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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 740933

WINCHESTER TELEVISION CABLE COMPANY,

Appellant

v.

TAYLOR L. BARR,
Commissioner of Revenue,

W. H. FORST,
State Tax Commissioner,

Appellees

APPENDIX TO APPELLANT'S BRIEF

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TABLE OF CONTENTS

	Page
Application to Court for Correction of Errouneous Assessments	1
Answer by Commonwealth of Virginia	9
New Matters	10
Stipulation of Facts	17
Record Opinion of Trial Court	23
Final Order	32
Notice of Appeal and Assignments of Error	34
Testimony by John Lewis	36
Testimony by Jack A. Rickel	86
Testimony by O. D. Page	120
Statements by Assistant Attorney General Trible	128
Exhibit A - Franchise	131
Exhibit B - Analysis of Section IV-B, FCC Form 303, and Section IV, FCC Form 342	144
Supplement to Exhibit B	146
Exhibit C - Diagram of Towers	148
Exhibit D - Chapter III, Policies Relating to Certain Minimum Standards for CATV Systems	150

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WINCHESTER TELEVISION CABLE COMPANY,

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v. RECORD NO. 740933

TAYLOR L. BARR,
Commissioner of Revenue,

W. H. FORST,
State Tax Commissioner,

Appellees

[2] APPLICATION TO COURT FOR CORRECTION OF ERRONEOUS ASSESSMENTS

1. That Winchester TV Cable Company is a Virginia stock corporation duly qualified to do business in this State, with its principal office at 136 South Cameron Street, Winchester, Virginia, such location being wholly within the City of Winchester, Virginia, and subject to the jurisdiction of this Court.

2. That on December 10, 1969, Applicant was assessed by the Department of Taxation of the Commonwealth of Virginia the following amounts:

a. For the period from July, 1968 through May, 1969:

State Use Tax	$176.95
State Use Tax Penalty or Interest	27.41
Local Use Tax	154.25
Local Use Tax Penalty or Interest	32.97

Total Taxes, Penalties and Interest	$391.58

b. For the period from September, 1966 through June, 1968:

State Use Tax	$273.71
State Use Tax Penalty or Interest	68.43
Total Taxes, Penalties and Interest	$342.14

(Exhibit A attached).

3. That Section 58-441.37 of the Code of Virginia, as amended, makes Section 58-1130 through Section 58-1139 applicable to sales taxes.

4. That Section 58-1130 of the Code of Virginia permits the application of Petitioner Applicant to this Court for relief of any erroneous assessment within two (2) years from the 31st day of December of the year in which such assessment is made. Said assessments having been in the Calendar Year 1969, this petition for relief is timely filed.

5. That Petitioner Applicant is expressly exempted from the application of such Sales and Use Tax by Section 58-441.6(j) of the Code of Virginia, as amended, which states the specific exclusion:

> "(j) Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies or concerns which are under the regulation and supervision of the Federal Communications Commission."

6. That Petitioner Applicant is exempt under

the aforesaid section and sets forth the following facts in support thereof:

a. That Community Antenna Television (CATV) systems are clearly under the regulation and supervision of the Federal Communications Commission by decision of the Supreme Court of the United States in U.S. v. Southwestern Cable Company, 392 U.S. 157 (1968).

b. The Federal Communications Commission has adopted rules regarding television stations to be carried, advertising on CATV systems, cablecasting by candidates for public office, Fairness Doctrine for CATV systems, sponsor identification requirements for CATV systems, lotteries, diversification of control over CATV systems, and rules regulating cablecasting of feature films and sports events. A copy of the rules is attached hereto as Exhibit B.

c. The Federal Communications Commission has adopted rules requiring CATV systems to pay annual fees and fees for filing various petitions and notifications with the Commission. A copy of the schedule of fees is attached hereto as Exhibit C.

d. The Federal Communications Commission has proposed rules requiring CATV systems to maintain program logs for cablecasting and it has proposed rules requiring CATV systems to show non-discrimination in their employment practices. A copy of these notices of proposed rule

making is attached hereto as Exhibit D.

e. The Federal Communications Commission on August 5, 1971, proposed to adopt rules to be effective March 1, 1972, further regulating and supervising CATV systems in the following respects:

(1) requiring a minimum channel capacity for certain CATV systems;

(2) requiring that for each broadcast signal carried, CATV systems must provide an equivalent bandwidth for nonbroadcast uses;

(3) requiring there be one free, dedicated, non-commercial, public access channel available at all times on a non-discriminatory basis;

(4) requiring one channel be set aside for educational use and one channel for state and local government use;

(5) forbidding state or municipal regulation of the channels described above in numbers three and four;

(6) requiring that there be built into cable systems the capacity for two-way communications;

(7) forbidding any censorship or exercise of program content control of any kind over the material presented on assess channels not programmed by the CATV systems; however, the CATV system shall adopt rules prescribing the presentation of any advertising material (including political advertising spots) of lotteries, and

in terms identical to 18 U.S.C. Section 1464, of obscene or indecent matter;

(8) proposing technical standards to provide that a signal must meet certain standards of minimum technical performance on arrival at a subscribers terminal;

(9) Proposing that all CATV operators conduct complete performance tests of systems at least once a year, and keep the results of such tests on public file for five (5) years; and

(10) prescribing standards which must be met before local or state governments can act in the following areas: choice of franchise and service area, construction timetable, franchise duration, subscriber rates, service standards, and franchise fees.

f. Your Petitioner Applicant originates local programs over its network from its studio at 136 South Cameron Street, Winchester, Virginia, and at all times, after being energized, has had the capacity to do so and, in fact, has done so, and under the rules and regulations of the Federal Communications Commission may at any time be regulated to the extent that the Commission so elects.

g. That much of the equipment used by your Petitioner Applicant in the origination of these programs, and the towers and electronic tubes, switches, relays, rectifiers, connectors, dividers, transformers, filters,

extenders, transistors, electric coating, together with other miscellaneous equipment and accessories is identical to, interchangeable with, and perform the same functions as similar equipment used by other radio and television companies not disseminating to subscribers by use of cable.

h. That your Petitoner Applicant is a stock corporation organized for profit and is commercial in its origin and activity and is a "company" within the meaning of Section 58-411.6(j).

i. That the cable and all parts and accessories thereto are integral parts of the distribution system of cable networks, and cables are frequently used by other radio and television companies for shunting, relaying, and direct transmission of portions of signals even where such transmissions are primarily through airways.

j. The statute imposes no point source dissemination requirement or wireless requirement.

k. Your Petitioner Applicant is duly operating under a franchise granted by the Common Council of the City of Winchester on the 9th day of March, 1965, and accepted the 15th day of March, 1965, over rights-of-way granted as part of such franchise, but paying rental to Chesapeake and Potomac Telephone Company of Virginia and the Potomac Edison Company for space on poles from which cable is strung.

7. Even if the Court holds the statute to be applicable, Petitioner Applicant represents that it is unconstitutional. In support thereof, it alleges the following:

a. It imposes a tax upon proceeds from interstate commerce in violation of the commerce clause of the Constitution of the United States, Article I, Section 8.

b. To grant wireless radio and television companies the exemption and not CATV systems fails to provide equal treatment for taxpayers similarly situated and the failure to create equality constitutes a burden upon interstate commerce prohibited by the Constitution.

c. The method of interpretation employed by the Virginia Department of Taxation is arbitrary and unreasonable and based on vague standards of delineation not expressly provided in the statute nor in any duly constituted regulations, in particular the imposition of a wireless requiement, and an uninterrupted reception requirement, and as such, these are unconstitutional.

d. The same equipment owned by power companies or telephone companies is exempt from taxation in Virginia and would be exempt from taxation and as such constitutes unequal treatment for taxpayers similarly situated, and such treatment is unconstitutional.

8. Petitioner Applicant represents that to the

best of its knowledge, information and belief all of the sales tax sums represent assessments on equipment essential to the cable TV dissemination of signals. Assessment having been made by the Department of Taxation, however, is an objective assessment, and should less than all of the equipment be exempt, the exact amount may be determined and assessed in this proceeding from the information now provided to the Department of Taxation through its auditor.

WHEREFORE, your Petitioner Applicant prays that it be relieved from the erroneous assessments made by the Commonwealth of Virginia and that this Court determine (a) that your Petitioner Applicant is entitled to the exemption provided by Section 58-411.6(j) of the Code, or (b) that the attempted assessments of your Petitioner Applicant are unconstitutional and, therefore, unenforceable, and that the Court set a date for said hearing so that required notices may be given the Department of Taxation.

WINCHESTER TV CABLE COMPANY
By /s/ Lewis M. Costello
Counsel

[Filed October 27, 1971]

* * *

[61]

A N S W E R

Now comes the Commonwealth of Virginia, by the Attorney General and answers the petition filed against it herein and says:

1. The defendant admits the allegations of paragraphs 1, 2, 3 and 4 of the application.

2. The defendant denies the allegations of paragraph 5 of the application.

3. The defendant denies the allegations of paragraph 6 of the application, except that it admits:

a. That the Federal Communications Commission has certain regulatory authority over Community Antenna Television systems.

b. That the Federal Communications Commission has adopted certain rules and proposed other rules as set forth in subparagraphs b, c, d and e of the application, but defendant does not admit the power of the Federal Communications to promulgate such rules.

c. That the allegations of subparagraph f of paragraph 6 are true.

d. That certain electrical equipment performs specialized functions in many different systems, as alleged in subparagraph g of paragraph 6, but defendant denies that such equipment is thereby considered to be broadcasting equipment within the meaning of Virginia Code §58-441.6(j)

e. That the allegations of subparagraphs h and k of paragraph 6 are ture; and that the defendant neither admits nor denies the allegations of subparagraph i of paragraph 6 of the application.

4. The defendant denies the allegations of

paragraph 7 of the application.

5. The defendant neither admits nor denies the allegations of paragraph 8 of the application and calls for strict proof of the same.

And now, having fully answered, defendant prays to be hence dismissed with its costs in its behalf expended.

COMMONWEALTH OF VIRGINIA
By/s/ Lee F. Davis, Jr.
Assistant Attorney General

[Filed on November 13, 1971]

* * *

[69] NEW MATTERS

Certain new matters have arisen since the preparation of the original brief of both Applicant and

the Commissioner.

By law the Commonwealth has created in the office of the Governor a Virginia Public Telecommunications Council, §22-333. The purpose stated is to assist counties, cities, and towns. (§22-333 et seq. to §22-344.3).

The general powers and duties of §22-334 authorize it to

(a) "prescribe reasonable regulations as it deems necessary"; and

(b) "to acquire, produce and distribute programs for telecommunication service to any part of the state."

In pursuance thereof certain regulations have been proposed, have had a public hearing in Richmond, September 19, 1973, and are being adopted. (See proposed policies attached).

Such rules significantly relate to all CATV systems and contain a prescribed schedule for the supply to the state of

(1) One channel for use by the VPTC for its purposes.

(2) The lease of channels.

(3) The supply of such channel in addition to other FCC required channels.

(4) Prohibits converters.

(5) Two-way technology.

(6) Intermittent or continuous use.

(7) Equipment suitable for program origination.

Applicant taxpayer finds it incredible that the Commonwealth is simultaneously imposing two-way capacity and local origination on all CATV systems in its borders and denying exemption from sales tax because of inherently inferior status as a transmission medium and denying that local origination is an identical function. It is now to be required of all CATV systems.

We urge the Court to consider this new and onerous imposition in the decision of this case. The crowning blow is that the Commonwealth while denying all with one breath and grabbing for control and use of a channel with the next, proposes to take the use rent-free to boot.

This being a new matter, Applicant believes the Commissioner should give adequate explanation for the ambivalent position of the Commonwealth or give up the obviously erroneous assessment. We cannot be legally required to be broadcasters and denied the exemption simultaneously.

By/s/ Lewis M. Costello
Counsel for:
WINCHESTER TV CABLE COMPANY

[71] (Attachment to NEW MATTERS)

III

POLICIES RELATING TO CERTAIN MINIMUM STANDARDS

FOR CATV SYSTEMS

1. Subject to any necessary FCC approvals or waivers, the VPTC shall require that, by March 31, 1977, all CATV systems operating in Virginia which have the required channel capacity will make one designated (6mHz) channel available for "on-call" use by the VPTC acting on behalf of the various organs of the Commonwealth Government.

2. During the period prior to July 1, 1984, this "Commonwealth Channel" shall be leased by VPTC from local CATV systems at the prevailing hourly rate and on a strict basis of actual transmission use. (Where no lease rate has been established, the franchising authority and the franchisee must settle on one by March 31, 1977, seeking FCC approvals as may be required in the circumstances.)

3. In those CATV systems operating in one of the "Top 100 markets" (as defined in FCC regulations) this "Commonwealth Channel" shall be provided separate from, and in addition to, any channels dedicated to use by "local educational authorities" or by the governments of the local jurisdictions involved.

4. This "Commonwealth Channel" shall be receptable throughout each CATV System and shall not require converters at subscriber's receivers unless the converters are invariably provided as a part of the CATV service to the

general public.

5. If and where the Federal Communications Commission shall give its consent, after July 1, 1984, the VPTC shall be granted "on-call" use of a "Commonwealth Channel" <u>without</u> lease fees on all CATV systems in Virginia, except that reasonable fees can be charged by the CATV operator for contractable use of system-owned program origination or insertion apparatus (such as VTR recorders.) This "Commonwealth Channel" shall incorporate the use of two-way technologies (as defined by the Federal Communications Commission) where they are available.

6. Schedule use of the "Commonwealth Channel" by VPTC after March 31, 1977, may be intermittent or continuous. Where VPTC schedule use is intermittent, the CATV system involved may make other (leased or free) usage of the channel, provided the VPTC may order up its use for Commonwealth-related programs on 24-hour notice.

7. Each Virginia CATV franchisee having a "Commonwealth Channel" capacity of the sorts described above will be expected, after March 31, 1977, to provide without charge at its main head-end location, space and electrical facilities needed to connect into the main CATV feed system;

A. One-to-three helical-scan videocassette machines (or other comparable audiovideo storage mechan-

isms) supplied by VPTC (or its public telecommunications agents.)

B. And/or one-to-three audiocassette (or other comparable audio storage mechanisms) supplied by VPTC (or its agents.)

C. And/or electronic interconnection terminal elements (supplied by the telephone company, a common carrier firms, or the Commonwealth government.)

If and when the CATV franchisee can provide none of these devices or elements through lease agreements, the VPTC could employ such devices and elements of its own to insert program materials into the "Commonwealth Channel" (or, where VPTC allows, into other governmentally and educationally-dedicated channels of the CATV systems, including, where technically appropriate, audiobandwidth channels.) The VPTC will pay any reasonable system fees associated with the manned operation of such program insertion apparatus placed by VPTC on the premises of the system.

8. Where the franchisee has been required, or allowed, by the FCC to dedicate one or more channels for use by "local education authorities," the franchising authority will require a Committee of Education Interests (CEI) be established for the purpose of regularly advising the local authority and the CATV operator as to the specific

applications, allocations, programming and other policy decisions affecting the operation of such an educational channel or channels.

9. The VPTC must approve and confirm the composition of the CEI.

10. The by-laws and amendments adopted for its operation must be approved by the VPTC. The minutes of its meetings and any other documentation which describes CEI decision-making processes and outcomes must be furnished VPTC.

11. The CEI must, in all cases, include one representative named by the Public Telecommunications entity whose District includes the franchise area involved. The other representatives should be drawn from:

a) the local public school division(s)

b) the State Department of Community Colleges

c) the State Council for Higher Education

d) any locally-based non=sectarian institution(s) of higher education

e) any local state-accredited non-sectarian private school(s)

f) the community-at-large

12. The meetings of the CEI must always be public. Their time and place must be given 10 days public notice, with an advance copy of such notice to be furnished the VPTC.

13. The VPTC will be allowed to send one or more official representatives to the CEI meetings for the purpose of making presentations about pertinent public telecommunications issues and then to participate in any ensuing discussion.

[Filed November 13, 1973]

* * *

[76] STIPULATION OF FACTS

The following facts shall be admitted for all probative purposes as proven in this cause:

1. Winchester TV Cable Company (Company) is a Virginia Stock Corporation qualified to do business in Virginia with its principal office at 136 South Cameron Street, Winchester, Virginia, owns and operates the TV Cable System (CATV) in Winchester, Virginia. It is organized and operates this system for profit.

2. A CATV System consists of an antenna located at a strategic point for the reception of TV signals braodcast from distant commercial TV stations or transmitted by microwave relay, amplification equipment which boosts the strength of the signals, conversion equipment which alters the frequency of the signals in cycles per second (c.p.s. or hertz), and transmission equipment which sends the converted and amplified signals through cables to a subscriber's TV set. The antenna and related equipment allow the reception and amplification

of signals which are too weak to be detected by the ordinary home TV antenna. CATV concerns may also transmit by cable, to the same TV sets, programming originating from studios which they own and operate in the locality served by the system.

3. The Company's receiving antenna towers are located within the city limits of Winchester (near Winchester Fruitgrowers labor camp). The equipment owned and utilized by the Company in the reception and transmission of audio and video signals includes, but is not necessarily limited to, receiving devices, studio equipment, electronic tubes, rectifiers, transformers, filters, transistors, switches, relays, and shielded cable.

4. The Company originates some programs in its studios which are then transmitted by cable to its subscribers' sets. The studio equipment includes, but is not necessarily limited to, microphones, video cameras, film, and tape recording equipment.

5. Some of the equipment purchased and used by the Company is interchangeable with similar equipment used by radio and television broadcasting companies and would be exempt under §58-441.6(j) from the Virginia sales and use taxes if purchased by the latter.

6. Only subscribers of its service who are connected to the cable can receive the TV signals transmitted by the Company. Any member of the public

accessible from the Company's cable facilities may become a subscriber if he is willing to pay the established rate.

7. A length of cable without shielding will act as an antenna when radio-frequency energy is fed into it and, therefore, CATV systems must use shielded cable to prevent the escape of any r.f. energy into space.

8. The cable system runs throughout the city of Winchester, or can be required to do so and subscribers receive service through connections called "Taps." Charges are made per tap at rates established under a franchise granted by the Common Council of the city of Winchester on the 9th day of March, 1965, and accepted the 15th day of March, 1965. The tap charge entitles the customer to the channels carried by the cable company and all locally-originated programs. The cable company operates over rights-of-way granted by franchise but pays rental to the Chesapeake and Potomac Telephone Company of Virginia and the Potomac Edison Company for space on poles from which the cable is strung.

9. In 1959, the Federal Communications Commission, which regulated the operation of any apparatus for the tarnsmission of energy by radio (including TV signals) decided that its regulatory authority did not extend to CATV systems, because the transmission of CATV signals was not by radio waves and involved no use of the radio frequency spectrum. In 1960, however, the Commission

placed restrictions upon the activities of common carrier microwave facilities that serve CATV systems. In 1962, the Commission instituted a rulemaking proceeding in which it reevaluated the significance of CATV for its regulatory responsibilities. The proceeding was explicitly restricted to those systems that are served by microwave. At the conclusion of the proceedings in 1965, the Commission decided that CATV created substantial competition for local broadcasting which might adversely affect the audience and revenues of broadcasting companies which were regulated by the Commission. The Commission attempted to accommodate the interests of CATV and of local broadcasting by imposing upon CATV systems in 1965 a rule requiring them to transmit to their subscribers the signals of any station into whose service area they have brought competing signals, and another rule forbidding CATV systems from duplicating the programming of such local broadcasting stations for periods of 15 days before and after a local broadcast.

In 1966, the Commission reversed its previous position and held that it had regulatory authority over all CATV systems. It promulgated revised rules, applicable both to cable and to microwave CATV systems, to govern the carriage of local signals and the nonduplication of local programming. It also forbade the importation by CATV of distant signals into the 100 largest television

markets without its approval.

In 1968, the Commission issued a Notice of Proposed Rule Making and Notice of Inquiry wherein it proposed additional regulations of CATV. The scope of the proposed regulations was expanded in 1969 and 1970, and finally in 1972 the Commission adopted and promulgated extensive regulations governing many aspects of CATV systems, including, but not necessarily limited to, fees (annual and filing fees), program times, proof of non-discrimination, nonduplication controls, advertising controls, a fairness doctrine, sponsor identification requirements, diversification of control, cable casting of feature films and sports events, the nature, quality, and makeup of programs (minimum channel capacity), public access channels, educational channels, two-way community capacity, technical standards, and the prohibition of state and local regulation of program content.

10. The Company may at any time be regulated to the extent that the Federal Communications Commission elects with regard to the origination of local programs over its network from its studio.

11. The Virginia Department of Taxation has assessed the Company with sales and use taxes, penalties and interest of $733.72 as a result of an audit of purchases from September, 1966 through May, 1969. The State Tax Commissioner did not allow the Company the

benefit of the exemption afforded pursuant to §58-441.1(j).

12. The applicability of the sales and use tax exemption provided by §58-441.6(j) is at issue at present and not the extent to which it applies to specific items of tangible personal property. The issue of whether specific property is "used directly" as required by §1-88 of the Rules and Regulations promulgated by the State Tax Commissioner may be determined after the Court has decided the primary issue, either by agreement of the parties or by additional judicial interpretation by this Court.

13. It is technically possible to transmit, either by radio or television broadcasting, or by cable transmission, garbled intelligence which cannot be converted by the ordinary radio or television receiving sets into intelligible audio or video. Conversion requires the addition of a decoding device connected to the ordinary radio or television set. Concerns which transmit in this manner require prospective recipients of the signals to obtain a decoding device from them and to pay a fee therefor.

Agreed:
/s/ Lewis M. Costello
Counsel for Applicant
/s/ Charles K. Trible
Assistant Attorney General
Counsel for Defendant

[Filed on January 15, 1974]

* * *

[84] Record Opinion of Trial Court

The Cable Company has filed a petition for exoneration from the payment of use taxes assessed. This case involves the question of whether the Winchester TV Cable Company is exempt under the provisions of Section 58-441.6(j), Code of Virginia, 1969 Repl. Vol. from the payment of sales and use taxes assessed against it by the Department of Taxation on certain tangible personal property purchased and used by the Cable Company in the trnasmission of television signals over its cables to subscribers.

Code Section 58-441.6(j), in pertinent part, exempts from taxation:

> "(j) Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies or concerns which are under the regulation and supervision of the Federal Communications Commission."

The Company is a Virginia Corporation for profit which owns and operates the TV Cable system in Winchester, Virginia. A TV Cable system consists of an antenna located at a strategic point for the reception of television signals broadcast from distant television stations, or transmitted by microwave relay, amplification equipment which boosts the strength of the signal, and transmission equipment which sends the converted and amplified signals through cables to a subscriber's television set. (1)

Some of the equipment purchased and used by the Company is interchangeable with similar equipment used by radio and television broadcasting companies. Only subscribers to the company service who are connected to the cable can receive the television signals transmitted by the Company. Any member of the public who is accessible to the Cable facilities may become a subscriber if he pays the established rate.

The company carries television signals from 12 commercial and educational television stations, and in addition, as required by its franchise from the City of Winchester, maintains a channel providing time, weather, and temperature by automation and 30 hours a month of "local expression". It may be required by the Federal Communications Commission to provide local programming to a "significant extent."(2)

During a composite week the applicant carries 1526.4 hours of total programming on 12 channels, and 168 hours or 11%, of local programming. Approximately 8 (1/4 of 30) of these 168 hours are devoted to non-automated programming; thus, approximately 5% (8/168) of the local origination consists of non-automated programming;

(1) See United States v. Southwestern Cable Company, 392 U.S. 157, 161, 20L. Ed. 2d 1001, 1007, 88S. Ct. 1994,1997 (1968).

(2) United States v. Midwest Video Corporation, 406 U.S. 649, 653, 32 L.Ed. 390,394,92 S. Ct. 1860,__(1972) Footnote 5; see, National Cable Television Association, Inc. v. United States, ___U. S. ____, 42L. W. 4306 (March 4, 1974)

(8/126.4 + 168) .5% of the total programming consists of non-automated local programming.

The evidence establishes that the applicant is a concern under the regulation and supervision of the Federal Communications Commission; this leaves the question of whether the property is broadcasting equipment and parts and accessories thereto. Although some of the exemptions refer to the nature of the property itself; Code, Sec. 58-441.6 (e), (f), (g), (k), (o), principally, they deal with the use to which the property is put. Code, Sections 58-441.6 (b), (c), (d), (h), (i), (l), (n), (p), (q), (t), (u), (v), (w). The right to the exemption is, therefore, determined by the purpose for which the property is used. Commonwealth v. Community Motor Bus Company, 214 Va. 155, ____ S.E. 2d ____(1973).

The retail sales and use tax act, Title 58, Chapter 8.1, which became effective September 1, 1966 does not define the word "broadcasting" as used in Code Section 58-441.6(j); thus we must ascertain the legislative intent and give the word its obvious meaning. Although we look to the decisions of the Supreme Court of Ohio interpreting the sales and use tax exemptions of the statute of that state, no decisions of the Courts of Ohio have been cited; we therefore must resort to the rules of statutory construction for guidance in determining legislative intent. Statutes granting tax exemptions are construed strictly against the taxpayer. When a tax statute is susceptible

of two constructions, one granting an exemption and the other not granting it, we must adopt the construction which denies the exemption. Commonwealth v. Community Motor Bus Company, supra at 157 ____ S. E. 2d at ____.[3]

The United States Supreme Court has considered whether TV Cable systems were engaged in broadcasting on at least 4 occasions. In United States v. Southwestern Cable Company, 392 U.S. 157, 20 L. Ed. 1001, 88 S. Ct. 1994, (1968), the Court considered whether the Federal Communications Commission which had jurisdiction over "all interstate communication by wire or radio" could regulate community antenna television sytems. The Cable Company contended, and the Court agreed that, CATV systems are neither common carriers nor broadcasters, and in an opinion by Mr. Justice Harlan, the Court held that the authority of the Commission extended to "all forms of electrical communication, whether by telephone, telegraph, cable or radio." 392 U.S. at 168, 20 L. Ed. at ____, 88 S. Ct. at 2000. The Court thus drew a distinction between broadcasting and cable casting.[4] In a concurring opinion, Mr. Justice White emphasizes that the act gave the Commission broad authority over broadcasting as well as

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[3]But see, 59 Va. L. Rev. 1585

[4]The Court did point out that, at that time, CATV systems characteristically did not produce their own programming; Footnote 9 at 392 U.S. 162, 88 S. Ct. at 1997.

electrical transmission and it had the power to regulate wire communications of those not engaged in broadcasting when they interfered with those who were. 392 U.S. at 182, 20 L. Ed. 2d at ___, 88 S. Ct. at 2007.

In Fortnightly Corporation v. United Artists Television, Inc., 392 U.S. 390, 20 L. Ed. 2d 1176, 88 S. Ct. 2084 (1968), United Artists claimed rights to royalties on movies transmitted over cable television. The Court, in an opinion by Mr. Justice Stewart held that CATV systems do not "perform" as broadcasters "perform". The Court draws a clear distinction between broadcasting and cable casting.

> "The television broadcaster in one sense does less than the exhibitor of a motion picture or stage play; he supplies his audience not with visable images but only with electronic signals. The viewer conversely does more than a member of a theater audience; he provides the equipment to convert electronic signals into audible sound and visible images. Despite these deviations from the conventional situation contemplated by the framers of the Copyright Act, broadcasters have been judicially treated as exhibitors, and viewers as members of a theater audience. Broadcasters perform. Viewers do not perform. Thus, while both broadcaster and viewer play crucial roles in the total television process, a line is drawn between them. One is treated as active performer; the other, as passive beneficiary.
>
> "When CATV is considered in this framework, we conclude that it falls on the viewer's side of the line. Essentially, a CATV system no more than enhances the viewer's capacity to receive the broadcaster's signals; it provides a well-located antenna with an efficient connection to the viewer's television set. It is true that a CATV system plays an 'active' role in making reception possible in a given area, but so do ordinary television sets and antennas. CATV equipment is powerful

> and sophisticated, but the basic function the equipment serves is little different from that served by the equipment generally furnished by a television viewer. If an individual erected an antenna on a hill, strung a cable to his house, and installed the necessary amplifying equipment, he would not be 'performing' the programs he received on his television set. The result would be no different if several people combined to erect a cooperative antenna for the same purpose. The only difference in the case of CATV is that the antenna system is erected and owned not by its users but by an entrepreneur." 392 U.S. at 398, 20 L. Ed. 2d at ___, 88 S. Ct. at 2088.

However, the Court again discusses broadcasting in terms of the subject matter of the transmission rather than the method of transmission:

> "The function of CATV systems has little in common with the function of broadcasters. CATV systems do not in fact broadcast or rebroadcast. Broadcasters select the programs to be viewed; CATV systems simply carry, without editing, whatever programs they receive. Broadcasters procure programs and propagate them to the public; CATV systems receive programs that have been released to the public and carry them by private channels to additional viewers. We hold that CATV operators, like viewers and unlike broadcasters, do not perform the programs that they receive and carry." 392 U.S. at 400, 20 L. Ed. 2d at ____, 88 S. Ct. at 2089.

In United States v. Midwest Viedo Corporation, 406 U.S. 649, 32 L. Ed. 2d 390, 92 S. Ct. 1860, the Court considered whether the Federal Communications Commission had the power to regulate cable television by requiring systems to originate programs. The Court, in a plurality opinion by Mr. Justice Brennan, sustained the power of the Commission, not on the ground that the cable casters were

engaged in broadcasting, but on the ground that the regulation preserves and enhances the integrity of broadcast signals and therefore is reasonably ancillary to the Commission's responsibilities for the regulation of broadcasting. 406 U.S. at 670, 32 L. Ed. 2d at 404, ____ S. Ct. at ___. Thus the Court recognized that origination did not make one a broadcaster if the signals were not freely distributed over the air.

Concurring in the result, Mr. Chief Justice Burger observed that requiring CATV operators to develop programming did not commandeer them to engage in broadcasting, but when they exploit broadcast signals for private commercial service transmission, they are not strangers to the stream of broadcasting; when they put the signal to their own use for profit, they take on the burden of regulation by the Commission. 406 U.S. at 676, 32 L. Ed. 2d at 407, 92 S. Ct. at ____. The dissenting opinion of Mr. Justice Douglas, (in which Mr. Justice Stewart, Mr. Justice Powell and Mr. Justice Rehnquist concurred) points out that 47 U.S.C., Section 301 forbids any person from operating a broadcast station without first obtaining a license from the Commission, and to require someone to originate programming drafts him against his will to become a broadcaster; one cannot be a broadcaster without the requisite license from the F.C.C., 406 U.S. at 679, 32 L. Ed. 2d at 409, 92 Sup. Ct. at ____.

Finally in Teleprompter Corporation v. Columbia Broadcasting System, ____ U.S. ____, 42 L. W. 4323 (March 4, 1974), creators of televised programs protected by the Copyright Act claimed that defendants had infringed their copyright by intercepting broadcast transmissions and rechannelling copyrighted materials through CATV systems to paying subscribers. They pointed out the technological developments since the Fortnightly decision, especially that many CATV systems originate programs wholly independent of those they receive off the air and rechannel. 42 L.W. at 4326. The Court nevertheless adhered to the rationale of Fortnightly, drawing a clear distinction between broadcasting and cable casting.

> "In Fortnightly the Court reasoned that '(i)f an individual erected an antenna on a hill, strung a cable to his house, and installed the necessary amplifying equipment, he would not be "performing" the programs he received on his television set.' 392 U.S., at 400, and concluded that '(t)he only difference in the case of CATV is that the antenna system is erected and owned not by its users but an entrepreneur.' Ibid. In the case of importation of 'distant signals,' the function is essentially the same. While the ability or inclination of an individual to erect his own antenna might decrease with respect to distant signals because of the increased cost of bringing the signal to his home, his status as a 'non-performer' would remain unchanged. Similarly, a CATV system does not lose its status as a nonbroadcaster, and thus a non-'performer' for copyright purposes, when the signals it carries are those from distant rather than local sources." 42 L.W. 4327.

If broadcasting were to be equated with the creation or origination of programming,(5) and we assume that .5% is origination to a "significant extent", it would hardly be practical to designate applicant a .5% broadcaster or conclude that this percentage converts applicant into a broadcaster.

In summary, the United States Supreme Court holds that Cable television systems may be regulated by the F.C.C. notwithstanding that they are not broadcasters, and they need not pay royalties to copyright holders, because they do not perform in the sense that broadcasters perform. The Federal Communications Act defines broadcasting as:

> "Broadcasting means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." 47 U.S.C. § 153(o)

The Supreme Court has consistently declined to include Cable casting within this definition. Since origination of some programming does not per se constitute one a broadcaster, we cannot determine that it is an unreasonable or arbitrary interpretation of the statute

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(5) See dissenting opinions of Mr. Justice Douglas (in which the Chief Justice concurred) and Mr. Justice Blackmun, in Teleprompter v. C.B.S., supra. It might be cogently argued that a principle agreed upon by Mr. Justice Douglas, the Chief Justice, and Mr. Justice Blackmun would be favored by a strong presumption of validity, but six Justices disagreed.

to conclude that for one to be a broadcaster the signals must be transmitted freely through the air by one who holds a broadcasting license.(6) See, Golden Skillet Corporation v. Commonwealth, 214 Va. 276 (1973).

Although the statute may be ambiguous, the Court is obliged to adopt the construction which denies the exemption.(7)

The Attorney General may submit an order accordingly pursuant to Rule 1.13.

Dated this 30th day of March, 1974.

/s/ Joshua L. Robinson
Judge

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(6)
Compare Code Sec. 58-441.6(u) granting an exemption to property sold to an airline operating under a certificate of convenience and necessity issued by the Federal Civil Aeronautics Board.

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(7)
Applicant argues that it would be manifestly unjust to treat them differently from conventional broadcasters. "if any inconsistencies exist, they are the product of a body having the power not to be consistent. Whether and to what extent taxes should be laid...involves "consideration of many complex, intricate and sometimes technically significant factors which (the legislature) the weaver, evaluates as 'like Penelope' it weaves and unweaves like the seamy web men call tax law'.... If inconsistencies spoil the garment the change is for (the legislature), not us." Estate of Byrd v. C.I.R. 388 F. 2d 223 (5th Cir. 1967, Brown, J.).

[Filed on April 2, 1974]

* * * *

[94] FINAL ORDER

THIS ACTION came on to be heard upon the Application

for Correction of Erroneous Assessments filed herein, upon the Answer, upon the Stipulation of Facts, upon the Order dismissing other defendants, granting the Virginia Cable Television Association leave to appear as amicus curiae, and designating associated counsel, upon the legal memoranda duly filed by counsel for the applicant and counsel for the defendant, upon the evidence taken in open court, and was argued by counsel and defended by the Attorney General.

IT APPEARING TO THE COURT, for the reasons more fully set forth in its opinion dated March 30, 1974, which is incorporated herein by reference, that the applicant is not engaged in broadcasting and is not entitled to the sales and use tax exemption provided by §58-441.6(j), Code of Virginia (1950), as amended, and that the use tax assessments dated December 10, 1969, are not erroneous.

BE IT, THEREFORE, ADJUDGED AND ORDERED that the use tax assessments at issue are not erroneous and that pursuant to §58-1134 the Court declines to grant the applicant the relief requested.

BE IT FURTHER ADJUDGED AND ORDERED that the transcript of the evidence previously submitted to the Court be made a part of the record by the Clerk.

ENTERED this 23rd day of May, 1974.

/s/ Joshua L. Robinson, Judge

/s/ Charles K. Trible
Assistant Attorney General
Of Counsel for Defendant

Seen and objected to:

/s/ Lewis M. Costello
Of Counsel for Applicant

/s/ Lewis I. Cohen
Of Counsel for Applicant

[Filed May 23, 1974]

* * *

[96] NOTICE OF APPEAL

TO: Charles K. Trible, Assistant Attorney General
Office of the Attorney General
Supreme Court Building
1101 E. Broad Street
Richmond, Virginia 23219

ASSIGNMENTS OF ERROR

1. The Court erred in its construction of Va. Code Ann. §58-441.6(j) in denying the Applicant exemption from Sales and Use taxation.

2. The Court erred in its judicial construction of the exemption by limiting it ot the taxpayers whose "signals must be transmitted freely through the air by one who holds a broadcasting license."

3. The Court erred in limiting the exemption to "Broadcasting" rather than broadcasting equipment and parts and accessories thereto as required by statutes.

4. The Court erred in excluding Applicant which is a "commercial company" under the regulation and supervision of the Federal Communication Commission.

5. The Court erred in ignoring the required performance local originating time of Applicant and ignoring

the vast nonoriginated repetitive broadcasting time of other radio and television concerns which enjoy the exemption.

6. The Court erred in adopting a construction which denies equal protection and due process of law of Art. I, Sections 1 and 11 of the Virginia Constitution.

7. The Court erred in adopting a construction contravention of Art. I, Section 8 of the U.S. Constitution, placing a prohibited burden on interstate commerce, and denying Applicant equal protection of law and due process of law as granted by Amendments V and XV of the U.S. Constitution.

STATEMENT REGARDING TRANSCRIPT

The transcript having been made a part of the record herein by the final order of this Court, no transcript will be later presented for incorporation into the said record.

WINCHESTER TV CABLE COMPANY
By/s/ Lewis M. Costello
Counsel

[Filed on June 20, 1974]

* * *

1 relevant?

2 MR. COSTELLO: If it please the Court, I will ask

3 Mr. Lewis. Is this the only relevant franchise agreement?

4 THE WITNESS: This ordinance is the only one.

5 THE COURT: Is there any objection on competency

6 grounds?

7 MR. TRIBLE: No, Your Honor.

8 THE COURT: It will be received in evidence then.

9 This is not certified or signed, but I assume there is no

10 objection to that.

11 MR. COSTELLO: If it please the Court, in explana-

12 tion, this is the only form that we have received a copy of

13 the ordinance, and we could introduce the book, the book is

14 in the building; but we felt because it was in the building,

15 there would be no objection of competency.

16 THE COURT: This will be received as Applicant's

17 Exhibit Number A. It will be received in evidence.

18 (Whereupon, the above-mentioned

19 document was marked as Applicant's

20 Exhibit Number A for identifica-

21 tion and received in evidence.)

22 BY MR. COSTELLO:

23 Q What sort of local origination have you done under

DEO REPORTING
931-3434

1 this?

2 A We have numerous things. We have regularly

3 scheduled programs, such as Coaches Corner in which high

4 school and college coaches discuss football and baseball

5 games. We show video tape of where they play those and so

6 forth. We have discussion programs, one being called Cable

7 Talk in which we interview people in the community on public

8 affairs issues. We regularly televise church services from

9 area churches, live from the sanctuaries. We have many

10 special events, such as at Apple Blossom Time we do three

11 days per week about ten hours of telecasting of the apple

12 blossom festivities. During the election time, we have a

13 whole evening devoted to televising returns of both local

14 and the state races. This is a sample, and it averages about

15 thirty hours a month.

16 THE COURT: Do I assume correctly that you sell

17 commercial time for those programs?

18 THE WITNESS: That is correct. We sell commercial

19 time at the rate of $50 for an hour's program.

20 BY MR. COSTELLO:

21 Q Do you also broadcast meetings of the Council or

22 other governmental functions?

23 A Yes, we do on a regular basis. We televise here

DEO REPORTING
931-3434

1 from the City Hall of Winchester the Council meetings. And
2 also, if there is a special meeting or hearing that is even-
3 tuous, such as zoning matters, or even a dog ordinance which
4 attracts local attention, we will televise that live from the
5 City Council Chambers; or when the hearing is in this court,
6 we will televise from this very room.
7 THE COURT: Are these programs sponsored by com-
8 mercial advertising or are they carried as a public service?
9 THE WITNESS: Both. Some are sponsored and some
10 are not, depending on how good we sell the program.
11 THE COURT: You sell it if you can, and if you
12 don't, you carry as a public service?
13 THE WITNESS: That is correct.
14 BY MR. COSTELLO:
15 Q Mr. Lewis, based on your experience in both over-
16 the-air broadcasting and cable casting, what is the difference
17 in program sources between these two types of broadcasting,
18 over-the-air and cable?
19 A I feel they are identical. For example, over-the-
20 air broadcasters receive some of their programming from the
21 networks and the networks would be defined as: a program
22 feed that serves one or two or more stations from a national,
23 regional, or special network; ABC, NBC, CBS, for example are

DEO REPORTING
931-3434

1 over-the-air broadcasters. CATV systems can subscribe to
2 special networks, but there is no national network designed
3 to serve them. For example, they could buy a boxing match
4 to show over their closed-circuit portion. Secondly, over-
5 the-air broadcasters receive programs from other stations.
6 For example, at WINC we will pick up newscasts or farm news-
7 casts from a Warrenton, Virginia station where the other
8 station originates but we rebroadcast on WINC. The analogy
9 to the TV cable is that of course many of our programs are
10 picked up from over-the-air broadcasters. Thirdly, radio and
11 TV, all over-the-air broadcasters do local originations. And
12 in the definition of the Federal Communications Commission,
13 local are those recorded on the program itself that are done
14 by the local people. In the cable business, we also do local
15 origination that we just discussed. A further program source
16 would be recorded programs. TV stations have a number of
17 video tapes that they do not do themselves that it plays, and
18 of course a CATV system also plays video tape and material
19 which it does not record itself.
20 Q If you attempted to determine how much local origi-
21 nation was done on a commercial radio and TV station, by
22 commercial over-the-air radio and TV stations, how would you
23 go about that?

DEO REPORTING
931.3434

A The way you would go about it is they way I went about it in preparation for this session. I went to the Federal Communications Commission, the Public Reference Room, and looked at the license renewals of all of the TV stations that we carry. Every three years --

THE COURT: (Interposing) We carry -- you mean on Winchester station?

THE WITNESS: Winchester TV Cable. And every three years a licensee must file an FCC form for renewal of its license. This form includes the hours of local programming it does along with the total hours that it does in a composite week. A composite week is a week selected by the Commission, the Federal Communications Commission to be representative of the three years of service. It is one day from each day of the week. And then, this information is analyzed and in the renewal it can be used as indicative of what it did for the whole three years.

BY MR. COSTELLO:

Q How is this information presented to the FCC?

A This information is presented on Section 4B of FCC Form 303. Non-commercial broadcasters are presented on Section 4, FCC Form 342. Specifically, these forms which I have here were filed in June and July of 1972. I went to the

DEO REPORTING
931-3434

Commission and made copies of the pages in each case.

Q From their file?

3 A From the public file at the FCC.

4 Q This information is available to the public gener-

5 ally?

6 A That is correct.

7 Q Did you prepare similar summaries of time for your

8 stations?

9 A When we renew our license, we must also make a

10 similar summary. Of course, we use a different form; we have

11 Form 4A because we are not a TV station, but it is essentially

12 the same.

13 THE COURT: What about the radio stations? They

14 are licensed by the FCC.

15 THE WITNESS: We do this same procedure at the

16 radio stations as we do with the TV stations.

17 BY MR. COSTELLO:

18 Q With regard to the stations that you investigated,

19 what stations were they and why did you choose those stations?

20 A The stations were WBAL TV, WSVA TV, WRC TV.

21 Q Would you state where each of these are as you go

22 down through the list?

23 A WBAL TV is in Baltimore, Maryland. WSVA TV is

DEO REPORTING
931-3434

1 Harrisonburg, Virginia. WRC TV, Washington, D.C.; WTTG TV,
2 Washington, D.C.; WMAL, Washington, D.C.; WBFF, Baltimore,
3 Maryland; WTOP, Washington, D.C.; WDCA TV, Washington, D.C.;
4 WHAG TV, Hagerstown, Maryland; WETA TV, Washington, D.C.;
5 WVPT TV, Harrisonburg, Virginia; and WJZ TV, Baltimore,
6 Maryland. We selected these because these are the ones we
7 carry on the Winchester TV Cable Company. To be precise,
8 WVPT is a translator or WTOA is.
9 Q What is a translator?
10 A A translator is a TV transmitter that retransmits
11 100 percent of the programming of its parent station.
12 Q Have you made copies of these public documents?
13 A Yes, I have.
14 Q Have you summarized the information on those docu-
15 ments?
16 A Yes, I have.
17 MR. COSTELLO: May it please the Court, at this
18 time we would propose this for identification as Exhibit
19 Number B. This is an analysis made by this witness from the
20 files of the public record on the station which he carries.
21 THE COURT: Is there any objection on competency
22 grounds?
23 MR. TRIBLE: I don't think this witness has

DEO REPORTING
931-3434

1 within ten days.

2 MR. COHEN: We can't get it within ten days. The

3 process of the FCC would not permit that.

4 THE COURT: I don't like to delay the decision in

5 this case that long.

6 MR. COHEN: I will tell you again from my own per-

7 sonal knowledge that we cannot obtain it within ten days.

8 THE COURT: Thirty days?

9 MR. COHEN: Thirty days is a reasonable time.

10 THE COURT: All right. It will be received as

11 Plaintiff's Exhibit Number 2 for identification.

12 MR. COSTELLO: Two or B?

13 THE COURT: B, thank you. And also subject to the

14 Commissioner's objection on the grounds of relevancy.

15 (Whereupon, the above-mentioned

16 documents were marked as Appli-

17 can't Exhibit Number B for iden-

18 tification.)

19 BY MR. COSTELLO:

20 Q You have a copy?

21 A Yes.

22 Q What does the comparison of these stations which

23 you carry show?

DEO REPORTING
931-3434

A I have extracted here their percentage of local programming to the total hours of operation, and those two figures are on this form.

THE COURT: Excuse me, is the first page, it isn't numbered, is the first page this witness's analysis of the remaining pages?

THE WITNESS: Correct.

THE COURT: The first page is merely illustrative of the witness's testimony, his analysis of the remaining pages. All right.

MR. COSTELLO: Yes, the certification would be on the remaining pages, not the first page.

BY MR. COSTELLO:

Q Go ahead.

A I have the percentages of the local programming time. And I then averaged them for the various categories of stations. For instance, all educational stations that we carry have 18.3 percentage of local programming in the composite week. The commercial stations we carry had 13.7 percent of local programming in the composite week. The independent stations had 8.1 percent of local programming in the composite week. Stations outside the major market had 6.7 percent local programming in the composite week.

DEO REPORTING
931-3434

1 Q What do you mean by each of these categories of
2 stations?
3 A An educational station is a non-profit station as
4 opposed to a commercial, and this would be WETA and WVBT.
5 The commercial stations would be all the balance of the
6 stations. The independent stations would be those without
7 network affiliation. This would be such as WTTG and WDCA and
8 WBFF. The stations outside the major market would be those
9 not in the Washington-Baltimore Metropolitan Area. These
10 would be WSVA TV, WHAG TV, and WVPT TV.
11 Q What is the programming of the Winchester TV Cable
12 Company, and how does this compare?
13 A I took the total hours in the composite week in the
14 stations we are carrying during that time, and I added to it
15 the total hours of our programming over our closed-circuit
16 channel, Number 6, the local origination channel; and I
17 obtained that during this week, and we programmed 1,526.4
18 hours of TV programming. Then, during that time I noticed
19 that we had 168 hours of local origination, and this would be
20 24 hours a day times 7 days a week. Then I determined that
21 as a percentage basis we had 11 percent of local origination.
22 THE COURT: Local origination as distinguished from
23 local origination from one of the other stations that you

DEO REPORTING
931-3434

1 carry, this is local origination in Winchester?

2 THE WITNESS: That is correct, as opposed to

3 picking up one of the other radio or TV stations.

4 THE COURT: Does that include the channel that

5 transmits the time and temperature?

6 THE WITNESS: Yes, the 168 hours would include the

7 time and temperature channel.

8 BY MR. COSTELLO:

9 Q Based on your knowledge of over-the-air transmis-

10 sions and CATV transmissions, how to these two methods of

11 transmission compare with regard to the method of receiving

12 program sources?

13 A They are very similar. Over-the-air broadcasters

14 receive their programming, one, by coaxial cable that is

15 owned by the radio station or by AT&T.

16 THE COURT: Isn't this pretty well covered in the

17 Stipulation?

18 MR. COHEN: It is touched upon, but I don't think

19 it is developed.

20 MR. COSTELLO: I think it is offered with regard to

21 what this system does, but with regard to the comparison

22 between that and over-the-air, it is not in one place and

23 that is what this is for, if it please the Court.

DEO REPORTING
931-3434

1 THE COURT: All right.

2 BY MR. COSTELLO:

3 Q All right. Go ahead.

4 A CATV system has the same way of receiving program
5 sources through coaxial cable; and for instance, the Jeffer-
6 son Cable in Charlottesville, and one of the stations, WVIR
7 TV, is by coaxial cable but the head-in being the beginning
8 place of the cable system, and that is on the same location
9 as the transmitter of the TV station; so, instead of picking
10 up a signal over the air, it is cabled from the transmitter
11 building over to the TV station to the cable system. The
12 second say of receiving programs would be over the air. The
13 TV station actually receives its programming on an antenna
14 like we use, and some stations, particularly the networks,
15 feed that way. These would be ones like WSVA in Harrison-
16 burg, and they get their ABC and NBC, and they get much of
17 their programming from over the air by antenna. The third
18 way is microwave systems. The TV stations use microwave
19 owned by themselves or AT&T to bring in the program sources.

20 THE COURT: Well now, when a network station picks
21 up a station from the network, they either have to pay for
22 it or the network pays them for carrying it, one way or the
23 other I assume.

DEO REPORTING
931-3434

THE WITNESS: Correct.

THE COURT: Now, when a cable TV station picks up a commercial broadcast over the air or by coaxial cable, do they have to pay the network for picking up the station or does the network pay them for carrying it?

THE WITNESS: Neither is the case. But when you have a cable system that uses microwave to bring in its programming, there is a whole set of FCC Rules called CARS, which stands for Communication Antenna and Relay Stations in which the TV signal is microwaved into the system. Then also, the US Mail is used to deliver programs; and of course, we as a cable company receive some programs by mail, these are mailed to us and we show them.

BY MR. COSTELLO:

Q With regard to CARS, what is CARS?

A I have here in front of me the FCC Rules which gives the definition of that. May I read this?

Q Where does that come from?

A I made a copy from the rule book which I personally have.

Q This is a rule book of the FCC which you are required to follow?

A That is correct.

DEO REPORTING
931 3434

1 MR. TRIBLE: No objection.

2 THE WITNESS: It says, "Cable TV relay station is
3 a fixed or mobile station used for transmission of TV and
4 related audio-signals, signals of standard and FM broadcast
5 stations, signals of instructional TV fixed stations, and
6 cablecasting from the point of reception to a terminal point
7 where the signals are transmitted to the public by cable." I
8 am familiar here in Virginia with a 4-hop CARS system that
9 takes two of the signals from the Washington, D.C. stations
10 down to the Hampton Road area.

11 BY MR. COSTELLO:

12 Q What are the stations involved and the locations of
13 those?

14 A In this case, the Hampton Cable Company and WTTG
15 out of Washington, and WDCA TV out of Washington to show to
16 its subscribers in Newport News, and they pick the signals
17 up at Caret, Virginia and actually demodulate them; that is,
18 bring them down to vidio and audio level and microwave them
19 to King William, Virginia. Then they are microwaved to Good
20 Hope, Virginia, then microwaved to Williamsburg, Virginia,
21 and on to Newport News, Virginia where they are then inserted
22 in this cable system. CARS being the type of station used
23 for microwaving CATV programming.

DEO REPORTING
931-3434

(Whereupon, there was a discussion off the record.)

MR. COSTELLO: On the record.

BY MR. COSTELLO:

Q Let me ask you, Mr. Lewis, is this a schematic presentation of this CARS system you described?

A This is a portion of the application to the FCC concerning the CARS system.

Q This does show the transmission circuit?

A From Caret, Virginia to Newport News.

Q As you described it?

A This shows the tower at each location.

MR. COSTELLO: We would propose at this time to offer this in identification as Exhibit Number C.

THE COURT: This is illustrative of the witness's testimony, and this contains two pages. And this is marked Exhibit 2 and Exhibit 3 which is typed in, but both pages are stapled together and will be marked as our Exhibit Number C. This would be illustrative of what the witness testified to.

MR. COHEN: This part marked as Exhibit 1 is not a part of it.

THE COURT: No.

MR. COSTELLO: Only the two diagrams.

DEO REPORTING
231-3434

(Whereupon, the previously mentioned document was marked as Applicant's Exhibit Number C for identification.)

THE COURT: Do I assume correctly if the network feeds a program to an affiliate station, that if the affiliate station carries the network commercials, the network probably pays the station to carry, pays them to carry the program?

THE WITNESS: It depends on the arrangement that station has with the network. In many cases yes, but not in all cases. Some stations are bonus stations and they are not paid anything for carrying the network but must still carry the commercials.

THE COURT: If the station puts in their own commercials during the program, then I assume it is part of the contractual relationship in which there is consideration from the station to the network for furnishing them with the program.

THE WITNESS: Normally the way that works is that the station does not pay the network for that programming, but in return carries the network programming and the network commercials.

THE COURT: In a cable TV company, does the cable

DEO REPORTING
931.3434

1 TV company -- say the station in Norfolk, if it is picking up
2 through this relay system programs out of Washington, they
3 have to transmit those programs, I assume, exactly; and do
4 they make any financial arrangement with respect to payment
5 for carrying the station or carrying the program? One way or
6 the other, don't they?
7 THE WITNESS: That is correct.
8 THE COURT: And what is to prevent the cable TV
9 company in Norfolk from cutting out the CBS or NBC commercials
10 and putting in their own?
11 THE WITNESS: FCC Rules preclude that.
12 THE COURT: They have to carry it exactly as it is
13 transmitted by the originating station?
14 THE WITNESS: Yes, but they don't have to carry
15 every program. They can choose the programs they wish.
16 THE COURT: If the station in Norfolk picks up a
17 program from WRC in Washington, is it unheard of in the indus-
18 try for them to make a contractual relationship with that
19 station to cut out their commercials and put in their own
20 commercials?
21 THE WITNESS: I don't think there is any station
22 that does that.
23 THE COURT: Would it be contrary to FCC Regulations

DEO REPORTING
931-3434

1 to do it?

2 THE WITNESS: Yes.

3 THE COURT: Go ahead.

4 BY MR. COSTELLO:

5 Q All right. You have computed a comparison of the

6 method of receiving these program sources?

7 A Yes, I have.

8 Q Based on your knowledge of over-the-air transmission

9 and cable transmission, can you compare the processing of

10 these received signals by each of these methods?

11 A Both the over-the-air broadcaster and the cable

12 operator, when they receive these program signals they process

13 them. This means to shape the wave form or amplitude or

14 frequency to enhance the picture or make the picture more

15 desirable. At the Cable Company we do this. We bring in,

16 for instance, in our head-in equipment, we take the RF, radio

17 frequency, on channel information and we take it down to an

18 intermediate frequency and then we automatically control the

19 gain of both the audio and video level and then we step it

20 back up to RF before we transmit it through our cable. We

21 also alter the frequency to show on our channels. That is,

22 we switch UHF frequency to VHF frequency. UHF is Ultra High

23 Frequency channels, 14 and above; and VHF are Very High

DEO REPORTING
931 3434

1 Frequency channels, 2 to 13. We switch all our UHF frequen-
2 cies to VHF frequency; and further, we switch the various
3 VHF frequencies as part of our processing of these signals.
4 THE COURT: You are talking about Winchester Cable
5 TV?
6 THE WITNESS: I am, both in general and specifically
7 Winchester Cable.
8 THE COURT: I don't follow the change of the fre-
9 quencies. You transmit the program over cable?
10 THE WITNESS: That is correct.
11 THE COURT: Now, are the transmission frequencies
12 relevant to transmission over cable?
13 THE WITNESS: Yes, very much so because when we
14 attach to the back of a TV set, it has to come in in a fre-
15 quency that the TV set can receive.
16 THE COURT: I see.
17 BY MR. COSTELLO:
18 Q You convert to the same frequency that would be
19 received by that TV set over the air?
20 A We convert for many reasons. One reason we convert
21 is that our cable is not capable of transmitting the UHF
22 frequency. We always convert UHF to VHF frequencies. There
23 are other reasons that we convert too.

DEO REPORTING
931 3434

THE COURT: It is not like, say thirteen telephone lines running in the set?

THE WITNESS: No. One coaxial cable carries all these frequencies.

BY MR. COSTELLO:

Q Based on your experience in over the air and cable transmissions, can you compare the method of switching signals?

A Yes, and of course in over-the-air broadcasting, we collect from one of many sources and switch the program to one output in the TV itself, one channel. In CATV, we select from many program sources and switch to twelve outputs, that is twelve channels. Now, in the industry, there are some people who have twenty channels, but we just don't have the channel capacity of that system. I mentioned earlier the switching we do, and we also do switching for non-duplication protection. This is required by the FCC Commission, and we also do switching to help the public school system. For instance, we pick up more than one educational station and we will switch stations depending on what the public schools want in their classrooms. Most of the switching we do is set up on an automatic clock.

THE COURT: Does your franchise agreement require

DEO REPORTING
931-3434

1 you to do that without charge to the public school system, or
2 do they have to pay you for it?
3 THE WITNESS: The franchise agreement only requires
4 that we provide services to the public school system. We
5 have elected on our own to be as cooperative as possible to
6 provide the public school system with the programs they want.
7 THE COURT: Do they pay you for it?
8 THE WITNESS: No.
9 THE COURT: They do not?
10 THE WITNESS: The only thing they pay us for is
11 the maintenance of the distribution system within the school
12 itself. We provide the first cable free to the school, but
13 we use an amplifier and there is a cable complex within the
14 school distributing the signal to each room. They pay us a
15 maintainance fee for maintaining that distribution system
16 in the school.
17 THE COURT: How does that compare when you hook up
18 your system to a motel or hotel?
19 THE WITNESS: This is different. There is a nomi-
20 nal charge to the school, and a hotel or motel would be
21 charged another rate.
22 THE COURT: The same set-up but a different rate?
23 THE WITNESS: That is correct.

DEO REPORTING
931-3434

1 BY MR. COSTELLO:

2 Q With regard to the clock that you were describing,
3 what other purposes would you switch for?

4 A Well, the primary objective of the clock is for
5 non-duplication protection. This is required by FCC so if
6 two stations have the same program and one is a local station,
7 in their definition, we must delete the program on the dis-
8 tant signal. And specifically in our case, when WHAG has an
9 NBC program that WRC has, we must delete WRC-NBC programming.
10 We do this on a clock, and we are switching on a minute-by-
11 minute basis seven days a week -- it is a complicated clock.
12 That is the only practical way of coping with the problem.
13 This is called non-duplication protection. Actually, there
14 can be two ways. One way is that Channel 4, the WRC channel
15 would go blank. The other way, we move WHAG to Channel 4's
16 channel so that WHAG, during that period of non-duplication
17 protection, is on two channels, its own and WRC.

18 Q Then all of the non-duplication rules are really
19 directed onto the control of rebroadcasting over more than
20 one channel?

21 A I'm not sure I understand that question.

22 Q The non-duplication, why would duplication exist
23 in more than one channel?

DEO REPORTING
931-3434

1 A The duplication exists in more than one channel
2 because we are receiving several stations who have the same
3 programming.
4 Q Where would they be getting the same programming?
5 A Primarily from one of the networks.
6 Q The stations to whom you provide the protection
7 then are really rebroadcasting at that time.
8 A All the stations are rebroadcasting the same pro-
9 gram, but we are not allowed to carry all those programs on
10 our system.
11 Q Then the non-duplication rule is addressed to con-
12 trol of rebroadcasting by several stations simultaneously?
13 A I think you could say that.
14 Q How do you know the non-duplication rule applies
15 to you?
16 A Very specifically, the station in question has
17 demanded --
18 Q Which one?
19 A WHAG TV demanded we abide by them, and we filed a
20 petition for waiver before the FCC. This was rejected, the
21 petition for waiver, and we took that petition to the Fourth
22 Circuit Court of Appeals. The Commission decision was over-
23 turned. We lost in the Fourth Circuit Court of Appeals. And

DEO REPORTING

1 then we applied to the Supreme Court of the United States
2 and were not granted a waiver, so we are quite aware of this
3 because of the attorneys fees we paid.
4 MR. COSTELLO: For the record I want to point out
5 we were not the attorneys involved in that litigation anyway.
6 BY MR. COSTELLO:
7 Q With regard to your experience in over the air and
8 cablecasting, can you compare the method of generation of
9 radio frequency output?
10 A Functionally they are identical. And in a TV
11 station, the video and audio from any source are fed in the
12 transmitter and that generates a standard side band signal.
13 In CATV, we take the audio and video and feed it in a modu-
14 lator and this generates a standard side band signal and the
15 only exception on CATV, in some channels we might not have
16 the audio and the video might be started at IF and go up to
17 the side band signal. However, the process is identical.
18 Q How does the transmission of the RF output compare?
19 A The output of a broadcast-over-the-air transmitter
20 feeds the coaxial cable. That coaxial cable is under the
21 tower and it's fed with an antenna and this then, the radio
22 frequency electromagnetic waves are then dissipated in the
23 air from the antenna. In CATV, the modulator or head-in is

DEO REPORTING
911 3434

1 fed into the coaxial cable. Except that the coaxial cable
2 does not feed the antenna, it is just longer, and it goes
3 down every street in the community, and the signal is ampli-
4 fied periodically with amplifiers. Now, there is an alternate
5 means of distributing CATV and that is, as I mentioned
6 earlier, the CAR system. You can, from your head-in go
7 microwave to a subhead-in and then cable, which of course is
8 your CAR system.
9 Q Are there times when WINC and your station are
10 broadcasting simultaneously?
11 A Yes.
12 THE COURT: What is WINC?
13 THE WITNESS: That is a radio station in Winchester
14 that we operate.
15 THE COURT: Do you mean broadcast simultaneously
16 from the same facility? And they're both on the air at the
17 same time?
18 MR. COSTELLO: Yes, from the same equipment, yes.
19 THE COURT: I see.
20 THE WITNESS: There are times when the programming
21 is identical on WINC and within the TV cable. For instance,
22 originally the City Council meetings were carried on both
23 WINC and the TV cable; and obviously cutting out the video

DEO REPORTING
931-3434

1 portion on WINC. The Coaches Corner program I referred to,
2 the first fifteen minutes of it is on WINC and the TV cable.
3 Then we go to our individual users and pipe in the informa-
4 tion which is only on the TV cable. All of the election
5 returns are simultaneously on WINC and the TV cable. This is
6 either from the cable studios, which we have done before, or
7 from WINC's studio, or from a remote point such as the George
8 Washington Hotel which many times is a Campaign Headquarters
9 for the candidate; and we take it live from there on both
10 cable and radio so we can talk to the candidate.

11 BY MR. COSTELLO:

12 Q How do you combine the audio and video in those
13 simultaneous broadcasts?

14 A We do --

15 THE COURT: (Interposing) The engineering of it?

16 BY MR. COSTELLO:

17 Q Yes.

18 A We do it different ways. When we are broadcasting
19 live from WINC location, we are starting with a WINC micro-
20 phone and going through WINC audio switching equipment. And
21 then, WINC provides audio to the TV on a straight line which
22 is originated at the TV Cable Company. The way we do it is
23 that the TV Cable Company's microphone and audio switching

DEO REPORTING
931.3434

1 equipment handle the audio, and these are interchangeable
2 with WINC. And WINC feeds over the TV cable. That is we
3 have a tap on the radio station line, and we just take the
4 audio off Channel 6 and feed it into the WINC switching
5 equipment.

6 Q What portion of your equipment in your cable opera-
7 tion is identical to the equipment used by WINC?

8 A Well, the antenna we have at WINC picks up other
9 stations fed from other radio stations, and this is identical
10 to the antenna we have at the TV Cable Company in many
11 respects. Obviously, the down leads from the antenna are
12 the same as the down leads we have at the TV Cable Company
13 antenna. The tower at WINC and the TV Cable Company that
14 hold these antennas are the same.

15 THE COURT: Are you indicating the same piece of
16 equipment might be used for the radio station broadcas~~ting~~
17 and the cable TV transmission?

18 MR. COSTELLO: Yes, and in two categories. One is
19 identical equipment, and we want to talk here about identical
20 equipment and similar or functionally similar.

21 THE COURT: You are not referring to identical but
22 the same equipment. One piece of equipment, not two pieces
23 of equipment?

DEO REPORTING
931-3434

1 MR. COSTELLO: It may be two pieces of equipment
2 that are exactly alike.
3 THE COURT: Now, is he referring to one piece of
4 equipment that he uses for both the radio station and the
5 cable TV transmission?
6 BY MR. COSTELLO:
7 Q You were referring to identical equipment, and
8 would you indicate whether this is the same piece of equip-
9 ment used for both, or whether they are identical pieces but
10 two different pieces that are used in each of these?
11 A Those items I just mentioned, I was specifically
12 referring to two separate pieces. One piece is at the Cable
13 Company and one piece at WINC, but the pieces could be inter-
14 changed.
15 THE COURT: Well, you have somebody covering a
16 public hearing and there is a microphone and that microphone --
17 THE WITNESS: Feeds both. One microphone feeds
18 both the cable and the radio.
19 THE COURT: One piece of equipment for both pur-
20 poses.
21 THE WITNESS: Correct.
22 THE COURT: If that is the case, Mr. Trible, and
23 it is used for both tax exempt and non-tax exempt purposes,

DEO REPORTING
931.3434

1 is the procedure to prorate it?

2 MR. TRIBLE: Well, in this case, Your Honor, it

3 would depend on who purchased that piece of equipment. If it

4 was purchased and used by WINC Radio Broadcasting Station in

5 broadcasting, then it would be exempt. But if it was pur-

6 chased by the TV Cable Company, not intended for broadcasting,

7 it would not be exempt.

8 THE COURT: This does not relate to whose business

9 it is, but what it is used for?

10 MR. TRIBLE: Well, as to the equipment used by

11 commercial radio and TV companies, our position is --

12 THE COURT: (Interposing) If it is bought by the

13 broadcasting station, it is exempt; but if bought by the

14 Cable TV Company, it is not exempt even though they let the

15 radio station use it ninety percent of the time?

16 MR. TRIBLE: Well, if they bought it to lease to

17 the radio station, they could be exempt and there would be

18 no tax from the lease proceeds because the radio station would

19 be exempt. But if it was bought for their own use, and they

20 just occasionally let the radio broadcasting station use it,

21 they would not be able to claim the benefits of the exemption

22 for the broadcasting. If they both use the same microphone

23 and say he uses yours, he would have the use of the microphone

DEO REPORTING
931 3434

1 but he couldn't claim the exemption because he used it.

2 THE COURT: If somebody owns a rent-a-microphone

3 company, where he is not engaged in broadcasting, but in the

4 business of renting microphones to companies -- he is not

5 broadcasting, that would not exempt him, would it?

6 MR. TRIBLE: It would not, because it was purchased

7 for lease and this is normally taxable.

8 THE COURT: Is a lease taxable or not taxable?

9 MR. TRIBLE: It depends on the lessee.

10 THE COURT: Now, do I understand correctly that the

11 radio station is WINC?

12 MR. TRIBLE: Correct. And the Cable TV Company is

13 a separate corporation owned by the same parent company.

14 THE WITNESS: Correct.

15 BY MR. COSTELLO:

16 Q Mr. Lewis, would you describe other identical

17 equipment?

18 A All of our audio equipment is identical. That is,

19 the microphones we use here at the Council Chambers. And the

20 TV Cable Company, I think, bought twelve microphones so all

21 the Council members could use the microphones for Council

22 Conference. Of course WINC could borrow microphones from us

23 and do sometime. They are interchangeable. The microphone

DEO REPORTING
931-3434

1 cable, the switches, some equipment came from WINC, but they
2 are used both together and interchangeable. Our audio limi-
3 ter device that controls the level of the audio automatically
4 are the same equipment. They are the same as the Cable
5 Company and at WINC. Of course, the speakers for monitoring
6 are identical and the cartridges, the audio cartridges we use
7 to play our commercials are actually WINC's for the most part.
8 Although sometimes we buy our own and sometimes we use theirs.
9 We do interchange them a great deal. Our tape recorders, both
10 reel-to-reel and cartridge are interchangeable with WINC
11 equipment. And of course many times we record commercials on
12 WINC equipment and play back on the TV Cable equipment. We
13 don't have any video thing in common, because that is for the
14 TV station and WINC, everything there is audio.
15 Q What portion of your equipment would be identical
16 and interchangeable if this were an over-the-air TV station
17 broadcasting from Winchester?
18 A All the audio equipment, the lights, TV cameras,
19 cables, then the individual switching and generating equipment,
20 and then the processing, the amplifiers, the preliminary
21 towers used for video would be identical. The tape recorders,
22 the video tape recorders and the film chain. We have a film
23 projector that feeds into a camera, the film chain, and these

DEO REPORTING
931-3434

1 items we would have to generate the video picture, and we
2 would have, if it were, a TV station.
3 Q With regard to the interchangeable items with WINC,
4 you in fact do exchange that equipment back and forth?
5 A Yes, both exchange back and forth or use simul-
6 taneously on both cable and WINC.
7 THE COURT: Do you keep records with respect to
8 that or not?
9 THE WITNESS: No, we are somewhat informal when it
10 comes to doing that.
11 BY MR. COSTELLO:
12 Q Based on your experience in over the air and cable
13 transmission, can you compare the modulation of the radio
14 frequency as it enters the home?
15 A Yes. This would be the final instep.
16 Q What do you mean by modulation?
17 A Modulation is putting the audio and video intelli-
18 gence or information on the radio frequency, that is taking
19 the video signal that we use and put on Channel 6.
20 THE COURT: I can't resist making the remark that
21 in all of the things that come over the radio could not be
22 classified as intelligence.
23 THE WITNESS: The modulated signal is received over

DEO REPORTING
931-3434

1 the air by the home TV antenna, either on the roof or rabbit
2 ears on the set; or in the radio, it might be the antenna
3 built inside the set. It comes to the set by coaxial cable
4 or rooftop antenna, sometimes going through a preamplifier;
5 and if he wanted to get both the signals, he would need more
6 than one set. The cable signal comes from the cable in from
7 the street to a house drop, and the cable might look like the
8 cable used to provide telephone service. It is attached to
9 the back of the set instead of the antenna. The signal
10 transmitted to the set is indistinguishable from the signal
11 from the antenna.

12 BY MR. COSTELLO:

13 Q What are satellites?

14 A Satellites are a type of TV broadcasting station
15 that are used to extend the coverage of a station. There is
16 no separate set of rules that govern them under the FCC Law.
17 A person applies for a satellite station just as he would
18 apply for a regular TV station. The satellite station, how-
19 ever, rebroadcasts the parent station. However, it is some-
20 what like CATV system in that it also adds some local program-
21 ming of its own. For example, when I was at the Commission,
22 I looked at one, WSYE TV in Elmira, New York. This is a
23 satellite for WSYR in Syracuse, New York, and in that case

DEO REPORTING
931 3434

1 WSYE provided just a little over five hours of local program-
2 ming in the composite week, and the balance of it was pro-
3 gramming picked up from WSYR, the parent TV station. So
4 most of its programming is retransmitting that which the
5 parent station has. The satellite stations are more promi-
6 nent in the Midwest where the population is very sparce.
7 There are none in the State of Virginia.
8 Q I believe you testified previously, did you not,
9 that translators are stations rebroadcasting 100 percent of
10 the signals of another station? And how many such transla-
11 tors are there in the State of Virginia?
12 A There are, according to the TV Fact Book, which is
13 a reference source published by the TV Digest, there are
14 currently in Virginia twenty-nine translators and one con-
15 struction permit pending. That is, permission has been given,
16 but the translator has not been built. I know from personal
17 knowledge that there is at least one more pending construc-
18 tion permit in Shenandoah County. I have the definition of
19 a translator.
20 Q Where is this definition from?
21 A From the FCC Rules.
22 Q What is that definition?
23 A This is Subpart G of Part 74, and a TV broadcasting

DEO REPORTING
931-3434

1 translator station is a station in broadcasting service
2 operated for the purpose of retransmitting the signals of a
3 TV broadcasting station or relay station by means of direct
4 frequency conversion and amplification of the incoming
5 signals without significantly altering the incoming signal
6 other than frequency and amplitude. This is for the purpose
7 of providing TV reception to the general public.
8 Q What happens in a cable system if there is a break
9 in the shielding of the system?
10 A If there is a break in the shielding or if there
11 is a loose connector, the radio frequency inside the cable
12 will escape and will go through the air like a signal from a
13 TV station. So that possibly that persons with home antennae
14 would receive that cable programming on his home antenna.
15 Q With regard to local origination, are there any
16 regulations of the Commonwealth of Virginia now in effect
17 which would require this type of origination?
18 A Yes. In addition to the Federal Communications
19 Commission Regulations requiring local origination, the
20 Virginia Public Tele-Communications Council in its master
21 state plan has certain requirements for local origination.
22 Q What are those?
23 A Could I read from this master plan?

DEO REPORTING
931 3434

1 Q What are you reading from?

2 A This would be Chapter 3, Policy Relating to Certain
3 Minimum Standard for CATV Systems, from the master state
4 plan for Public Tele-Communications, Part 1, Virginia Public
5 Tele-Communications Council, Commonwealth of Virginia,
6 adopted October 2, 1973.

7 Q Have they been adopted by this Commission?

8 A Yes, they have.

9 (Whereupon, there was a discussion off the record.)

10 THE COURT: On the record. That is in the Code
11 Section. The Court would take judicial notice of that.

12 MR. COSTELLO: We would propose we substitute a
13 photocopy of these policies as an exhibit.

14 THE COURT: That would be part of the record then.
15 Have you about concluded? I want to recess for a few
16 minutes.

17 MR. COSTELLO: Maybe two minutes more of question-
18 ing here. I would propose this be offered as Exhibit Number
19 D, the photocopy of the regulation.

20 THE COURT: This is a copy of the regulation.

21 MR. COSTELLO: Adopted October, 1973.

22 THE COURT: By the Tele-Communications Council on
23 October the 2nd, 1973, Pages 51, 52, and 53, and these are

DEO REPORTING
931-3434

1 all relevant parts of it.

2 MR. COSTELLO: Yes.

3 (Whereupon, the previously men-
4 tioned document was marked as
5 Applicant's Exhibit Number D
6 for identification.)

7 BY MR. COSTELLO:

8 Q With regard to the imposition of tax on the
9 Winchester TV Cable, Mr. Lewis, at what point did you first
10 become aware that the Commissioner made the assertion of the
11 applicability of the tax?

12 A They sent out an auditor and audited our books, and
13 so informed us.

14 Q Prior to that time, did you have knowledge of any
15 similar assessment anywhere else in the Commonwealth?

16 A No.

17 Q You would have had knowledge?

18 A I probably would have because anyone in the Trade
19 Association would have alerted us, I am sure; and I was an
20 officer of the Trade Association. I would have found out
21 about it.

22 Q What is this association?

23 A The Virginia Cable TV Association.

DEO REPORTING
931-3434

THE COURT: Well, that is a matter probably of hearsay, but it is conceded no administrative practice had been established when this suit was filed.

MR. TRIBLE: The Sales Tax was September, 1966, and they said this was in 1969. I don't think he testified as to the date in 1969.

THE COURT: The Commissioner is not fortified by long standing administrative practice in this case.

MR. TRIBLE: No, not over these many years, but the Commissioner has never taken the position that these cable TV companies were exempt.

THE COURT: I understand that.

MR. COSTELLO: We are contesting from the moment it was conceived by their client or by any member of the Association that the tax was imposed. I believe that is all the questions I have of this witness.

CROSS EXAMINATION

BY MR. TRIBLE:

Q Mr. Lewis, you have testified that the Winchester TV Cable Company operates in a composite week 168 hours of programming, and that is of course the maximum number of hours in any week. How much of that programming is active type programming existing which from a picture of a clock or

DEO REPORTING
931-3434

1 a thermometer or something of that sort?

2 A You could say automated versus nonautomated.

3 Q Fine.

4 A On the average, our nonautomated program is 30

5 hours a month.

6 Q Fifteen hours of the 168, that would be --

7 A (Interposing) Not fifteen, thirty, and divide that

8 by four and a third, and that would give you the average.

9 Q So that would be seven and a half hours out of 168?

10 A It can vary from week to week.

11 Q The average is seven and a half hours out of a

12 total of 168?

13 A Correct.

14 Q And the balance would be the clock for the time or

15 temperature or barometer?

16 A On the individual use on the audio portion, there

17 is music that we provide from the tape recorders, but the

18 video is automated; and from the tape recorder or cartridges

19 for commercials.

20 Q All right. You testified that in your analysis of

21 the broadcasting stations, radio and TV broadcasting stations,

22 this indicated that they are somewhere between 13 and 18 per-

23 cent of original programming per week. This is compared to

DEO REPORTING
931-3434

1 your 11 percent. Now, how much of that thirteen to eighteen
2 would be the automated type programming such as a picture of
3 the clock?
4 A First of all, it goes down to 1.9, that is the
5 lowest station. And some would be automated programming in
6 the sense that we have the temperature clock.
7 Q So then, the true comparison between what the
8 radio and TV broadcasting stations in your analysis do and
9 what your stations do, would lead one to the conclusion that
10 you do only a small percentage of the nonautomated program-
11 ming that they do. In other words, your percentage on your
12 per week is considerably smaller than their percentage?
13 A If you change the term to working, it would be, yes.
14 Q I don't understand your answer.
15 MR. COSTELLO: I would interpose an objection, and
16 ask him to restate the question so I can understand it.
17 BY MR. TRIBLE:
18 Q Well, I'm trying to work the percentages that he
19 has apparently derived from his analysis, and he has broken
20 it down in percentage of the local programming in the com-
21 posite week for the radio and TV broadcasting stations, and
22 he compared that with the Winchester Cable TV Company. Look-
23 ing at the summary, one would assume that Winchester Cable

DEO REPORTING
931-3434

has 11 percent of original programs and that the others vary from 1.9 to 26.2 percent. But we are not talking about the same type of programming, so the percentages are not of the same thing, are they? In other words, their programming is all what you call nonautomated.

A To the extent we have both automated and nonautomated programming, the two figures are not comparable. But whether this is an important distinction, I do not know.

Q Is Winchester TV Cable licensed as a broadcaster by the FCC?

A The Company does not have a license as such.

MR. COSTELLO: I would object to that question unless he ways broadcaster in what sense.

BY MR. TRIBLE:

Q You do not have a call sign, do you? A call sign like WINC?

A We do not have a call sign assigned by the FCC.

Q Well, do you have a broadcasting license of any kind from the FCC?

A We do not have any license. They have a certificate of compliance, it is not called a license. We might be working with a sematic distinction with the certificate of compliance and a broadcasting license.

DEO REPORTING
931-3434

1 Q What are the similarities between a certificate of
2 compliance and a broadcasting license?
3 A We do not have a certificate of compliance, we do
4 not need one until 1977. So therefore, I have not actually
5 applied for a certificate of compliance nor do I need one
6 until 1977. Basically a certificate of compliance, to obtain
7 one, the Commission approves the details of your franchise,
8 they approve the signal you are carrying, it approves your
9 operation, it assures your operation is in compliance with
10 FCC Rules and Regulations.
11 Q You don't have a certificate, and are you permitted
12 under FCC Rules to put up an antenna and transmit your
13 signals through the air like a radio or TV station?
14 A No one can do that without a license, beyond a
15 certain power.
16 Q Now, you've stated that you carry public service
17 programs, and your franchise requires you to do so. Now does
18 it require you to carry them free of charge?
19 A It requires us to carry programs without charging
20 the subscriber any additional money. However, it is silent
21 whether we can have commercial sponsorship.
22 Q Now, you have radio stations within this parent
23 company, the Mid-Atlantic Network, and are they required by

DEO REPORTING
931-3434

1 FCC to carry public service messages free of charge?

2 A The specific answer to your question would be no.
3 We are not required to carry free of charge; however, as a
4 practical matter, most stations do carry public service
5 announcements free of charge. There is no requirement to do
6 that. The way it works with radio stations, we file a
7 license renewal application on what we say we intend to do,
8 and then the Commission, after three years, sees if we have
9 performed as we said we would, and the Commission makes the
10 decision as to whether it gives us our renewal license
11 depending on what our policy has been.

12 Q You used the term cablecasting, and could you
13 define cablecasting?

14 A I used the term cablecasting, and it would be broad-
15 casts on cable.

16 Q Then you say the only difference between cable-
17 casting and broadcasting is the fact that one is through the
18 air by means of electromagnetic waves and the other is through
19 the cable by means of electromagnetic waves?

20 A I would say that, yes.

21 Q The power of your transmitting equipment, how does
22 this compare to the power of transmitting equipment of the
23 ordinary television broadcasting station?

DEO REPORTING
931-3434

1 A It is reduced. Our transmission equipment is at
2 the head-in of the cable company.
3 Q What do you use to move the signal through the
4 cable to the home?
5 A The power output of the transmitter of TV stations
6 is much, much greater than the power output of any one of
7 our amplifiers. However, the gain in any one amplifier would
8 be the same as the gain in the output, the final output of
9 the TV transmitter.
10 Q And this is a measure of what?
11 A The amount at which the power is increased.
12 Q In other words, that relates to the strength of
13 the signal as it is received at the TV set?
14 A Yes.
15 Q So that the signal to the TV set is as strong from
16 your cable as it is over the air?
17 A That is correct.
18 Q Now, when the TV set is connected to your cable,
19 can it receive without disconnecting the cable ordinary
20 broadcast programs from television broadcasting concerns?
21 MR. COSTELLO: Objection. If he would say over the
22 air rather than other broadcasting concerns. He is attempting
23 to distinguish between over the air and cable.

DEO REPORTING
931-3434

THE COURT: I think that is explicit in his question.

THE WITNESS: Normally not. If a set is attached to a cable, it cannot normally pick up over-the-air broadcasts. However, there are times where if an over-the-air broadcast is strong enough, it could interfere with the cable signal because of the direct pickup in the set itself.

BY MR. TRIBLE:

Q You've stated that WINC occasionally purchased property and that property was used by Winchester TV Cable. Now, is that WINC purchased property primarily for use by Winchester Cable?

A I can only think of one specific piece of equipment we purchased to be used primarily by the TV cable, and the balance of the equipment was purchased with the idea it would be interchangeable. It is sort of like the right ~~picket~~ pocket and the left pocket, really. The specific piece of equipment is a secondary tone generator, and this is because the automated equipment at the Cable Company requires this secondary equipment for the cartridges, and the cartridges are WINC. We felt that we should, WINC should buy the equipment to be compatible with other equipment; but for the balance of the equipment, I think this equipment was purchased to use with

DEO REPORTING
931.3434

1 both systems or primarily WINC.

2 Q Well, has Winchester TV Cable purchased the balance

3 of the equipment it uses in the receipt and retransmission

4 through the cable of broadcast signals, over-the-air signals?

5 A Oh yes, the bulk of the equipment it purchased

6 itself. Some of the equipment is just borrowed from WINC.

7 Q But is that just a short-term temporary type of

8 thing or is it more of a permanent arrangement?

9 A It is not committed in writing. I assume that it

10 is whatever we want it to be.

11 Q And there is no charge made to Winchester TV Cable

12 for the equipment it uses purchased by WINC?

13 A Not directly. However, there is an implied charge

14 as we then are receiving the programming that Winchester TV

15 Cable provides on WINC. Whether that would be an exchange of

16 services I am not sure.

17 Q You do not pay for the programming, do you, Winches-

18 ter TV Cable?

19 A We don't pay for the programs on our channels which

20 we rebroadcast, but there is another situation where we do

21 pay for programs on our closed-circuit channel.

22 Q Well, you receive a program by the method you

23 described as through the air. You have an antenna that

DEO REPORTING
931-3434

1 receives a program that has been broadcast over the air by
2 a TV company, and do you pay the TV company anything for that
3 signal?
4 A No, we don't.
5 Q And they don't pay you anything for carrying that
6 signal?
7 A No, they do not.
8 Q You stated that there were certain nonduplication
9 rules, and how to they apply to Winchester TV Cable as com-
10 pared to how they would apply to an over-the-air television
11 company?
12 A Nonduplication rules are not applicable to an over-
13 the-air company. They are so phrased only to be applicable
14 to TV cable companies. This is in the cable portion of the
15 rules.
16 Q How much studio equipment do you have in your
17 Winchester TV Cable operation that you use for this original
18 programming as compared with the studio equipment that you
19 have for your radio over-the-air station?
20 Q Well, of course we have a lot of equipment at
21 Winchester Cable Company that we don't have at the radio
22 station because we must have all the TV portion of it. The
23 audio portion -- how do want this, in dollars or numbers of

DEO REPORTING
931-3434

1 pieces of equipment?

2 Q I'm trying to compare the cable studio with the
3 over-the-air studio. I wondered if they are the same or
4 whether an over-the-air studio would be much more complex in
5 terms of total equipment. Dollars would be one measure, and
6 how about the cameras, and what do you have to have for the
7 cable?

8 A Well, some cable systems have better local origina-
9 tion facilities than some of the television stations. In
10 particular, the Winchester TV Cable Company's local origina-
11 tion equipment is more modest than most over-the-air broad-
12 casters. We have only four television cameras and other
13 stations might have more. We do not originate as many pro-
14 grams, therefore, we don't have to have as much equipment.

15 Q You defined a translator under the FCC Rules, and
16 is Winchester TV Cable a translator under that definition?

17 A No.

18 Q Why is it not, I didn't get that down? It would
19 seem to me from that definition that you were doing essential-
20 ly what that definition encompasses.

21 A Well, it translates over the air and that is dis-
22 tinguishable from a CATV system.

23 Q The term over the air wasn't used in the definition,

DEO REPORTING
931-3434

1 was it?

2 A No.

3 Q Is there some reason, then, that you wouldn't fall

4 within the definition as it is stated there?

5 A Just the fact it belongs to this section of the

6 rules as being over the air.

7 Q Isn't broadcast the key word in that rule?

8 A It is called a television broadcast translator

9 station, yes.

10 Q And FCC does not consider you a television broad-

11 casting station?

12 A I suppose the way you use the word in that case,

13 but we do not come under this section of the rules; we come

14 under a cable antenna TV station, so it is not called a

15 broadcast station in the rules.

16 Q You stated that if there were a break in your cable

17 that the signal would radiate in the air, would escape in the

18 air; and how far would it escape?

19 A It depends where the break is, but never more than

20 a couple of blocks. I assume it could be more, but usually

21 in terms of a few blocks.

22 Q That is due to what, the power? In other words,

23 there is not enough power to radiate any further than that?

DEO REPORTING
931-3434

A We are operating at a lower power output, and that is part of the reason, yes.

Q The video is the same equipment?

A Yes.

Q And you have remote video tape equipment?

A Yes, we do.

Q That is equipment you use to produce the signal of the Winchester City Council?

A We do not use the remote video tape or equipment.

Q You said that you have video tape equipment.

A We do not use video tape on the Community Council Meetings.

Q You put that out live?

A Correct.

Q All you use then essentially is a camera for the video and a microphone for the audio?

A Plus modulating devices and processing equipment.

THE COURT: Might you video tape and rebroadcast?

THE WITNESS: Possibly. We just don't do that.

MR. TRIBLE: I think that completes my cross examination.

THE COURT: Any redirect?

DEO REPORTING
931-3434

A No.

Q What, if any, are the similarities between those signals of an over-the-air broadcaster and CATV Company signals?

A The signals themselves are identical. The frequencies are the same. The wave shape is the same. The color information, the synchronizing signals, there is no essential difference in the signal itself that is generated by an over-the-air broadcaster and that generated by a cable television company.

Q What is the difference in the two types of transmission? If the signal is not different, what is the difference?

A Over-the-air broadcasting came along before cable television, and transmission through the air is a very inefficient way of transmitting signals. It takes an enormous amount of power from the transmitter, the transmission line, and the antenna to allow this signal to cover the area desired. The signal fades quite rapidly as it progresses further and further from the broadcast, the over-the-air broadcast station. It radiates in all directions which tends to diminish its strength in any one direction. By the time this over-the-air broadcast signal reaches the home, it is in

1 the order of what we call a micro volt, or a millionth of a
2 volt. A typical television receiver, for example, requires
3 between 1,000 and 3,000 micro volts to operate properly.
4 This means 1,000 to 3,000 millionth of a volt, which is a
5 very weak signal. The cable company generates a similar
6 signal, but because it is transmitted through the medium of
7 a cable, rather than through the air, its initial power does
8 not need to be as great and the signal received at the home
9 is still in the same order as that from an over-the-air broad-
10 caster. Roughly in the one to three thousand to six thousand
11 micro volt range.
12 Q Is there any difference other than the medium of
13 transmission?
14 A No.
15 Q What are the similarities between the equipment
16 used -- what is the functional similarity in the two methods
17 of transmission?
18 A Much of the equipment is identical. Studio light-
19 ing, for example, could be used in either a cable company or
20 an over-the-air broadcast studio. The audio equipment is
21 identical. The television cameras, camera controls, video
22 monitors, audio cartridges, video switches, lenses, incoders,
23 analyzers, synchronizers, and generators, towers, antennas,

DEO REPORTING
931-3434

1 microwave, coaxial cable and connectors, video tape recorders,
2 film projection equipment, wave form monitors, test equipment,
3 consoles, cabinets, audio type recorders, tripods and dollies,
4 and scenery and props might be used by either company.
5 Q What items might not be interchangeable but func-
6 tionally similar?
7 A I guess the cable amplifiers would come close to
8 that category. They are designed to transmit the signal
9 along a coaxial cable they have put in operation after the
10 first transmitter used to carry the signal along the trans-
11 mission line to the antenna.
12 Q Would a modulator be functionally similar or
13 identical in these two methods?
14 A A modulator is identical to the exciter of the
15 transmitter in the signal that it generates. The audio and
16 visual signals are sent through the modulator which is in
17 essence a miniature transmitter. These signals are combined
18 and processed and created into a standard television channel
19 such as Channel 6. The exciter in a transmitter does the
20 same function. It takes the audio and the video and changes
21 them and generates a standard broadcast train.
22 Q In the pleading of this case in Paragraph 6G, the
23 applicant has said that much of the equipment, or has pled,

DEO REPORTING
931-3434

1 that much of the equipment used by the applicant in origina-
2 tion of programs, such as towers, tubes, switches, relays,
3 rectifiers, connectors, dividers, transformers, filters,
4 transistors, electronic coding, together with other miscel-
5 laneous equipment and accessories is identical or interchange-
6 able with and performing the same functions as similar equip-
7 ment used by other radio and television companies and is not
8 designated specifically to the use of the cable. With regard
9 to the equipment described in that paragraph, how does that
10 equipment differ from the titles of equipment that you have
11 read as being identical or interchangeable with the two types
12 of transmitters?
13 A Many of those items enumerated are in actuality
14 components of larger pieces of equipment such as transistors
15 or relays. The items that I enumerated are actually pieces
16 of equipment designed to do a specific job. These components
17 you just listed might be used in a home radio or inter-com-
18 munications or any number of different things. But we are
19 speaking in my list of specific items of equipment designed
20 to produce and/or process the TV signals.
21 Q Do commercial over-the-air stations often pick up
22 signals over the air from other stations? Are you familiar
23 with any?

DEO REPORTING
931-3434

1 A I am personally familiar with two, in Wilmington,
2 North Carolina, and I had occasion to work with the station.
3 One is WECT TV, Channel 6, an NBC affiliate; and the other
4 WWAY, Channel 3, an ABC affiliate. Both of these stations
5 receive their programming from NBC and ABC stations located
6 in the Raleigh Durham area which is some distance to the
7 north and west. They would pick these up by microwaves.
8 They would pick up these microwave signals with their own
9 receiving antenna, pick up the signals over the air and
10 rebroadcast them. One of the stations, Channel 6, is actually
11 connected to the local cable company, and on occasion they
12 will take the signal from Raleigh Durham on the cable system
13 and rebroadcast that.
14 Q Mr. Lewis, in describing the method of obtaining
15 programs or program sources discussed a network feed. What
16 is a network feed?
17 A Most of the programs in the United States are
18 generated in two localities: New York area and the West
19 Coast area. This is by one of the three major networks, NBC,
20 CBS or ABC. These network programs are carried across the
21 country by either coaxial cable or microwave or a combination
22 of the two. It is impossible to state unless you are famil-
23 iar with AT&T network which is which. In other words, when

DEO REPORTING
931-3434

1 it crosses a river, it might go microwave; and when it
2 crosses the open plain, they might use cable; and when it
3 crosses the mountains, they might use microwave. These
4 signals are transmitted by the networks from the network
5 studio to the local studio where they are rebroadcast.
6 Q So a typical television station would get network
7 feed by any combination of these, microwave or coaxial cable
8 feed?
9 A Yes, and I don't believe they either know or care
10 whether microwave or cable. They pay AT&T for delivery of
11 the signal to their origination studios.
12 Q Well, if you are willing to pay the AT&T rates, you
13 can presumably get any feed anywhere in the United States?
14 A Anywhere the network goes. I know from personal
15 experience that the White House, for example, has network
16 feed coming in and they can connect across any one of the
17 networks and use the program within the White House.
18 Q When you say that these are obtained from AT&T,
19 how is this transmission controlled, who determines the
20 method of transmission and the price?
21 A It is established by AT&T rather than the network,
22 and I believe FCC has authority to govern that.
23 Q And would the method of supply vary from day to day?

DEO REPORTING
931-3434

1 Could it go coaxial cable one day and microwave the next?

2 A I don't know.

3 Q What would that depend on?

4 A I suppose it would depend on a failure on the

5 normal method of transmission. And if the cable failed some-

6 where along the line, they might establish a temporary micro-

7 wave ~~length~~ link to continue that path.

8 Q Could this be done alternately as an alternate

9 source?

10 A Yes, it could be. There is a fourth network in the

11 country which is available to any user who is willing to pay

12 the hourly rate to transmit signals from any one major city

13 in the United States to any other major city.

14 Q What experience have you had with network feed by

15 coaxial cable?

16 A Not too much. I have worked at each of the network

17 headquarters, in New York on specific projects; and I have

18 been at over-the-air broadcasting stations across the United

19 States where the network feeds are received; and I have had

20 an opportunity to see the signals and work with them.

21 Q Can you compare the processing of those received

22 signals of over the air versus CATV, or in comparison with

23 CATV?

DEO REPORTING
931-3434

1 A Yes, I think so. There is an old saying in the
2 industry that the highest quality TV signal obtainable any-
3 where is at its source. Everything done to that signal from
4 that point on tends to deteriorate it. The deterioration may
5 not be visible, but if it is repeated often enough then
6 deterioration does creep into it. So each signal, as it is
7 repeated across the country from microwave relay to relay or
8 cable amplifier to cable amplifier, there is some distortion
9 and some noise and loss of the signal strength itself. So
10 there are devices that are employed along the cable route
11 itself by AT&T, and when received by over-the-air broadcasters,
12 when they receive the signal, to increase the amplitude and
13 clean out the noise, to reprocess the color information, and
14 the same thing happens identically in a cable system when the
15 signal received over the air may be weak. It may be distor-
16 ted or it may be lacking proper color information and these
17 signals can be reprocessed and restored as closely as possible
18 to their original form before they are sent out to the cable
19 subscriber. Of course, each amplifier along the cable route
20 performs exactly the same functions as performed by AT&T in
21 increasing the strength of the signal and they can to improve
22 the fidelity of it.
23 Q With regard to Mr. Lewis's testimony on the

DEO REPORTING
931-3434

1 nonduplication provision which has been indicated as being
2 applicable only to cable. What is the purpose of that non-
3 duplication provision, if you know?
4 A Not from the legal standpoint, but from the eco-
5 nomic standpoint itself to protect the commercial advantage
6 of the local broadcaster so his advertisements may not be
7 deluded by someone watching the same program from a distant
8 station with different commercials attached to it.
9 Q These provisions apply to identical programs being
10 transmitted over different stations simultaneously?
11 A That is right.
12 Q What would be the source of these programs from the
13 different stations?
14 A Probably from the network. They would probably be
15 fed down from New York to two or three stations in any com-
16 munity, and the more local over-the-air broadcast station
17 would have priority over the more distant station.
18 Q Can you compare the generation of a radio frequency
19 output, the transmission of this output over the air and CATV
20 transmission?
21 A Yes. We talked a little while ago about modulators
22 and exciters; and in the case of an over-the-air broadcaster,
23 the signal leaving the exciter is not much stronger than they

DEO REPORTING
931-3434

are leaving the modulator, if any stronger. So we get the normal output required for over-the-air broadcast and these signals are amplified through a power amplifier and the power of the signals may be built up to a few million watts for transmission up the coaxial cable to the transmitting antenna where they are finally sent out in the air. With a cable system the modulator again may be putting out a few million watts of power, but because of the more efficient method of transmission, these signals do not need the enormous amount of power and there is amplification in the individual cable to maintain the level to the subscriber's home at the desired signal strength.

Q Are you familiar with any radio broadcast station that broadcasts over media other than air waves?

A There is a service called Low Power Broadcasting or Common Carrier Current Broadcasting. This is where the radio signal is generated in the normal manner, but instead of broadcasting through an antenna, it is over power lines or in some cases even the plumbing within a building or complex of buildings where it can be picked up by ordinary receivers. So that the transmission medium is not the air, but rather some hard solid conductor such as a copper electrical wire in the building or the plumbing.

DEO REPORTING
931-3434

1 Q Can you give any example in the local or in this
2 geographic area of these?
3 A Yes. One of my young associates designed one in
4 use at the University of Virginia. He was the chief engineer
5 of that station which is operating today. It covers the
6 entire campus of the University of Virginia with radio signals
7 from the student-operated studio.
8 Q Can you think of any other examples?
9 A There are two. The other two examples use coaxial
10 cable that was designed to leak or radiate signals, and the
11 first is in use at Los Angeles Airport, and the cable is
12 buried under the ground. And as you drive up to the airport,
13 you pick up the signal on your car radio and it tells you
14 what parking lot is in use and which areas are designated for
15 certain uses. The other use of this leaky cable, as it is
16 called, is in a drive-in theatre. Again, the coaxial cable is
17 buried under the ground and radiates into the car radio
18 rather than having the standard speaker to hear the sound
19 portion of the movie.
20 Q What type of radio broadcast station is used at the
21 Walter Reed Medical Center?
22 A Walter Reed has for some time had a low power or
23 carrier-current broadcast system which has just been put out

DEO REPORTING
931-3434

1 by the Army to completely rebuild the system to allow for
2 greater coverage and to extend the signal on up to the Walter
3 Reed Annex which is approximately a mile and a half or two
4 miles north and west of the main complex of Walter Reed. I
5 might add these signals between the two complexes will be
6 carried on coaxial cable fastened to telephone poles.
7 Q Do you know of any cable company involved in over-
8 the-air broadcasting?
9 A Yes. In Toronto, Canada there is a large cable
10 company called McLean-Hunter, and they established a UHF
11 over-the-air broadcasting station in the heart of Toronto.
12 The principal purpose of this is to provide program material
13 to the head-in of some thirteen or fourteen cable TV channels
14 stretching around the perimeter of Toronto.
15 Q What is the function of the translator in broad-
16 casting?
17 A The translator's principal function is to serve
18 areas which normally would not be able to receive the signals
19 from the main transmitting station of an over-the-air broad-
20 caster. They operate tecnhically very much like a cable
21 system. For example, the translator will use a receiving
22 antenna to receive the programs from a broadcasting station
23 and it will use coaxial cable to bring the signal down to the

DEO REPORTING
931-3434

1 front end or receiving end of the translator. The signal
2 normally will go down to IF frequency for processing and
3 applying AGC. It is then converted to another channel for
4 rebroadcast so it does not interfere with the primary channel.
5 For example, the translator might receive programs on Channel
6 3 and down convert to IF frequency and then convert back up
7 to Channel 6 and rebroadcast. Usually they have a receiving
8 antenna and a transmitting antenna and usually the signals
9 are beamed in a particular direction rather than in an omni-
10 directional fashion. This compares almost identically with
11 the idea in a cable system which does just that. It takes
12 the signal from the receiving antenna, it down converts it
13 to IF frequency, a gain control is employed, and then it is
14 up converted to another channel and fed out on the cable
15 system.
16 Q What is a satellite and what is its function?
17 A A satellite in some ways functions much like a
18 translator except a satellite may be privately owned or it
19 may be owned by the original station, but a satellite is
20 normally owned by the originating station and its function is
21 to provide rebroadcast of the original programming plus some
22 local broadcasting. I can give you a good example. We
23 designed a network in Nevada where the primary transmitting

DEO REPORTING
931-3434

station was in Reno, Nevada on the western border, and the signals from this transmitter were picked up approximately a third of the way east across the state by an over-the-air receiver antenna and converted and fed into a microwave system which went through some ten microwave hops across the state to a station located at Ely, Nevada, on the eastern border of Nevada where it was rebroadcast. But the station at Ely also had the capability of providing its own local source if it didn't choose to use the programming coming from Reno.

Q What is the difference between satellite and cable transmission?

A Normally the amount of power generated by the satellite station.

MR. COSTELLO: I have no other questions.

CROSS EXAMINATION

BY MR. TRIBLE:

Q Mr. Rickel, you said you were president of Lexington Cable Company, and does Lexington Cable operate its own cable TV system?

A It is a cable company constructing CATV systems.

Q But it does not operate a system such as Winchester TV Cable? This is just primarily in the construction end of

DEO REPORTING
931-3434

the business and not in the transmission of signals to home sets?

A No, that is not correct. It is a fully fledged, ~~capable~~ cable TV system which is not yet operating because it is still under construction. But yes, it will carry a number of over-the-air channels and it will carry several local generated channels that will be available to everyone within the city limits of Lexington, Virginia, which is the franchise for this system.

Q Are you also a stockholder in that company?

A Yes, I am.

Q Then in the event this litigation was favorable, Lexington Cable would benefit, would it not?

A Yes, it would.

Q Is the equipment which you described, I think Mr. Costello read from the petition, is that used exclusively in TV over-the-air broadcast, cablecasting, or can it all be used for other purposes? In other words, is it used for the function of transmitting the signal to a television set or can you do other things?

A I'm not sure I follow that question, because an amplifier is designed to amplify signals and it can amplify any signal within the frequency range that it is designed to

1 handle.

2 Q All right. How about my home television set. Is
3 there an amplifier installed in that receiver in order to
4 boost it so I can see it?

5 A That is a difficult question to answer because a
6 TV set is a combination of many, many different circuits.
7 Some are amplifiers, some are detectors, some IF amplifiers,
8 some video amplifiers, some audio amplifiers, and generally
9 if you want to go into the circuitry of the set, the signals
10 are received at the terminal where they go to the tuner, an
11 oscillator which reduces the frequency of the signal down to
12 some other frequency before they are amplified.

13 Q Then there's an amplifier in every TV set?

14 A Yes.

15 Q There is an amplifier in a public address system, is there
16 not?

17 A Yes.

18 Q And there is a microphone in a public address sys-
19 tem?

20 A There might be, there might not be.

21 Q What about a modulator. You mentioned a modulator
22 several times, and is there a modulator in a public address
23 system?

DEO REPORTING
931.3434

A No. A modulator is used specifically to generate a television channel.

Q You mentioned low power broadcasting, and this was over power lines or through plumbing. In other words, not through the air, and are there commercial radio or television companies that engage in low power broadcasting?

A There are commercial companies, yes. And many of the utility companies, the power companies use this as their own communications link, and they have links going across the country. They put carriers in the current communication system for their own communications, in-house, internal communications.

Q These would not be companies that are licensed by the FCC as a radio or television company, would they?

A No.

Q How about Los Angeles or Walter Reed's system. Are they a broadcasting station licensed by the FCC, or is that just an internal communications network?

A It becomes a matter of power. They are governed by the FCC Regulations, but as long as their power is below a certain level, they do not require a license to operate. The manufacturer of the equipment must have certification by the FCC and they must not interfere with any other radio

1 service; and of course, if they exceed a certain power level,
2 they must be licensed.
3 Q You mentioned that the networks send their signal
4 through a common carrier such as AT&T by microwave or by
5 cable; and now, do the cable TV companies receive their sig-
6 nals from the networks through this system?
7 A No, not normally.
8 Q Why don't they?
9 A It is very expensive. Since they wouldn't have the
10 commercial revenue of an over-the-air broadcaster, it would
11 be a quite expensive way to do this.
12 Q In other words, they would have to pay the network
13 for the signal if they got it through AT&T, correct?
14 A Correct.
15 Q And they would have to pay AT&T to bring it to them?
16 A That is correct.
17 Q But they do get the same signals that had been
18 received by an over-the-air broadcaster and transmit over the
19 air indirectly, don't they?
20 A Would you ask that again, please?
21 Q In other words, Winchester TV Cable, I'm looking
22 at a program that has originated in District of Columbia, and
23 has been transmitted to some radio over-the-air station, and

DEO REPORTING
931.3434

1 retransmitted and picked up by Winchester TV Cable, and sent
2 to my home set; or in other words, it is not direct, it is
3 indirect.
4 A That is correct.
5 Q So then, there is no signal at all that I would get
6 at my home set that had been hooked up to a cable TV system
7 that came through this AT&T microwave length or cable length?
8 A I am not sure that is correct.
9 Q Without going through another transmission through
10 the air.
11 A The reason I say that is there are common carrier
12 companies in the United States who deliver specific network
13 programs directly to the cable system. For example, the
14 cable system at Fort Lee, New Jersey receives all the sports
15 events at Madison Square Garden from a commercial carrier.
16 It is wired directly into the cable company. It is not an
17 over-the-air broadcast for the general public.
18 Q Well, is this a closed circuit type of thing?
19 A No, because it is available to any cable system
20 that wants to connect to it.
21 Q If they pay the fee?
22 A They must pay the fee.
23 Q You can see what is happening in Madison Square

DEO REPORTING
931-3434

1 Garden through your cable TV hookup if you pay the cable TV
2 or the cable TV pays to get the information?
3 A Yes.
4 Q Is there an additional charge to the home subscriber
5 for that type of service?
6 A No, that is all part of the cable service, normally.
7 Q You mentioned that some cable companies were engaged
8 in over-the-air broadcasting, and you specifically mentioned
9 one in Canada. Are there any in the United States that are
10 engaged in over-the-air broadcasting?
11 A I don't know. I know the concept in Canada was a
12 rather innovative one, and the FCC showed great interest in
13 it; but whether this is permitted under our rules or not, I
14 do not know.
15 THE COURT: I don't quite follow how that operated.
16 Would you have an unscrambler at the set?
17 THE WITNESS: No, it would also be receivable at
18 homes connected to the cable. But the primary function is to
19 provide programming to the head-in of the various cable
20 systems. Programming that wouldn't be available from the
21 major networks.
22 THE COURT: Do the subscribers pay a fee?
23 THE WITNESS: No more than the normal cable fees, no.

DEO REPORTING
931-3434

1 THE COURT: These subscribers do pay a cable fee?

2 THE WITNESS: Yes.

3 THE COURT: And what prevents the nonsubscriber

4 from picking up the signal?

5 THE WITNESS: Not a thing if he is willing to put

6 up a UHF antenna and connect to a receiver.

7 THE COURT: Unless the Government enacts a statute

8 to make it a misdemeanor, to own a system without paying the

9 fee?

10 THE WITNESS: I don't understand the question.

11 THE COURT: I don't follow, for instance, what

12 would keep the nonsubscriber from picking up the signal?

13 THE WITNESS: Well, Toronto geographically is a

14 very large city, and the suburbs are quite some distance from

15 the transmitter, and the signal probably would not be received

16 properly at that distance. But the cable company is able to

17 put up a high gain antenna and amplify the picture up to

18 deliver to the home.

19 THE COURT: Where does the cable company get the

20 revenue?

21 THE WITNESS: From the subscribers, just as they

22 do in this country. They charge them a fee to belong to the

23 cable system.

DEO REPORTING
931-3434

THE COURT: Is anyone who owns a set required to pay a fee or a tax like they pay in England?

THE WITNESS: No, the Canadian system is similar to the one in the United States. It is a voluntary thing. If you want to be on the cable system, you pay the fee. If you do not, you don't pay the fee.

THE COURT: I don't see how they collect their revenue unless anybody who does not pay the fee cannot pick up the signals unless they are on the system.

THE WITNESS: Because these programs carry commercial sponsorship and they pay for the program material.

THE COURT: They get the revenue from the commercial sponsorship, not from the receiving subscribers?

THE WITNESS: On this particular channel, yes. But if you subscribe to the system, you get that channel and all the other channels for your monthly fee. But the transmitting station's operating revenue normally comes from the sale of commercials.

THE COURT: If someone owns a television set within the transmission area and does not pay the subscriber fee, can he turn on the set and receive the same signal?

THE WITNESS: If he is going to put up a UHF antenna, he may.

DEO REPORTING
931-3434

1 BY MR. TRIBLE:

2 Q A UHF antenna is a very simple apparatus, or do you
3 have to have some special antenna to receive that type of
4 signal, or would you be able to use the antenna that comes on
5 the back of a lot of the TV sets that are sold today?

6 A UHF signals are peculiar little beasts. They tend
7 to travel in straight lines. And in the first place, they
8 can be blocked by tall buildings, they can be blocked by
9 hills, they can be blocked by even a clump of trees. You may
10 find areas a great distance from the transmission place where
11 you get a good UHF signal, and you may find a place close to
12 the UHF transmitter where there is no signal at all.

13 Q Well, do you know whether the Lexington Cable
14 Company could be licensed by the FCC to broadcast over the air?

15 A I think not. The Lexington Cable Company operates
16 under a certificate of compliance, because it started before
17 the latest FCC Rules. This certificate of compliance, the
18 application would look very much like the application of an
19 over-the-air broadcaster. They want to know the principles
20 involved, where the money came from, what material is going
21 to be carried, how many channels you are going to use, how
22 much local origination is going to be done, how much auto-
23 mated and how much live, and it is a very complete application.

DEO REPORTING
931-3434

1 And this is first offered to the general public for a period
2 of 30 days so anybody may object to the application. This is
3 just as they do for broadcasting over the air. And if no
4 one objects to that application, for your certificate of
5 compliance, it then goes through due process, processing
6 through the FCC, and it took ours nine months, and it was
7 granted November of last year, which gives us permission to
8 carry certain over-the-air channels and which tells us that
9 we must provide local access channels, and we must provide
10 channels for use by the local government. We must provide a
11 channel for use by the educational system in Lexington, and
12 we must do this under those rules.
13 Q If you had existed prior to the time the rules be-
14 came effective, then you would not be subject to those re-
15 quirements?
16 A Not until 1977, at which time all cable systems
17 must be in compliance with those rules and seek a certificate
18 of compliance and/or if we made changes to the system, then
19 we would have to go in and file for a certificate of compli-
20 ance. If, for example, we decided to carry another over-the-
21 air station, we would have to seek a certificate of compli-
22 ance.
23 Q So you operate, then, under the regulatory

DEO REPORTING
931-3434

1 provisions of the FCC, because you started business subse-
2 quent to some fixed date, and what is that date, do you know?
3 A March 31, 1973.
4 MR. COHEN: I think '72.
5 THE WITNESS: '72.
6 BY MR. TRIBLE:
7 Q If you started in business prior to that, you
8 wouldn't be subject to these rules?
9 A Until 1977, or until we made some major change to
10 the system.
11 Q You mentioned a translator, and could a television
12 set owner pick up a translator signal in his home?
13 A Yes, he can.
14 Q Would he have to be exactly in the middle of the
15 signal or how would he get it? You said, I thought, it was
16 limited to a certain direction, and he would have to be in
17 line of sight or something.
18 A Not in that sense. But due to the limited amount
19 of power required, they are restricted to the area of radia-
20 tion. For example, it may be beamed up a particular valley
21 between two mountains and anyone in that valley that is with-
22 in the beam of that can pick it up with some sort of an
23 antenna, and it may require a very elaborate antenna or it

DEO REPORTING
931-3434

may require a very simple antenna if he is close enough to it.

Q You mentioned microwave, and can you pick that up on the television set?

A No, you could not.

Q Because of the frequency or what?

A Two reasons: frequency; and the second is it is a beam sent between one microwave dish antenna and a microwave receiver antenna, and that is one type of microwave and there is another type of microwave that is used by the educators. And this microwave radiates in all directions. Each school has a receiving dish to pick up the signal, but it cannot be received unless you have this microwave receiver, and it is sort of an over-the-air closed-circuit educational system.

MR. TRIBLE: I have no other questions.

REDIRECT EXAMINATION

BY MR. COSTELLO:

Q Can CATV systems be subscribers to microwave systems, microwave service of common carriers?

A Yes.

Q Can you think of any that there are offhand?

A The cable system in Wilmington, North Carolina receives four channels by microwave and other signals are

DEO REPORTING
931-3434

1 received over the air.

2 Q Is that subscription by the cable system to the

3 common carrier controlled by the FCC?

4 A Yes. The carrier or microwave owner is controlled

5 by FCC, and he is classed as a common carrier delivering

6 signals to the cable company.

7 Q Are you aware of whether there are other rules

8 other than the local access channel, local use public access

9 channels of the FCC under which a local cable system is re-

10 quired to operate or rules to which they are subject?

11 A Yes. Particular standards of the FCC which apply

12 to the technical side of the system, and it must be tested

13 and approved under those systems of the FCC Rules that cover

14 that.

15 Q Do you know if these technical requirements are

16 also applicable to grandfather systems?

17 A I don't know the specific regulations that well.

18 Q Would a grandfather system be required to have its

19 equipment up to the standards required by the FCC?

20 A Yes, and there is a time period. The regulation is

21 relatively new as it applies to existing grandfather systems,

22 and I don't specifically know the regulation.

23 Q Are you aware of any other regulations which are

DEO REPORTING
931-3434

1 applicable to all systems, both new and old?

2 A Yes. We all must meet the requirements of the FCC

3 and the FAA as far as tower paint and tower lighting and

4 tower clearance, and we are subject to the rules of joint

5 policy use which is governed by the FCC.

6 Q How about the equal employment regulation or the

7 fairness doctrine?

8 A Both of those.

9 Q Any others?

10 A That is part of the certificate of compliance and

11 application to show that there are no discriminating prac-

12 tices and that equal opportunity was offered and that access

13 to the channel would be available to all comers.

14 MR. COSTELLO: That is all I have.

15 RECROSS EXAMINATION

16 BY MR. TRIBLE:

17 Q On the last one, fairness and equal opportunity,

18 do I understand that they apply to grandfather systems or

19 systems that existed prior to March of 1972?

20 A My understanding, yes.

21 MR. COHEN: I might add, if you're interested, I

22 have some personal knowledge of this; and the brief we pre-

23 pared deals with this.

DEO REPORTING
931-3434

THE COURT: That is a question of law, if it should be relevant.

MR. COSTELLO: There is a concern by the FCC, but if additional testimony is needed on that, we can get it in.

MR. TRIBLE: The testimony indicated that some systems that were grandfathered apparently were not subject to the requirement prior to 1977, and is Winchester TV Cable one of those?

MR. COHEN: That was not the thrust of the testimony. I think the thrust of the testimony was that in certain aspects the Commission's Rules apply to all systems at the present time, and in certain aspects the Commission's Rules apply differently to different systems at different times. Our brief does explain that. If there are questions on that, I think I can answer it.

MR. COSTELLO: The Stipulation, as I recall it -- let's see, the Commission placed restrictions on the activity of common carriers, the microwave facility institutes rulemaking procedures --

MR. COHEN: (Interposing) Look in the brief.

MR. COSTELLO: The point is whether it is in evidence in this case.

MR. COHEN: We can take official notice of what is

1 in the rules.

2 MR. TRIBLE: Page 9 is a general summary of what
3 the FCC has done. Everything is in there as far as I know
4 that specifically applies or does not apply to Winchester TV
5 Cable.

6 MR. COSTELLO: It is stipulated, and what I thought
7 we were stipulating to. And there is some case law which I
8 think we can take notice of on the Rules and Regulations of
9 the FCC. And the Commission was reversed in 1966, and it
10 was held, they had regulatory authority over all CATV systems,
11 and it's obviously a matter of law that it does have, and
12 this is what surprises me, this point being made. It was my
13 understanding this had been stipulated to or is a matter of
14 common knowledge, and the cable systems are subject to FCC
15 Regulations whether it is closed circuit or not; and they
16 are ever increasingly under control which is fairly obvious
17 by the history. That is one thing, but if the State of
18 Virginia is maintaining we are not under control of the FCC,
19 this is new to me, and I think contrary to the stipulation we
20 have.

21 MR. COHEN: I think it is certainly the intent of
22 the stipulation. And it is certainly the intent to make
23 clear in Paragraph 10 that rules of the FCC apply and they are

DEO REPORTING
931-3434

1 set forth therein. Now, if I did a poor job, I would like to
2 have another chance at it.
3 MR. COSTELLO: It is stipulated that the company
4 may at any time be regulated to the extent the FCC elects
5 with regard to origination, and there have been all kinds of
6 cases since this tax was first assessed.
7 THE COURT: There is no question that the FCC has
8 power to regulate unless there was something in the FCC
9 Statute that prevents them from regulating systems that were
10 grandfathered, and I assume there was not.
11 MR. COHEN: Your Honor, one of the difficulties is
12 these witnesses have been testifying about quasi-legal matters
13 and the testimony, I must say, for the record is clear; and
14 Mr. Lewis is a very intelligent witness, but he is not an
15 FCC lawyer. So much of his testimony today was accurate in
16 a sense, but inaccurate in a legal sense. I am talking about
17 the extent of the FCC Regulations over grandfathered or non-
18 grandfathered systems, and that is something we can argue
19 about; but I don't think you should base your argument on
20 Mr. Lewis's testimony. He wasn't qualified in this proceeding
21 as a competent expert in FCC Regulations, and I'm quite sure
22 that if he would go back to the witness stand, he would be
23 the first to say that.

DEO REPORTING
931-3434

1 MR. COSTELLO: The point I'm concerned about making
2 here for the record is our understanding of the testimony
3 today, it was to be on the technical phases of the comparison
4 of this system to the over-the-air broadcaster. We are not
5 prepared to reargue this question of whether under control,
6 because we were not aware that the Commonwealth was going to
7 argue this way, we were not prepared for this.
8 MR. TRIBLE: I assumed they were subject to and
9 under the supervision of the FCC, but the testimony clearly
10 indicates that the systems that were grandfathered in were
11 not required to comply with, apparently, the bulk of the FCC
12 Rules.
13 MR. COHEN: It is not accurate.
14 THE COURT: Well, on Page 4 of the Stipulation, at
15 the top of the page, the FCC refers to its previous position
16 and held that it had regulatory authority over all CATV sys-
17 tems. It promulgated rules applicable to cable microwave
18 systems. It indicates in this stipulation that the FCC had
19 some authority over this applicant.
20 MR. TRIBLE: To the extent of the local system and
21 nonduplication of programs, I imagine that is correct. In
22 other words, those rules predated this revised set of new
23 rules that applies to systems coming in after 1972. The

DEO REPORTING
931-3434

1 nonduplication rule, I presume, has been around since 1966,
2 and does apply to Winchester TV.
3 THE COURT: Since the Stipulation says all CATV
4 systems, I would assume that also applies to the applicant.
5 MR. COHEN: Right, that was the intent, and all
6 the rules and regulations which applied. Mr. Lewis testified
7 about an area where the Commission had distinguished the terms
8 of filing the certificate of compliance, and there is a very
9 narrow area between what I call grandfathered systems and
10 nongrandfathered systems. That is a very narrow exception.
11 The bulk of the FCC Rules, the overwhelming majority apply
12 to every cable TV system, that was my intent in this Stipula-
13 tion.
14 MR. COSTELLO: The Stipulation speaks for itself,
15 and if it please the Court, it is plainly obvious from the
16 question of the Attorney General. He is trying to require a
17 license under this section of the Code. The question he has,
18 I don't mind getting into that in argument, but if he is
19 getting to the point we're not even controlled by the FCC, I
20 am saying that is contrary to this Stipulation. We under-
21 stood this Stipulation to say they had regulatory authority
22 and were asserting it.
23 THE COURT: It says under the regulation and

DEO REPORTING
931-3434

1 supervision, and does that mean that the Commission has the
2 power to regulate and supervise or that the Commission actually
3 regulates and supervises?
4 MR. TRIBLE: I would say they have not exercised
5 that power and it is a latent power. It appears from what I
6 have heard in this case that there has been some limited
7 exercise of the power over the Winchester TV prior to this
8 1972 Rule, but the point I want clarified, and I think we can
9 clarify it, certainly by bringing Mr. Lewis back to the
10 stand, and that is whether or not the '72 Rules, the fairness
11 doctrine, the equal opportunity and all that apply to Winches-
12 ter Cable TV.
13 THE COURT: Well, isn't the operative date the date
14 of the assessment?
15 MR. TRIBLE: The assessment was made in 1969, I
16 believe. And subsequent to that time, there have been a lot
17 of additional regulations.
18 THE COURT: The Stipulation says in 1966, the
19 Commission held that it had regulatory authority. And I have
20 to assume that it was not reversed over appeal. And it pro-
21 mulgated rules applicable to cable and microwave CATV systems.
22 Now, I haven't gone through the entire Stipulation, but it
23 says a company may be regulated, and there may be a difference

DEO REPORTING
931-3434

A I am a professional engineer and vice-president of Cable Dynamics, Inc., a communications consulting firm.

THE COURT: Do you have his written qualifications in written summary?

MR. COSTELLO: You do have a written summary of your qualifications?

THE WITNESS: Yes, I do.

THE COURT: Can that be stipulated to?

MR. TRIBLE: If I can look at it, I can perhaps stipulate to it.

THE COURT: Give a copy to counsel.

MR. TRIBLE: No problem with that. I would stipulate to his qualifications, Your Honor.

MR. COSTELLO: I would offer this as Exhibit E then.

THE COURT: It will be made a part of the record as Plaintiff's Exhibit Number E, and stipulated that the witness would testify to what is stated on those two pages as his qualifications, and do you wish to voir dire the witness on his qualifications?

MR. TRIBLE: No, Your Honor.

BY MR. COSTELLO:

Q This will be in the record then, and I believe you have a B.S. or a S.B.S. in electrical engineering?

DEO REPORTING
931-3434

A Yes, M.S.E.E., Master Electrical Engineer. This is from the Massachusetts Institute of Technology.

(Whereupon, the previously mentioned document was marked as Applicant's Exhibit Number E for identification.)

BY MR. COSTELLO:

Q You have been in the courtroom throughout the testimony of Mr. Lewis and Mr. Rickel, have you not?

A Yes, I have.

Q With regard to their testimony, and as a professional, was their testimony accurate?

MR. TRIBLE: This was done before, and I didn't object to it, but this witness is a professional engineer, and he should not be asked whether Mr. Lewis's testimony in total was accurate. I do not believe he is qualified to answer that question.

MR. COSTELLO: I will narrow the question, if it please the Court, and we certainly agree here that in order to save time, Mr. Trible is free to cross examine this witness with regard to any of the testimony of the other two witnesses on the technical phases of over-the-air transmissions with regard to the technical aspects of over-the-air

DEO REPORTING
931.3434

1 transmission and cable transmission, and did you hear the
2 testimony that was given?
3 A Yes.
4 Q Was that testimony accurate?
5 A It was for technical purposes technically accurate.
6 Q Is there any portion that you disagree with that
7 you want to give us any more clarification on?
8 A I have one note which I made that might be of some
9 interest. There is nothing of disagreement, however. There
10 is a clarification, and there was a question of a UHF broad-
11 casting station broadcasting to CATV stations. Mr. Rickel
12 mentioned this, and I am familiar with the technical aspects
13 of UHF broadcasting. And the question came up as to why
14 somebody who was not a subscriber, why he could not pick that
15 up in the air over his receiver.
16 THE COURT: That is the Canadian system.
17 THE WITNESS: Yes. And this system, I understand,
18 it's used to broadcast to many CATV stations which are some
19 distance from the transmission. A person would have to spend
20 quite a bit of money, a lot of money to buy an antenna that
21 would receive that transmission. In most cases, it is cer-
22 tainly beyond feasibility to spend that kind of money unless
23 you do it as a hobby. I think that is the only thing that I

DEO REPORTING
931-3434

1 wanted to go over in the way of clarification. I thought it
2 was very well handled.
3 BY MR. COSTELLO:
4 Q Are you an officer or director of any local cable
5 system in the Commonwealth of Virginia?
6 A No.
7 Q Do you own any stock in any system in the Common-
8 wealth of Virginia?
9 A Unfortunately, no.
10 Q In a technical sense and as a technical question,
11 do cable operators use broadcasting equipment or parts as
12 part of their inventory?
13 A Yes.
14 Q What equipment is it they use that is broadcasting
15 equipment or have access thereto?
16 A Technically and as a practical purpose, all of the
17 equipment they use is used for broadcast purposes. This
18 includes, for example, the equipment that Mr. Rickel enumer-
19 ated and Mr. Lewis enumerated that is used in their operation.
20 It includes everything from the point where the signal is
21 generated or received by the CATV station through the signal
22 processing equipment in the head-in, the transmitters or
23 modulators, the distribution system, and into the TV set.

DEO REPORTING
931-3434

1 Q Can you categorize these for way of illustration or
2 amplification?
3 A Yes. I would classify a CATV system to consist of
4 the following basic subsystem or components: the antenna,
5 amplifiers, towers, access, microwave equipment, origination
6 equipment, studios, data stock and so on. You have the
7 signal generating, processing, switching, and combining
8 equipment. You have the transmission and distribution equip-
9 ment which includes cable amplifiers, passive devices such as
10 splitters and directional couplers, the standard access,
11 anchors and guys, also the terminal plan includes the drop
12 cable and possibly multitap devices, transmission and distri-
13 bution components depending on who is doing the classifying;
14 and again, the passive devices with the home such as the con-
15 nectors, and finally the transformer on the back of the TV
16 set. It also includes test equipment and tools that are used
17 in the installation and maintenance of a TV system.
18 MR. COSTELLO: If it please the Court, I believe
19 this witness having confirmed the testimony of the two previ-
20 ous witnesses, I won't go into each of them again; and I have
21 no further questions of this witness.
22
23

DEO REPORTING
931-3434

CROSS EXAMINATION

BY MR. TRIBLE:

Q I have two questions, Mr. Page. What is your technical definition of broadcasting?

A My technical definition of broadcasting is: the creation, generation, and transmission of a signal that is generally available to anyone in the given area.

Q How do you mean generally available?

A The individual chooses what and when to receive, and the choice is in his hands, the hands of the receiver. That is my own personal understanding of broadcasting.

Q You would make no distinction between whether the signal came by cable or came by air?

A No, sir, I would not. I could give an example that is perhaps pretty far removed, but I used to live on the farm and we used to plant seed by broadcasting; and that meant we threw the seed out there and it could be accepted or rejected where they fell. Some of them came up and some did not. This is like to who it may concern. That is my understanding of the broadcast function of broadcasting.

Q Well, if I ran a line from me to you and spoke through it and the signal reached you, that would be broadcasting?

DEO REPORTING
931-3434

1 A No, that is transmitting.

2 Q What is the difference there?

3 A Point to point transmission.

4 Q That is because the line goes just to you?

5 A Correct.

6 Q Suppose I had one to you, one to Mr. Costello, and

7 one out to the hall?

8 A I would say, if addressing us personally, and not

9 meant to address anybody else, it would not be broadcasting.

10 Q Suppose I just sang a song to anyone who wanted to

11 listen?

12 A Then you would be broadcasting, and the people

13 could listen or not, as they chose, as the case may be.

14 Q You have, then, a rather broad definition of broac-

15 casting?

16 A Which contains the word broadcast. Broadcasting

17 meaning covering a broad audience so to speak.

18 Q You don't purport to be using that word in the sense

19 in which it is used for Federal Communications Regulations,

20 do you?

21 A I don't know.

22 Q You are not familiar with their definition. You

23 don't know how they use the word. You are speaking in a

DEO REPORTING
931-3434

1 general, technical sense?

2 A Yes.

3 MR. COSTELLO: I object to the question as to how

4 the word broadcast is used by the Federal Communications Com-

5 mission. He replied how he used it, and I think that was a

6 fair question.

7 THE COURT: He was not qualified as an expert in

8 semantics to assist the Court in defining the word, and he

9 described it generally, and I think we're getting to a ques-

10 tion of discussion of law with the witness.

11 BY MR. TRIBLE:

12 Q You were reading from a list of what you called

13 broadcasting equipment, and who prepared that list?

14 A I'm sorry. I didn't mean to imply I was reading

15 from a list of broadcasting equipment.

16 Q I didn't mean to imply you were either, but I

17 thought I saw your eyes go down to a piece of paper, and was

18 I mistaken?

19 A I was reading from a list of notes that I had made

20 of the general categories of what makes up a CATV system. A

21 CATV cable TV system generally consists of these major cate-

22 gories and subcomponents I read off or that I gave you from

23 these notes. I prepared this myself.

DEO REPORTING
931-3434

1 MR. TRIBLE: I think I answered that earlier. That
2 would certainly be closer to this than the other example.
3 But I think that you could still distinguish it from what I
4 consider true broadcasting. We can pull these words apart
5 all we please, but when we come down to it, there is just
6 nothing in there that has anything to do with cablecasting
7 or cable television concerns. That is the whole problem.
8 If the General Assembly had intended to cover them, they
9 would certainly have used some descriptive language in there.
10 But it hasn't done it, and why?
11 MR. COSTELLO: One problem I have had in the case
12 for five years with both the Attorney General and his prede-
13 cessor is what is "true broadcasting," where did the defini-
14 tion come from.
15 THE COURT: That is what we are trying to figure
16 out.
17 MR. COSTELLO: We haven't really had a definition
18 of what their stated position is on this. He keeps inferring
19 about what he is talking about, but I would like to hear the
20 State say what they believe true broadcasting is as defined
21 by the General Assembly in that statute.
22 MR. TRIBLE: Broadcasting is done by radio stations
23 with a licensed call sign, and TV stations with a licensed

DEO REPORTING
931-3434

1 call sign, and received over a radio or television set that
2 anyone has available to them and no charge is made for that
3 signal. They don't pay anything to the radio or television
4 station for it. It comes through the air and not through a
5 pipeline. I don't know how I can be any more complete than
6 that. And we are saying that licensed radio and television
7 stations are involved in broadcasting and they are exempt.
8 THE COURT: I don't know if this is relevant, but
9 is there a Federal Excise Tax on television sets?
10 MR. COHEN: I think so, sir.
11 THE COURT: Is that tied in with the FCC? Do they
12 get money from this and so on?
13 MR. COHEN: No, sir.
14 MR. TRIBLE: I'm not sure.
15 MR. COHEN: I don't know. I know that FCC gets no
16 funds whatever from that source, if there is such a source.
17 THE COURT: Then, if the signal is broadcast over
18 the air, and you have to pay the transmitting company a fee,
19 and an unscrambler to get their program, that would not be
20 broadcasting, because it is not free.
21 MR. TRIBLE: That would be a closer case than what
22 we have here. I hate to say that the whole case relies on
23 whether or not there is a charge made for the receipt of the

DEO REPORTING
931-3434

1 and I don't know that the technicians got into it enough so
2 that I can ~~sight~~ cite proof of fact, but FCC is concerned with
3 allocation of available radio frequencies and they set aside
4 certain frequencies for each licensed broadcaster. The
5 broadcaster that we consider exempt is using a part of that
6 frequency under that license. The cable TV companies do not
7 use any part of that frequency, there is no signal transmitted
8 through the frequency, and there is never another broadcaster
9 on the same frequency. I think that is why the FCC decided
10 that cable TV companies were not broadcasting and are not
11 considered to be broadcasters.

12 THE COURT: They didn't want them to be broadcasters.

13 MR. TRIBLE: True. And if that statute imposes a
14 tax under J, if J is not exempt, I don't see any doubt what-
15 ever why we should not impose a tax on them because the
16 language does not specifically have TV cable companies within
17 it. That is the whole crux of the case. And it is my posi-
18 tion that all we have to do is present reasonable doubt, and
19 the Court must hold for the Commonwealth.

20 MR. COSTELLO: One other point. The intent of all
21 the testimony today is the transmission of a radio frequency
22 for access to the public, and we were to put three things
23 together: the common sense logical definition of broadcasting

DEO REPORTING
931-3434

EXHIBIT A

AN ORDINANCE GRANTING UNTO WINCHESTER T.V. CABLE COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE RIGHT OF CONVENIENCE OR PRIVILEGE TO ERECT, OPERATE AND MAINTAIN POLES, CABLES, AND ALL OTHER ELECTRICAL EQUIPMENT, STRUCTURES, OR FIXTURES NECESSARY AND INCIDENTAL TO THE OPERATING OF A COMMUNITY ANTENNA SYSTEM SERVICE AND CLOSED CIRCUIT TELEVISION TRANSMISSION SERVICE, SUBJECT TO THE LIMITATIONS AND RESTRICTIONS HEREIN SET FORTH UNDER, OVER, UPON AND ACROSS THE STREETS, ALLEYS, SIDEWALKS AND PUBLIC PLACES OF THE CITY OF WINCHESTER, VIRGINIA, FOR THE PURPOSE OF ERECTING, OPERATING AND MAINTAINING A COMMUNITY ANTENNA SYSTEM AND CLOSED CIRCUIT TELEVISION TRANSMISSION SERVICE FOR THE USE OF THE RESIDENTS AND CITIZENS OF SAID CITY, AND FOR THE PERSONS, FIRMS, AND CORPORATIONS DOING BUSINESS THEREIN, AND TO USE THE PROPERTY OF OTHER COMPANIES UPON SUCH ARRANGEMENTS AND CONDITIONS AS THE COMPANIES MAY AGREE.

BE IT ORDAINED, by the Council of the City of Winchester, County of Frederick, State of Virginia:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "COMMUNITY ANTENNA TELEVISION Franchise Ordinance."

SECTION 2. Definitions. For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural

number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) "City" is the City of Winchester, Virginia.

(b) "Company" is the grantee of rights under this Franchise.

(c) "Council" is the City Council of the City of Winchester, Virginia.

(d) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(e) "Home" is any single family dwelling unit whether a house, apartment, trailer, rented room or otherwise.

(f) "Pay television system" is a system whereby subscriber is furnished with non-commercial programming at a charge based upon the programs viewed.

SECTION 3. (a) Grant of Authority. There is hereby granted by the City to the Company the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other televisions conductors and fixtures necessary for the maintenance and operation in the City of

a community television system for the interception and distribution of television signals, and for the operation of a closed circuit television transmission service, for a fixed rental to be charged subscribers as set forth below.

(b) Non-Exclusive Grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this Franchise.

(c) Limitation of Grant. The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges for multiple installation at the same house or building. The Company, officers, stockholders or employees, shall not engage in the business of sales, service, repair or installation of television and radio receiving equipment. The Company shall not charge additional fees for the transmission of closed circuit television signals over the cable system.

(d) Rates. The rates to be charged by the Company for installation of its service and the monthly rental to be charged by the Company shall be subject to regulation

and control by the Council, but in no event shall the Council have the right to require an installation charge at a figure less than $7.50 for each connection, or to require the monthly rental at a figure less than $5.00 per month for the first or original connection in any home and $1.00 for each additional connection in said home. Any change in the rates of the Company shall be approved by the Council.

(e) Term of Franchise. This grant shall be for a period of Twelve (12) years from the effective date of this ordinance. The grant shall be renewable or may be terminated each year thereafter on six months written notice by either party for an additional eight (8) years. This grant shall in no event extend for a period over twenty years.

(f) A Pay Television System shall not be used or installed under this City Community Television System without the consent of the City.

SECTION 4. (a) The Company shall install an All Bands System, ten channels of which shall be employed for the purpose of providing reception of commercial television and educational television, and two channels of which shall be held available for closed circuit television transmission. The Company shall provide free subscriber service to schools and it shall furnish educational television to such schools and it shall furnish educational television to such schools and to its subscribers. Quality

of reception shall be equivalent to Class A signal as defined by FCC.

(b) The Company shall provide, either through its own facilities or by contract with other persons, closed circuit programming on two channels, such programming to be furnished without additional cost to subscribers. One of such channels shall be maintained as an audio weather scanning channel providing time, weather and temperature while the other shall be used for the purpose of transmitting local programs to persons using the service of the Company. Within six months after the system is energized, the Company, or the persons contracting with the Company for such purpose, shall provide at least thirty (30) hours of local expression per month in addition to the weather scanning channel.

SECTION 5. Compliance with Applicable Laws and Ordinances. The Company shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City, and to such regulation as the City shall hereafter by resolution or ordinance provide. The City shall have the right to impose such license tax upon the Company as the Council shall determine.

SECTION 6. (a) Company Liability--Indemnification. It is expressly understood and agreed by and between the Company and the City that the Company shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever,

resulting from negligence on the part of the Company in the construction, operation or maintenance of its television system in the City.

(b) The Company shall take out and maintain throughout the term of this grant insurance against personal injury with limitations of not less than $100,000 for injury to any one person and $300,000 for any one accident and insurance against property damage in an amount not less than $50,000. The above policies shall be written by a company acceptable to the City and the City shall be named as an additional insured thereunder. A certificate of this policy shall be furnished the City.

(c) The Company shall obtain workmen's compensation insurance as required by the law of the State of Virginia, such insurance to be written by a company acceptable to the City.

SECTION 7. (a) The Company shall install its poles, wires, cables, fixtures and appurtenances in accordance with the requirements of the National Electrical Code and the current edition of the National Electrical Safety Code and so as not to interfere with the installations of the City, or of any public utility engaged in serving the City. The Company further agrees to comply with any rule or order now in effect or which may hereafter be issued by any governing or regulatory authority having jurisdiction.

(b) All poles, posts, or other structures, and

all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public grounds or places of the City, wherever situate or located, shall at all times be kept and maintained in a safe, suitable and substantial condition, and in good order and repair.

(c) The Company shall maintain a force of one or more resident agents or employees at all times and shall have sufficient employees to maintain adequate and prompt service to its facilities.

(d) The Company agrees to provide services to any person in the city limits within twenty-two months after the system has been energized.

SECTION 8. (a) The Company shall file with the City Manager true and accurate maps or plats of all existing and proposed installations, and the City hereby reserves the right at all times to reject any proposed installation whose manner or place of construction it deems contrary to public interest, and may order and direct the Company, at its own expense, to move the location or alter the construction of any existing installation wherever the Council deems the public interest to require such removal or alteration, having due regard to the equities of the parties concerned and the purpose of this grant.

(b) The Company shall file with the City Manager a statement setting forth the ownership interest in the Company and setting forth the names and addresses of all

officers of the Company and the position that each holds. In the event of a change in ownership of stock of the Company or any change of officers or directors the Company shall promptly file information setting forth such change with the City Manager.

(c) In addition, the Company shall file with the City Manager (1) Copies of such rules, regulations, terms and conditions adopted by the Company for the conduct of its business, and (2) an annual summary report showing gross revenues received by the Company from its operations within the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to the Company's service within the City.

SECTION 9. Conditions on Street Occupancy.

(a) Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City Inspector, replace and restore all paving, side-

walk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of two years.

(c) Relocation. In event that at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other telephone fixtures at its own expense.

(d) Placement of Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant, main, or sewer, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

(e) Temporary Removal of Wire for Building Moving. The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of

wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight hours' advance notice to arrange for such temporary wire changes.

(f) Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the City and at the expense of the Company. The City specifically reserves the right to prohibit the trimming of trees where it deems that such trimming would damage or destroy the tree.

(g) Existing poles, posts, and other such structures of telephone and power companies for leasing or licensing at reasonable terms shall be used as practicable in order to minimize interference with travel.

SECTION 10. Approval of Transfer. The Company shall not sell or transfer its plant or system to another, nor transfer any rights under this Franchise to another without Council approval. Provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise, and agreeing to perform all the

conditions thereof.

SECTION 11. City Rights in Franchise.

(a) City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of tis police power.

(b) Supervision and Inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

(c) The City reserves the right to order the service discontinued in the event of an emergency.

(d) All rights, rights of way, and easements hereinabove designated shall remain the property of the City. Until such time as said poles or other equipment are actually installed, and in the event of future removal of said equipment, said rights shall immediately revert to the City and be automatically cancelled.

(e) The Company, before beginning construction or operation under this Franchise shall execute a bond with good and sufficient security in favor of the City, in the amount of $50,000.00, conditioned upon the constructing and putting into operation and maintaining the community antenna system provided for in this Franchise. This bond shall

remain in effect during the full term or terms of this grant.

(f) The Company shall have fourteen (14) months from the effective date of this Ordinance within which to erect, install and energize its system. Failure of the Company to erect, install and energize its system within this period shall be deemed a breach by the Company giving to the City the option to cancel the rights given to the Company by this Franchise.

(g) If at any time after the date the system is energized the Company shall fail to comply with the terms of this Ordinance, and shall continue to fail to comply for a period of thirty (30) days after receiving notice of non-compliance from the City, the Company shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than $5.00 nor more than $50.00 for each days' failure to comply, each days' failure to comply being a separate and distinct offense. Criminal liability under this section is predicated on negligent or willful failure on the part of the Company to comply and this section shall not apply if non-compliance is occasioned by events beyond the control of the Company. In the event the Company should contest its liability to fine under this section, no further penalty shall be assessed until such liability is established. Should such liability be established by a court of competent jurisdiction the Company shall have thirty (30) days within which to comply and within which to pay all fines assessed.

In the event the Company does not then comply and pay all fines assessed the City shall have the option to declare the Franchise and bond forfeited.

SECTION 12. Payment to City.

Winchester T.V. Cable Company will pay to the City a sum equal to 3% of the first $100,000.00 annual gross rentals received, 4% in excess of $100,000.00 and less than $200,000.00 and 5% in excess of $200,000.00 or an annual payment of $500.00, whichever shall be greater.

SECTION 13. The Company shall at all time operate and maintain its community antenna system in such manner as not to interfere with existing television reception, including interference by radiation. Once interference has been established, if the same be not corrected within 30 days time following notice given to the Company by the City, the City, by action of its Council, may terminate this grant.

SECTION 14. Records and Reports. The City shall have access at all reasonable hours to all of the Company's plan, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder.

SECTION 15. Publication Costs. The Company shall assume the cost of publication of this Franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the City Treasurer upon

the Company's filing of acceptance and shall be paid at that time.

SECTION 16. The provisions of this Ordinance are hereby declared to be severable. If any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect, it being the intent now hereby declared that this Ordinance would have been adopted even if such unconstitutional or void matter had not been included therein.

Passed by the Common Council on the 9th day of March, 1965.

Testee:
B. M. Perrere
Clerk of the Common Council

Approved:
William M. Battaile
Mayor

[Filed

* * *

EXHIBIT B

ANALYSIS OF SECTION IV-B, FCC FORM 303, AND SECTION IV, FCC FORM 342, FILED IN JUNE & JULY, 1972, FOR TELEVISION STATIONS CARRIED ON WINCHESTER TV CABLE COMPANY CATV SYSTEM*

Station	Hours of Local** Programming in Composite Week	Total Hours of Operation in Composite Week***	%
WBAL-TV	25:51	129:42	19.9
WSVA-TV	8:34	118:10	7.3
WRC-TV	25:48	137:50	18.7
WTTG(TV)	18:10	128:11	14.2
WMAL-TV	27:07	129:47	20.9

WBFF-TV	1:50 1/2	94:30	1.9
WTOP-TV	21:23	134:17	15.9
WDCA(TV)	7:05	110:00	6.4
WHAG-TV	8:04	123:52	6.5
WETA-TV	27:00	103:00	26.2
WVPT(TV)	4:00	66:30	6.0
WJZ-TV	27:51	149:05	18.7

Percent of Local Programming in Composite Week

Educational Stations	18.3%
Commercial Stations	13.7%
Independent Stations	8.1%
Stations Outside Major Markets	6.7%

Winchester TV Cable Company

Total Programming on 12 Channels in Composite Week	1,526.4 hours
Local Programming on Channel 6 (local origination channel) in Composite Week	168 hours
Percent	11%

* Attached hereto as pages 1-12 are excerpts from Section IV and IV-B of the most recent renewal applications filled by the television stations carried on Winchester TV Cable Company CATV System.

** Attached hereto as page 13 of this exhibit is Federal Communications Commission Form 303, Section IV-B, Page 1, Paragraph 10(a) defining the term "local program".

*** Attached hereto as page 14 of this exhibit is a Public Notice released by the Federal Communications Commission on August 9, 1971, explaining the term "composite week."

* * *

FCC Form 342
December 1965

Form Approved
Budget Bureau No. 52-R140.3

SECTION I

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR RENEWAL OF NONCOMMERCIAL EDUCATIONAL TV, FM, OR STANDARD BROADCAST STATION LICENSE

INSTRUCTIONS

A. This form is to be used only in applying for renewal of license for a noncommercial educational TV, FM, or Standard broadcast station. This form consists of this part, Section I, and the following sections:
Section II, Renewal Application Engineering Data
Section IV, Statement of Program Service of Broadcast Applicant

B. PREPARE THREE COPIES of this form and all exhibits. Sign one copy. File all the above with the Federal Communications Commission, Washington, D. C. 20554.

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 5 of this form. Date each exhibit.

D. The name of the applicant must be stated exactly as it appears on the current license. The applicant must notify the Commission of any change of address.

E. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any), the FCC form number and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application the application or other form referred to in its entirety. Do not incorporate by reference any material which is not to be open to the public.

F. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he signs for the applicant, set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

G. *BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.*

1. Renewal requested for following existing facilities

Frequency	Channel No.	Call Sign
542-549 mhz	26	WETA

Effective radiated power in kilowatts (or power for standard broadcast stations)	Antenna height above average terrain in feet (FM and TV only)
vis - 1024	756

Location of main studio

State	City
Virginia	Arlington

Location of transmitter

State	County	City
[illegible]	[illegible]	[illegible]

Number and street (or other indication of location)

[illegible] Lavor Road

FOR COMMISSION USE ONLY

File No.

Name and address of applicant (See Instruction D)

Name Greater Washington Educational Telecommunications Assoc., Inc.

Address 3320 - 27th Street, South

City Arlington State Virginia ZIP CODE 22206

Send notice and communications to the following-named person at the post office address indicated:

Name Donald V. Taverner

Address 3320 - 27th Street, South

City Arlington State Virginia ZIP CODE 22206

2. Is applicant, or any person directly or indirectly controlling applicant, party to a suit in any Federal Court involving the monopolizing, or an attempt to monopolize radio communication directly or indirectly through control of the manufacture or sale of radio apparatus, by exclusive traffic arrangement, or by any other means, or of using unfair methods of competition?

YES [ ] NO [X]

If "Yes," attach as Exhibit No. a full description of the proceeding, identifying the court and showing where records of the proceeding may be obtained. If applicant is party to such a case describe fully the proceeding, identify the court and show where records of the proceeding may be obtained. (See Section 313 of the Communications Act of 1934.)

3. Has there been any change with respect to the applicant's citizenship status or with respect to representation of alien or foreign governments?

YES [ ] NO [X]

If "Yes," give full details in Exhibit No.

4. Are there any documents, instruments, contracts or understandings relating to ownership, use or control of the station facilities, or any right or interest therein?

YES [ ] NO [X]

If "Yes," attach as Exhibit No. copies of all such documents, instruments or contracts and state the substance of oral contracts or understandings.

5. Is the applicant's Ownership Report (FCC Form 323E) filed with this application? (See Section 1.615 of Commission's Rules.)

YES [X] NO [ ]

If answer is "No," give date of filing last Ownership Report and call sign, station location and file number of renewal application with which it was filed.

6. How is the operation of the station financed?

-Membership contributions (individual)
-Corporation for Public Broadcasting
-School system program contracts
-Foundation and private broadcast contracts
-Underwriting from industry

FCC Form 342

STATEMENT OF PROGRAM SERVICE OF BROADCAST APPLICANT	Name of applicant: Greater Washington Educational Telecommunications Assoc., Inc.	FOR COMMISSION USE ONLY File No.:

DEFINITIONS FOR PROGRAM DATA

1. Sources of programs are defined as follows:

A local program (L) is any program originated or produced by the station, employing live talent more than 50% of the time, and using the studios or other facilities of the station. A local program recorded or filmed by the station for later broadcast shall be classified as local. A program produced by a station and fed to a network shall be classified by the originating station as local. Programs primarily featuring phonograph records, syndicated or feature films or taped or transcribed programs, shall not be classified as local even though a station personality appears incidentally to introduce such material.

A record program (REC) (Radio only) is any program, not falling within the definition of "local" above, which utilizes phonograph records, electrical transcriptions or taped music, with or without commentary by a local announcer, or other station personnel.

A network program (N) is any program furnished to the station by a network (national, regional or special) such as NET, NAEB Radio Tape Network, Eastern Educational Network, Educational Radio Network, etc.

Other Programs (OTHER) are any programs not defined above, including, without limitation, syndicated film, taped or transcribed programs, and feature films.

2. Types of educational programs are defined as follows:

Instructional (I) includes all programs designed to be utilized by any level of educational institution in the regular instructional program of the institution. In-school, in-service for teachers, and college credit courses are examples of instructional programs.

General Educational (GEN) is an educational program for which no formal credit is given.

Performing Arts (A) is a program, live or recorded, in which the performing aspect predominates such as drama or concert, opera or dance.

Public Affairs (PA) includes talks, discussions, speeches, documentaries, editorials, forums, panels, round tables, and similar programs primarily concerning local, national, and international affairs or problems.

Light Entertainment (LE) includes programs consisting of popular music or other light entertainment.

Other (O) includes all programs not falling within the definitions of Instructional, General Education, Performing Arts, Public Affairs or Light Entertainment. Such programs as news or sports should be reported as "other."

PROGRAM DATA

1. (a) Attach as Exhibit No. A Program Logs for a full week of operation:

(1) from the school term during which the application is filed, or

(2) if such term began less than 90 days before the date of filing the application, from the school term immediately preceding the school term during which the application is filed.

(b) State for the week submitted in 1(a) above the sign-on and sign-off time and total hours for weekdays, Saturday, and Sunday.

	Weekdays	Saturday	Sunday	
Sign-on	8:00am	8:30am	3:30pm	
Sign-off	12:15am	11:00pm	11:00pm	
Total hours on air	16+	14:30	7:30	Total 103+

(c) State for a full week submitted in 1(a) above the portion of the schedule obtained from the following sources (totals to equal 100%):

Source	Hours	Percentage
1. Local program	27:00	26%
2. Record program (Radio only)	—	—
3. Network program	63:00	61%
4. Other	13:00	13%
Total	103:00	100%

(d) State for a full week submitted in 1(a) above the amount of time devoted to the following types of programs (totals to equal 100%):

Type of Program	Hours	Percentage
1. Instructional	0	0
2. General Educational	73:50	71%
3. Performing Arts	8:00	8%
4. Public Affairs	17:40	17%
5. Light Entertainment	0	0
6. Other	3:30	4%
Total	103:00	100%

2. Does applicant contemplate any material changes in future program service? YES ☐ NO ☐

If "Yes", submit as Exhibit No. a statement indicating what they are.

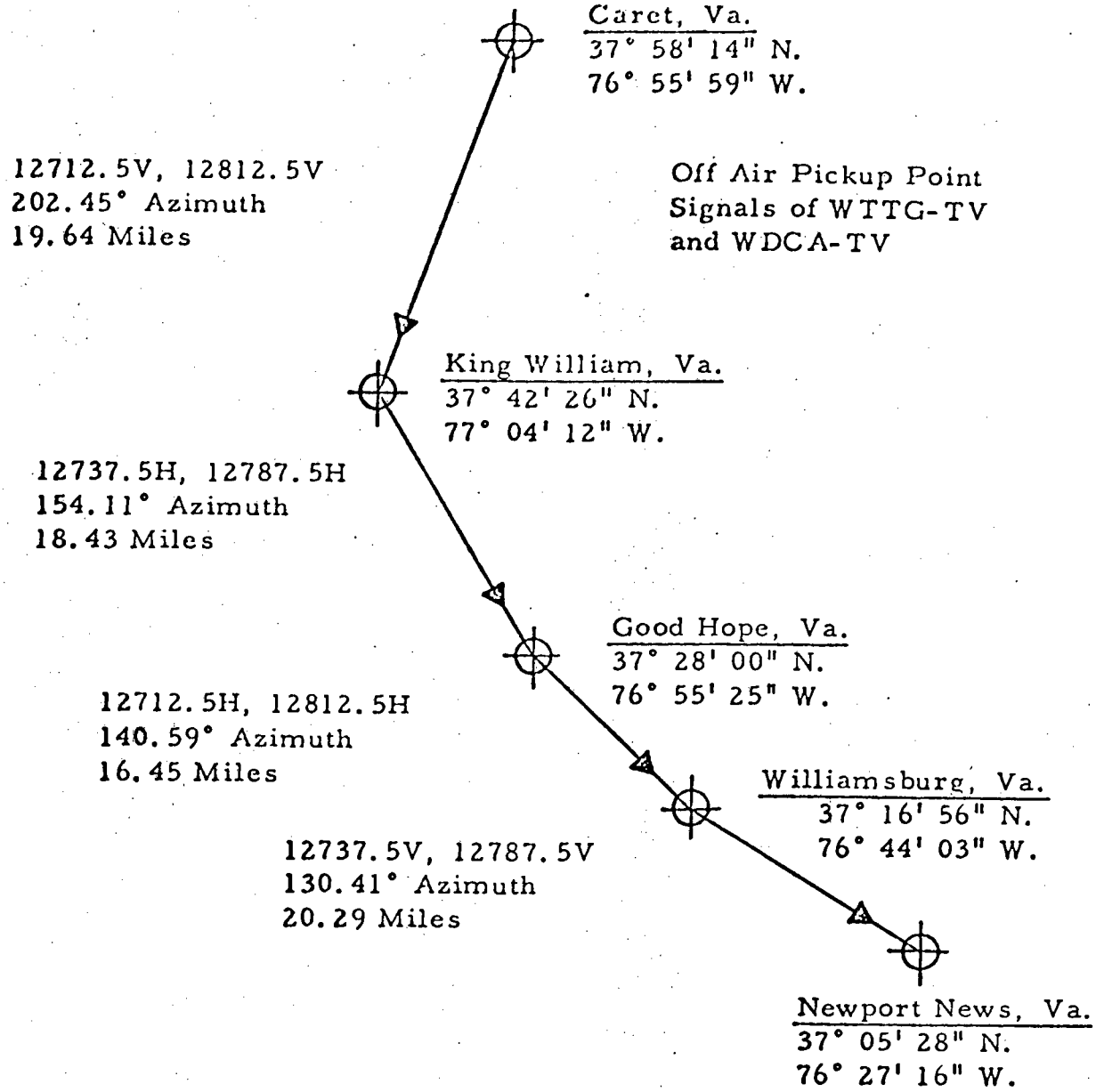
3. Will the station be affiliated with any network? YES ☒ NO ☐

PBS -- NETAN

If "Yes", give the name of the network(s).

NOTE: The NET, NAEB Radio Tape Network, Educational Radio Network, and the Eastern Educational Network are examples of educational networks.

EXHIBIT C



COMMUNITY ANTENNA RELAY SYSTEM

Proposed by

HAMPTON ROADS CABLEVISION COMPANY

COMPUCON

January 1972

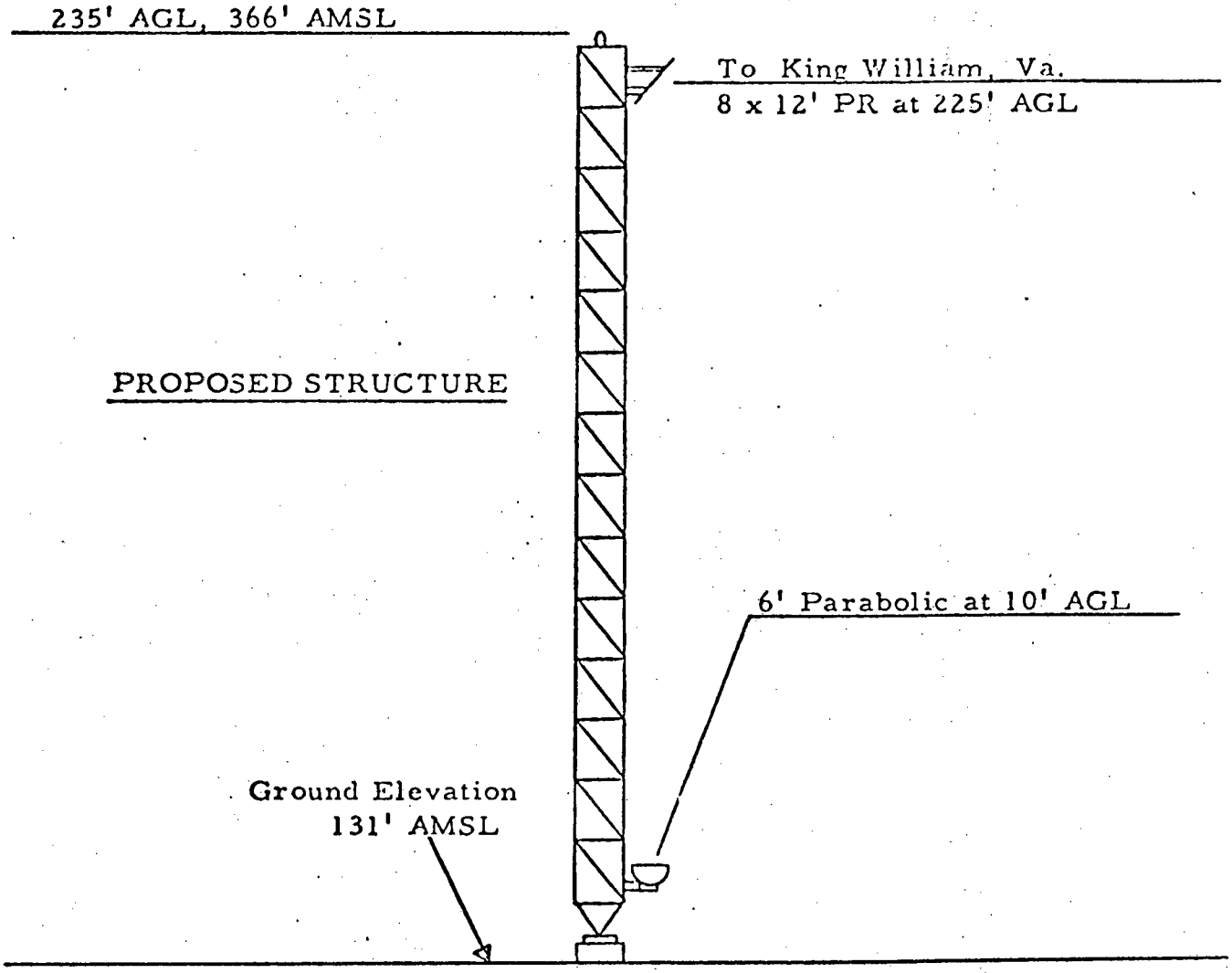
SYSTEM DIAGRAM

EXHIBIT 2

Exhibit C

PREPARED FOR

HAMPTON ROADS CABLEVISION COMPANY



NOT DRAWN TO SCALE

COMPUCON

CONSULTING ENGINEERS
13740 NEUTRON ROAD
DALLAS, TEXAS 75240
TEL. 214-233-2916

VERTICAL PROFILE SKETCH

CARET, VIRGINIA

37° 58' 14" No. Latitude
76° 55' 59" W. Longitude

January 1972 * * * EXHIBIT 3

EXHIBIT D

CHAPTER III

POLICIES RELATING TO CERTAIN MINIMUM

STANDARDS FOR CATV SYSTEMS

1) Subject to any necessary FCC approvals or waivers, the VPTC shall require that, by March 31, 1977, all CATV systems operating in Virginia which have the required channel capacity will make one (6 mHz) channel available for "on-call" lease use by the VPTC acting on behalf of the various organs of the Commonwealth Government.

2) This "Commonwealth Access Channel" shall be leased by VPTC from local CATV systems at the prevailing hourly rate and on a strict basis of actual transmission use. (Where no lease rate has been established, the franchising authority and the franchisee must settle on one by March 31, 1977, seeking FCC approvals as may be required in the circumstances.)

3) In those CATV systems operating in one of the "Top 100 markets" (as defined in FCC regulations) this "Commonwealth Access Channel" shall be provided separate from, and in addition to, any channels dedicated to use by "local educational authorities" or by the governments of the local jurisdictions involved.

4) This "Commonwealth Access Channel" shall be receptable throughout each CATV System and shall not require converters at subscriber's receivers unless the converters are invariably provided as a part of the CATV service to the general public.

5) This "Commonwealth Access Channel" shall incorporate the use of two-way technologies (as defined by the Federal Communications Commission) where they are available for leased applications.

6) Scheduled use of the "Commonwealth Access Channel" by VPTC may be intermittent or continuous. Where VPTC schedule use is intermittent, the CATV system involved may make other (leased or free) usage of the channel, provided the VPTC may order up its use for Commonwealth-related programs on 24-hour notice.

7) Each Virginia CATV franchisee having a "Commonwealth Access Channel" capacity of the sort described above will be expected, after March 31, 1977, to provide (for

reasonable fees) at its main head-end location, space and electrical facilities needed to connect into the main CATV feed system:

a) One-to-three helical-scan videocassette machines (or other comparable audiovideo storage mechanisms) supplied by VPTC (or its public telecommunications agents.)

b) And/or one-to-three audiocassette (or other comparable audio storage mechanisms) supplied by VPTC (or its agents.)

c) And/or electronic interconnection terminal elements (supplied by the telephone company, a common carrier firm, or the Commonwealth government.)

If and when the CATV franchisee can provide none of these devices or elements through lease agreements, the VPTC could employ such deivces and elements of its own to insert program materials into the "commonwealth Access Channel" (or, where VPTC allows, into other governmentally and educationally-dedicated channels of the CATV systems, including, where technically appropriate, audiobandwidth channels.) The VPTC will pay any reasonable system fees associated with the manned operation of such program insertion apparatus placed by VPTC on the premises of the system.

8) Where the franchisee has been required, or allowed, by the FCC to dedicate one (or more) channel(s) for use by "local education authorities," (i.e., the "Education Access Channel" specified in Section 76.251(a)(5) of the FCC Rules and Regulations) the franchising authority will require a "Committee of Education Interests" (CEI) be established for the purpose of regularly advising the local authority and the CATV operator as to the specific applications, allocations, programming and other policy decisions affecting the operation of such an educational channel or channels. The CEI shall have no power of censorship over such channels.

9) The VPTC must approve and confirm the composition of the CEI.

10) The by-laws and amendments adopted for CEI operation must be approved by the VPTC. The minutes of its meetings and any other documentation which describes CEI decision-making processes and outcomes must be furnished VPTC.

11) The CEI must, in all cases, include one representative named by the Public Telecommunications entity whose District includes the franchise area involved. The other

representatives should be drawn from:

a) the local public school division(s)

b) the State Department of Community Colleges

c) the State Council for Higher Education

d) any locally-based non-sectarian institution(s) of higher education

e) any local state-accredited non-sectarian private school(s)

f) the community-at-large

Proxy attendance will be permitted in all cases. The CEI must be selected without regard to race, sex, religion, color or national origin, taking special care to ensure that selection techniques do not discriminate in any way against women or members of minority groups.

12) The meetings of the CEI must always be public. Their time and place must be given 10 days public notice, with an advance copy of such notice to be furnished the VPTC.

13) The VPTC will be allowed to send one or more official representatives to the CEI meetings for the purpose of making presentations about pertinent public telecommunications issues and then to participate in any ensuing discussion.

14) The VPTC will consult with the FCC and file with that agency such legal papers as may be necessary to effectuate the policies of the State Plan, including the creating of an administrative procedure for enforcing the Commonwealth's CATV policies.

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