detroit (WXYZ–TV), San Francisco (KGO–TV), and Los Angeles (KABC–TV), and one of the three national television networks with affiliated stations throughout the country, submits the following.

ABC has long held the view that the Federal Communications Commission has authority under provisions of the Communications Act of 1934, as amended, to adopt regulations such as those covered by the Commission's "Second Report and Order" in Docket Nos. 14895, 15233 and 15971, released March 8, 1966.[1] The ABC "Petition for Commission Regulation of Carriage of Television Signals by Community Antenna Television Systems," filed October 16, 1964, initiated in substantial measure the course of pleadings and consideration of CATV impact upon free television which led to the action taken by the Commission in its "Second Report and Order." In that report and order the Commission asserted jurisdiction over all CATV systems to the extent necessary to meet the basic threat that uncontrolled CATV expansion would seriously impede the development of free television and thereby thwart the basic policies of the Communications Act. The policies recently adopted by the Commission are designed to accommodate the orderly growth of both free television and CATV, with the latter serving a supplementary role.

The Commission has provided, in essence, that CATV systems must carry stations providing a local service, i.e., stations within whose grade B contours the CATV system is located, without degradation of the station's signals and without duplication of its programing. The Commission has also limited the importation of distant signals by specifying that within the top 100 markets (i.e., markets in which the prospect for development of local stations, particularly UHF, is greatest) no CATV system may extend a station's signal beyond its grade B contour "except upon a showing made in an evidentiary hearing that such operation would be consistent with the public interest, and particularly the establishment and healthy maintenace of UHF television broadcast service" (par. 141). Consideration would be given, on an individual-case basis, to similar matters in markets other than the top 100.

In our view, reasons given by the Commission for its actions, pinpointing the public importance of local station development; the commitment of the Congress and the Commission to this objective as a matter of national policy; and the responsibilities in this area imposed upon the Commission under the Communications Act more than support the reasonableness and lawfulness of the steps taken by the Commission in its "Second Report and Order." Indeed ABC believes that the Commission also should have provided: (1) protection against duplication on CATV systems of the programs of local stations for 15 days before and after the broadcast of such programs instead of the 1-day protection provided by the Commission; (2) outright prohibition against importation of distant signals into the top 100 markets instead of providing that proposals to

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[1] We refer, for example, to letter dated June 3, 1965, from ABC President Leonard H. Goldensen to the Honorable Walter Rogers with respect to H.R. 7715, introduced by the Honorable Oren Harris on April 28, 1965. In that letter, we also supported the desirability of confirmatory legislation.

import such signals be subject to an evidentiary hearing; and, (3) greater protection against the importation of distant signals into markets below the top 100.

Because of the basic national importance of the policies enunciated by the Commission in its "Second Report and Order," as well as the actions that inevitably must be taken in the implementation of those policies, ABC agrees that congressional confirmation of the authority and responsibility of the Commission with respect to CATV would be highly beneficial to the orderly development of a total television system in this country, including both free television and supplementary CATV. In our judgment the provision of H.R. 13286 would accomplish this purpose. We would also urge that the House report on H.R. 13286 reflect the desires of Congress regarding the additional protections suggested in the preceding paragraph and thereby provide further guidelines for Commission action.

STATEMENT OF S. I. NEIMAN, CHICAGO, ILL.

My name is S. I. Neiman. I am the owner of Public Relations Affiliates and the Electronics Information Bureau, with offices at 11 East Adams Street, Chicago, and national chairman of the All-Industry Electronics Conference.

In my capacity as owner of Public Relations Affiliates I have been retained in behalf of a group of 307 home and suburban newspapers in 29 States as communications consultant in the field of community antenna television. The population of the trading area in which these 307 newspapers are located is in excess of 24 million persons.

My firm has been authorized to make application for municipal franchises in areas where CATV systems can be operated in the public interest in these newspapers' circulation territories, and where the newspapers wish to enter the CATV field.

My background in both the newspaper and electronics fields covers a period paralleling the development of both radio and television as news dissemination media, and it is in this context that I have requested permission to appear before this commiteee.

The position of the home or community newspaper is a unique one; and while my clients may be divided into three separate categories, they have a common interest in the growth and proposed regulation of CATV. Many of our newspapers have substantial home delivered circulation in neighborhoods and areas within the corporate limits of large cities. Others have substantial circulation in suburban areas adjacent to or near large cities. The third group serves smaller communities and rural areas elsewhere in the 29 States.

As the honorable members of this committee are well aware, the entire concept of newspaper publishing has undergone a continuing change with the advent of radio and television, and to a more limited extent with the introduction of CATV.

In the first place, radio and television have taken a commanding role in the dissemination of news; particularly spot news events which historically had been the principal stock in trade of the newspaper. It is interesting to note that just as these electronic media have preempted first place in that field, the home and community newspapers have preempted the purely local and neighborhood news in metropolitan cities. The dictum that "man bites dog is news" no longer applies to the big city dailies. The day-to-day comings and goings of residents of neighborhoods and suburban areas is now the life's blood of our type of newspapers.

It follows, then, that community antenna television is destined to parallel the development of home and community newspapers, if in its wisdom this committee sees fit to initiate legislation that will not "freeze" the expansion of CATV in metropolitan areas, and will permit latitude for expansion elsewhere.

As evidence that the home and community newspapers are becoming vitally important media in this country, I would invite the committee's attention to the growth of these publications. In Chicago, for instance, the combined circulations of home and neighborhood publications exceeds considerably the circulation of any one of the giant city dailies. In Detroit 1 publication, a semiweekly, has a carrier circulation of more than 630,000 home delivered. In Montgomery County, Md., suburban area of Washington, the 3 community newspapers reach 115,000 families, compared with the largest Washington daily's Montgomery County circulation of 67,000.

I cite these figures, not for purposes of comparison with metropolitan dailies, but to indicate in some measure the importance of the home and community newspaper; and the history of success and responsibility they would bring to CATV management. I might add that the metropolitan newspapers have continued to grow in their own markets, side by side with our type of publication, just as they have grown side by side with radio and television stations in their communities.

May I point out that in proposing to enter the CATV field, my clients do not intend to compete for the advertiser's dollar. We do not intend to make CATV an advertising medium. We do not intend to delete, alter or otherwise interfere with programs as telecast for home consumption. We intend to operate CATV in the public interest.

As to legislation now being considered by this committee; we concur in the belief that there is need for reasonable regulation and jurisdiction at the Federal level. We leave the question of the right to regulate the reception of information and other programs carried on television to the judgment of the Congress and the courts. Certainly the right to regulate the transmission of such material has been established.

Our interest and the frame of reference within which our immediate concern lies is in the possibility that, in promulgating Federal regulation, the position of the many hundreds of home and community media may be overlooked. My own purpose in appearing before you today is to acquaint you with the plans of our group and other publications that we expect to join with us, in the field of CATV. Those plans take into consideration our belief that CATV is a part of the overall communications picture and the enterprise in which we are already engaged.

TESTIMONY OF BILL DANIELS, DENVER, COLO.

Gentlemen, I appreciate the opportunity of appearing before this committee. My name is Bill Daniels, and I reside in Denver, Colo. I am a broker and consultant to the CATV industry, and I am a past president of the National Community Television Association. I have been both a television broadcaster and a radio broadcaster. I feel qualified to testify before this distinguished committee primarily as a result of my direct association with television broadcasters worldwide. I think it appropriate that the committee be advised that I personally have brought 90 percent of the television broadcasters that are in the CATV industry into the business.

I would like to begin my statement with two quotations, the first by the Honorable Gale W. McGee, senior Senator from the State of Wyoming, as quoted in the hearings before the Communications Subcommittee of the Committee on Interstate and Foreign Commerce of the U.S. Senate in relation to S. 2653, wherein Senator McGee states, and I quote: "In the final report that we prepared following our hearings in Washington last June and July, we included this paragraph:

" 'The Congress and the people in any community have no particular interest in the success or failure of any given broadcaster in the area, so long as the public receives acceptable service.'

"The concern of the Communications Subcommittee of the Interstate and Foreign Commerce Committee of the U.S. Senate is not who is going to go broke or who isn't, who is going to make a great financial success or who isn't; its concern is only in the public interest, and the secondary consideration arises when this going broke or a monopoly of any communication service may affect the public interest. It is the public interest that we are commissioned to protect and to watch over."

I next would like to quote directly from a statement made by the Honorable John Pastore of Rhode Island during the same hearings, and I quote: "Give the people a choice of CATV or local, that is the democratic way."

The Census Bureau of this great country has recently asked the American housewife which of the following was the most poplar item in the home: Automobiles, refrigerators, washing machines, and TV sets.

The answer was TV sets by a fairly wide margin. The Census Bureau says as of January almost 93 percent of the 60 million households had a TV set. Moreover, 21 percent had two or more. Refrigerators ranked second, with 82.4 percent. Then automobiles, with 78.2 percent. I point this out so that this distinguished committee will well realize their responsibility—that your decision can

directly affect 55,800,000 homes or 93 percent of the homes in the country, which in turn affects 93 percent of the public. See exhibit A.

This committee and this Congress can well make history by your decision that will follow these hearings. Where would this Nation be today if the coal producers attempted to legislate the fuel and oil industry out of business or tried to stop their growth? Where would this Nation be today if the fuel and oil producers attempted to legislate the natural gas industry out of business or tried to stop their growth? Where would the electric industry be today if the kerosene producers attempted to legislate the electric utilities out of business or tried to stop their growth? Has the electric business attempted to outlaw nuclear power? Yet, the television broadcasters today and the Federal Communications Commission would like to do exactly that to the community antenna industry so that the TV broadcasters can maintain their present-day monopolies, and they well know that our industry has built a better mousetrap as proven by the public's willingness to subscribe to our industry's service in every market in which there is presently a CATV system in operation. CATV operators have not held a gun to the head of the public to subscribe to our service. The public has subscribed because they, as free Americans living in a nation that has been built on free enterprise, have the right to make the decision to improve their way of life.

This committee's decision will affect the entire TV viewing habits of this great Nation in that you, with the power you hold, can set the course to decide whether the entire country can receive as much as 30 channels of television or whether they must be told that all they can receive is 3, 5, 7, 8, or as in 1 case, 10 channels of television.

The community antenna industry is a young and exciting one. The CATV industry, if allowed to grow, will provide over 750,000 additional jobs for our Nation's economy and pump over $1 billion into the Nation's economy by purchase of materials in the next 3 years alone.

The TV broadcasters cry to the Federal Communications Commission and to this Congress the great public service they perform, which indeed they do. They would maintain that they, and they alone, can provide what the public desires. Throughout these hearings you will hear time and again that the broadcasters think that CATV is all right as long as it does not compete directly with the witness' particular TV station. I would like to quote to you from the prepared text of the National Association of Broadcasters' 1965 fall conferences, wherein they, although I am sure not knowingly, admit what is really bothering the broadcaster today. To quote: "Another concern which bothers many of our radio members is the potential effect of CATV on local radio service. The areas of concern are two: competition for audience: and competition for advertisers. A CATV bringing 10 or 15 high-quality additional radio programs into a tuner in the subscriber's home might shift listener loyalty to the imported station in preference to the local station. Eventually this could have a disastrous effect upon the sale of time to the local advertiser. Additionally, if the CATV is permitted to originate programing, such as the local basketball or football games, it would be in direct competition with the local radio broadcaster who is trying to sell the audio broadcast of those games. Further, without a strict prohibition on origination the CATV will compete with local radio's most important products: time, music, and weather." You will notice that a form of the word "competition" is repeated four times in the NAB's official position statement, and there is no question but what the public benefits from competition whether it be radio, television, or any other business enterprise.

Would this committee or this Congress consider passage of a law that would not permit the New York newspapers to be delivered in Washington, D.C.? Would this committee or this Congress consider a law that would not permit your local hometown newspaper to be delivered to you in Washington, D.C.? I think not!

I wonder if this committee is aware that presently there are 106 50,000-watt radio stations in the country, 26 of which are clear-channel stations, that can be heard far out of their normal coverage area. If the broadcasters are adamant on not permitting New York independent TV stations to be received in Chicago, Philadelphia, Pittsburgh, Dayton, etc., would they consider the immediate shutting down of the high-powered radio station that dilutes the broadcaster's audience in the communities just mentioned? I wonder what is the difference between radio and television in this respect.

Let us explore this so-called and threatening economic injury situation in more detail, although I am frankly at a loss to understand what place it has in even being considered in a land of free enterprise. The city with the most television service in the country is Los Angeles. Its citizens presently are able to receive a total of 10 local television stations. If our industry were permitted to perform the proper public service in the public interest, we would be permitted to microwave the Los Angeles independent stations into any city in the country. Let us analyze what this would mean. A. C. Nielsen reports in their January book that during prime time, only 16 percent of the viewing audience in Los Angeles watches any station other than the three network affiliates. Accordingly, if the same independents were permitted to be brought into any market, the maximum dilution of viewing audiences would be 16 percent for all the local stations combined, or in a three-station, all-network market an average of 5⅓-percent reduction in viewing audiences and, therefore, an anticipated 5⅓-percent loss in revenue. I do not think any local station would lose any revenue, but would simply work harder, provide better service, and in the end would be as prosperous as it presently is. I respecfully pose an interesting question to this committee. Should not 100 percent of the American public have a free right of television reception rather than the Federal Communications Commission or this Congress having to worry about a potential—and I emphasize only a potential—loss of 5⅓ percent of revenue of each local station?

Is this not a fair question, most especially when you refer to exhibit B and exhibit C attached? Exhibit B shows that from the years 1949 through 1964 there were approximately 135 television station sales, some of these stations changing hands more than once, as you will see. The average cost to put a television station on the air excluding real estate seldom exceeds $500,000. Multiplying $500,000 times 135 transactions, we arrive at the interesting figure of a total cost of building the stations of $67,500,000. Yet, the total profit of the combined transactions over a 5-year period is in excess of the astounding figure of $463,500,000. Is there not room for a reduction of 5⅓ percent so that 100 percent of the public may benefit?

Exhibit C taken from the Federal Communications Commission published records will show to this committee the average profiit per station before taxes in the nine major television markets in the country. They range from an annual profit before taxes per station in New York of $6,596,563 to an annual average profit per station before taxes in Pittsburgh of $2,853,134. Is it unreasonable under the worst conditions that these stations should suffer a 5⅓-percent reduction in profit while 100 percent of the public is given a free viewing choice? The purpose of this demonstration is, I submit, the soundest argument yet presented that there is room for both industries without restrictions.

In conclusion, I would like to quote Mr. Vincent V. Wasilewski, president of the National Association of Broadcasters, from one of your local newspapers, which I submit as exhibit D: The NAB's recently elected president, Vincent T. Wasilewski, promised at a luncheon meeting that the organization would continue its fight against unwarranted Government interference with broadcasting.

He added that, "the question of who shall decide what is to be seen and heard on radio and television should not really be open to question. We all know the answer. The people themselves should decide."

I respectfully repeat to this committee and to this Congress as a free American in the greatest country in the world that each of you realize the responsibility which rests on you in this matter. When competition is keen, both the broadcaster and the CATV operator will strive to improve their service to the public, which, in the final analysis the public would be the ones to benefit, which is, I believe, the reason for these hearings public interest.

Under our American system of free enterprise, and as long as the public gains and benefits, I see no logical reason why legislation should be passed to restrict these benefits, nor do I see the authority for the Federal Communications Commission to act in this direction. There is a place for both the broadcasters and the CATV systems operating competively in this country, and I believe you will find that the public is grateful they have the facilities available if they so desire to use them.

Gentlemen, I thank you.

(Mr. Daniels' exhibits have been placed in the committee files.)

TRI-STATE TV TRANSLATOR ASSOCIATION,
Livingston, Mont., March 19, 1966.

Hon. Congressman HARLEY O. STAGGERS,
Chairman House Interstate and Foreign Commerce Committee, U.S. Congress, Washington, D.C.

HON. MEMBERS: The following material is for the record and for your consideration in the formulation of plans for legislation suggested by the Federal Communications Commission pertaining to the Radio Act of 1934, as amended. It is also presented for your consideration in any suggestions you may make to the FCC in the administration of the present law.

This material, as presented by me, has been authorized as the presentation of this association by our board of directors.

We have no financial interest in the transmission or distribution of television or radio other than the TV translators in which the FCC has forced us to invest. We want out of this translator business, and we will be, if you force the FCC to make their planned TV broadcast system "work." We are convinced it can.

We wish to thank your committee for allowing us to file this statement for your consideration.

Respectfully,

JIM BEAMER, *Secretary.*

Tri-State TV Translator Association is made up of nonprofit TV clubs in Idaho, Montana, and Wyoming. People, who have joined together voluntarially, to pay in a fee to support a TV translator so they can get television in their homes. We are not financially involved in TV station ownership, TV program ownership, or TV cable ownership. We are people who want free, over-the-air, advertiser supported television reception.

Some of our areas have clubs that developed into what are known as TV tax districts. In such areas the homes with television receivers are taxed for the support of the TV translators that serve them. One such club in Hamilton, Mont., has a tax of 1 every 3 years. It operates only 1 translator, serves 1,800 homes. A club in Valley County, Mont. operates both UHF and a number of UHF to VHF translators. It started with a $15 tax per home per year. This has now been reduced to 6 per home per year. Some areas don't have tax districts but depend on the honesty of the people getting TV reception to pay their share of the club costs. Lions Clubs, Rotary Clubs, junior chambers of commerce and other civic organizations lend their assistance as organizing spirits of TV clubs for these TV translators. Some cities and some counties operate translators with recreation dollars.

It costs about $50 a month to keep a 1-watt VHF translator serviced and operating. The UHF 100-watt translators cost about $100 a month to keep in operation. A 1-watt low-band VHF translator has about the same coverage as a 100-watt UHF translator except in the plains country when a high hill can be found for a translator antenna. In this case unusual distances can be covered by UHF.

Our organization represents about 400 translators which supply television service to about 400,000 people in our 3 States. In addition, we have associate members in most of our other 47 States.

Our association was formed back in 1957 when the FCC had declared all boosters and translators "illegal" and tried to close them down.

The writer, among others, appeared before the Senate Interstate and Foreign Commerce Committee during the TV hearings of 1958, 1959, and 1960. The outcome of those hearings was that Congress forced the Commission to license TV translators. The TV cable boys had too much money and too good a lobby at that time. They "got away." They kept any legislation from passing that would have forced their immediate regulation. Our contention had been that the FCC had authority to regulate them "in the public interest" but the FCC of those years kept hands off.

The Commission tried to place every roadblock possible in our way for the development of TV translators. They demanded we use expensive code wheel devices which are not used by translators in any other country. These code wheels cause what is, to the public, an unintelligable mish-mash in the picture of each home receiver every half hour. They insisted on automatic shutoff devices even though no signal has ever been found to be emitted via a translator

when its mother station is off the air. They adopted a complicated application form as though each translator were a broadcasting station, in place of simple application forms such as they use for boat transmitters of very much higher power. When adopting license fees they slapped our little nonprofit clubs with a 30 fee even though they, the FCC, had forced us into the translator field by not encouraging the building of translators by broadcast station licensees. This fee has now been reduced to $10.

Just ahead of the hearings which started in 1958 the Commission had authorized common carrier microwave circuits for CATV. We knew by what started to happen then, that rural America was in for real trouble to get TV reception.

In our part of the country, people who had had FCC issued construction permits for TV stations turned them back and went into the pay cable (CATV) business. People who had planned to build TV stations gave up the idea entirely and the stations were never built. Some stations went off the air because of microwave fed pay cable (CATV) duplicating all the programing they could carry.

There is no use in us burdening the record, this is all shown in the transcript of those 1958, 1959, 1960 Senate hearings. What was said then is applicable today. It is our belief that only one FCC Commissioner, who is on the Commission today and who has participated in the present FCC rulemaking proposal and proposed law change, has ever read the transcript of those Senate hearings. That Commissioner was special attorney for the Senate committee at the time of those hearings and his dissent in the present matter is most important to the people of rural America. It bears directly upon your duties to see that all of the people of the United States of America have free over-the-air television. So important do we consider this dissent by Commissioner Cox, we reproduce it here for your careful consideration.

SEPARATE STATEMENT OF COMMISSIONER KENNETH A. COX

I concur fully in those portions of the Commission's action in which it (1) asserts jurisdiction over all CATV operations, (2) requires carriage of local stations on CATV systems, (3) provides for expedited ad hoc procedures for the consideration of special relief requested either by broadcasters or CATV operators, (4) requires disclosure of information as to ownership of CATV systems and certain other matters, and (5) calls on Congress to give prompt consideration to the problem of integrating CATV operations into our overall television system, with particular attention to the questions of program origination by CATV systems, possible extension of the principle of rebroadcast consent, and overlapping jurisdiction with the States.

As to the balance of the action taken, I agree with what is done but believe it falls far short of protecting the public interest in an expanding television service. I agree that local stations should not have their programs duplicated, but believe that the protection afforded them is totally inadequate. As to network programs, they should be accorded exclusivity—that is, should not be duplicated—as to all programs which they propose to present in a comparable time period within 15 days.[1] This Commission found in the first report that, for congent reasons, delayed nonduplication served the public interest. See paragraphs 101–127, 38 FCC at 721–731. But the majority now cuts back on such delayed nonduplication to a single day. This 1-day protection is patently inadequate as to network programing (see first report, paragraph 125, 38 FCC at 730, where it is pointed out that only 10.2 percent of local stations' delayed broadcasts are delayed less than 1 day, with roughly 79 percent being delayed between 1 and 15 days). As to nonnetwork programs, the majority previously pointed out that such material was not distributed on a simultaneous nationwide basis and that, therefore, a 15-day protection was "clearly a minimal measure of protection against the duplication of syndicated or feature film programs, considering the extended periods—up to and exceeding 5 years—for which stations now bargain and obtain exclusivity in relation to such programs."

As to feature film, syndicated series, and other filmed or taped programing for which they have acquired local exhibition rights, they should be assured the right of first run—which is only one of the rights normally bargained for, but

[1] I agree that as to network color programs the local station should not be protected unless it will present them in color.

certainly the most important one. I realize that this is more protection than was proposed in this proceeding, but since I feel this would be necessary to assure the station of the most important of the program rights it has acquired as against prior exhibition by an entity which has acquired no rights at all, I certainly cannot agree with the majority's refusal to recognize any rights as to such programing. Some nonsimultaneous nonduplication is necessary to afford local stations sufficient flexibility to provide the best possible service to those viewers who do not subscribe to the cable service.

Similarly, I agree that some measures are needed to curb the indiscriminate extension of television signals by CATV systems. Section 303(h) of the Communications Act gives us clear authority to establish zones or areas of service for broadcast stations. In television, I think we have undertaken to do this by establishing a carefully designed channel allocation and by fixing maximum limits on heights and powers. While there are many situations in which deficiencies of service can and should be corrected by supplemental means such as CATV, satellites and translators, I do not believe that any of these auxiliary services should be permitted to disrupt the basic television system that Congress, the Commission, and the broadcasters have worked so hard to establish.

The majority contents itself with saying that it will carefully examine proposals to provide CATV service in the top 100 television markets. I would greatly prefer an approach which would bar new systems—for a specified period—from extending a station's signal beyond its grade B contour, except upon authorization by the Commission in certain carefully defined situations. I believe this is necessary to stem the current proliferation of CATV systems in areas already receiving substantial television service. Without such action, I am afraid that CATV—a supplemental and derivative service—will stunt the future growth of our free television system, and perhaps even impair the viability of some of the service which the public is now receiving.

It is all very well to study the problems posed by CATV's threatened invasion of the major markets. It is true that the most immediate hopes for expanded UHF service are centered there, and that the risk of CATV operators building a pay television system on the basis of signals appropriated from the broadcasters who now provide our free service is greatest there. But if we turn our backs on the smaller markets by assuring cable operators that they can pump in multiple competing signals from New York and Los Angeles unless a local broadcaster can prove that he will be driven out of business, I think we are on the way to substituting a shrinking for an expanding system, with an artifical ceiling on network and local service alike—all in the name of a multiplicity, if no real diversity, of service for a part of the public. I am afraid we may end up with a shrunken, substantially wired pay service for the majority of the public, and a really vestigial system for those who cannot afford, or cannot be provided, this service.

I am not comforted by the majority's confidence that it would reverse such a trend if it really became a clear threat. The Commission does not have a good record for taking such drastic measures—in fact, I think much of my colleagues' reluctance to take more meaningful action now stems from fear of disrupting the existing service of a rather small number of CATV subscribers who have been galvanized into pressuring Congress and the Commission by a campaign of outright misrepresentation by the CATV industry. If this bothers them, what likelihood is there that they will ever roll back any part of the greatly expanded CATV operations which I think their actions will bring into being? New York City signals have already been carried to points near the Ohio border, and service from Los Angeles is proposed for Oklahoma and Texas. Once such service is instituted, I am afraid it is impossible to roll it back. I think the majority itself recognizes this problem, as is indicated by the fact that in the release announcing their action they twice very carefully point out that service now being rendered to CATV subscribers will be unaffected by what they are doing.

I do not mean to suggest that I know or can prove that the consequences I fear will actually result—though I think my concerns are shared by many leaders of the broadcast industry, by certain organizations which represent elements of the public who stand to be disadvantaged by increased reliance on wired television, and by other interested and informed parties. But on the other hand, my colleagues cannot prove that my fears are groundless. My approach would not

impair the viability of existing cable systems and would not bar all further extension of CATV service. But it would confine such service to its proper supplemental role in areas which receive substandard over-the-air television for a limited period—say 5 years. That would give Congress and the Commission time to study the whole problem further, would permit continued UHF development, and would, hopefully, permit resolution of the copyright questions which are basic to the future of CATV.

By not taking the admittedly more rigorous course which I favor, the majority has, I believe, invited developments which may make further study futile, may stifle UHF development which otherwise would have occurred, and may make it politically difficult, or even impossible, to adhere to normal copyright principles. I do not think that the benefits it is claimed CATV will bring are worth the hazards to our television system created by the limited action here taken by the majority. If there is one thing that even critics of the commission concede it is that this agency was created for the purpose of allocating communications facilities. Both sections 307(b) and 303(h) of the Communications Act make this clear. I think the majority is simply refusing to discharge this responsibility. Now is the time to take hold of the problems posed by the explosive development of the CATV industry and to fit cable operations into an appropriate place in the overall televsion structure. I think we are at a real turning point as far as the development of American television is concerned—and I think the majority has taken the wrong direction.

The design of the FCC "Plan for Nationwide TV Service" to the people of the United States can be found in its "Sixth Report and Order" issued in 1952.

The failure of the plan to function can be laid directly on the FCC and, as we have said, is found in Senate Interstate and Foreign Commerce Committee hearings during the years 1958, 1959, 1960.

A great deal of information concerning the operations of television stations and repeating devices such as TV translators and TV cables and microwave for cable systems can be found in the "Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry," by Dr. Martin H. Seiden, for the FCC, issued February 12, 1965.

To read these publications will bring you up to date as of 1 year ago. Since that time the FCC has instituted two very important rulemaking proceedings and issued orders pertaining thereto.

On July 7, 1965, the Commission in docket No. 15858 revised its rules to permit the installation of 100-watt TV translators on any unoccupied FCC "assigned channel" in either the UHF or VHF band. It also (at long last) permitted TV stations to participate in the owning of such TV translators within and in some cases beyond their grade B coverage areas.

On July 27, 1965, the Commission in docket No. 15415 OK'd the participation in, or complete ownership of CATV cable systems by TV broadcast station operators and, of course, the ownership of TV broadcast stations by CATV cable companies.

The Commission, in adopting rules for the use of microwave by CATV has "grandfathered" in any and all arrangements between cable companies and broadcasters without looking to see if those "arrangements" or 'deals" are in the public interest. You should carefully look into this.

For us, in the United States, to build and maintain a free over-the-air system of TV broadcasting, it is our belief:

1. There should be no joint ownership of TV broadcast stations and CATV systems. The two are not compatable. One is for "free" distribution of a single TV signal to all people, the other is for the "paid" distribution of multiple TV signals to a section of the public that can afford those signals and are living in a location where the entreprenuer can make money delivering those signals to the home. The dollar income of the "paid" system, when under common ownership, can confuse and dilute the public service aspects of the "free" system. In Montana we can receive NBC programs on CATV home connections direct from New York and Los Angeles without the signal ever going through a TV station transmitter anywhere. This is wrong. This is a system of pay cable television, studio to home, for a few subscribing homes, located where it is profitable to deliver such service to them, for a fee. If is practice is to be continued and encouraged, it can destroy the incentive for the building of over-the-air TV broadcast stations which serve all the public. The network probably

likes this sort of distribution. Give it growth and the network will ultimately get TV home "set count" for its advertisers without having to pay a broadcasting fee to any TV station. Then, the drying up of TV stations!

2. There should be no duplication of the programs of any TV station, TV satellite, or TV translator within the trade area it serves. To develop the building and maintaining of this over-the-air system, each local station, satellite and translator should be carried by the local cable entrepreneur without duplication.

3. There should be no leapfrogging of programs over or around any TV station, satellite, or translator. The signal from the nearest such transmitting apparatus should be used on each cable system.

4. Rules of nonduplication and leapfrogging of programs must be for all hours of the broadcast day and not just for prime time.

To better illustrate the incompatability of "joint ownership of TV stations and CATV cable systems" I refer to Helena, Mont.:

The cable system and the TV station has been under joint ownership for some time although a change in ownership has recently been made through one owner retiring and Salt Lake City TV station ownership coming into the picture through the microwave company bringing signals to the cable system. The ownership was such that it made no difference whether the dollars were coming in through cable connections and monthly rental billings or coming in from station advertising dollars.

Data from the 1966 CATV Directory, published by Communications Publishing Corp., 1839 NW. 16th, Oklahoma City, Okla., shows the Helena TV cable system with 3,450 connected homes out of a potential of 5,000 homes. Its hookup charge is shown as $9.90 with monthly rental of $4.95. Nine channels are indicated as being carried on this cable. A bit of arithmetic shows monthly income for this cable at $17,077.50 and if Dr. Seiden's figures for a better than 50-percent profit are correct it may be better to have cable connections then to worry about income on a TV station.

Important to the public is what happened when a Great Falls TV station KFBB applied to replace the little 1-watt TV translator in Helena that had been carrying its programs with a 100-watt TV translator, which the FCC authorized in its July 7 order.

Application was made to the city of Helena for a location on a mountaintop, owned by the city, for the 100-watt translator location. The management of the local Helena TV station protested this application saying such a translator would "wreck the local TV station."

When the KFBB application for the 100-watt translator was filed with the FCC the local Helena TV station immediately filed another application for a 100-watt TV translator on the same channel, to be located only about 13 miles distant. This move, if granted, would effectively block a second over-the-air signal for Helena.

When the FCC turned down the local station and made the grant to KFBB of Great Falls the local Helena station then went back to the city fathers and protested again the rental of the ground for translator use.

All of the time this has been going on—the local NBC programing of the local Helena TV station has been duplicated on the Helena cable system by KRTV of Great Falls and KHQ–TV of Spokane, Wash.

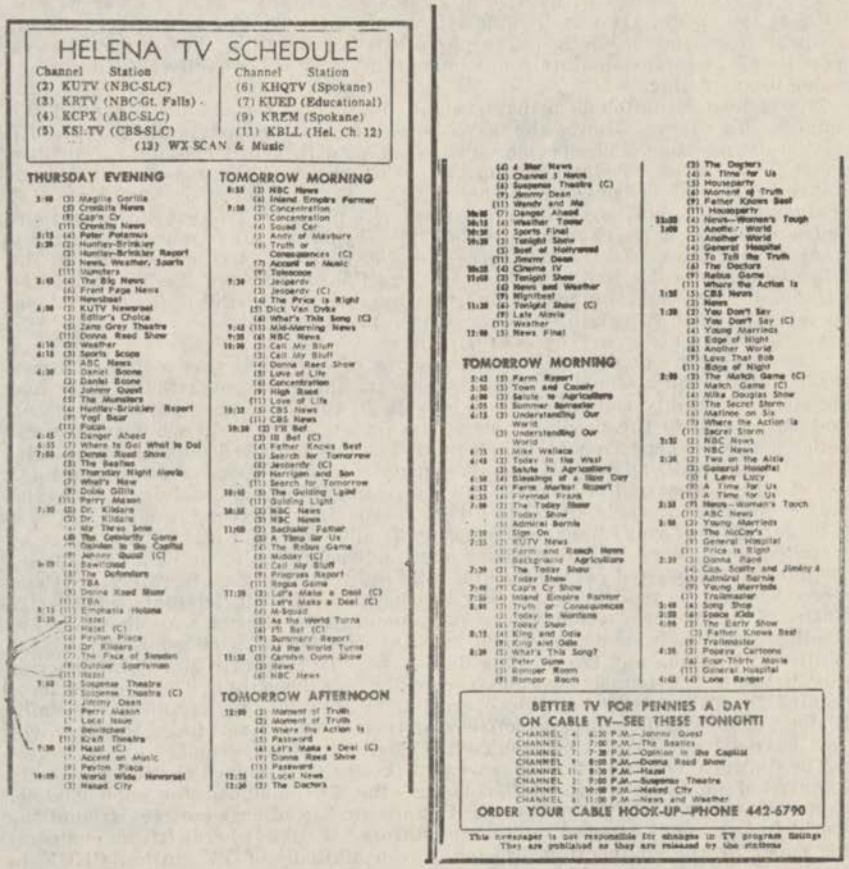
The ABC programing of the local TV station has been duplicated on the cable system by KRTV of Great Falls (ABC is secondary network on this station); KREM–TV of Spokane, Wash.; and KCPX–TV of Salt Lake City, Utah.

With the new 100-watt TV translator installed by KFBB–TV of Great Falls going on the air, this will give primary CBS network (not carried by local Helena station) and secondary ABC over-the-air service.

KSL–TV of Salt Lake City is primary CBS and is carried on the Helena cable.

It seems to us that for the encouragement of the building and maintaining of free over-the-air TV signals, the FCC must look into the nonduplicating of TV translator signals by TV cables. The people putting in the 100-watt translator in Helena will never have their programs seen on 3,450 TV homes in Helena unless that TV translator is placed on the cable. The FCC has determined this area should be a part of the KFBB coverage "zone" by making this grant, so naturally the programing of this translator should be nonduplicated.

We show here a published TV schedule of service in Helena so you can see how locally broadcast signals are duplicated two and three times by microwave-fed signals. This dilutes the value and dulls the desire of those engaged in over-the-air broadcasting. No network would stand for its New York TV station's programs to be duplicated in New York by those same programs coming back on cable from its Los Angeles station 3 hours later.



HELENA TV SCHEDULE

Channel	Station	Channel	Station
(2)	KUTV (NBC-SLC)	(6)	KHQTV (Spokane)
(3)	KRTV (NBC-Gt. Falls)	(7)	KUED (Educational)
(4)	KCPX (ABC-SLC)	(9)	KREM (Spokane)
(5)	KSL-TV (CBS-SLC)	(11)	KBLL (Hel. Ch. 12)

(13) WX SCAN & Music

THURSDAY EVENING

3:00 (3) Magilla Gorilla
(5) Cronkite News
(8) Cap'n Cy
(11) Cronkite News
3:15 (4) Peter Potamus
3:30 (2) Huntley-Brinkley
(5) Huntley-Brinkley Report
(8) News, Weather, Sports
(11) Voyagers
3:45 (4) The Big News
(6) Front Page News
(9) Newsbeat
4:00 (2) KUTV Newsreel
(3) Editor's Choice
(5) Sports Scope
(9) ABC News
4:30 (2) Daniel Boone
(3) Daniel Boone
(4) Johnny Quest
(5) The Munsters
(6) Huntley-Brinkley Report
(9) Yogi Bear
(11) Focus
4:45 (7) Danger Ahead
5:55 (7) Where to Go! What to Do!
7:00 (2) Dennis Road Show
(3) The Beatles
(6) Thursday Night Movie
(7) What's New
(9) Dobie Gillis
(11) Perry Mason
7:30 (2) Dr. Kildare
(3) Dr. Kildare
(4) My Three Sons
(5) The Celebrity Game
(7) Trainer in the Capitol
(9) Johnny Quest (C)
8:00 (4) Bewitched
(5) The Defenders
(7) TBA
(9) Donna Reed Show
(11) TBA
8:15 (11) Emphasis Helena
8:30 (2) Hazel
(4) Hazel (C)
(5) Peyton Place
(6) Dr. Kildare
(7) The Face of Sweden
(9) Outdoor Sportsman
(11) Hazel
9:00 (2) Suspense Theatre
(3) Suspense Theatre (C)
(4) Jimmy Dean
(5) Perry Mason
(7) Local Issue
(9) Bewitched
(11) Kraft Theatre
9:30 (4) Hazel (C)
(5) Accent on Music
(9) Peyton Place
10:00 (2) World Wide Newsreel
(3) Naked City

TOMORROW MORNING

8:55 (2) NBC News
(4) Inland Empire Farmer
9:00 (2) Concentration
(3) Concentration
(4) Squad Car
(5) Andy of Mayberry
(6) Truth or Consequences (C)
(7) Accent on Music
(9) Telescope
9:30 (2) Jeopardy
(3) Jeopardy (C)
(4) The Price is Right
(5) Dick Van Dyke
(6) What's This Song (C)
9:45 (11) Mid-Morning News
9:55 (4) NBC News
10:00 (2) Call My Bluff
(3) Call My Bluff
(4) Donna Reed Show
(5) Love of Life
(6) Concentration
(9) High Road
(11) Love of Life
10:25 (5) CBS News
(11) CBS News
10:30 (2) I'll Bet
(3) I'll Bet (C)
(4) Father Knows Best
(5) Search for Tomorrow
(6) Jeopardy (C)
(9) Harrigan and Son
(11) Search for Tomorrow
10:45 (5) The Guiding Light
(11) Guiding Light
10:55 (2) NBC News
(5) NBC News
11:00 (2) Sachsler Father
(3) A Time for Us
(4) The Robin Game
(6) Midday (C)
(9) Call My Bluff
(11) Progress Report
(11) Regus Game
11:20 (3) Let's Make a Deal (C)
(5) Let's Make a Deal (C)
(6) Hi-Squad
(7) As the World Turns
(9) I'll Bet (C)
(11) Summary Report
(11) As the World Turns
11:35 (3) Carolyn Dunn Show
(5) News
(6) NBC News

TOMORROW AFTERNOON

12:00 (2) Moment of Truth
(3) Moment of Truth
(4) Where the Action Is
(5) Password
(6) Let's Make a Deal (C)
(9) Donna Reed Show
(11) Password
12:25 (4) Local News
12:30 (2) The Doctors

(4) 4 Star News
(5) Channel 5 News
(6) Suspense Theatre (C)
(9) Jimmy Dean
(11) Wendy and Me
1pm55 (7) Danger Ahead
1pm15 (4) Weather Tower
1pm30 (4) Sports Final
1pm35 (2) Tonight Show
(3) Best of Hollywood
(11) Jimmy Dean
1pm55 (6) Cinema TV
2pm05 (3) Tonight Show
(6) News and Weather
(9) Nightbeat
11:20 (6) Tonight Show (C)
(9) Late Movie
(11) Weather
12:00 (5) News Final

TOMORROW MORNING

6:45 (5) Farm Report
6:50 (5) Town and County
6:00 (3) Salute to Agriculture
6:05 (5) Summer Semester
6:15 (2) Understanding Our World
(3) Understanding Our World
6:25 (5) Mike Wallace
6:45 (2) Today in the West
(3) Salute to Agriculture
6:50 (4) Sleepings of a New Day
6:52 (4) Farm Market Report
6:55 (4) Foreman Frank
7:00 (2) The Today Show
(3) Today Show
(5) Admiral Bernie
7:10 (5) Sign On
7:25 (2) KUTV News
(3) Farm and Ranch News
(9) Backgrounds Agriculture
7:29 (2) The Today Show
(3) Today Show
7:40 (9) Cap'n Cy Show
7:55 (4) Inland Empire Farmer
8:00 (7) Truth or Consequences
(2) Today in Montana
(3) Today Show
8:15 (4) King and Odie
8:29 (5) What's This Song?
(4) Peter Gunn
(5) Romper Room
(9) Romper Room

(2) The Doctor's
(4) A Time for Us
(5) Houseparty
(6) Moment of Truth
(9) Father Knows Best
(11) Houseparty
11:00 (4) News—Women's Tough
1:00 (2) Another World
(3) Another World
(4) General Hospital
(5) To Tell the Truth
(6) The Doctors
(9) Retus Game
(11) Where the Action Is
1:25 (5) CBS News
(3) News
1:30 (2) You Don't Say
(3) You Don't Say (C)
(4) Young Marrieds
(5) Edge of Night
(6) Another World
(9) Love That Bob
(11) Edge of Night
2:00 (2) The Match Game (C)
(3) Match Game (C)
(4) Mike Douglas Show
(5) The Secret Storm
(6) Matinee on Six
(9) Where the Action Is
(11) Secret Storm
2:25 (2) NBC News
(5) NBC News
2:30 (2) Two on the Aisle
(3) General Hospital
(5) I Love Lucy
(9) A Time for Us
(11) A Time for Us
2:55 (9) News—Women's Touch
(11) ABC News
3:00 (2) Young Marrieds
(5) The McCoy's
(9) General Hospital
(11) Price is Right
3:30 (2) Donna Reed
(4) Cas. Scotty and Jimmy A
(5) Admiral Bernie
(9) Young Marrieds
(11) Trailmaster
3:45 (4) Song Shop
3:55 (4) Space Kids
4:00 (2) The Early Show
(5) Father Knows Best
(9) Trailmaster
4:25 (3) Popeye Cartoons
(4) Star Theatre Movie
(11) General Hospital
4:55 (4) Lone Ranger

BETTER TV FOR PENNIES A DAY
ON CABLE TV—SEE THESE TONIGHT!
CHANNEL 4: 6:30 P.M.—Johnny Quest
CHANNEL 5: 7:00 P.M.—The Beatles
CHANNEL 7: 7:30 P.M.—Opinion in the Capitol
CHANNEL 9: 8:00 P.M.—Donna Reed Show
CHANNEL 11: 8:30 P.M.—Hazel
CHANNEL 2: 9:00 P.M.—Suspense Theatre
CHANNEL 3: 10:00 P.M.—Naked City
CHANNEL 4: 11:00 P.M.—News and Weather
ORDER YOUR CABLE HOOK-UP—PHONE 442-6790

This newspaper is not responsible for changes in TV program listings. They are published as they are released by the stations.

It seems to us that for the Helena TV station to be a healthy and robust broadcast entity so that it can better serve its people, that its programing should likewise be nonduplicated by the cable system, no matter what the "connection" or the "deal" may be between it and the cable system. For such a situation to exist, without protest, to the FCC, it appears to us, there must be some hidden agreements that are certainly not in the public interest, convenience, and necessity.

Helena and the Helena Valley have approximately 9,000 homes. It is in the interest of all of these people that the FCC should make any broadcasting system it devises work.

The signals of KSL–TV of Salt Lake City are being brought into Helena by microwave, leapfrogging KID–TV of Idaho Falls, Idaho, and KXLF–TV of Butte, Mont., both CBS primary network stations. This practice also dulls the incentive to build and maintain small market TV stations. If this practice is to persist then the whole system of "local station" television must be revised,

microwave given to TV translators, and let the networks run the whole works from New York or Los Angeles. This may be what is in the future via satellite-in-the-sky television—but—when it happens we will say goodby to State and local government as we have known it. The local, economic, social, political, and cultural needs of a people cannot be served from any national or world central location. If we are to go to satellite-to-home reception this will not only leave our communities without local expression but in case of war it will us without television. If our Gemini astronauts can rendevous in space, so can a warhead be sent to knock out any broadcasting satellite. For our own good, as a people, we must maintain our community system of both radio and television broadcasting.

The Helena situation is being repeated over and over again all around the country. In Havre, Mont., the FCC issued a construction permit for a TV station at one time. The people it was issued to turned it back and went into the cable business. Today there are two FCC-assigned channels laying idle in Havre; 2,500 subscribers are on the cable out of a potential of 3,200 homes; 3 Spokane, Wash., stations with all 3 networks plus the 2 Great Falls stations and a weather, news channel are shown. The best that a new 100-watt TV translator can hope for is to pick up the 700 nonconnected homes. If, on the other hand, the cable had to pick up and run the programs of the TV translator without duplication, you would find two applications in there at once for the operation of such translators to give service to all people.

Dr. Seiden, in his report to the FCC, said:

"Consideration should be given to the use of translators as a tool of structural policy. They require a substantially smaller investment than CATV and are compact, highly mobile, and can be sold in the secondary market. In general they provide the flexibility necessary in an industry in which structural policy must be kept free to adapt to technological and demographic change. Translators are ideally suited as a temporary communications medium, and their use should be required of broadcast licensees in fulfilling their obligations to the public by bringing their signal to all homes in their coverage area."

Since the FCC rule change of last July 7, allowing 100-watt translators to be installed and owned by TV stations, one has been installed at Kalispell, Mont., (where microwave-fed cable killed off a TV station—see Senate Interstate Commerce Committee reports). Another has been installed in Missoula, another in Butte. I have already told you of one coming into Helena. Applications are pending for one in Lewistown and two in Miles City. One was granted for Williston, N. Dak., and two in Sheridan, Wyo. To illustrate how the impact of this 100-watt TV translator rule is working has been felt, TV stations have applied for full satellite station operation in Rawlins, Wyo., and Twin Falls, Idaho. This was done because of fear of translator competition. Rawlins will now have a local TV station and Twin Falls will get its second.

The limitation of 100 watts of power on these FCC-assigned channels is really a waste of channels as the full coverage the FCC planned for each channel cannot be given with 100 watts. In Canada and in other countries around the world full power is allowed on TV translators. I submit herewith an engineering paper by the engineering director, Loren McBride of TV station CKCK in Regina, Saskatchewan, which operates three high-powered TV translators. This study is pertinent in your consideration of U.S. broadcasting and the delivery of TV signals beyond the normal grade B contour of any TV station.

(The paper referred to was placed in the committee files.)

On pages 62 and 63 of his report, Dr. Seiden discusses common ownership of CATV and TV stations.

In Butte, Mont., FCC construction for a second station was authorized. The holder turned back the construction permit and went into the cable business when NBC promised him they would add Montana TV cable home count to his Salt Lake City station. He has expanded ownership of cable companies over much of Montana and is principal owner of the common carrier microwave circuit from Salt Lake City through Idaho, Montana, Wyoming, and into North

Dakota. It is over this circuit that NBC programs are sometimes fed directly off transcontinental A.T. & T. lines from NBC studios and pickup points, directly into TV homes, without ever going through a TV transmitter anywhere. This practice, if continued, will destroy free over-the-air television.

In my home town of Livingston there are 1,821 homes on the cable system out of a potential 2,000 homes (according to CATV directory 1966). We have 700 homes that help to support our 3 TV translators. Two of these are on the two Billings stations and one is on the Butte station. The cable company carries the two billings stations and the three commercial Salt Lake City channels. The Salt Lake City educational station is fed by microwave right over Livingston but its signal is not used on the cable system. Much of the Salt Lake City commercial programing duplicates that of the Billings and the Butte station.

If the Commission made it mandatory the cable nonduplicate our TV translator signals, and carried these signals on the cable, we would find, in our size community, that the TV stations in Billings and Butte would take over the operation and maintenance of our TV translators and we could sit back and have free TV just like big city folks. This can never take place however with the few people (700 homes) potential of our translators, as they must run today, without nonduplication protection. This example shows you in a very small way how even the duplication of a small, fairly inexpensive, over-the-air one-watt TV translator is not even put in by a station when its programs are duplicated by CATV. Think how this stops the building of expensive TV stations.

On the next page we reproduce a map of the microwave circuit as it was shown in 1964 and was published in the Seiden report. This includes the western microwave circuits I have mentioned above, from Salt Lake City, through Idaho, Montana, Wyoming, and into North Dakota.

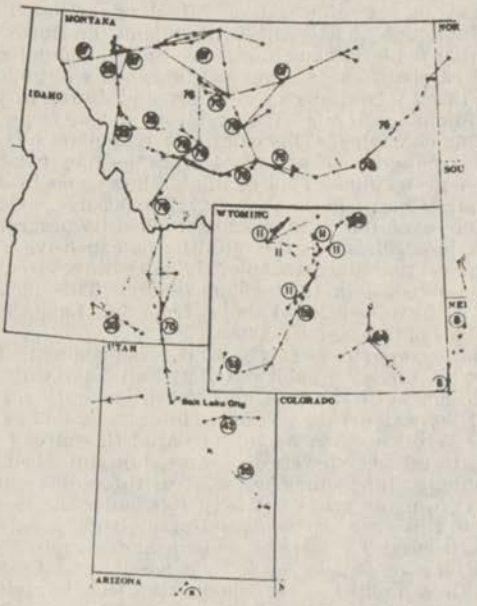
The map does not well portray exactly what is happening to TV viewers, either cable or free over the air. We point out that Salt Lake City TV programs are fed all the way to northern Montana and North Dakota. Spokane, Wash., TV signals are fed all the way across northern Montana as well as over western and central Montana. With the time zone differential this gives two different times for each program to attract viewers the same day and when programs are delayed because of film or tape shipments it gives three different times for seeing the same programs in many areas. It is little wonder that we have had so few TV stations built in this sparsely populated area. Only now, since July 7, 1965, when the FCC authorized TV stations to own and operate 100-watt TV translators on FCC assigned channels has it been possible to stir up any interest in the activating of these facilities. In some areas this is giving folks a second signal. In some areas, like Kalispell, the first signal. CATV duplication of programs simply killed off the building of broadcast stations in this area.

The Seiden report shows the following:

	Number translators	Number CATV systems
Idaho	71	27
Montana	196	27
Wyoming	118	21

These are 1964 figures. Since then there are more microwave circuits, more TV translators and more CATV cables. You wonder why so few CATV's can have such an effect on such a wide area as these three States? They are located in the very towns that can support TV stations and high-powered TV translators. They dilute the very markets that can support such over-the-air transmitting equipment. They take away viewers in the very heart of the area where a TV station must get its income to exist. They dry up the existance of TV signals for rural America.

UNITED STATES OMMON CARRIER MICROWAVE NETWORK SERVICING CATV SYSTEMS LICENSED AND PROPOSED, 1964



Dr. Seiden has this to say on common ownership:

"When a television licensee owns a CATV at the fringe of his signal's coverage area or just beyond it, he is discouraged from extending his signal for he would be competing with himself." * * *

"The A contour is often open to further development by licensees where natural or manmade obstructions limit good TV reception. In such circumstances the use of translators would improve the situation. But if the licensee owns a CATV in this area he is discouraged from improving his signal's coverage. The annual revenue from CATV subscribers is, on the average, 3.3 times the annual revenue from an off-the-air TV home, and the profit margin in CATV operations is estimated to be about twice that obtained from TV broadcasting. There is thus ample economic motive for the licensee to avoid any action that would improve off-the-air reception when there is colocated common ownership of TV and CATV."

Since the FCC made both the decision to expand TV translator usage and for station-cable common ownership in July 1965 it would seem quite timely to ascertain exactly how much man-hour time and how many dollars have been expended and committed broadcasters toward each of these endeavors. Such a compilation would quickly show whether or not the efforts of broadcasters in their over-the-air broadcasting has been "diluted." To us, from the trade press, and from papers filed with the Commission, we would say many broadcasters have resisted getting into the CATV cable business but have had to do so to protect their own interests. In other words, the Commission is forcing them into this "duopoly" business. Even CBS and NBC have cable ownership and ABC is reported "looking for it."

When you see the three TV stations of Seattle, Wash., or the major stations in Dallas, Tex., or in Salt Lake City, joining forces to get into the cable busi-

ness as a joint venture, it means the destruction of competitive over-the-air broadcasting as we have known it. These are only three of many "joint station ventures." Your committee should carefully consider the effect upon the public. Too, there has been no limitation suggested by the FCC on how many cable systems any one entity may own. Would it be in the public interest that every CATV cable in the country was under common ownership? The FCC has suggested no rule against it. This must be another of your committee considerations.

We hope you will not allow the growth of CATV cable television to develop in this country in such a manner it can strangle free over-the-air television, either through program monopoly or through the limitations of the development of those entities that are so important for the dissemination of television signals, TV stations, TV satellites, TV translators.

You must be cognizant of the fact the Commission has placed no limitation on the distance a TV station signal, or for that matter, a FM radio station signal may be carried by microwave. It has placed a very definite limitation on how far these signals may be transmitted over the air from a station antenna. These limitations are established through restricted power and restricted antenna height. On top of this, while the FCC allows microwave for FM radio signals to CATV it has not authorized an FM translator, although these are used in other countries.

You must realize that the original CATV people, the TV serviceman who put up a high antenna to get better reception from the distant station and to wire that signal to homes in his area has been replaced by a highly specialized business entrepreneur, dealing in high finance and high profits. They deal with high write-off depreciation and most CATV systems seem to be changing hands about every 5 years. Many of the CATV owners you are dealing with today are multimillion-dollar institutions. Don't let them "small talk" you.

You must realize that the 1958, 1959, 1960 hearings in the Senate showed the CATV people they must go out and get broadcasters into their CATV business so as to relieve the pressure the broadcasters were bringing against them. You must also realize that today, the idea is to interconnect all of the CATV's in the entire country and have them ready for pay television.

Pay television doesn't need a coin box on the side of a receiver. Pay television is here today. Where are the prize fights? They are on pay TV, part through theater TV and part through cable home TV where the cable entrepreneur pays from 5 cents to 25 cents per connected home on his cable system. He does this to get the program feature so he can advertise to get more cable subscribers to pay him $60 a year for that cable connection. Now 5 cents to 25 cents a home isn't much for a program. But—remember, when you multiply that by several million, it adds up. It is a lot more than an advertiser pays for a home to take his program to that home by free over-the-air TV.

You can legislate, if you want to, that there can't be pay TV. We wish you would. You can legislate that cables can't originate programs for their special "class" (people with money who live close together where entrepreneurs can make money wiring TV programs whose entrepeneurs select, to their homes) of viewer. We wish you would because any such origination will dilute and dull free over-the-air TV.

How can you stop an association or group of cable companies, or maybe, in the future, just one big cable company from "kicking in" to a New York station to help that station pay for all Madison Square Garden attractions, on an exclusive basis? What is to block the world's series from being picked up the same way? What about professional football? These are only three. Do you think that if top feature programing is taken away from free over-the-air, advertiser-supported TV, that it will be possible to have all the many wonderful features on free TV as in the past? How will free TV have the money for Senate hearings, world forums, special reports, discussion shows, Gemini shots—to mention a few?

The only way you are going to protect rural America and free over-the-air TV is to build a nationwide television system of community or area stations as envisioned by the FCC "Sixth Report and Order." Make station program coverage and station signal coverage conform to the same planned areas as limited by this FCC allocation plan. You may hear "howls" from the "fast buck" cable entrepreneur for a different system. Remember it is his prospect for dollars that is talking. It is not the vast public of all America that is crying to you for this change. The FCC is listening to their "howl." Their dollars, their lobby is talking. The FCC has heard. The FCC in its present rules is throwing rural

America to the dogs. It cut down from 15-day nonduplication of programs to 24 hours. It is only in rural America where film shows are shipped to stations by express that delays of more then 24 hours take place. The FCC has ignored us. Abolished a rule for our protection, yet has in the same breath refused to open the door to CATV pay cable in the top 100 markets where there is no problem of duplication beyond the 24-hour period except for feature film shows. Why? Why penalize rural America and hold metropolitan markets sacred? Dollars, that's all, just dollars. Network pressure. Big business. Delay. But—the networks are hurrying to get ready for the gold rush. CBS says, "charge CATV copyright fees," even in the coverage area of TV stations where the fee for home coverage has already been paid by the station. Does the fact that CBS owns the Yankees, a few stage shows and has many other program property rights have a bearing on this? NBC is already experimenting with direct studio-to-home cable TV in our Mountain States which I have already mentioned.

What about FM radio on TV cables? Are you going to sit back and let 10, 20, 30 FM "formatted signals," all-news stations, all-western stations, all-Hawaiian-music stations, all rock-and-roll stations, all classical music stations, all-drama stations come in and dilute your own local radio station fare? Are you going to let them be diluted to the point where they have fewer listeners and must sell their advertising spots for less and then put more spots on the air and eventually force the listener away to the point where your local radio station closes down? Are you going to let cables, carrying multiple free radio and television programs, originate news programs? The FCC would let them. But—are you going to? This will dilute the use of news over both over-the-air free TV and radio. Are you going to let cables, which get their lifeblood and heartbeat from the distribution of multiple radio and television programs originate features such as prize-fights? If you do, it will eventually take all major sports away from free over-the-air TV. This is one of the things the broadcasters are betting on as they get into the cable business. How are you going to regulate equal time on a cable news wire? If you don't vote the way they want you to they can insert stories about you the night before election or even on election day and discredit you.

The FCC has fostered and opened a Pandora's box. It is up to you gentlemen to close it.

While we are thinking about programs, shows, entertainment, call it what you will, lets look at what an expert said about availability of this fare.

Herb Jacobs of TV Stations, Inc. buys shows for more than 100 TV stations. He has been in the film business for more than 35 years. Here are his remarks to his member-owners in 1965, made in Washington, D.C. You will be surprised to know that only 5 percent of all homes, connected for pay TV can control TV programs on today's market.

IS TELEVISION BY WIRE IN THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY?

(Address made by Herb Jacobs, President of TV Stations, Inc., at the Tenth Annual Breakfast Meeting of TV Stations, Inc., Monday, March 22, 1965, Blue Room, Shoreham Hotel, Washintgon, D.C.)

Mr. Chairman, honored guests, ladies and gentlemen: So much has been discussed and reported on what divides most of the principals on CATV that little attention has been paid to the real issues: The availability and control of programing.

Therefore, this morning, I will try to assess for the average American family, their current and future program potentials—something I have been doing for my own members for the past 10 years, from this dais.

And it will be quite understandable to our non-broadcaster guests, too. Because everyone here has a stake in the ultimate consumer of programs—the public—in whose interest, convenience, and necessity, much lipservice and thought is always given—but too often perhaps, as an afterthought, or a byproduct.

I believe the essence of this controversy to be freedom—in this case, freedom of choice. To see or not to see, is not the question—but to see what there is to see—is.

Voltaire, one of freedom's greatest exponents—when asked what he did for a living, said, "My trade is to say what I think"—mine is too. It's not a very popular trade. If pursued honestly, you're confined to the truth, and not permitted to worship sacred cows. However my members have come to expect, that whatever I say, will in the end, be in their best interest—whether they are pro- or anti-CATV.

I for one, believe any action Congress or the Commission would take, at this time, would be honorable—providing the things they have been told were related—which of course, they most certainly are not.

And it's quite possible to become confused—because everyone is being swamped with expensively prepared reports—compiled by economists and college professors—all contradicting each other.

The confusion is caused, by everybody using the word CATV to describe their own side of the dispute.

There can be no argument, that community antenna, as an auxiliary delivery service, was in the interest, convenience and necessity, of the people.

But it isn't any longer, with the now expressed intent, of the more ambitious CATV entrepreneurs—to exploit and inflate CATV's basic usefulness—to include program origination both locally and by national interconnected wired networks. Which they allege is possible, only through their expanded services.

And they can make such allegations and pursue and accelerate their uncontrolled growth, because no guidelines exist to contain such ambition. And this they do, under the guise of free enterprise—which I submit, will be anything but free—for the people. And surprisingly enough, will not increase the available choice or the program quality.

Therefore, I suggest we begin identifying the problem by its true name—wired broadcasting systems. For if we don't, Congress might mistakenly legislate CATV, which is in the people's interest. And then we would all be stuck with a hollow Chamberlain compromise—and inadvertently, disenfranchise untold millions of Americans, of their right to see television free of charge—and some day maybe all, if they want to see good programs.

That's a harsh statement and I expect to be labeled a "prophet of doom" or a "crackpot"—selling buggy whips, by fighting the motor car. You may also expect such observations to come wrapped in a beautiful package—proving the piano-roll industry cried when Edison invented the talking machine, and they in turn when radio came along, and motion pictures when television got here. And it will neatly tie together, with the most logical facts—that they are all still in business. Sure they are—but logic isn't always the truth.

The truth is those industries wailed in their own self-interest, and had the facilities and ways and means of recovering—so will the current ones—and that's where the analogy ends.

Because I'm not talking about any industry's special interest. I'm talking about the people's interest unless their rights are protected, they won't recover. Because it's historic, that once you pay for something, you can never get it for nothing again—and the people will add paid television programs, to their inevitable death and taxes.

But I'm not suggesting that it will happen overnight—but subtly by attrition. And it will be done, because the vital issues boil down to competition for and control of programing—which in turn, really means control of the viewing audience. Therefore, I submit that programing is the only basis on which to arrive at a just and sensible decision. Let's take a look at the problem from my angle.

CATV's best sales tool is the people's desire for multiple choice of available programs—and this they do provide. But I take issue with wired broadcasting advocates, who promise their systems will give the people, something they are not now getting. Because I contend, the supply of programing is so limited that no matter how many channels they promise to open up on their wired systems it will not increase the amount of program choice.

A prominent TV columnist summed up their intentions last month: "Mr. Public, why settle for 2 or 3, or even 7 or 8 channels to choose from when there may be a choice of 15 or 17 or more. Indeed, why not? Such a service, if it gets well established, might even deliver entertainment—even cultural entertainment—without commercials."

How is that for an irresistible sales pitch. And it's a most logical argument—but logic isn't often the truth. The truth is, our astute TV columnist is as equally naive, as he is equally uninformed—regarding what is available, to fulfill such wondrous claims of 15 to 17 channels of programing—or more. Let's find the truth.

Wired systems do not now originate their own programing—they appropriate it, from existing broadcasting stations—who incidentally, serve over 150 million Americans with programs from the three networks, in addition to originating quite a bit themselves—all free of charge.

That leaves only one source of programing not accounted for, to add to the existing network supply—the independent nonnetwork stations, in some 17 markets. And you can bet those extra multiple program promises will be pitched as coming from the big time, such glamorous places as Broadway, New York and Hollywood and Vine, California.

The only way such scintillating starlight could be delivered to faraway places, is by interconnected wired networks, one of the things against which protection is needed if the people's rights are to be safeguarded. Why the protection? Perhaps it will be more understandable, if we know what can be made available by those independent sources—to be carried on the promissory wired networks, to fill 15 or more captivating channels.

It's really quite simple to explain, so I didn't order a $50,000 research project—complete with a professor. All I did was to pick the biggest town of them all. New York has 3 independent nonnetwork stations. Then I spent 15 cents on a TV Guide and checked the programs all three independent stations played, during 1 week last month—in their prime time, between the hours of 7:30 and 11:00 P.M.—because that would be the only logical place for them to put their finest shows. Here's a résumé of that 73½ hours, of promise.

It included an hour and a half of local community and religious programing, of no interest elsewhere. But 53½ hours of 73 percent, of the entire week's prime time, was filled with reruns of former network programs and repeats of feature films—one of these features accounted for 16 hours of the 53½, because it was repeated 8 times in the same week. That left just 18½ hours of fresh new attractions; 9½ of that was devoted to sports, such as ice hockey, pro and college basketball—all of which featured the local teams—and about which a viewer outside the area could care less—since he now sees his own local and regional teams play, on his own local station. The sports were rounded out by 2 hours of theatrical wresting and 2 hours of a dog show—hardly conducive to glamour.

I now had 9 hours to account for—here's how they shaped up. For 3 hours, teenage kids mugged and silly grinned into the camera—while dancing the watusi and the frug, to records—spotted with pro-amateur talent of the same ilk. Another 3 hours was devoted to talk-talk marathons, like little David Suskind talking down to people. Two more hours had syndicated shows—which means they weren't good enough to make it on network and which included the all important Fractured Flickers. That left just 1 hour, out of 73½ that was filled with a show of merit, Repertory Theater, and even it was a foreign import.

That Mr. Average American is your potential, for multiple choice, to fill 15 or more channels of stardust. Indeed why not—network reruns, rejects and repeats of repeats of repeats. Is that a choice?

But that's not all, by a long shot. I didn't go into morning and afternoon fodder, because it would turn up such items as "Topper," a show produced in 1953, that played on all three networks and is now in its 20th or 30th New York rerun. And it would have been a waste of time to check out the programing of all the other independent stations, in all other enchanting markets, because it would not change a thing, or add any additional choice. You see, all of them must play the same programs, because there is no other source. But most importnt of all, is the fact that almost every program in the entire 73½ hours, has been played, will be shown, or is available to, every free television stations in this Nation.

That's yuor horn of plenty, I know, I buy programing for over 100 stations. So what is left—a few foreign imports to add to the network reruns, rejects, and repeats of repeats of repeats.

Instead of poring over technical reports and wondering, does he or doesn't he, and hoping some shoemaker will know for sure, it's about time someone in authority began asking, our ambitious entrepreneurs, the $64,000 question. Where are you fellows going to get all the exciting new programing, to fill your claims, of a bright new world of 15 channels of television—or more?

That's an answer, I'm dying to hear myself, because I don't know and I should, because day in and day out for 35 years, I have lived in a world of program shortage. Our chairman only scratched the surface when he said that this organization spent over a hundred million dollars on programing. Because if our wired friends or anyone else in this room knows, where I can find the guy with fresh new quality product, I'll make him wealthy overnight, because we will have another $200 million to spend on programing, in the next 5 years. And you can be sure, the networks will beat me to him, because they

spend over $600 million a year on programing, and all of us are desperately seeking the same answers.

Sports can't be it, because every top pro- and college-football game, and every other leading sporting event, except boxing, are already being seen, free, plus all the pro championship and bowl games, including baseball. And speaking of major league baseball, so will many of the regular season games, and that too, was brought about by a broadcaster, John Fetzer.

And, oh where, oh where, are those cultural programs, without commercials, who would pay for them if the advertiser didn't? You've guessed it, Mr. John Q. Public, doesn't he always. The lesson of cultural promises should have been learned from Pat Weaver. Everytime he opened his mouth, out fell the Bolshoi Ballet, right into the headlines, at least 20 times. Guess what, it's already played on network and the people saw it for nothing.

You know, if someone up there would only care enough to protect the people against such humbug, that the only way they will ever see cultural, or any other kind of good programing, is by paying for it, the producers will continue to sell their wares to free television and the people will continue to see it for nothing. And I regret that Mr. Weaver's pay TV attempt was voted down, before his plethora of cultural promises, to small passionate groups, showed through his double talk.

So again, what's all the fuss, because someone is sure to say, It's the people's right to decide for themselves. Let them. If what you say is true, that there will be no multiple choice, or better programing, the people won't go for it and it will fail. Very logical, but logic isn't always the truth.

The truth is, it can, will, and is happening here. Anyone who doubts it, doesn't really know how easily the average American can be bilked by fancy promises. Even the most outrageous promise will move him to try anything once, especially if it's only $5 a month, for openers. Only in this case, there will be no second guessing.

You see, gentlemen, two principals are missing from your compromise table, the advertiser and the program producer; they don't have to recognize any compromise you reach, and they won't.

Once the advertiser finds out that he can get ample coverage in a one or two station market, without paying for it, or at a reduced rate, he won't order it. And it won't make any difference, whether the program protection is simultaneous or 15 days, because if the market is not ordered for a Bonanza at 9 on Sunday night, it will be perfectly legal for the wired systems to bring it in from the nearest big city.

And the networks will shrug helplessly and say, "I'm sorry, old buddy, what can I do, he didn't order your market." The networks won't lose a thing, either, because they are interested in getting national coverage, for which they will get paid.

But the attrition of free broadcasting will be underway, because no medium or small market would be able to stand many such losses. Furthermore, they would not be able to compete with wired systems, who would not be paying for a "Bonanza," while the broadcaster would have to buy and pay for an inferior show, to compete with a network hit. Which is hardly conducive to retaining their life's blood, the national spot dollar, despite what any doctor's report says, especially a Ph. D.'s. Because, as you broadcasters know, it's impossible to survive on network revenue alone.

But your troubles would have begun long before, because multiple channels, no matter how poor the programing, will so dilute your viewing audience that even your local spot dollar, would diminish to the point where you might find it difficult, if not impossible, to earn a fair return on your station investment. And your eventual demise would, in turn, disenfranchise those Americans who are now receiving your service free of charge.

But the loss of your free signal would not affect the public's insatiable program appetite, because in the wings, awaiting the call to duty as public benefactors, would be the wired broadcasting systems operators, who not only want to deliver available programs from distant markets, but want to originate their own, for a fee.

If anyone doubts that intent, let me dispel it quickly by reading a statement just made to the press by one of their top spokesmen. He no longer espouses such intent hopefully, but warns anyone standing in the way, and I quote, "If the time comes when the American public wants CATV to originate its own local

programs, we don't want anybody to tell us we can't," he warned. Not even Congress, Mr. Big?

And that time will come, for if there is no other way for the people to receive television shows, they will pay for it. They will have no choice. And, free broadcasters, in some 175 to 200 small and medium markets, will be ripe for the cherry picking. Some of you larger markets are not that safe either, there's always a bigger guy closer to New York and Hollywood than you are.

When that time comes, all obstacles on the road to Pay TV will have been removed, because if you recall what I said last year, pay TV needs a lot less than 5 percent of the national audience to succeed.

No matter how wired broadcasting systems try to sweet talk it, by claiming that paying by the month is not the same as paying on a per program basis, it makes little difference, because wired broadcasting systems will become a combination of both. A monthly charge for gobs of mediocrity, plus a per program charge for anything worthwhile, both of which the public now gets free.

And it will happen, because wired broadcasting will then have the economic potential to siphon off the best programs. It will have a strangle hold on the TV viewer, to dictate which programs must be paid for on a per program basis, and charitably, which it will donate to the monthly fee. And you can bet that charity will begin at home, their home.

But despite all this, if for a moment I thought that paying for it would improve programing I would be the first to say it was worth it, but I know better, it won't.

Last year I told you why. It's even more true today. Some of you will remember that I said, "Whoever controls programing controls the viewing public. If pay TV is allowed to develop unchallenged, its economic potential is so vast, it will control programing. And that would be ironic, because the most important source of programing in the world today is free television.

The unfortunate thing about that statement is that for a long time, the public has been duped to believe otherwise—thanks to the audible minority of carping critics, intellectuals, and other self-interest groups.

Well, I'm sorry for them. It is they who are the dupes. Despite their intelligence, they lack the expenrience to realize that genius is the rarest of all commodities, especially in the entertainment and sports world. And for thinking that the human brain has the capacity to create quality product, either in quantity or vastly better than is now available, merely by paying for it. Pay TV promises it will. Let's see if they're right and start with the live theater.

Challenge any intelligent audience to name just 25 outstanding Broadway smash hits produced since the year 1900, and give them 10 minutes to do it. I've never found any that could.

If in a span of 65 years, the best producing, directing, writing, and acting talent has not been able to compile a better track record from the many thousands of Broadway shows produced, at considerable investment, how does anyone expect it to happen overnight by putting money in a coinbox.

And speaking of movies, in 50 years, Hollywood's batting average for outstanding achievement has been miniscule compared with the tens and tens of thousands of features released. You play them—you know that. And we know for sure no amount of money was spared the geniuses of that industry to do their best.

Despite popular belief, the answer does not lie in the amount of money available, for, or spent on productions, but in the human element behind them.

No "open sesame promise" by pay TV, will ever force the human brain to satisfy the desire for greater attractions. It's also hard to conceive that people can be so easily misled, to believe that pay TV will uncover so much untapped talent, to make it outdo what is already theirs for nothing.

Your networks spend over $600 million annually, to develop and supply you with programing. That's more than enough money to make any talent who's been hiding, crawl out of the woodwork.

Your viewers have had free access to every known superstar in the world, from the best of the dramatic and performing arts, to full coverage of a Project Mercury.

Does anyone believe the promise of a bigger payoff will make Frank Sinatra or Joan Sutherland sing any better—or Sandy Koufax pitch more strikes—or for that matter, Ingrid Bergman and Sir Lawrence Olivier bring their fine art to the screen in better fashion?

You know the answer is emphatically "No," because stars perform at their best all the time. The minute they don't, they're no longer stars.

Gentlemen, let's face it—the networks are doing a superb job. If their detractors and harassers believe the results are mediocre, I have news for them, and anyone else—that's all there is—there ain't no more, even if they dig up Cecil B. DeMille, Ziegfeld, and Toscanini, and that goes for wired broadcasting systems, too.

Those statements are not only logical, but the truth. You can't legislate creativity and you can't administer it. The FCC will find that out when and if advertisers begin producing their own shows. You can stop pointing with pride to the "Bell Telephone Hour" and the "Hallmark Hall of Fame." Those advertisers are the exceptions that make the rule.

Giving artists their freedom of expression won't guarantee creativity either. Even so loquacious a champion of that cause, David Susskind, just dropped $650,000 on a Broadway show called "Kelly," that lasted exactly one performance. It can't be done, and wishing or promises won't make it so.

No amount of money would have been too much for CBS to spend to keep its lead. And it wasn't their fault that the current supply of creativity was equalized by the other networks.

If creativity was so plentiful, why would all three networks be scheduling a total of 8 hours of feature movies next season, in prime time—or why have network summer reruns become a boring legend.

I'm afraid all of us will just have to wait for more creativity to develop, or haven't you noticed that there's been no second coming—of Shakespeare.

That, Mr. John Q. Public, is your current and future program potentials, and yours too, Mr. Broadcaster.

Will programing improve if people are made to pay for it? Again the answer is emphatically "No."

Like all of you, I am concerned with the best interest of the American public. I am equally concerned with the best interest of free broadcasting, to remain a healthy business that will permit the free broadcaster to allow a fair return to his stockholders, and the luxury—and it is a luxury—of programing in the interest, convenience, and necessity of his audience, the American public.

Gentlemen, the interest of the free broadcaster, and the interest of the American public are inseparable.

That is the most important issue facing the broadcasting industry today—and gentlemen, this is the one time when logic is truth.

Thank you.

Dr. Seiden completes his study with a chapter titled "To Close the Gap." He says:

"To close the gap between the haves and the have-nots in three network programing requires the development of an expanded television broadcasting industry." * * *

"To cope with this problem, broadcasters should be given expanded coverage areas so that three stations can be superimposed on the same general location."

"To reduce the capital cost of UHF transmitter while expanding their required coverage area, and to retain flexibility in anticipation of future adjustments in coverage area, translators should be employed by UHF broadcasters to effect the broadened coverage."

"This approach will attract capital back to the broadcasting industry * * *."

What Dr. Seiden said of UHF in general is also true of VHF in sparsely populated areas such as we have in the Mountain States. This is exactly what the FCC rule on 100-watt TV translators was planned to do when made last July 7. FCC thinking was not realistic because of the power limitation which simply cannot do the job.

On July 27, this "plan" received a great setback when the FCC gave a go-ahead for the duopoly operation of TV cables and TV stations. The two are not compatible and if you gentlemen don't separate them, some day the Department of Justice will have to.

Another thing you should encourage the FCC to do is to allow more power to all TV translators. With the advent of color our little 1-watt translators are not strong enough to give good color pictures. In other countries more power is allowed—why not in the United States?

We of rural America are not "loud enough" to make the FCC hear us. Perhaps you of our Congress who represent rural areas can make us heard.

In closing we have these thoughts:

1. Rural and small town America depend solely upon broadcast over-the-air television for reception. We don't want or need any REA type of pay cable TV just because the pay cable equipment manufacturers and their delivery boys want to make us pay them.

2. Whether it be advertiser-supported TV or box office in-the-home TV it must be over the air so as to be useful to all peoples, rich and poor, city and country.

3. We are against pay TV as a substitute for advertiser-supported TV and urge the FCC and Congress to use their energies and powers to develope a strong system of over-the-air, advertiser-supported television.

4. If there must be pay TV then see that it is placed in one definite section of the UHF band. Do not allow pay TV stations to be partly supported by advertiser dollars, let them sink or swim on the dollars they can garner from direct subscribers for their fare. Let them be supported solely by the people who want that type of service. Let them be governed by a different set of rules than free TV, advertiser-supported television stations. The "public interest, convenience, and necessity" of the one is not that of the other. Do not allow any advertiser-supported station to devote any of its time to pay television programing.

5. There are adequate channels available for a system of TV stations, aided by both high-powered and low-powered TV translators to bring multiple signals to all the people of the United States.

6. The engineering aspects of the art have advanced over the years so there is no excuse for the United States not to adopt the system of station-owned, high-powered, unattended VHF TV translators as used by our neighbors to the north in Canada. TV translators of higher power than the FCC is presently licensing, should be allowed in the UHF band. The development of equipment is already completed.

7. The signals of TV translators should be protected from TV cable dilution exactly the same as a TV station because TV translators give an over-the-air signal service to all people and TV stations must be encouraged to build and maintain them.

8. Higher power "people owned" TV translators should be allowed in both the VHF and UHF bands when showing is made that a tax body, club, association or other entity is properly financed to engineer, install and operate such equipment. There are many areas in mountainous States where several small TV translators could be replaced and service to the viewer greatly improved with but a single higher powered translator for each channel repeated.

9. In Japan special equipment is used to energize TV translators so local programing may be put on at intervals when such programing is important to the people of an area. The FCC should make a study of this operation and determine its desirability, particularly toward the practicability of (1) helping to get TV translators eventually converted or replaced by local TV stations, and (2) by allowing use of such equipment for improving fund drives for the support of and financing of TV translators.

10. Microwave must be made available for TV translators on the same basis as it is for TV cables. Rural America should not be "ruled" against.

We do not recommend a nationwide system of TV translators connected to a New York or Los Angeles TV station. But—if that is what the FCC is going to allow on pay cable TV—then rural America should have the same advantage through microwave-connected translators. A system of long distance, interconnected cables will obliterate our present community-oriented system of TV stations. If this is the picture then rural America must have a system of long-distance connected translators or go without TV. We would prefer microwave only for the purpose of seeing that each area had three network and one or two educational channels TV from the nearest such stations and we believe CATV cables should be limited by the same rule. It is only in this manner that a competitive over-the-air system of local stations can be constructed and maintained, in our United States.

11. We reiterate our stand aganist the useless, foolish, expensive, interfering, unrealistic, never used and in many cases not working code wheels U.S. translators are forced to use.

12. We protest against allowing TV broadcasters to own cable TV systems. We do this on the grounds that such dual ownership has and will continue to

dull their interest and energies in getting first-run shows and events on broadcast over-the-air TV. Such duplication of ownership allows a broadcaster to collect both from the cable subscriber and from the network delivered for such service. A broadcaster will be inclined to place on the cable, his station, no matter how remote its location. He will leapfrog other similar network stations to do this. He will run the network through his cable direct to build set count for network payment when his own remote station has uninteresting programs for distant cable subscribers. He will run feature fights and other box-office attractions on his own stations cable channel to build that channel's set count and consequently his network income. All of this creates an imbalance in the art of broadcasting. It aborts the FCC TV allocation plan for a nationwide system of free over-the-air multiple TV signals. Such a system is only the forerunner of pay TV. Such a system takes away the force, the drive, the incentive of the broadcaster to fight for top programing for over-the-air advertiser supported "all people" TV.

Respectfully submitted.

JIM BEAMER, *Secretary.*

(Whereupon, at 4:15 o'clock, the committee adjourned, subject to the call of the Chair.)

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JUN 3
1966
MANHATTAN, KANS.