

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

\* \* \* \* \*

In re: House Bill 1960

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Stenographic report of hearing held at  
the Gold Room, Allegheny County Court-  
House, Pittsburgh, Pennsylvania

Friday  
August 20, 1993  
11:00 a.m.

\* \* \* \* \*

HON. FRANK LaGROTTA, ACTING CHAIRMAN

MEMBERS OF JUDICIARY COMMITTEE

Hon. Frank Dermody, Subcommittee Chairman on Courts

ALSO PRESENT:

Hon. William Robinson  
David Krantz, Executive Director  
Martin Durkin  
Tom Trkula, Staff Member

Reported by:  
Dawn Forsythe, RPR

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1           ACTING CHAIRMAN LaGROTTA: I'm going to  
2 call the hearing to order.

3           Let this public hearing of the House  
4 Judiciary Committee come to order.

5           This is Friday, August 20th. We are in  
6 the Gold Room of the Allegheny County Courthouse in  
7 Pittsburgh, and I'm State Representative Frank  
8 LaGrotta.

9           I would like to welcome all of you to this  
10 public hearing during which we will gather  
11 testimony which is relevant to House Bill 1960, of  
12 which I'm the prime sponsor.

13           House Bill 1960 has been introduced to  
14 prevent cable television companies or affiliates  
15 from charging customers additional fees, user fees,  
16 assessments, et cetera, for channels or events  
17 which are shown on channels which are included in  
18 the Basic Cable rate provided by that company.

19           Of course, the introduction was prompted  
20 by the recent controversy in the Allegheny County  
21 area involving the KBL Sports Network and its  
22 attempt to levy per-seat fees on commercial  
23 establishments that subscribe to basic cable and  
24 receive KBL as part of this basic cable service.

25           Today we will hear from a wide variety of

1 witnesses who will provide testimony which we will  
2 use to strengthen the legislation in question.  
3 Both sides of this important issue will be  
4 represented today.

5 As the Acting Chairman of this proceeding,  
6 I'm going to ask that each witness provide written  
7 copies of his or her testimony to the members of  
8 the Committee and staff and that the witness begin  
9 his or her allotted time with a short summary of  
10 that testimony so that most of the time can be used  
11 to answer questions from the panel.

12 We will have a tight schedule today, as I  
13 said earlier. We will make every effort to adhere  
14 to it.

15 I always said if I had enough seniority to  
16 be Chairman of a committee some day, I would always  
17 stick to hearing schedules. And every Chairman  
18 that came before me said that and they have not  
19 kept their word, so I doubt that I will, either.

20 Having said that, I'm going to introduce  
21 Representative William Robinson of Pittsburgh, Dave  
22 Krantz, who is the Executive Director of the House  
23 Judiciary Committee, and Martin Durkin from Senator  
24 Dawida's office, and Tom Trkula from my staff, my  
25 District Staff.

1           That having been said, I'm going to call  
2 the first witness, who is Bernie Pucka and Jake  
3 Osterman, representing the Allegheny County Tavern  
4 Association.

5           Do you want -- from my understanding, that  
6 microphone here is on for you to take those two  
7 seats.

8           MR. PUCKA: I guess I'm going to lead it  
9 off here.

10           "The Allegheny County Tavern Association,  
11 representing members in thirteen counties in  
12 Southwest Pennsylvania, would like to go on  
13 record today as supporting House Bill 1960,  
14 which would prohibit any cable television  
15 service provider from levying any additional  
16 user fee, tax, or service charge for any event  
17 shown on a channel included within a cable  
18 television service which has been paid for by a  
19 subscriber.

20           We believe it would be a great injustice  
21 to permit KBL, the cable service in question,  
22 to charge an additional fee to the taverns  
23 based on seating, as is their current proposal.

24           The majority of the liquor licensees in  
25 Southwest Pennsylvania are "Ma and Pa" type

1 places, with a very small gross income. And  
2 the primary reason they have KBL or any other  
3 cable station is strictly for their own  
4 enjoyment, as they are usually working sixteen  
5 or seventeen hours daily in their  
6 establishments.

7 People just do not go to their  
8 neighborhood bars to watch sporting events,  
9 they may go to the so-called "sports bars"  
10 whose primary drawing card is the sporting  
11 events, but it is rare, if ever, that people  
12 congregate in their neighborhood taverns to  
13 watch these events. They can watch them at  
14 home.....for free!

15 For KBL to levy a per-seat charge would be  
16 devastating to the smaller businesses because  
17 empty bar stools do not pay to watch sporting  
18 events.

19 In a recent poll that I did of seventeen  
20 taverns in the Pittsburgh area, there was a  
21 total of 102 customers combined on an evening  
22 when no ballgame was being telecast.

23 In the same seventeen taverns on two  
24 nights when the Pittsburgh Pirates were playing  
25 the San Francisco Giants, there were 109 and 91

1 customers, respectively. Obviously, KBL had no  
2 significant influence on the income of these  
3 particular businesses, if any.

4 In a Post Gazette editorial on July 4,  
5 1993, a perception was given that tavern owners  
6 were deriving a great profit from showing  
7 various events on their seven foot screen  
8 televisions.

9 I would personally like to invite all the  
10 members of the panel to do a survey of a number  
11 of taverns with me to find out exactly how many  
12 offer seven foot screen televisions to their  
13 customers. You would find that the  
14 overwhelming majority of the bars actually have  
15 a single television, probably smaller than the  
16 television you have at home, usually under  
17 twenty-five inches.

18 Broadcast Music, Incorporated, or BMI, and  
19 the American Society of Composers, Authors and  
20 Publishers, or ASCAP, use the guideline of any  
21 single home receiver for determining whether or  
22 not to charge an establishment a user fee; that  
23 is, if you have a single television and its  
24 under twenty-five inches, you are not charged  
25 at all under the guidelines established by the

1 Federal Copyright Commission, which brings me  
2 to another point.

3 There is currently Federal legislation in  
4 Washington, HR 1988 that if passed, would  
5 prohibit cable companies from raising fees  
6 arbitrarily, but would authorize the Copyright  
7 Tribunal to establish fees that business owners  
8 could afford, while protecting the copyright  
9 ownership rights of the sports teams.

10 The legislation is currently in the House  
11 Judiciary Committee and the House Energy and  
12 Commerce Committee. This legislation would  
13 completely eliminate the "per-seat" charge as  
14 planned by KBL.

15 On the June 23, 1993 edition of the John  
16 Cigna show on KDKA radio, Bill Craig, General  
17 Manager of KBL was quoted as saying, "We're  
18 trying to get as much money as we reasonably  
19 can get out of the marketplace."

20 This statement seems to completely define  
21 KBL's position and would at least explain some  
22 of the tactics they've used to position  
23 themselves.

24 For example, in a recent ad in the Post  
25 Gazette paid for by KBL, they thank a number of



1 their commercial subscribers, one of them being  
2 J.K. Sportsmen, Inc. However, Jeffrey Kalfas,  
3 President of J.K. Sportsmen, Inc., recently  
4 called me and explained that he never agreed or  
5 was even made aware of a per-seat charge by KBL  
6 and that he in fact paid Satellite Sports  
7 Network \$900 per year for his subscription,  
8 which included a great many other sports  
9 channels, including KBL.

10 On several occasions, Bill Craig of KBL  
11 has tried to use the fear of losing the various  
12 sports teams to the so-called more hospitable  
13 regions if this per-seat charge is not assessed  
14 as a justification of the per-seat charge.

15 In the June 23, 1993 edition of the Post  
16 Gazette, the headlines read "KBL/taverns settle  
17 on tab."

18 When I read the morning paper, I  
19 immediately called Christine Rouvalis, the Post  
20 Gazette reporter, and asked her where she got  
21 her information. She told me that it was in a  
22 joint Press Release from KBL and the Allegheny  
23 County Tavern Association.

24 Although progress had been made the  
25 previous day and I was extremely happy to that

1 point, I told Fran Powell of KBL that I would  
2 have to speak with my Board and a few of my  
3 members before any settlement could be reached  
4 or any proposal accepted.

5 The next thing I know, there's the  
6 headlines in the Post Gazette claiming  
7 settlement, based on a Press Release I had  
8 never seen nor authorized. You would think  
9 that in a matter so important to KBL that they  
10 would at least do their homework to help with  
11 their positioning.

12 In the June 29, 1993 Post Gazette, Fran  
13 Powell is quoted as saying, "There are over  
14 5,200 bars in Allegheny County alone." I wish  
15 there were. I would immediately trip my  
16 membership. There are less than 2,500 liquor  
17 licensees in Allegheny County, and this  
18 information is readily available from the  
19 Pennsylvania Liquor Control Board upon request.

20 So why just the bars, or does KBL's plan  
21 just start with them? There are a number of  
22 hotels, motels, nursing homes, hospitals, car  
23 repair shops and even barber shops that use  
24 cable television as a way of enticing consumers  
25 to choose their particular business over

1 another.

2           Although the consumer, particularly the  
3 tavern owner, will be the first ones hurt by  
4 KBL's proposed price gouging. Because many  
5 tavern owners will cancel their KBL  
6 subscription, KBL, its advertisers, the Pirates  
7 and the Penguins will all suffer. If fewer  
8 bars see the telecasts, fewer consumers will  
9 see the commercials, and people already angry  
10 by the increased ticket prices and player  
11 salaries will lose yet another link to their  
12 hometown teams.

13           But KBL already has the answer to our  
14 questions and objections; they can offer their  
15 service as pay-per-view. But you see, because  
16 of the limited circulation of pay-per-view, KBL  
17 would lose their base of advertisers that, by  
18 the way, I have already been told by KBL that I  
19 would be sued if I solicit the help of the  
20 advertisers in this matter.

21           In closing, in taking over one thousand  
22 telephone calls, contacting twenty-six State  
23 Legislators, and being a guest on a great many  
24 radio and television shows, only two callers  
25 have positioned themselves on the side of KBL.

1 All of the Legislators I have contacted have  
2 shown their total support, with a great number  
3 of them volunteering to co-sponsor House Bill  
4 1960.

5 Even the hosts of the radio and television  
6 shows have shown their support.

7 Members of the Panel, KBL is surely in the  
8 minority in this issue, and I ask that House  
9 Bill 1960 be passed in following with the  
10 wishes of the majority of your constituents.

11 Thank you."

12 MR. OSTERMAN: Mr. Chairman, Members of  
13 the Panel, I'm Jake Osterman, attorney for the  
14 Allegheny County Tavern Association for the past  
15 twenty-two years.

16 Prior to that, I spent eight years as  
17 local Chief Counsel for the Liquor Board in  
18 Southwestern Pennsylvania.

19 "On August 5th of this year, the  
20 Pittsburgh Post Gazette reported that David  
21 Brugnone, KBL Director of Sales and Marketing,  
22 couldn't wait for the hearing; that he thinks  
23 the politicians, tavern owners and media have  
24 misrepresented and distorted KBL's position.

25 It's rather ironic that KBL should make

1 that statement when that's exactly what they  
2 did when this controversy first broke on June  
3 23.

4 As you heard from Bernie, KBL had  
5 requested a meeting with him. After that  
6 meeting, the Post Gazette was contacted by KBL  
7 who gave their reporter what was purported to  
8 have been a joint Press Release by KBL and  
9 Bernie. There was one glaring problem. As  
10 Bernie has explained, he had never authorized  
11 nor been requested to make a joint Press  
12 Release. He had never seen it and had no  
13 knowledge of its contents. You can understand  
14 why Bernie was upset when he saw the joint  
15 Press Release in the paper.

16 What KBL did in informing the Post Gazette  
17 that it was a joint Press Release is the worst  
18 kind of misrepresentation and distortion that  
19 you can imagine.

20 Brugnone went on to say, "The public  
21 hearing will afford us the opportunity to  
22 present the facts..."

23 Will KBL present the facts today or  
24 another distortion and misrepresentation like  
25 the so-called joint Press Release?

1           That August 5th article further stated:  
2           "Brugnone said KBL does not want to hurt the  
3           mom and pop tavern, so it will charge bars with  
4           eight or fewer seats a flat fee of \$25 per  
5           month. It is unclear, however, how many  
6           taverns would benefit from this break because  
7           the State Liquor Control Board requires a  
8           minimum seating capacity of thirty to qualify  
9           for a liquor license."

10           It is not unclear at all; no taverns or  
11           restaurants would benefit because the article  
12           is correct, any restaurant or tavern must have  
13           at least thirty seats.

14           Is KBL giving us more distortion, or  
15           should we call it smoke and mirrors?

16           KBL wants the restaurants and taverns to  
17           pay an inequitable and exorbitant fee to view  
18           their sports presentations. Are the  
19           restaurants and taverns being discriminated  
20           against, or should other establishments with  
21           numerous TV viewers be concerned that they  
22           might be next on KBL's hit list; places such as  
23           hospitals, nursing homes, and the other places  
24           that Bernie mentioned?

25           One thing is clear, the taverns and

1 restaurants have already contracted with TCI or  
2 other cable stations for their Basic Cable  
3 service, which includes the reception of KBL as  
4 part of that Basic Service.

5 The legislation proposed by Chairman  
6 LaGrotta is fair and would prevent KBL from  
7 renegeing on its contracts with its customers,  
8 particularly the taverns and the restaurants.

9 The Allegheny County Tavern Association  
10 earnestly requests the passage of House Bill  
11 1960.

12 Thank you very much."

13 ACTING CHAIRMAN LaGROTTA: Thank you,  
14 gentlemen.

15 Marty, questions?

16 MR. DURKIN: No.

17 ACTING CHAIRMAN LaGROTTA: Bill?

18 REPRESENTATIVE ROBINSON: Yes, just one  
19 question. It relates to the number of seats that  
20 are required for some of your members to meet State  
21 regulations.

22 Is there any practical way for your  
23 members to avoid the proposed fees of KBL and still  
24 meet the requirements of the State Liquor Control  
25 Board?

1 MR. OSTERMAN: No, I don't see how.

2 MR. PUCKA: Practical, yeah. They could  
3 take out all their bar stools.

4 I mean -- but, you know, why? You know,  
5 why would they do that?

6 I don't -- you know.

7 The legislation -- I mean after I met with  
8 KBL the last time, that was as far as they were  
9 going to give to me. And to be honest with you, up  
10 until that point in time and including that point  
11 in time, I was happy with the way negotiations were  
12 going.

13 I guess what threw me off was the next day  
14 in the paper.

15 When I left that meeting, Fran Powell had  
16 said, well, Bernie, let's get out a joint news --  
17 or, excuse me, Dave or Bill, I don't remember which  
18 one, said let's get out a joint news conference.  
19 And Fran Powell said to me, Bernie -- Bernie is  
20 going to have to talk this over with his people.

21 And I said, well, I hope I can get them to  
22 buy this, but -- and that's the last I heard from  
23 them before I saw the article in the paper that  
24 said there was an agreement reached.

25 REPRESENTATIVE ROBINSON: Just two other



1 quick questions.

2 Of the approximate 2,500 taverns that are  
3 in Allegheny County, how many belong to your  
4 association?

5 MR. PUCKA: We have about 850 members.

6 REPRESENTATIVE ROBINSON: Have you polled  
7 the majority of the tavern owners in the County,  
8 those who do not belong to the Association, and  
9 asked them their position on House Bill 1960?

10 MR. PUCKA: Out of the thousands of calls  
11 that I received, and that's no exaggeration, that's  
12 very conservative, approximately 150 to 200 of them  
13 were from my members; the other ones were from  
14 regular citizens or tavern owners.

15 Like I said, there were two calls that I  
16 received that weren't against this.

17 One lady thought that we should pay  
18 because we are all making \$6,000 a week from the  
19 Poker machine.

20 Another --

21 REPRESENTATIVE ROBINSON: Legal ones or  
22 illegal ones?

23 MR. PUCKA: And I couldn't tell if this  
24 guy was against KBL or against me, but with some  
25 questionable language, he asked me who the hell I

1 thought I was representing the taverns on this  
2 issue.

3 REPRESENTATIVE ROBINSON: Last question.  
4 Perhaps Mr. Craig can specifically speak  
5 to this.

6 The issue that's raised in 1960, the issue  
7 we attempt to address, do you think it would be  
8 better for us to wait for some Federal action on  
9 this issue, or do you think it's best for us to  
10 take action at the State level?

11 MR. OSTERMAN: I think this action is  
12 appropriate right now. I think that it would be  
13 one thing, first of all it would make sure this  
14 inequitable situation did not occur.

15 Secondly, it would bring it rather  
16 forcibly to the attention of the Federal  
17 authorities.

18 REPRESENTATIVE ROBINSON: Okay, thank you,  
19 gentlemen.

20 Mr. Chairman, if I might, just one quick  
21 comment.

22 ACTING CHAIRMAN LaGROTTA: Sure,  
23 absolutely.

24 REPRESENTATIVE ROBINSON: My interest in  
25 this issue stems not only from the fact that many

1 of my constituents patronize 2,500 taverns in this  
2 County, but my Legislative District includes the  
3 two largest business districts in the Commonwealth  
4 of Pennsylvania, Downtown Pittsburgh and Oakland.

5 In that district there are many taverns,  
6 restaurants and other places that utilize cable  
7 services, including programming from KBL.

8 So I have a double interest, one from the  
9 standpoint of patrons, but also from the standpoint  
10 of the businesses that utilize our cable services  
11 here in the Pittsburgh area.

12 Thank you, Mr. Chairman.

13 ACTING CHAIRMAN LaGROTTA: Okay.

14 Dave Krantz?

15 MR. KRANTZ: Thank you, Mr. Chairman.

16 Gentlemen, can you provide the Committee  
17 with a copy of the contract from KBL for cable  
18 services, because I'm sure it's a standard contract  
19 for all your 800 members.

20 MR. PUCKA: There's -- I don't know if  
21 there is such a thing. That's what Jake said to  
22 me.

23 Right now, each individual place is  
24 working on an individual contract that they have  
25 with the particular cable company that they deal

1 with, TCI, so on and so forth.

2 MR. KRANTZ: Does not City Council of  
3 Pittsburgh authorize the cable companies, a  
4 franchise within the City limits?

5 ACTING CHAIRMAN LaGROTTA: That's TCI.

6 MR. PUCKA: That question could probably  
7 be answered --

8 REPRESENTATIVE ROBINSON: There's  
9 different companies in the County.

10 MR. KRANTZ: Okay.

11 But how does KBL get into it?

12 ACTING CHAIRMAN LaGROTTA: KBL is one  
13 channel on the cable network.

14 MR. KRANTZ: On TCI?

15 REPRESENTATIVE ROBINSON: They sell TCI.

16 ACTING CHAIRMAN LaGROTTA: A number of  
17 different cable providers, right.

18 MR. KRANTZ: Then there should be a  
19 question as to whether or not being a City that has  
20 franchised TCI, a cable contract, that someone else  
21 can then come in and usurp it or override that.

22 Another question.

23 Has this problem crept up anywhere else in  
24 Pennsylvania and/or the United States?

25 MR. PUCKA: Well, according to KBL, on

1 different radio shows and television shows, it's in  
2 the Dallas area, what, Minnesota?

3 Where have you gone with this (to Mr.  
4 Craig)?

5 MR. CRAIG: Well, it's in our testimony.

6 MR. PUCKA: Okay.

7 MR. KRANTZ: Thank you, gentlemen.

8 ACTING CHAIRMAN LaGROTTA: Thank you,  
9 David.

10 A couple of questions, gentlemen.

11 Back in your initial testimony, Bernie,  
12 you talk about sports programming.

13 Is it your contention as the Chairman of  
14 the Allegheny County Tavern Association that sports  
15 programming doesn't affect business in any way in  
16 not -- I guess in Allegheny County would be your  
17 specific area of expertise.

18 Is that what you're telling us?

19 MR. PUCKA: No, I'm not trying to mislead  
20 anyone. There are bars that derive a profit from  
21 the different sporting events, but they're  
22 primarily your sports bars; the Sports Garden, so  
23 on and so forth, whose primary drawing card is the  
24 sporting event.

25 What I'm saying to you is, the bars in

1 East Liberty, the bars in Lawrenceville, the bars  
2 in Millvale, the bars in Aspinwall, the bars in  
3 Etna, the same people are in that bar whether the  
4 Pirates are playing or whether Cheers is on or  
5 cartoons, you know.

6 It's the same neighborhood people stopping  
7 in on their way home from work that are stopping  
8 for a drink to see their friends for a couple --  
9 now I won't deny it, if the Pirates are in the  
10 bottom of the ninth and it's a tie game and they  
11 have got the bases loaded with nobody out, someone  
12 may have an extra beer to see the end of that game.

13 But by no means did that Pirate game get  
14 them to that bar. And in Allegheny County and in  
15 Southwestern Pennsylvania, in particular, 95  
16 percent of your bars are the small ma and pa  
17 taverns.

18 ACTING CHAIRMAN LaGROTTA: Would you  
19 object, Bernie, as a tavern owner -- I'm assuming  
20 you're a tavern owner?

21 MR. PUCKA: No, we sold it. My family  
22 owned a bar for thirty-seven years.

23 ACTING CHAIRMAN LaGROTTA: Would you  
24 object as the Chairman and as a former tavern owner  
25 if the individual commercial establishments were

1 given the opportunity to choose whether or not they  
2 wanted KBL, or any specific channel in their  
3 establishment?

4 Do you have a problem, or do you have a  
5 specific objection with the charging of a  
6 commercial versus residential rate by cable  
7 companies for Basic Cable service?

8 MR. PUCKA: Initially, I'll be honest with  
9 you, no, I didn't, the reason being that everything  
10 that KBL had showed me in their negotiations gave  
11 them the right to charge a separate and higher  
12 commercial fee.

13 When I started on the other side of this  
14 issue was when I first contacted you.

15 If there is a bona fide contract with the  
16 existing cable companies then, yeah, I do very much  
17 object to a higher commercial fee.

18 ACTING CHAIRMAN LaGROTTA: My question,  
19 though, is if the cable company gave the tavern the  
20 right or the ability, the technology, to say, no, I  
21 don't want this channel, no, I don't want that  
22 channel, but if they chose that channel they would  
23 be charged a commercial rate for that channel as  
24 opposed to the residents who could get that channel  
25 for the residential rate, do you or Mr. Osterman

1 have an objection to that?

2 Right now, that technology does not exist  
3 in most places around here; KBL is Basic Cable and  
4 if you buy Basic, you get KBL.

5 But if the technology existed to say, yes,  
6 I want that; no, I don't want that, gave you, the  
7 tavern or the tavern owner that choice, would you  
8 object to a commercial rate being charged?

9 MR. OSTERMAN: I would, because actually  
10 what it would be doing is using just another method  
11 to accomplish what KBL is doing now.

12 MR. PUCKA: See, the problem I have with  
13 that, with the proposed plan, that per-seat charge  
14 with a minimum fee for the ma and pa taverns,  
15 Representative, there's no choice at that point in  
16 time.

17 I mean if it's an honest choice where it  
18 may be \$5, \$10 a month, something they can afford,  
19 then I'd have to rethink it. But the way things  
20 stand right now, you're talking a minimum \$90 to a  
21 \$100 fee a month per establishment.

22 ACTING CHAIRMAN LaGROTTA: Any other  
23 questions?

24 (No response.)

25 ACTING CHAIRMAN LaGROTTA: Thank you very



1 much.

2 MR. OSTERMAN: Thank you.

3 ACTING CHAIRMAN LaGROTTA: We are one  
4 minute ahead of schedule.

5 Our next witness to testify on behalf of  
6 KBL Sports Network, we have Mr. Brugnone.

7 I also see Mr. Craig here.

8 Is he going to testify?

9 MR. BRUGNONE: Mr. Craig will initiate the  
10 testimony and help me answer any questions.

11 ACTING CHAIRMAN LaGROTTA: Do you want to  
12 come up with him and anyone else you want to bring  
13 with you, that's fine.

14 Please go ahead and introduce yourself and  
15 go right.

16 MR. CRAIG: You folks have copy of our  
17 remarks?

18 ACTING CHAIRMAN LaGROTTA: Yes, I think  
19 so, thank you.

20 MR. CRAIG: "Mr. Chairman and  
21 Representatives, thank you for extending to KBL  
22 the opportunity to appear before you today.

23 My name is Bill Craig and I'm General  
24 Manager of KBL Sports Network, Inc.

25 KBL is a Regional Cable Network that

1. operates out of Pittsburgh and which offers  
2 sports and other programming to cable systems,  
3 bars and restaurants, TVROs and others in a  
4 five-state area.

5 KBL began operating in the late 1980's  
6 when it carried only a small number of games of  
7 the Pittsburgh Pirates and Penguins.

8 KBL began operating as a full service  
9 channel at the beginning of 1990 and, more  
10 recently, began offering programming on a 24  
11 hour a day basis.

12 Two of our primary operating objections  
13 have been and continue to be:

14 and to offer more and better  
15 sports programming to viewers in  
16 metropolitan Pittsburgh and  
17 surrounding areas;

18 and to maintain and support local  
19 professional and collegiate sports  
20 teams.

21 We believe that to date we have been  
22 successful in both of these regards.

23 For example, prior to KBL's commencement  
24 of operations, games of the Pirates and  
25 Penguins were available to the public only

1 over-the-air standard television stations such  
2 as KDKA-TV.

3 At the beginning of its operations in the  
4 late 1980's, KBL carried only approximately 20  
5 Penguin and 25 Pirate games. Since 1990, we  
6 have more than tripled the number of Penguin  
7 and Pirate games we carry, and more than  
8 doubled the amount of fees we pay to the  
9 Pirates and Penguins for the right to carry  
10 these games.

11 Before the end of the current Pirate  
12 season, we will have carried 62 Pirate games,  
13 and for the upcoming Penguin season KBL may,  
14 depending upon the Playoffs, carry up to 78  
15 Penguin games. Let's hope we go that far.

16 Although the media generally focuses on  
17 our carriage of Pirate and Penguin games, we  
18 also carry Pitt basketball, Duquesne and other  
19 Atlantic 10 basketball, and Notre Dame  
20 basketball and football.

21 I would like to stress that we are not  
22 providing these additional games at the expense  
23 of local standard television stations. These  
24 stations continue to carry approximately the  
25 same number of games as they did prior to KBL's

1 entry into the market.

2 We have also greatly expanded the public's  
3 access to games since we serve approximately  
4 2,000,000 subscribers in a five-state area;  
5 subscribers, in business terms, or constituents  
6 and households, in your terms.

7 Indeed, KBL is a great promotional beacon,  
8 promoting on its telecasts the Pittsburgh area  
9 and its teams to residents of many parts of  
10 Pennsylvania as well as Ohio, New York State,  
11 West Virginia and Maryland.

12 Not only have we enabled significantly  
13 more people to view a much larger number of  
14 games, we have provided substantial revenues to  
15 the local teams.

16 On a few years ago, KBL provided less  
17 revenue to the local teams than either local  
18 radio stations or local television stations.

19 We believe that today after ticket sales  
20 and in the case of the Pirates, revenues from  
21 national television contracts, we are the  
22 largest source of revenue for the teams, larger  
23 than local television and radio.

24 These revenues have contributed to the  
25 teams' obvious successes over the past few

1 years and their ability to retain players such  
2 as Mario Lemieux.

3 We strongly believe, especially in a small  
4 market like Pittsburgh, that the survival and  
5 future successes of professional sports teams  
6 will depend to a large degree on the ability of  
7 cable channels like KBL to provide them with  
8 substantial rights fees.

9 We began implementing our commercial sales  
10 program in June of 1992. The primary reasons  
11 for the program are the following:

12 To compensate KBL for its  
13 entertainment programming which is and  
14 will continue to be used in bars and other  
15 establishments to increase revenues by  
16 attracting more customers. Bars presently  
17 pay for other forms of entertainment such  
18 as disc jockeys, jukeboxes, video  
19 machines, and some sort of poker machines  
20 that I gathered from that they pay for,  
21 all of which are designed to draw  
22 customers. I trust they are paying for  
23 those poker machines.

24 To conform our sales of our  
25 programming to the manner in which other

1 sports networks similar to KBL throughout  
2 the country have been selling their  
3 programming. This is not different from  
4 what other people are doing in other parts  
5 of the country.

6 To minimize increases in rates paid by  
7 our advertisers and by the cable systems  
8 carrying KBL, both of which we believe  
9 have contributed their fair share in  
10 support of the local teams. As you know,  
11 increases in rates paid by our advertisers  
12 and cable systems are ultimately passed on  
13 to consumers.

14 To help eliminate theft of our  
15 programming in the marketplace. We  
16 estimate that 10 to 15 percent of all  
17 commercial establishments that show KBL  
18 are doing so on an unauthorized basis.  
19 The ability to separately license  
20 establishments will effectively eliminate  
21 theft of our programming.

22 It is interesting to point out that  
23 this estimate bears out in regards to a  
24 letter written by Mr. Patterson and Ms.  
25 Fisher, both of whom will be testifying

1 this afternoon, which they sent to our  
2 advertisers in opposition to our  
3 commercial program.

4 Specifically, 15 percent of the  
5 establishments that are listed in the  
6 letter as endorsing the views of Mr.  
7 Patterson and Ms. Fisher are subscribing  
8 to KBL only after we threatened legal  
9 action to prevent the further unauthorized  
10 reception of our programming.

11 As with the theft of any product or  
12 service, the persons who lawfully purchase  
13 the product or receive the service must  
14 bear the costs of the theft. Our  
15 licensing programs will eliminate theft  
16 and the need to pass the cost of theft  
17 through to commercial and residential  
18 subscribers, there's a lot of them out  
19 there. We're serving about two million  
20 households. They're paying money on their  
21 cable bills and who legally receive KBL  
22 programming.

23 Since our licensing programs have been  
24 implemented, although we have encountered  
25 opposition from those being represented here

1           today, over 400 commercial establishments in  
2           KBL's territory have signed up and are licensed  
3           to carry KBL. These establishments have  
4           presumably determined that it is in their  
5           interest to carry KBL at the rates we have set.

6           Because there has been some misinformation  
7           circulated in the local media about the  
8           commercial sales program, we would like to set  
9           the record straight on our program.

10           Under the program, commercial  
11           establishments are solicited as to their  
12           interest in carrying or continuing to carry  
13           KBL.

14           If an establishment chooses to carry  
15           KBL programming, it will be licensed by KBL and  
16           pay a licensing fee based on a formula tied to  
17           the number of seats in the establishment having  
18           a view of the establishment's television(s).

19           For each seat or stool at the bar having a  
20           view of a television at an establishment  
21           located in KBL's primary region (which is the  
22           area closest to Pittsburgh), the assessed fee  
23           would be \$3.00 per month. A lot of newspapers  
24           conveniently dropped that per month notion, a  
25           typographical error we're told, or



1 approximately ten cents per day, less than half  
2 of what you pay for the Post-Gazette newspaper.

3 For each other seat having a view of the  
4 television in such establishment, the assessed  
5 fee would be \$1.00 per month or a little over  
6 three cents per day.

7 KBL does not include in its fee  
8 determination the standing room where patrons  
9 may watch the television.

10 We are trying to fit the circumstances on  
11 a case by case basis on the individual needs of  
12 the bar. We are trying to be as responsive as  
13 we can in our structure and not have sort of a  
14 flat rate that if you have got more than one  
15 television set you may -- we're trying to  
16 fashion, we're trying to have a fair fashion  
17 instead of going after somebody's  
18 profitability.

19 It was something that was obvious and  
20 easily accountable, bar stools in a location.

21 The fee applicable to establishments in  
22 areas outside of KBL's primary region would be  
23 less than those described above. For  
24 establishments with eight or fewer seats at the  
25 bar, a flat fee totaling \$25 would be assessed,

1 and that's \$25 per month for the bar, a small  
2 bar, regardless of how many other seats the  
3 establishment may have.

4 When you think of that \$25 and you think  
5 of what a season ticket is to go to a Penguin  
6 game and how many times you go to a Penguin  
7 game and you have to take twenty or thirty  
8 people and set them on that seat in a row,  
9 that's a hell of a price; that's a terrific  
10 price.

11 As an alternative to the above, KBL will  
12 be available to the commercial establishment at  
13 the "a la carte" or per-channel rate determined  
14 by its cable company. The cable company would  
15 in turn pay KBL a fee based on the number of  
16 establishments to which the cable company has  
17 sold KBL and the number of seats in the  
18 establishment.

19 Under either scenario, when the commercial  
20 sales program is fully implemented, KBL will no  
21 longer be available as part of the  
22 establishment's "basic" or "expanded basic"  
23 service package provided by its cable company.  
24 Rather, it will be sold separately and be  
25 available only on an "a la carte" or per

1 channel basis to the establishment at a rate  
2 based on what I just described.

3 With respect to those establishments who  
4 choose to no longer carry KBL under the  
5 commercial sales program, the channel on which  
6 KBL programming is displayed in that  
7 establishment will be physically or  
8 electronically blocked out (trapped).

9 The commercial sales program is also  
10 designed to assist participating establishments  
11 in enhancing their marketing efforts.

12 In an effort to help attract customers to  
13 these establishments and therefore increase  
14 revenues generated by these establishments on  
15 game nights, KBL will provide coasters, banners  
16 and posters, as well as authorized KBL  
17 distributor window labels. KBL will also  
18 support the participating establishments by  
19 providing televised and print promotions.

20 I was struck by a comment here that  
21 somehow you should charge these sports bars for  
22 this and not all the other establishments.  
23 That seems to be kind of unfair, you know, to -  
24 - what's the uniqueness of that sports bar if  
25 they have got competitors, because they are --

1           because they are a bar that wears themselves as  
2           a sports bar?

3           They didn't have to pay the fee and all  
4           the other guys get to offer it for free because  
5           they decide it's not a sports bar. I find that  
6           fairly discriminatory and not appropriate.

7           If this doesn't mean anything to a bar  
8           owner, don't buy it.

9           The commercial sales program will have no  
10          effect on residential subscribers, including  
11          the rates they pay or how they receive KBL  
12          (that is, as part of their cable company's  
13          "basic" or "expanded basic" service).

14          We are not forcing anything on anybody  
15          here, we are not telling people they have to  
16          carry it.

17          You know, this is not like taxes where you  
18          have got to do it, but this is where it's a  
19          voluntary participation in a free enterprise  
20          system offering a service.

21          And I'm sure there are establishments out  
22          there who don't want all those poker machines.  
23          They are not forced to offer those poker  
24          machines, and they are not forced to offer  
25          those video games. They make a commercially

1 separate rate determination that is in their  
2 best interest to do so.

3 Now although I am not a lawyer, I have  
4 been advised by our legal counsel from  
5 Washington, who are knowledgeable in this area,  
6 that there are several legal reasons why the  
7 proposed legislation, or any other attempts to  
8 regulate the rates we would charge commercial  
9 establishments such as bars, is prohibited.

10 Our legal counsel is here today and is  
11 available to answer any questions you  
12 would have. But basically as I understand  
13 it, there are the following problems with  
14 any proposed regulation of KBL's rates. I  
15 think it's worthwhile going through this.

16 First, KBL is a programming service, not a  
17 cable operator like ESPN or like Showtime or  
18 like HBO.

19 As an owner of copyrighted programming,  
20 KBL has complete discretion to establish how  
21 its programming will be distributed and to  
22 decide what rates to charge its distributors.

23 The new cable legislation passed by  
24 Congress last year does not authorize the FCC,  
25 the States or Municipalities to regulate rates

1 that programmers charge their distributors,  
2 including cable operators. Thus, KBL is  
3 completely within its rights in requiring that  
4 its programming be sold to commercial  
5 establishments on an "a la carte" or per  
6 channel basis or any basis we choose.

7 Second, if a cable operator sells KBL's  
8 programming to commercial establishments on a  
9 per channel basis, the new cable law prohibits  
10 any rate regulation of that service.

11 As the FCC recently stated, and I quote,  
12 "programming that cable operators choose to  
13 offer on a per channel or pay-per-view basis is  
14 not subject to rate regulation."

15 Third, although KBL will continue to  
16 permit cable operators to sell the KBL service  
17 to residential customers as part of a basic or  
18 expanded basic package of services (which may  
19 be rate-regulated by municipalities and the  
20 FCC, respectively), there is no requirement in  
21 the law that cable operators offer KBL to all  
22 classes of customers on the same basis.

23 As the FCC stated recently, the new rate  
24 regulation imposed on the cable industry, and  
25 again I quote, "does not prohibit the

1 establishment by cable operators of reasonable  
2 categories of service and customers with  
3 separate rates and terms and conditions of  
4 service within a franchise area."

5 Very plain English, very straightforward,  
6 very understandable.

7 It may not be what people want, but it's  
8 the law. It's the regulation. It's in place,  
9 and it's democracy.

10 There were hearings and whatnot on  
11 theories of that process.

12 As I mentioned, commercial establishments  
13 are a special class of customers. They use  
14 television service not for private viewing but  
15 for the purpose of attracting customers to  
16 their establishments and entertaining them.  
17 Television is no less a form of entertainment  
18 in bars than jukeboxes, live entertainment,  
19 disc jockeys, video games, whatever these poker  
20 games are and the like, all of which are paid  
21 for by bar owners at commercial rates.

22 It's interesting.

23 I don't know if you have ever rented a  
24 video. The first thing -- what's the first  
25 thing you see when you pop that video cassette

1           into your machine? It says FBI. There's a  
2           long, long, threatening sentence that says this  
3           is not to be shown other than in a residence  
4           for private viewing, not in bars.

5           The same holds here.

6           I found it kind of interesting that they  
7           brought up BMI and ASCAP.

8           You can go and buy a phonograph record.  
9           You can play it on a stereo or you can buy a CD  
10          and you can play it on your television set in  
11          the privacy of your own home. If you play that  
12          record in a bar, you have got to pay money.  
13          You have got to pay Michael Jackson, you have  
14          got to pay for all the performers because they  
15          kind of think you're making money out of that  
16          being played next to a can of beer that you can  
17          charge \$4 or \$5 for.

18          As I mentioned, commercial establishments  
19          are a special class of customer. They use  
20          television service not for private viewing but  
21          for the purpose of attracting customers to  
22          their establishment and entertaining them.

23          I don't have a sense that these guys are  
24          in the bar business for just philanthropic  
25          purposes. I have a sense they make money at



1 this.

2 As you will learn later today from other  
3 witnesses, it is standard practice in cities  
4 throughout this country for cable operators and  
5 programmers to charge different rates to  
6 residential subscribers and commercial  
7 subscribers who live in the franchise area.

8 Moreover, I'm also informed that  
9 distinctions between commercial users of  
10 television and private home viewing of  
11 television are numerous in the law, including  
12 copyright law, communications law, and even  
13 criminal law; thus the opening of the videotape  
14 that you rent from the store.

15 Thus if the cable operators of this area  
16 wish to create a separate class of service and  
17 separate rates for commercial establishments,  
18 this would be a reasonable classification under  
19 the FCC's rules consistent with standards  
20 throughout the industry and prevailing public  
21 policy.

22 In fact, we should be applauded for having  
23 the situation carry on for three years, of not  
24 concentrating on it. We have been subsidizing  
25 the bars for the last three years.

1           Finally, regulation of the commercial rate  
2 structure proposed by KBL by State or local  
3 governments has been preempted by Congress.

4           In the 1992 Cable Act, that's very recent.  
5 We're not going way back to the '30's here,  
6 Congress granted the State and local  
7 governments the authority to regulate rates  
8 only in compliance with the FCC guidelines.

9           As stated above, the FCC has declared that  
10 there can be no rate regulation of programming  
11 offered on a per channel basis, and the FCC has  
12 recognized the rights of cable operators to  
13 vary the service and price offerings among  
14 different classes of customers within the same  
15 franchise territory. Any attempts by State or  
16 local officials to regulate cable rates in a  
17 manner inconsistent with these FCC guidelines  
18 would be subject to legal challenge in the  
19 courts.

20           In conclusion, even though KBL's legal  
21 justification for adopting a commercial rate  
22 structure for bars is solid, KBL is not here to  
23 rattle legal sabres or issue threats of  
24 litigation.

25           Frankly, Mr. Chairman, I am somewhat

1           perplexed by all of this controversy.

2           From its very beginning, KBL has attempted  
3           to support local sports teams, sports fans and  
4           TV viewers with our service and to bring more  
5           and better sports coverage to our area for  
6           enjoyment by many. We view our mission as one  
7           of forming partnerships with the sports teams  
8           that we carry, with our advertisers, and with  
9           the fans. These partnerships are of very  
10          critical importance in smaller markets such as  
11          Pittsburgh.

12          If our comment, this area, is to maintain  
13          highly competitive professional sports teams  
14          that can bring home Stanley Cups, Super Bowl  
15          Trophies, Baseball Pennants and other national  
16          titles, we must all, all seek ways to increase  
17          the revenues of our home teams. Otherwise, our  
18          competitive edge will be eroded by the power of  
19          the enormous capital available to sports teams  
20          in larger markets such as New York, L.A., and  
21          Chicago.

22          And generally, Mr. Chairman, we have found  
23          that almost all segments of this community are  
24          more than willing to support this effort.

25          Advertisers are spending millions,

1 television and radio stations are supporting it  
2 with their air time, selling advertising time.

3 Cable operators are supporting it with  
4 dollars and channel capacity capability,  
5 promotional clout.

6 Ticket buyers, fans going to the Arena  
7 buying tickets, season ticket holders, those  
8 people who come up and buy one ticket a season  
9 for the team, local governments are supporting  
10 the teams. Corporations are supporting and  
11 have paid their share.

12 Unfortunately, however, a small group of  
13 vocal bar owners and bartenders, some of whom  
14 don't even own bars, apparently do not want to  
15 do their part.

16 Unlike the bar owners in Detroit, Boston,  
17 Washington, D.C., and many other cities across  
18 the country, and unlike the 400 bars that have  
19 joined KBL's commercial program structure to  
20 date, these owners and bartenders think that  
21 someone else should be responsible for  
22 supporting our teams. They get to look at the  
23 games, they get to associate with the beer and  
24 stuff that they are selling, even when they  
25 realize substantial benefits when our local

1 teams' televised games fill their bar stools  
2 with patrons.

3 That, Mr. Chairman, is really what this  
4 controversy is about.

5 Yes, we feel confident of our legal rights  
6 to implement our commercial rate structure as  
7 we propose and, yes, we are going to do it.

8 If certain bars do not believe our product  
9 is worth the price tag, they are free to drop  
10 the service and provide their patrons with  
11 whatever sporting events are available on basic  
12 or regular TV, like in the old days.

13 Before KBL, you got 20 games of the  
14 Penguins. When KBL came along, we now have  
15 access to 78 games, and the regular television  
16 system wasn't able to support it beyond the 20  
17 Penguin games.

18 We came along with new technology, a new  
19 way of raising money, and the fans get serviced  
20 with many more games.

21 But we believe the product is worth it at  
22 a dime a stool at night, or a dime a game, that  
23 it brings value to the tavern business, and  
24 that the rates we establish are essential to  
25 help us all maintain high quality sports teams

1 in Pittsburgh that can bring home national  
2 titles and make our City proud.

3 With me here today is Mr. David Brugnone  
4 who is the Director of Affiliate Sales at KBL.  
5 David is responsible for overseeing all aspects  
6 of our affiliate relations. David is very  
7 conversant with all of the details of our  
8 commercial rate program, if you'd like to go  
9 into that.

10 He and I are available to answer any  
11 questions. And if you have any legal  
12 questions, we have got support here as well in  
13 that area.

14 ACTING CHAIRMAN LaGROTTA: Thank you, Mr.  
15 Craig.

16 Marty?

17 MR. DURKIN: I'll just defer my questions  
18 for a few minutes.

19 ACTING CHAIRMAN LaGROTTA: Okay. David?

20 MR. KRANTZ: I still have a problem.  
21 I'm from the great Northeast.

22 MR. CRAIG: Northeast of --

23 MR. KRANTZ: Of Pennsylvania.

24 I find it -- I mean we have cable TV, and  
25 I don't know if we have a KBL or an interim.

1 I'm wondering if --

2 MR. CRAIG: Which county are you from?

3 MR. KRANTZ: Lackawanna.

4 If TCI is the cable TV that provides the  
5 franchise by the City Council, then KBL is an added  
6 thing?

7 MR. CRAIG: We are a programming service.  
8 We are like ESPN.

9 MR. KRANTZ: I don't know. I just think  
10 it's something extra that may not even be  
11 necessary; I don't know.

12 I'll offer that for right now. Thank you.

13 ACTING CHAIRMAN LaGROTTA: Bill?

14 REPRESENTATIVE ROBINSON: Yes.

15 Gentlemen, thank you very much for your  
16 prepared testimony and certainly the remarks made  
17 by Mr. Craig were very enlightening to me.

18 I'll just ask a couple quick questions.  
19 This clarification may be useful to some other  
20 members of the Committee and to others who perhaps  
21 don't fully understand exactly what KBL is  
22 attempting to do.

23 Does KBL operate in any areas outside of  
24 Western Pennsylvania under any other corporate name  
25 or in conjunction with any other corporation

1 providing the same kind of service you provide here  
2 in Western Pennsylvania?

3 MR. CRAIG: Not KBL, per se.

4 There are about I would guess thirty to  
5 forty regional sports networks in the country. We  
6 tend to cluster around teams.

7 We are associated, we have a network that  
8 helps us with our service, as do the others, and  
9 it's called Prime Network, a sports channel. So  
10 when we travel around to other cities, KBL, if  
11 you're in New York, would be known as NSG.

12 In Philadelphia, you might notice PRISM.  
13 That's the sports channel in Philadelphia.

14 KBL is one of those things. We have  
15 different names in different parts of the country.

16 REPRESENTATIVE ROBINSON: So then the  
17 answer is no, KBL itself is not in business with  
18 any other corporate entity that provides the same  
19 kind of service?

20 MR. CRAIG: Right, KBL itself is not.

21 Our parent has an ownership in some of  
22 these other region's sports networks.

23 REPRESENTATIVE ROBINSON: And the parent  
24 is?

25 MR. CRAIG: Liberty Media.



1           REPRESENTATIVE ROBINSON: You mentioned  
2 that illegal operations have some impact on KBL  
3 revenue.

4           Do you have an estimate for Allegheny  
5 County or this Western Pennsylvania area as to what  
6 the negative economic impact is on KBL due to the  
7 theft of services?

8           MR. CRAIG: Well, I guess it's like when  
9 you go to Hornes. Everybody who steals a T-shirt  
10 or pair of shoes out of that store, other customers  
11 pay for it. It's a basic principle of commercial  
12 enterprise, that the money has got to come from  
13 somewhere and the governments haven't encouraged  
14 that, but -- historically.

15           And it's when people should pay their fair  
16 share, someone should be able to offer their  
17 services without fear of it being stolen.

18           REPRESENTATIVE ROBINSON: But can you  
19 quantify the economic impact on KBL by the theft of  
20 services; either by tavern owners or individual  
21 citizens?

22           MR. CRAIG: Well, it makes our ability --  
23 David, I think -- are you asking for a specific  
24 number, or --

25           REPRESENTATIVE ROBINSON: Yes.

1 MR. CRAIG: David, maybe you could --

2 MR. BRUGNONE: I don't have a full number  
3 to tell you, but I can say that they are averaging  
4 approximately \$56 a month per establishment.

5 And if you look at the number of  
6 establishments in a given area and use the 10 to 15  
7 percent of theft of KBL's programming, then you  
8 multiply that by \$56 a month. That might give you  
9 an idea of what it is.

10 REPRESENTATIVE ROBINSON: How did you  
11 arrive at the 10 to 15 percent?

12 MR. BRUGNONE: That comes from two areas.

13 One is from our experience via TVRO sales,  
14 which is satellite reception of our programming.  
15 That's the kind of theft percentage we are  
16 experiencing there.

17 Before I came to KBL, I was in Cable  
18 Operations and there is a certain percentage of  
19 residential theft that exists on average and a  
20 certain percentage of commercial theft that exists  
21 on average.

22 The commercial theft tends to run higher  
23 than the residential theft and that's where these  
24 numbers come from.

25 REPRESENTATIVE ROBINSON: The reason I

1 raised that question was not to suggest to you  
2 naivness on my part about people stealing or  
3 pirating cable service; I'm well aware that that  
4 occurs. It's not only unfortunate, it's illegal,  
5 as you mentioned.

6 But there seems to be some implication and  
7 maybe it's because of the heat of the battle, some  
8 implication that KBL's efforts to impose this --

9 MR. CRAIG: I think it might explain why  
10 some of these bar owners are particularly perplexed  
11 here, because they have been able to get it for  
12 free, let alone pay the cable operator or the  
13 satellite.

14 But they have been stealing it off --

15 REPRESENTATIVE ROBINSON: Okay.

16 MR. CRAIG: And we come in and offer them  
17 this rate and they go into cardiac arrest.

18 REPRESENTATIVE ROBINSON: Let's presume  
19 that all tavern owners in Allegheny County say  
20 fine, we'll go along with KBL's plan but -- let's  
21 say one-third says fine, we'll play the game.

22 MR. CRAIG: All right.

23 REPRESENTATIVE ROBINSON: The other  
24 two-thirds, they say no thank you, that's all.  
25 Then they steal the signal because technology is

1 still there. There's still a signal, correct?

2 MR. BRUGNONE: No.

3 What happens is that we will have  
4 identified that they are either an affiliate of the  
5 KBL commercial plan or they're not, okay?

6 What happens is we will walk into a  
7 commercial establishment. We will see KBL on the  
8 television set. We'll say to the owner how are you  
9 receiving our programming, and they will say to us  
10 we are getting it from the cable system, okay.

11 Now the cable system walks into the bar,  
12 sees KBL on the TV and they will ask how are you  
13 getting KBL, you're not a subscriber to the cable  
14 system. They will say I'm getting it from  
15 satellite.

16 And there are situations where they are  
17 not paying either one of us.

18 REPRESENTATIVE ROBINSON: Right.

19 MR. BRUGNONE: Not only will this recover  
20 the lost revenues from these people with  
21 unauthorized use of our programming for KBL, it  
22 will help the cable operators, because that  
23 represents a significant loss of revenue to them  
24 for their whole entire service.

25 REPRESENTATIVE ROBINSON: Okay.

1           Let me just ask a couple other quick  
2 questions.

3           Let the record state I'm opposed to the  
4 pirating of cable signals by commercial  
5 establishments or by individuals.

6           MR. CRAIG: Any legitimate outfit would  
7 be.

8           REPRESENTATIVE ROBINSON: Right, that's  
9 absolutely, positively the wrong way to approach a  
10 business relationship.

11           The proposed timing for these changes from  
12 what you stated, Mr. Craig, you have already begun  
13 to implement your program and you have done so in  
14 part on the advice of legal counsel that you are on  
15 firm ground to proceed.

16           Did I hear you correctly that most of the  
17 persons who you have asked to participate have  
18 participated in the program, if there is a separate  
19 commercial rate and they can be offered the  
20 opportunity to -- they have made a positive  
21 decision to accept the commercial rate?

22           MR. BRUGNONE: I think it's -- your  
23 analogy before of those percentages, two-thirds,  
24 one-third, are pretty accurate.

25           We have experienced a little over 34

1 percent acceptance.

2 REPRESENTATIVE ROBINSON: To date?

3 MR. BRUGNONE: To date, yes.

4 REPRESENTATIVE ROBINSON: Okay, one last  
5 question that relates to the issue of regulations.

6 Mr. Craig gave quite a bit of testimony  
7 relative to FCC regulations and interpretation of  
8 these regulations by your legal counsel.

9 Have these regulations been tested in  
10 court because your legal counsel interprets them in  
11 a favorable fashion to KBL, they must be so  
12 interpreted?

13 MR. CRAIG: Well, the current regulations  
14 are fairly fresh. Absent the regulations before,  
15 there were court cases in the Detroit area where  
16 bar owners said we have a God-given right to get  
17 this like somebody else in their living room and it  
18 stood up.

19 This is -- I mean we are not breaking new  
20 ground here; this is well established.

21 If you want some -- I don't know if you  
22 guys -- do you have anything (to Mr. Griffin)?

23 MR. GRIFFIN: I'm Brett Griffin with Reed,  
24 Smith, Shaw & McClay of Washington, D.C.

25 As Bill indicated, the rates are very new.

1 They have only been in force now about sixty days,  
2 probably, so we haven't really tested them in  
3 court.

4 I will say that even before these  
5 regulations were adopted, from the history of the  
6 regulations of the cable television industry, there  
7 has never been rate regulation on a pay per channel  
8 or pay per view service. That has always been  
9 preempted by the FCC and Congress.

10 REPRESENTATIVE ROBINSON: One last  
11 question. This relates to LCB regulations.

12 As you know, the LCB has some pretty  
13 strict regulations as to what our bars and taverns  
14 can and cannot do.

15 Mr. Craig suggested that KBL is or would  
16 be engaged in some promotional activities with some  
17 taverns.

18 Mr. Craig, has your legal counsel checked  
19 LCB regulations to see if what you are doing or  
20 what you are proposing to do in terms of promotion  
21 is allowable by LCB regulations?

22 MR. CRAIG: Well, if the LCB -- if  
23 anything we are doing is against us -- we will be  
24 willing to abide by the law, you know.

25 My sense is that we want to promote it as

1 best we can within the law.

2 REPRESENTATIVE ROBINSON: Thank you, Mr.  
3 Craig and Mr. Brugnone.

4 And thank you, Mr. Chairman.

5 ACTING CHAIRMAN LaGROTTA: You're welcome,  
6 Representative Robinson.

7 We are running behind a little bit, but I  
8 do have a few questions.

9 I want to start out by saying this is very  
10 enlightening. I now know that people steal cable,  
11 that people play video poker machines illegally,  
12 and you have to pay your taxes in Pennsylvania.

13 MR. CRAIG: Are they illegal?

14 ACTING CHAIRMAN LaGROTTA: What's that?

15 MR. CRAIG: I didn't know they were  
16 illegal, the poker games.

17 ACTING CHAIRMAN LaGROTTA: Well, yes, they  
18 are; they are.

19 I didn't know either until today.

20 MR. CRAIG: I wouldn't have played one  
21 then.

22 ACTING CHAIRMAN LaGROTTA: As long as they  
23 don't pay you; it's illegal.

24 My question is, and this is probably  
25 simplistic, in reading your testimony I note that



1 you specifically point out there is a choice for  
2 commercial establishments who do not choose to  
3 participate in the program, that they will be  
4 filtered.

5 MR. CRAIG: Right.

6 ACTING CHAIRMAN LaGROTTA: So if I own a  
7 tavern and I say I can't afford this, I don't want  
8 this, I don't think it's a commercially viable  
9 option for me, I'm off the hook?

10 MR. CRAIG: That's right.

11 ACTING CHAIRMAN LaGROTTA: No charge?

12 MR. CRAIG: Right.

13 ACTING CHAIRMAN LaGROTTA: So I receive a  
14 basic decrease from TCI?

15 In other words, I remain a basic customer  
16 without KBL. Will I receive any kind of decrease?

17 And anyone from the industry can answer  
18 that.

19 If I choose to have KBL filtered --

20 MR. BRUGNONE: The cable operators must  
21 comply with the same FCC rules that Mr. Craig has  
22 referred to throughout the testimony.

23 In relationship to the cable operator's  
24 ability to categorize different groups of  
25 subscribers, the cable operator would be

1 responsible for compliance with the FCC rules and  
2 would have the ability to categorize and make  
3 different rates for commercial establishments in  
4 effect versus the residential rates.

5 ACTING CHAIRMAN LaGROTTA: But, David, if  
6 they choose not to, if TCI or Armstrong or Joe's  
7 Cable Company chooses not to, you are one channel  
8 on their system. I don't want you. You filter me  
9 out on my box.

10 Do I get a discount or participate in this  
11 arrangement in any way?

12 MR. BRUGNONE: The cable operator will  
13 consider that in establishing his commercial rate.  
14 He may still say that in the commercial  
15 establishment because you have ESPN and TNT and  
16 it's a commercial establishment, I'm going to have  
17 a higher rate than the residential, even without  
18 KBL.

19 It's really something we can't dictate to  
20 the -- we are sort of a wholesaler, we can't  
21 dictate what they carry. They have to abide by the  
22 law.

23 ACTING CHAIRMAN LaGROTTA: Well, will the  
24 provider, and I'm talking about the Company, the  
25 hookup company, will they be able -- at some point

1 will they be able, legally able, and maybe your  
2 attorney could best answer this, to say, well, you  
3 have got KBL and we provide it so we are going to  
4 charge you an extra fee?

5 If I'm participating in your program, will  
6 that be the extent of my commercial obligation  
7 financially to buy KBL, dealing directly with you  
8 now as opposed -- would TCI or Armstrong be able to  
9 come in and say we are going to charge you a  
10 commercial rate, and I'm going to say I'm already  
11 paying KBL and they are going to say, well, KBL  
12 isn't Armstrong and you're going to pay us.

13 I mean do you see any potential legal  
14 hassle in operating as a solo in this mix?

15 MR. BRUGNONE: Well, I think as KBL being  
16 solo on an ala carte basis, our rates would be the  
17 separate over here. The cable operator would be  
18 establishing a commercial rate, if they chose to do  
19 so.

20 Very few cable operators now are charging  
21 a commercial rate.

22 ACTING CHAIRMAN LaGROTTA: Will -- on a  
23 commercial rate, though, will they be including you  
24 as part of their commercial fee?

25 MR. BRUGNONE: We are going to be

1 unbundled.

2 ACTING CHAIRMAN LaGROTTA: Okay.

3 MR. BRUGNONE: We are going on an ala  
4 carte separate service.

5 ACTING CHAIRMAN LaGROTTA: So in other  
6 words pay per view for commercial establishments?

7 MR. BRUGNONE: Yes.

8 ACTING CHAIRMAN LaGROTTA: This will be a  
9 premium channel, not for residents --

10 MR. GRIFFIN: Pay per month.

11 ACTING CHAIRMAN LaGROTTA: Pay per month,  
12 not for residences, though, just for commercial  
13 establishments.

14 And that takes me to my next question.

15 Identify for me what you mean by  
16 commercial establishments.

17 MR. CRAIG: Well, it's a judgment call.

18 You know, someone rattled off hospitals  
19 here this morning.

20 ACTING CHAIRMAN LaGROTTA: If you listen  
21 to Hillary Clinton, they are pretty commercial.

22 MR. CRAIG: That's what I was going to  
23 say. I would be interested to -- these are all  
24 judgment calls.

25 ACTING CHAIRMAN LaGROTTA: I notice your

1 eyes got real wide when you heard hospitals.

2 MR. BRUGNONE: Well, yes, hospitals are  
3 treated as on a residential basis. We have  
4 traditionally done that.

5 Cable operators who contract our service  
6 do it that way.

7 ACTING CHAIRMAN LaGROTTA: How about  
8 barber shops?

9 I mean in other words are we specifically  
10 saying taverns and restaurants? What about hotels  
11 that put on their marquis we have KBL?

12 MR. CRAIG: Well, a bar quacks and walks  
13 like a bar, you know. I mean it's pretty clear  
14 it's a commercial establishment because it's  
15 licensed.

16 ACTING CHAIRMAN LaGROTTA: I understand.

17 MR. CRAIG: The gray areas are tough, and  
18 I don't want to -- you know.

19 ACTING CHAIRMAN LaGROTTA: I mean I  
20 explained to you in private conversation that I  
21 select a hotel in Harrisburg when we are in session  
22 specifically because I can watch Penguin games on  
23 KBL, and they promote that.

24 MR. BRUGNONE: Right, in your room.

25 We are not talking about the service in

1 your room.

2 ACTING CHAIRMAN LaGROTTA: How about the  
3 hotel operator?

4 MR. BRUGNONE: We are just talking about  
5 the bar area.

6 ACTING CHAIRMAN LaGROTTA: Not the hotel?

7 MR. BRUGNONE: No, no. The rooms -- not  
8 the rooms in the hotel, just the bar area. The  
9 rooms in the hotel are considered under our  
10 resident formulas.

11 ACTING CHAIRMAN LaGROTTA: Would you  
12 foresee -- and maybe counsel could answer this --  
13 I don't mean to forecast future legal battles, but  
14 could not a tavern which is subject to this  
15 commercial rate say, well, Joe's Hotel is promoting  
16 KBL to get guests into his hotel, he should be -- I  
17 mean we are being discriminated against.

18 Do you see that, counsel, as a potential  
19 problem?

20 MR. GRIFFIN: Well, I think that Joe's  
21 Hotel is certainly paying a hotel rate. That's  
22 certainly much more than an individual resident's  
23 rate.

24 Now there are --

25 ACTING CHAIRMAN LaGROTTA: But does KBL

1 benefit from that?

2 MR. GRIFFIN: Well, KBL is sold on that  
3 basis, on that bulk rate basis.

4 ACTING CHAIRMAN LaGROTTA: I'm saying a  
5 cable provider in Harrisburg, Samons (phonetic)  
6 Communications, may be charging my hotel a  
7 different rate than David Krantz who has a  
8 residence in Harrisburg.

9 MR. CRAIG: Yes.

10 ACTING CHAIRMAN LaGROTTA: But KBL doesn't  
11 gain any additional revenue from Samons because of  
12 the hotel hookup, do they?

13 MR. CRAIG: Not directly at the moment,  
14 but when a cable operator makes a decision to  
15 purchase KBL, he determines its value to him and  
16 then it's up to him or her to then exploit that to  
17 the best of their ability, to get as much money as  
18 they can out of the marketplace.

19 It's not -- negotiations are on the basis  
20 of our value; how much they're willing to come on  
21 board.

22 MR. BRUGNONE: And specifically, though,  
23 to answer your question, you know, a residential  
24 subscriber contributes a fee for having KBL.

25 Hotel rooms and motel rooms being serviced

1 with KBL may be serviced under a fewer hundred  
2 percent penetration residential type rate or a bulk  
3 rate.

4 So that has a different category and we  
5 derive a benefit, but not necessarily an  
6 incremental benefit.

7 ACTING CHAIRMAN LaGROTTA: I understand  
8 that. I'm just curious as to the fact that there  
9 is no -- I mean there's no FCC delineation that  
10 defines what is and what is not commercial. It's a  
11 judgment call on your part, and that's something we  
12 are going --

13 MR. GRIFFIN: If I may --

14 ACTING CHAIRMAN LaGROTTA: Counsel?

15 MR. GRIFFIN: To date, I don't think  
16 there's been any --

17 ACTING CHAIRMAN LaGROTTA: Any definition  
18 of commercial in the statute?

19 MR. GRIFFIN: No, no.

20 ACTING CHAIRMAN LaGROTTA: Nothing about  
21 deriving profit --

22 MR. GRIFFIN: No.

23 ACTING CHAIRMAN LaGROTTA: Okay, last  
24 question.

25 You will provide tavern owners with a



1 choice. They have the opportunity to filter out.

2 When do you plan to initiate giving them a  
3 choice? When will this technology and filtering be  
4 available to all the taverns in Allegheny -- I'm  
5 assuming you're going to go beyond just the County  
6 line?

7 MR. BRUGNONE: Well, we have begun that.  
8 This program has been going on since June of last  
9 year.

10 ACTING CHAIRMAN LaGROTTA: But is the  
11 technology in place as we speak to filter?

12 MR. BRUGNONE: Yes, the technology -- if  
13 somebody declines in having KBL, the technology is  
14 available. It's a trap that filters out that one  
15 channel frequency that KBL is located on.

16 ACTING CHAIRMAN LaGROTTA: So if I don't  
17 pay you my monthly fee for September, you will come  
18 in and trap me?

19 MR. BRUGNONE: The technical capacity is  
20 there.

21 ACTING CHAIRMAN LaGROTTA: And the monthly  
22 cable bill I pay to TCI will reflect, or I should  
23 contact them to reflect the loss of one channel  
24 from my Basic Service?

25 MR. CRAIG: It will be part of the

1 consideration of the all over rate that you are  
2 charged as a commercial establishment.

3 ACTING CHAIRMAN LaGROTTA: Martin?

4 MR. DURKIN: Thank you, Mr. Chairman.

5 I just want to clear up some inferences  
6 that were made as to the fact that this legislation  
7 may be prohibited legally. Maybe I'm confused and  
8 could quite be the possibility, but I just want to  
9 go through some of your testimony which I made some  
10 notes on.

11 On page 7, the first part is -- you note  
12 that KBL is a programming service, which the  
13 Chairman was just discussing with you, in essence,  
14 and not a cable operator.

15 And then you go on to talk about the fact  
16 that KBL has complete discretion to establish its  
17 programming, how it will be distributed, and what  
18 rates will be charged to the distributor.

19 Now the distributor is TCI, is it not?

20 MR. CRAIG: One of many.

21 MR. DURKIN: Okay.

22 And then you go on to state that the new  
23 cable legislation passed by Congress last year does  
24 not authorize the FCC, the states or municipalities  
25 to regulate rates that programmers charge their

1 distributors, including cable operators.

2 That's TCI?

3 MR. CRAIG: TCI is just one of many cable  
4 operators out there.

5 MR. DURKIN: Okay.

6 Thus, KBL is completely within its rights  
7 in requiring that its programming be sold to  
8 commercial establishments on an ala carte or per  
9 channel basis.

10 Now the per channel basis, I can agree  
11 with this, which I'm understanding is pay per view;  
12 is that what that is?

13 MR. CRAIG: Well, pay per month.

14 MR. DURKIN: Pay per month.

15 MR. CRAIG: The ala carte is sort of like  
16 a restaurant menu. It's paid per month, ala carte.

17 MR. DURKIN: But this does not go to pay  
18 per view, what this legislation goes to is if  
19 somebody is paying a rate to a distributor, which  
20 the distributor is paying you to carry KBL's signal  
21 that you're getting paid for, to give them the  
22 signal, this goes to you, including extra money to  
23 that individual subscriber which to me, there's an  
24 inference there that that would be illegal. I  
25 don't see that under the current law.

1 MR. GRIFFIN: I can speak to that.

2 I think what the law provides is, first of  
3 all, KBL may direct its cable operator affiliate  
4 that if you sell our programming in commercial  
5 establishments, you must sell it on an ala carte  
6 basis or a per channel basis.

7 And KBL and the cable operator will  
8 negotiate the monthly rate that is due KBL for that  
9 commercial establishment.

10 The cable operator then if he chooses to  
11 carry KBL's program on that basis, will set his own  
12 rate with the commercial establishment and whatever  
13 that retail rate would be, and pay KBL the  
14 negotiated portion.

15 If that's the case, if that's done, then  
16 that becomes a per channel or ala carte service  
17 offered by the cable operator, and it's not subject  
18 to rate rigging.

19 MR. DURKIN: It's not subject to rate  
20 regulation in the fact we cannot tell the  
21 distributor, Samons or TCI that they can -- what  
22 they can charge. It's not subject to rate  
23 regulations that the State can tell you that you  
24 can't charge extra money beyond what you're getting  
25 paid by the cable operator by the distributor?

1 MR. CRAIG: Now I'm getting confused.

2 MR. DURKIN: I just wanted to clear that  
3 up. That's why it's a little confusing to me. And  
4 I haven't done the research. Obviously, you folks  
5 have.

6 But to me, the way it works KBL is a  
7 programming service which gets paid by the cable  
8 operator, which is Samons or TCI, for carrying the  
9 signal which then TCI gets paid by each individual  
10 subscriber in the home, okay?

11 And this all reflects in what we are  
12 talking about on a per channel or ala carte, or  
13 whatever.

14 Now the rate regulations the FCC has set  
15 up, as I understand it, the State cannot tell  
16 people, cannot tell the cable operator what they  
17 can charge. They set a fee for Basic, Expanded  
18 Basic, et cetera, but that regulation by the  
19 Federal Government does not go to what the State  
20 can tell your service, a programming service, what  
21 they can charge in addition to what they are  
22 already getting through the established system.

23 You're kind of going outside of the  
24 system. You're not -- not only are you getting it  
25 through the established system from TCI which gets

1 it from the subscriber, you're also now charging  
2 extra by directing, going to the subscriber, which  
3 to me I don't understand -- that relationship from  
4 the programming service to the subscriber is not  
5 covered by regulations. That's my question.  
6 That's what --

7 MR. CRAIG: Just like MGM is regulated  
8 when they sell their movies. You know, MGM can  
9 sell their movies for as much as they want to  
10 whomever they want.

11 This is America, you know. In America, if  
12 you an idea or you have a concept, you should be  
13 able to sell it as long as you're not hurting  
14 anybody economically.

15 MR. DURKIN: Maybe I'm not making myself  
16 clear.

17 We are not -- this regulation does not  
18 prohibit you from saying that you can charge TCI or  
19 Samons to cover. What it's saying is you can't  
20 charge in addition, okay, to the subscriber who is  
21 already paying the cable operator.

22 MR. CRAIG: That's correct.

23 MR. DURKIN: See, there's this inference  
24 that this is illegal through regulation, and I  
25 don't see that. That's what I'm trying to get at.

1 MR. GRIFFIN: It seems to me that you're  
2 referring to a situation where a commercial  
3 establishment is paying for KBL to this person and  
4 KBL to that person. And I don't think that's part  
5 of the program.

6 MR. DURKIN: No.

7 I'm saying that KBL is providing a service  
8 to KBL and Samons and getting paid for that service  
9 and then TCI gets its money and it's paid by the  
10 subscriber. That's -- okay.

11 ACTING CHAIRMAN LaGROTTA: Identify  
12 yourself.

13 MR. FOSS: I'm Dan Foss from Reed, Smith,  
14 Shaw and McClay in Philadelphia.

15 To the extent that a commercial  
16 establishment is licensed directly by KBL, there  
17 can be no charge from the cable operator to that  
18 subscriber to that commercial establishment for  
19 KBL. That establishment will still pay TCI or  
20 Samons a rate for its other services.

21 MR. DURKIN: But that's a separate  
22 situation here.

23 What we are talking about here is you  
24 operate under two circumstances, as I understand  
25 it. Either you're giving -- you're kind of a

1 conduit and there's a relationship directly between  
2 a subscriber and yourself or you're going through a  
3 conduit that goes through Samons or TCI and down to  
4 the subscriber.

5 What this legislation applies to is where  
6 you're going through the conduit from yourself  
7 through the cable operator, TCI and Samons, down to  
8 the subscriber. It doesn't address where you go  
9 directly to the subscriber.

10 MR. CRAIG: All right.

11 MR. DURKIN: So there's an inference that  
12 if you take this legislation and you follow the  
13 conduit that this legislation is applied to, that  
14 you're going through the cable operator, TCI or  
15 Samons, and then down to the subscriber and then  
16 you're also additionally going directly from --  
17 you're also additionally going -- using that  
18 conduit and then also applying for extra money  
19 directly to the subscriber that this legislation is  
20 prohibited by the FCC.

21 That's what I'm getting at, that specific  
22 relationship, and --

23 MR. CRAIG: Dan?

24 MR. FOSS: I'm really having trouble  
25 following the question.



1           ACTING CHAIRMAN LaGROTTA: I think -- you  
2 know what, gentlemen, I think that Marty's  
3 confusion might be cleared up.

4           If I understand that, commercial  
5 establishments' Basic cable fee would no longer  
6 reflect any charge for any to KBL, which is why I  
7 asked in my question will my Basic cable bill be  
8 reduced if I become a subscriber to KBL.

9           MR. CRAIG: Well, if you don't, -- if you  
10 are not a subscriber to KBL?

11          ACTING CHAIRMAN LaGROTTA: No, no.

12          If I subscribe to your commercial program,  
13 I'm paying directly for your service, not part  
14 Basic.

15          Will my Basic rate reflect that?

16          MR. CRAIG: To answer that, it will  
17 reflect it but what could happen, though, and this  
18 is not our call because we don't control the rates  
19 to the other programming, is other program  
20 suppliers can say and the cable operator can choose  
21 to still have a commercial rate absent KBL that  
22 will be higher than the residential rate because  
23 they view the rest of it as having some commercial  
24 value to it.

25          I don't want to say, well, if the Basic

1 cable rate is \$20 will they subtract a buck and  
2 they will only be charged \$19 for it. I don't know  
3 what -- the cable operator has to choose what they  
4 want to charge the commercial establishment for  
5 what you might view as being the \$19 amount that's  
6 made available to residential.

7 ACTING CHAIRMAN LaGROTTA: I understand.

8 Let me just say, gentlemen, that we have  
9 to move on because we have other people to testify.

10 For the record, TCI representatives, Tom  
11 Cast, Armstrong Utilities and several other cable  
12 providers were asked and invited to participate  
13 here today and we did not have any acceptors from  
14 that group of people, so we want to make it clear  
15 to the people that are here that we wanted them to  
16 be a part of this proceeding.

17 Thank you, gentlemen.

18 Hal Lescourt, are you here?

19 (No response.)

20 ACTING CHAIRMAN LaGROTTA: If you're not  
21 here -- going once, going twice (no response).

22 Chris Hayes.

23 Chris Hayes represents the Home Team  
24 Sports Network in Washington, D.C.

25 Mr. Hayes, I want to remind you from this

1 point on in the hearing witnesses will be given  
2 fifteen minutes for testimony and questions, so  
3 keep that in mind as you begin.

4 MR. HAYES: Mr. Chairman, Representatives,  
5 my name is Chris Hayes. I work at Home Team Sports  
6 in Washington, D.C., Baltimore Metropolitan Area.

7 I have worked in the commercial sales of  
8 Home Team Sports on and off for the past six years  
9 or so.

10 Home Team Sports is a seasonal sports  
11 programming network that covers the pro sports  
12 teams; the Baltimore Orioles Baseball Club, the  
13 Washington Capitols of the National Hockey League,  
14 and the Washington Bullets of the National  
15 Basketball Association.

16 Pro Team Sports also covers regional  
17 college basketball and football teams of the  
18 Atlantic 10, the Mid-East, the ACC, as well as  
19 other local teams, smaller conference teams, et  
20 cetera. It also covers golf, tennis, and other  
21 professional sports.

22 HTF started off ten years ago as a premium  
23 service to both the residential and the commercial  
24 marketplace. The reason they started as a premium  
25 service to the residential marketplace is they

1 needed to get carriage on the local cable system.

2 The only way to get cable at that time was  
3 to promise the cable operator that you were going  
4 to be supplying them with a new cash flow.

5 At the time I was working -- when I first  
6 started working at a cable TV outfit in Virginia,  
7 we had 36 channels. So with 36 channels and a  
8 hundred programmers or so out there fighting for  
9 channel space, you had to come up with a way to  
10 provide them money from the beginning to get  
11 carriage. Therefore, the difference between being  
12 a premium service and being a basic service.

13 A basic service is paid for by the cable  
14 system as opposed to them collecting fees.

15 In the last two years, Home Team Sports  
16 has converted to a basic cable service. They are  
17 not a hundred percent basic, but they are moving in  
18 that direction. I would say about 8 percent of the  
19 cable systems now carry HTS as a basic service;  
20 however, it is still carried as a premium service  
21 to all commercial establishments.

22 That's part of the contract they have  
23 written with all cable operators. It's standard of  
24 their material.

25 A point that you mentioned, Home Teams

1 Sports -- a point that came up earlier, you talked  
2 about hospitals, et cetera.

3 Well, I know HTS does provide service to  
4 some nursing homes, select institutions, and they  
5 do that free of charge. It's something that they  
6 do as goodwill to the community.

7 The differentiation between commercial and  
8 residential service is standard throughout the  
9 industry.

10 I have had dealings in the past in  
11 Detroit. I had dealings with a sports channel in  
12 New York. Just all the different cable, regional  
13 sports networks that I have dealings with do charge  
14 a commercial rate for their service to commercial  
15 establishments, regardless of whether or not it's a  
16 basic or premium service to the residential market.

17 I did a national study some years ago of  
18 various cable systems and this is the point that  
19 was brought up, whether or not cable systems charge  
20 a commercial rate for the basic service to bars.

21 My conclusion is that in fact, yes, they  
22 do charge a commercial rate. Not all do, but  
23 through my study, about 70 percent of the cable  
24 systems across the country do charge a higher rate  
25 for a commercial establishment than they do for

1 residents.

2 In one instance, in Houston, Texas, the  
3 basic residential rate was \$22.80 for a commercial  
4 establishment. It's \$130.25, a difference of  
5 \$107.45 per month. That's an extreme case.

6 In other situations it may be a \$10 or \$15  
7 increase. On average, those systems that charge a  
8 commercial rate charge an average of about \$25 per  
9 month for the service.

10 I first started working with Howser  
11 Communications which is a multi-system operator  
12 like TCI but on a much smaller scale. They own two  
13 systems in the Washington, D.C. area and Arlington  
14 County, Virginia and Montgomery County, Maryland.

15 I have worked with both the direct sales  
16 operation and marketing department and in 1988, I  
17 became involved in the commercial sales, at which  
18 time -- well, when I first started there in '85, I  
19 realized that there was a premium rate for  
20 commercial establishments.

21 In '88, I became involved in commercial  
22 sales and was aware of the fact that, yes, there is  
23 a rate charge that's charged for Home Team Sports.

24 We average approximately \$70, \$80 per  
25 month per establishment.

1           The way it currently works, each cable  
2 system provides HTS with a listing of  
3 establishments that they service with the estimated  
4 viewing area that they have rated this particular  
5 bar or restaurant.

6           The way that works is HTS has a rate card  
7 that's part of their contract where the bars  
8 between 1 and 50 viewing area and increments of 50  
9 going up, they have a particular rate that they  
10 charge to the cable operator.

11           The cable operator is then allowed to  
12 charge whatever fee that they care to charge.

13           In most instances they work it out to be  
14 about a 50/50 split. In other words, they double  
15 the rate. But HTS, frankly, does not care what the  
16 cable operator charges as long as the cable  
17 operator pays HTS the rate card that's set in  
18 place.

19           I started working as a Regional Sales  
20 Manager for Satellite Sports Network in March of  
21 1991. We represent most of the regional sports  
22 networks around the country.

23           I guess the only one that I can think of  
24 off the top of my head is the Video Sports Channel  
25 from Minneapolis, and that's not -- they are the

1 only one that I can think of who's not under our  
2 jurisdiction and, in fact, they do charge a premium  
3 rate to their commercial subscribers as well.

4 I gave out a list of different channels  
5 that are part of the SSN package, both the sports  
6 channel and prime network sports.

7 The sales force is set up pretty much  
8 under the Cable Communications Policy Act of 1984  
9 when scrambling came in place and differentiation  
10 between commercial and residential service, and it  
11 also dealt with theft of service.

12 SSN is a nationwide company that has a  
13 residence and a commercial rate card.

14 The residence rate card is \$120 per year,  
15 \$10 a month. The minimum for a commercial  
16 establishment is \$900, which is \$75 per month, and  
17 the rate card works up from there and that's for a  
18 small establishment with a viewing area of 50 or  
19 less.

20 In my job, there's basically two functions  
21 that I take on and that's to sign Commercial  
22 Licensing Agreements, the first one. And a lot of  
23 the bars when you go to them, they have residential  
24 subscriptions which they had for years and years  
25 and they'll continue to have them unless you stop



1 by and say hello to them.

2 The second part of my job is to insure  
3 that those who don't want to pay the fee, the  
4 commercial fee, that they don't display the  
5 programming. And it's easy for them if they don't  
6 want a program and they just turn it off.

7 And we do have monitoring programs in  
8 place where if they try and program it, we make  
9 sure that they don't go ahead and display the  
10 programming.

11 The programming rights that were talked  
12 about before, and here's just a quick look, sports  
13 channel programming is intended for the private use  
14 of its audience, and a commercial establishment is  
15 designated as a public viewing subscriber.

16 Public viewing/commercial display is not  
17 permitted without an express written consent of  
18 Satellite Sports Network and requires a commercial  
19 viewing license.

20 The use of a residence subscription in a  
21 commercial establishment is a violation of Section  
22 705 of the Cable Communications Policy Act of 1984  
23 which includes but is not limited to commercial use  
24 of a satellite signal with a residence  
25 subscription.

1           That's how we go about protecting our  
2 rights on the commercial end of the business.

3           We have in many instances taken legal  
4 action against various commercial establishments.

5           I know that I have had several in Maryland  
6 and in Indiana. All of mine to date have settled  
7 out of court.

8           We have filed against a couple, but when  
9 the filing was done they quickly came to a  
10 resolution.

11           I know that in New York State and in  
12 Florida, a couple bars were willing to go ahead and  
13 test the water and SSN sent in one judgment in  
14 excess of \$100,000 in all instances.

15           In closing, just the whole industry has  
16 changed over the years and I grew up in the late  
17 '60's and early '70's.

18           I'm a Washington Senators baseball fan.  
19 Unfortunately, the Senators left town when I was  
20 twelve years old.

21           At that time, I don't know how many games  
22 were on TV, but I can remember growing up listening  
23 to them on the radio.

24           But now the Regional Sports Network  
25 provides a very important source of revenue to the

1 sports teams that are in town, and I think it is  
2 key that KBL play a big role in keeping the Pirates  
3 and the Penguins in the area because frankly, you  
4 know, being a baseball fan, you know, we'd love to  
5 have the Pirates down there.

6 And I think it's important that support is  
7 made on all levels to keep the teams here in town.

8 ACTING CHAIRMAN LaGROTTA: Thank you,  
9 Chris.

10 A couple questions.

11 Your commercial fee that is charged to  
12 residential -- or commercial customers, your signal  
13 is provided via the local cable operator, correct?

14 MR. HAYES: The signal is provided via  
15 satellite reception. It is also --

16 ACTING CHAIRMAN LaGROTTA: Available to  
17 commercial customers without satellites?

18 MR. HAYES: Right.

19 ACTING CHAIRMAN LaGROTTA: Now who  
20 collects the commercial fee?

21 MR. HAYES: The commercial fee is  
22 collected by the cable operator, be it TCI, Howser.

23 ACTING CHAIRMAN LaGROTTA: Describe for me  
24 the difference then on what you perceive the  
25 difference is and what you do and what KBL is

1 attempting to do as an independent operator  
2 collecting a fee separate from their basic cable  
3 bill.

4 MR. HAYES: In effect, it's the same  
5 thing.

6 It's a rate kind of setup. It just  
7 depends on who is going to collect the fees.

8 HTS has put in place a program where they  
9 charge the cable operator because the cable  
10 operators have commercial groups, a commercial  
11 department within their system that deals strictly  
12 with commercial establishments.

13 ACTING CHAIRMAN LaGROTTA: So if I'm a  
14 30-seat establish in your viewing area, I'm a  
15 tavern and I have your service, my bill is \$75 a  
16 month just for you?

17 MR. HAYES: That -- I can't tell you what  
18 your rate is.

19 ACTING CHAIRMAN LaGROTTA: Well, I'm 1 to  
20 50 feet.

21 MR. HAYES: You are receiving via  
22 satellite --

23 ACTING CHAIRMAN LaGROTTA: No, no, not  
24 satellite.

25 MR. HAYES: If you're receiving it through

1 the cable, I can't say.

2 HTS has a rate card they charge the cable  
3 operator. The cable operator is then --

4 ACTING CHAIRMAN LaGROTTA: What do you  
5 charge the rate card -- what's your rate card for  
6 the cable operator in my instance?

7 MR. HAYES: I really can't -- I mean  
8 that's -- I can't go into that.

9 ACTING CHAIRMAN LaGROTTA: You say that  
10 you insure that those who don't pay don't play.

11 How do you do that; what technology do you  
12 use?

13 If I'm a commercial operator and --

14 MR. HAYES: Well, we monitor; we trap. We  
15 just trap out the signal. There are little  
16 cylinders that trap.

17 ACTING CHAIRMAN LaGROTTA: But you're not  
18 basic cable, are you?

19 MR. HAYES: It is basic cable --

20 ACTING CHAIRMAN LaGROTTA: On residences?

21 MR. HAYES: You're right.

22 And the wording of the contract is basic  
23 cable for the residential market. It is a premium  
24 service to the commercial marketplace.

25 ACTING CHAIRMAN LaGROTTA: Do you know,

1 Chris, of any other cable programmer -- and I think  
2 that's what we should call the provider who is the  
3 cable company, and we will refer to KBL as the  
4 programmer -- that charges an additional fee by  
5 circumventing?

6 And I don't mean that in a negative sense,  
7 but by going around the cable company?

8 MR. HAYES: I don't -- well, I can't speak  
9 to that. But I don't think they are going around  
10 the cable company.

11 ACTING CHAIRMAN LaGROTTA: No, no.

12 Do you understand what I mean?

13 In your instance, the cable company  
14 collects your commercial fee.

15 MR. HAYES: Right.

16 ACTING CHAIRMAN LaGROTTA: In this  
17 instance, KBL will collect its own fee independent  
18 of the cable provider.

19 MR. HAYES: Right.

20 ACTING CHAIRMAN LaGROTTA: Do you know of  
21 any other sports programming networks or  
22 entertainment programming network that does that?

23 MR. HAYES: No, I don't know of any. I  
24 don't know of all -- you know, a lot of them  
25 charge. I don't know if any of them do it inhouse

1 or if they all do it through the cable operators;  
2 I'm not sure.

3 ACTING CHAIRMAN LaGROTTA: Who determines  
4 what a commercial establishment is for HTS?

5 MR. HAYES: We just -- I guess they may  
6 have guidelines set up or whatever. I deal  
7 strictly with restaurants, taverns.

8 There's some gray areas now and then that  
9 we may work out as special instances, give them  
10 maybe half rate card or something like that if it's  
11 not part of their business or whatever, if it's --

12 ACTING CHAIRMAN LaGROTTA: Who makes the  
13 legal determination?

14 MR. HAYES: If it's like a sporting goods  
15 store or something that wants service and, you  
16 know, people aren't going to sit around there and  
17 buy a pair of pants every half hour to watch the  
18 game, so we just kind of give them a half rate  
19 card.

20 ACTING CHAIRMAN LaGROTTA: How about a --  
21 let's say on an ice cream stand or Dairy Queen that  
22 has a television in its eating area.

23 MR. HAYES: It depends on how -- it  
24 depends. I mean I have never gone to a Dairy Queen  
25 and saw --

1           ACTING CHAIRMAN LaGROTTA: I mean in your  
2 opinion as a participant in this industry for a  
3 number of years, and I suspect I should have asked  
4 representatives of KBL this, too, what I'm hearing  
5 is that this is an alcohol intensive business that  
6 if you serve alcohol then you benefit from sports  
7 programming.

8           In other words, if I --

9           MR. HAYES: No.

10           I mean I have got establishments that  
11 don't serve alcohol. I mean there are underage  
12 clubs and the like that don't serve alcoholic  
13 beverages but do display the programming. It's not  
14 tied hand in hand to the alcohol.

15           But I mean bars and taverns and  
16 restaurants, they serve alcohol to make money, you  
17 know, and they also display TV to bring in people,  
18 too, so --

19           ACTING CHAIRMAN LaGROTTA: What I'm  
20 suggesting to you, though, and I'm not sure I'm --  
21 but understand my question.

22           Joe's Bar serves alcohol and hamburgers  
23 and he pays your commercial rate.

24           Joe's Fish House serves fish sandwiches  
25 and Coca Cola and he doesn't.



1 Do you expect that Joe's Bar might take  
2 legal action against you for discrimination simply  
3 because he serves beer with his fish and Joe's Fish  
4 Sandwiches are served with Coke?

5 I mean do you see where I'm leading?

6 I started with KBL and what I'm trying to  
7 ascertain here is who decides who pays?

8 It seems to me like -- the way you're  
9 describing your service is your Company says you  
10 pay, you don't, you pay, you don't. It's kind of -  
11 -

12 MR. HAYES: It's not arbitrary like that,  
13 you know.

14 Like I mentioned, if it's a clothing  
15 store, we will cut them a break because that's not  
16 a major part of their business. They don't really  
17 have a seating area, you know.

18 By KBL terms, they have no bar stools.

19 ACTING CHAIRMAN LaGROTTA: How about  
20 barber shops and beauty salons?

21 MR. HAYES: I really don't have any that I  
22 have dealt with.

23 There are a few barber shops that play,  
24 but the barber shop would pay a commercial rate.

25 We do have a rate card set up for

1 establishments of that type.

2 ACTING CHAIRMAN LaGROTTA: Okay.

3 Let me just for the record recognize the  
4 presence of my colleague Frank Dermody who  
5 represents Allegheny County, part of Allegheny  
6 County. He's a member of the Judiciary Committee.

7 Question, David?

8 MR. KRANTZ: No questions.

9 ACTING CHAIRMAN LaGROTTA: Marty?

10 MR. DURKIN: No.

11 ACTING CHAIRMAN LaGROTTA: Okay.

12 Thank you very much, Chris.

13 Next is Harry Patterson, Jr.

14 Do you own a tavern in Allegheny County?

15 MR. PATTERSON: No, I'm just a humble  
16 bartender, but I was one of the first --

17 ACTING CHAIRMAN LaGROTTA: Let me just ask  
18 you to kind of stick to the fifteen minute rule so  
19 that we can --

20 MR. PATTERSON: Absolutely.

21 Okay, I'm not an owner but I was one of  
22 the first ones to start raising hell about this, so  
23 I sort of became a lightning rod with people  
24 getting in contact with me.

25 We are a small but vocal group that began

1 with an ad hoc grouping of ten or fifteen  
2 establishments that over the past few weeks  
3 ballooned up to around 150 over eight counties.

4 I think you have the list there in front  
5 of you.

6 Restaurants, taverns, clubs, we are not  
7 cash counts. It's a constant struggle to keep  
8 going. We operate on a paper thin profit margin, a  
9 lot of us. The failure rate is very high.

10 We have heard a lot of talk about pennies  
11 a day. That's deceptive.

12 Factor it out on the other end, it could  
13 go up to like well over four figures a year.

14 Well, for us, we'd have to take a couple  
15 of our best days of the year, take our gross sales  
16 and just sign it right over to KBL.

17 It's a very troubling notion that a  
18 company with offices at the Trimont, flying people  
19 in on Lear Jets would be shaking down these  
20 neighborhood restaurants, clubs and taverns when  
21 they are just trying to get along.

22 Now we have heard about 400 bars that have  
23 signed up. Well, out of those 400, how many have  
24 actually agreed to pay \$3 a stool, \$1 a seat? And  
25 out of those 400, what's the percentage of those

1 400 that they have claimed that they would have had  
2 to sue to get them to pay?

3 My original list that they were going by  
4 the 15 percent had about 80 on there. That's  
5 expanded to about 150.

6 Our basic position has been stated. It's  
7 not a premium service; it's not HBO or Showtime.  
8 It's available in homes. You could just as easily  
9 make a case that the existence of KBL hurts  
10 restaurants, taverns and clubs which people can get  
11 at home, buy a case of beer, go to your buddy's  
12 house. Why come down to the bar and pay \$2 a beer?

13 We already pay for KBL as a non-resident  
14 rate for the basic package, or some of us have a  
15 satellite dish and for that, you pay for a  
16 satellite package and KBL is part of that. But you  
17 get a lot of other services, too.

18 KBL says they have the right to do this.

19 Well, they may have the right to charge  
20 \$100 a seat, for all I know. We have the right to  
21 charge \$9 for a cup of chicken noodle soup, but  
22 that doesn't mean we are going to do it.

23 Having the right to do something does not  
24 make it right.

25 Now who says KBL increases business? Has

1 any monitoring been done? Where's the figures on  
2 this?

3 Go over to the Sports Garden on a Tuesday  
4 night when there's no Pirate game on. Then go over  
5 the following Tuesday when there is a Pirate game  
6 on. Was it dead the previous Tuesday and packed  
7 that night? I don't think so.

8 Now it's a commercial station but they  
9 want it both ways. They want to charge the  
10 advertisers for the commercials and then they want  
11 to charge us to show these commercials to our  
12 patrons. This is great advertising. This is great  
13 point of sale advertising, especially for the beer  
14 companies.

15 Why do you think beer companies advertise  
16 so much during sporting events? Well, they know  
17 it's going to be on in restaurants, taverns and  
18 clubs all over the place.

19 Why do you think beer commercials are so  
20 visual? They know it's going to be on with the  
21 sound and music up. People are going to see it.  
22 It's great point of sale advertising for these  
23 companies, and we have had long and happy  
24 relationships with a lot of them.

25 There have been no bigger supporters of

1 the Pirates and the Penguins than the restaurants,  
2 taverns and clubs around the area. A lot of us are  
3 season ticket holders, especially in the case of  
4 the Pirates, and a lot of us frequently take large  
5 groups to the games. We are with you. We love the  
6 Penguins and the Pirates.

7 KBL, they're going to have a sprinkling of  
8 regular season games, nothing that I would call  
9 event programming that you could put a sign up and  
10 bring people in.

11 Playoffs could be considered an event  
12 programming thing, but there's no guarantee they  
13 are going to make the playoffs.

14 I don't think the Pirates are going to be  
15 in the playoffs this year and if they are, that's  
16 controlled by Major League Baseball.

17 If the Penguins make the playoffs, well,  
18 that's all unclear.

19 I understand that ABC and ESPN will have  
20 some of the games, and if they do make the playoffs  
21 it could be over after four games.

22 Over that, what do we get? Ping pong,  
23 billiards, talk shows during cocktail hour.

24 This is one time when you really want to  
25 have a drawing card to fill the seats, and what's

1 on, cartoons; not even good ones. Casper the  
2 Friendly Ghost.

3 We are holding out for Rocky and  
4 Bullwinkle here, okay.

5 This all begs the question, well, hey,  
6 Harry, if KBL isn't that big of a deal and doesn't  
7 bring that much business in, then why are you  
8 raising such a fuss?

9 Very simple. We object on principle and  
10 we look at it as a dangerous precedent. I mean  
11 what would be next, Monday Night Football, ESPN,  
12 local TV?

13 The biggest drawing card since I have been  
14 at the River City Inn for almost nine years was the  
15 Cheers finale. We just talked it up for weeks.  
16 People came in with their little buffet out. It  
17 was great. We packed them in.

18 Is NBC going to want \$3 a seat from us?  
19 No, they're advertising dollar is more powerful  
20 because they knew people were watching it in bars.

21 Now if this is done sporadically in other  
22 areas, well, it doesn't mean that it should be done  
23 here. That means it shouldn't be done here.

24 The smaller and medium places certainly  
25 will be hurt the most. And I'll take a little

1 neighborhood joint on East Ohio Street that I know  
2 couldn't afford something like this, or the people  
3 may just jump on 279 and shoot out to some sports  
4 bar out in the North Hills.

5 It's the tiny little places that are going  
6 to get hurt and these neighborhood clubs, taverns  
7 and restaurants are a big part of the fabric of  
8 Western Pennsylvania. If somewhere down the road  
9 you see a few of these places boarded up if this  
10 thing goes through, then KBL will have to live with  
11 the fact that they might have contributed to a few  
12 of these places closing down.

13 And on that nasty note, I will close it  
14 out.

15 ACTING CHAIRMAN LaGROTTA: First of all,  
16 Harry, you offended Casper the Friendly Ghost.

17 MR. PATTERSON: I just didn't like his  
18 nasty buddy, Spooky.

19 ACTING CHAIRMAN LaGROTTA: What's that?  
20 What did they call that, the ghostly trio?

21 MR. PATTERSON: Yeah.

22 The Jetsons, Heathcliffe, maybe a little  
23 Bugs Bunny would be nice.

24 ACTING CHAIRMAN LaGROTTA: Questions,  
25 David?



1 MR. KRANTZ: No.

2 ACTING CHAIRMAN LaGROTTA: Marty?

3 MR. DURKIN: No.

4 ACTING CHAIRMAN LaGROTTA: Frank?

5 REPRESENTATIVE DERMODY: No.

6 ACTING CHAIRMAN LaGROTTA: I have a  
7 question. I've got a question, Harry, and I have  
8 no reason to doubt that you're accurate; if you're  
9 accurate about the lack of any effect on the  
10 business involving --

11 First of all, how long have you been  
12 involved in the tavern business?

13 MR. PATTERSON: Since the Wednesday after  
14 the '75 Super Bowl, whatever that date was.

15 ACTING CHAIRMAN LaGROTTA: So we can  
16 consider you someone who has seen the trend in the  
17 last twenty years -- eighteen years?

18 MR. PATTERSON: Yeah.

19 ACTING CHAIRMAN LaGROTTA: If you don't  
20 believe that KBL has any impact on the occupancy of  
21 bars, let alone the purchasing, the revenue in  
22 bars, but even the occupancy, what would your  
23 forecast be for this kind of proposal in terms of  
24 what its effect would be?

25 Would tavern owners choose not to

1 subscribe? Would they reject?

2 MR. PATTERSON: I think a lot of them  
3 would choose not to subscribe.

4 I'm not saying it has zero effect; it has  
5 some. It's just part of the mix. You have the TV  
6 on with no sound and whatever game happens to be  
7 on. You have some music playing, you have the  
8 newspaper behind the bar for your people.

9 It's just one of the many things that you  
10 have to make everybody comfortable and feel  
11 welcome. It's part of the mix.

12 ACTING CHAIRMAN LaGROTTA: But are you  
13 comfortable with Mr. Craig and Mr. Brugnone's  
14 testimony that tavern owners who choose not to pay  
15 the additional fee have that choice; they can  
16 filter out, they won't be --

17 When this information originally hit the  
18 media, we were under the impression that it was  
19 going to be there and you were going to have to pay  
20 because there was no technology to do the actual  
21 removal.

22 Now I understand and both gentlemen have  
23 testified to the fact, that a tavern whether it be  
24 the tavern where you work or any tavern or  
25 restaurant in Pittsburgh or any area, has the

1 opportunity to say I don't want this service and  
2 they won't be levied any fee.

3 Is that -- are you comfortable with that?

4 MR. PATTERSON: Well, I still object on  
5 principle with the fact that everybody gets it at  
6 home as part of a basic cable package and then they  
7 want to charge us extra.

8 It's not a drawing card. If it was a pay  
9 per view thing -- they have got a nice pay per view  
10 package; I like that. I think they should promote  
11 that instead of trying to do something like this.

12 If we had something that not only we had  
13 to pay extra for but the folks at home had to,  
14 great, that's a drawing card. We could say, hey,  
15 we have got Penn Vision, why don't you stop down on  
16 Tuesday night, the Pens and the Oilers are on  
17 Tuesday night.

18 But the fact that everybody has it at  
19 home, that's what really hurts because people can  
20 stay home anyway. It's probably better for them,  
21 especially in tough economic times to buy a case of  
22 beer and go to a friend's house.

23 This is just one more thing that could  
24 really hurt us, and there's a lot of things.

25 You know, it's not pennies a day, it's

1 another big fat monthly bill is what it is.

2 ACTING CHAIRMAN LaGROTTA: For the record,  
3 I think it's important to point out that KBL does  
4 not own Penn Vision. That's a production of the  
5 Pittsburgh Penguins. It's separate. They are  
6 hired by the Penguins to do production. It's not  
7 their package.

8 I just think it's important to point that  
9 out.

10 MR. PATTERSON: Okay.

11 ACTING CHAIRMAN LaGROTTA: Any other  
12 questions?

13 (No response.)

14 ACTING CHAIRMAN LaGROTTA: Thank you very  
15 much, Harry.

16 Next we were to have Mr. Gurgiolo from the  
17 Satellite Sports Network. He is not here. It is  
18 my understanding that Mr. Chmura from the Penguins  
19 was to be here. I don't see him here, either.

20 Consequently, we will proceed with Mary  
21 Margaret Fisher from the Pennsylvania Restaurant  
22 Association.

23 Go ahead.

24 MRS. FISHER: "My name is Mary Margaret  
25 Fisher, Executive Director of the Western

1 Chapter of the Pennsylvania Restaurant  
2 Association.

3 The Western Chapter offers testimony on  
4 behalf of over 400 members operating businesses  
5 throughout Allegheny, Beaver, Butler, Green,  
6 Lawrence, Washington and Westmoreland Counties  
7 in Western Pennsylvania.

8 We believe that it is important that this  
9 Committee recognize the impact that our food  
10 service industry has on our economy and on the  
11 communities within our state.

12 I would like to share with you a few facts  
13 about our food service industry.

14 Food service is an integral part of our  
15 economy.

16 Our food service industry will achieve  
17 a real gain in sales of 1.7 percent in 1993.

18 Our national food service industry  
19 sales account for 4.3 percent of the U.S. gross  
20 national product.

21 National food service sales are  
22 projected to be \$267 billion in 1993. In  
23 Pennsylvania, our sales are projected to be  
24 \$7.9 billion, a 3.7 percent increase.

25 Our industry's aggregate sales are

1 significant; however, approximately three out  
2 of four eating and drinking establishments are  
3 small businesses with annual gross sales of  
4 less than \$500,000.00.

5 The KBL Network is attempting to levy a \$3  
6 per bar stool and \$1 per dining seat with a  
7 view of the television fee to restaurant and  
8 other establishments in addition to their  
9 monthly cable bill. KBL is not a premium  
10 service such as HBO and Cinemax and until now,  
11 has been included in the price of the basic  
12 cable package.

13 KBL has stated that since 1984 the FCC has  
14 given them the right to charge a commercial  
15 rate for their programming. But until KBL  
16 negotiated the contract in excess of \$20  
17 million dollars over the next four years with  
18 the Pittsburgh Penguins, they had not exercised  
19 their right.

20 David Brugnone, KBL's Director of Sales  
21 and Marketing, stated that they had to develop  
22 additional revenue to cover these costs.

23 The Pennsylvania Restaurant Association  
24 feels that the method KBL has derived for  
25 generating these additional funds is unfair.

1 KBL has selectively targeted restaurants and  
2 taverns while excluding private clubs, such as  
3 the American Legion, VFW and Country Clubs.

4 KBL alleges that restaurants and other  
5 establishments use the channel's programming,  
6 especially the local Pirates and Penguin games,  
7 to attract customers.

8 The Restaurant Association would like to  
9 know when, how, and view the results of the  
10 survey KBL conducted to determine that their  
11 programming specifically attracted customers to  
12 the restaurants.

13 The KBL Network recently released their  
14 1993-1994 Penguin programming schedule. It  
15 includes 62 regular season games with an  
16 additional 26 available on Penn Vision, a pay  
17 per view channel. Twenty of the regular season  
18 games will also be broadcast on KDKA, a non-  
19 cable station. There is a possibility that  
20 some of these twenty games will be the same  
21 that KBL is offering.

22 What other programming will KBL provide  
23 for this fee?

24 As stated previously, most food service  
25 establishments have annual sales of under

1           \$500,000.00.

2           We appreciate the gesture on behalf of KBL  
3           to charge the smaller establishments, those  
4           that have fewer than eight seats, a monthly fee  
5           of \$25.00 or \$300.00 per year. Unfortunately,  
6           one of the requirements set forth by the  
7           Pennsylvania Liquor Control Board is a 30-seat  
8           minimum to qualify for a license. This  
9           gesture, therefore, would benefit not even the  
10          smallest restaurant.

11          The food service industry has had its  
12          costs raised significantly in recent years by  
13          Minimum Wage increases, employer FICA taxes on  
14          tips, and the recent 38 percent increase in  
15          Workers Compensation costs.

16          The reduction in Business Meal Deduction  
17          from 100 to 80 percent has had a negative  
18          impact. Now that the deduction will be lowered  
19          to 50 percent, a significant reduction in sales  
20          and an estimated job loss of 6,737 jobs in  
21          Pennsylvania will be another burden on the food  
22          service industry.

23          The new Energy Tax will increase overhead  
24          costs. If income tax rates are increased,  
25          there will be less disposable income for



1 consumers, and dining out will be curtailed.

2 Possible increases in Alcohol Excise Tax  
3 and potential payroll taxes for health care  
4 costs and/or worker training programs will  
5 further hurt the bottom line of businesses who  
6 are just now beginning to recover from the  
7 recession.

8 Restaurants and other establishments are  
9 currently paying ASCAP (American Society of  
10 Composers, Authors and Publishers) fees on the  
11 average of \$341.00 per year. This fee covers  
12 the royalties owed to the artists for the music  
13 played on television commercials.

14 KBL is proposing that we now pay again to  
15 show these advertisements during the games.

16 As I mentioned previously, more than three  
17 out of four of our establishments are small,  
18 independently-operated businesses with annual  
19 sales under \$500,000.00 per year. They must  
20 deal with low profit margins, 3 to 5 percent, a  
21 high failure rates.

22 The proposed KBL fee is another dip into  
23 the diminishing profit margins of the  
24 restaurant and other establishments.

25 As an example, the fee, if enacted, will

1 cost a typical restaurant such as the Cheese  
2 Cellar in Station Square, \$115.00 per month or  
3 \$1,380.00 a year..

4 With all of the costs outlined above, the  
5 Western Chapter of the Pennsylvania Restaurant  
6 Association predicts that members will  
7 eliminate KBL from their programming, thus  
8 creating a smaller audience for advertisers.

9 We want to make it clear that our position  
10 in no way will jeopardize the fine  
11 relationships already established with KBL  
12 advertisers.

13 The Association and its members strongly  
14 oppose this fee and support Representative  
15 Frank LaGrotta in House Bill 1960.

16 I would like to thank you on behalf of the  
17 Western Chapter of the Pennsylvania Restaurant  
18 Association and its members for the opportunity  
19 to present this testimony on the KBL Network  
20 fee.

21 In addition, this organization stands  
22 ready to work with the Senate and House of  
23 Pennsylvania in an effort to foster economic  
24 development and provide career opportunities  
25 and jobs for all Pennsylvania citizens.

1 Thank you.

2 ACTING CHAIRMAN LaGROTTA: David?

3 MR. KRANTZ: No.

4 ACTING CHAIRMAN LaGROTTA: Marty?

5 MR. DURKIN: No.

6 ACTING CHAIRMAN LaGROTTA: Frank?

7 REPRESENTATIVE DERMODY: Just a couple  
8 questions.

9 You say you have 400 members in the  
10 Association?

11 MS. FISHER: Yes.

12 REPRESENTATIVE DERMODY: Have you done any  
13 talking with them or discussed with them or have  
14 any idea how many of them would be refusing this  
15 service, if this fee is imposed?

16 MS. FISHER: I'm going to say at this  
17 point just for the survey that I have done, and I  
18 have not surveyed all of the members, probably  
19 about 20 percent.

20 REPRESENTATIVE DERMODY: And you haven't  
21 talked to all of them?

22 MS. FISHER: No, I have not.

23 REPRESENTATIVE DERMODY: Most of the ones  
24 I talked to said no.

25 Thanks.

1           ACTING CHAIRMAN LaGROTTA: Ms. Fisher, you  
2 on page 2 of your testimony talk about something  
3 that we have raised several times here. That is  
4 who determines what's commercial; who determines  
5 what's not commercial.

6           You say in your testimony that KBL has  
7 selected restaurants and taverns and excluded  
8 private clubs such as the American Legion, et  
9 cetera, et cetera.

10           Being very careful how I phrase this so I  
11 don't have a thousand American Legion and Country  
12 Club people at my door tomorrow morning with picket  
13 signs and baseball bats, let me ask you if you see  
14 this as a potential target of litigation.

15           In other words, would you -- obviously  
16 legal counsel has demonstrated, has documented that  
17 the Cable Act of '92 allows the levying of  
18 commercial fees.

19           Do you see potential litigation stemming  
20 from the determination of what's commercial and  
21 what's residential?

22           Obviously, you can't clarify an American  
23 Legion or VFW as a residence; do you see that as  
24 potentially something that some of your members may  
25 want to --

1 MS. FISHER: Yes, I do.

2 ACTING CHAIRMAN LaGROTTA: Also on the  
3 same page you talk, you ask a question about -- or  
4 make a statement that there's a possibility that  
5 some of the twenty games that KBL -- a television  
6 will be broadcasting will be the same that KBL  
7 offers.

8 I defer to the gentleman from KBL.

9 Am I right in assuming that what you sell  
10 to KDKA will not be on KBL? The games that KDKA  
11 will broadcast will not simulcast on KBL?

12 MR. CRAIG: Yes, they will be simulcast.

13 The Pirate games are not simulcast, but  
14 the Penguin games are.

15 ACTING CHAIRMAN LaGROTTA: I see. All  
16 right.

17 There have been several people, including  
18 my colleague Representative Robinson, who had to  
19 leave. He raised the issue of the 30-seat minimum  
20 that the LCB requires to qualify for a license.

21 Correct me if I'm wrong, and initially  
22 directing the question to someone from KBL, the \$25  
23 fee, the per stool, per seat fee is based on seats  
24 within view of the television, right?

25 MR. CRAIG: Right.

1           ACTING CHAIRMAN LaGROTTA: So you could  
2 have 30 seats within a tavern, have less than so  
3 many seats in view of the television and still  
4 qualify for that?

5           I mean is that what you're trying to  
6 establish?

7           MR. BRUGNONE: That's not always the case.  
8           The bar areas are much smaller areas than  
9 the total occupancy of the establishment. There  
10 can only be, say nine or ten seats, that are up at  
11 the bar that could view the television set.

12          ACTING CHAIRMAN LaGROTTA: And they would  
13 qualify for the flat per fee -- per monthly --

14          MR. BRUGNONE: (Indicating affirmatively.)

15          ACTING CHAIRMAN LaGROTTA: Can you give us  
16 any indication of how many establishments you may  
17 have encountered that meet this criteria?

18          MR. BRUGNONE: I could defer that to Fran  
19 Powell, who is our sales representative.

20          MR. POWELL: I would have to say that 90  
21 percent of the bars out there are the smaller bars,  
22 and it's very intricate where they arrange their  
23 TVs at.

24                 If it's at a bar where somebody even cares  
25 about the TV, it's right in the middle of the

1 corner. A lot of them put it in a corner that's  
2 not even accessible. So with the other regional  
3 networks that have done this, and in one instance  
4 where there was an attempt to place -- people  
5 position their TV so that it is not able to be seen  
6 by a lot of the bar stools or by the restaurant.

7 We have had instances in this area where  
8 they have the option to show it in the bar area and  
9 not in the restaurant area.

10 In other words, if they did show it in the  
11 restaurant area, their bill may be \$200 a month.

12 On the other hand, if they show it in the  
13 bar area which people -- if you're going to watch a  
14 game, you're going to sit and you're going to have  
15 a couple of drinks and watch the game. That's why  
16 the bar area can be situated different than a  
17 restaurant area.

18 I mean in the 400 establishments that we  
19 have under commercial contract, the average is \$53  
20 a month and there's no one except two bars that pay  
21 over \$100 per month.

22 ACTING CHAIRMAN LaGROTTA: Are there any  
23 meeting the \$25 minimum?

24 MR. POWELL: Sure, sure.

25 On the other hand, we are not

1 discriminating against the VFWs, et cetera. They  
2 would have to pay, too.

3 I mean we are not -- we don't have two  
4 lawyers sitting here to get into a lawsuit about  
5 discrimination, you know. It really -- the gist of  
6 the program is commercial establishments with  
7 liquor licenses, okay?

8 There are non-profit organizations that we  
9 would have to make a determination as far as maybe  
10 a rate structure but, no, we are not discriminating  
11 between a place that has a liquor license and one  
12 that does not.

13 ACTING CHAIRMAN LaGROTTA: So Sons of  
14 Italy and Polish -- you know, they're all receiving  
15 the same thing?

16 MR. POWELL: Yes.

17 I mean, really, they are considered  
18 non-profit, but they have \$300,000, \$400,000 in the  
19 bank that they have nothing to do with.

20 I mean that's non-profit, I guess.

21 My father was an LCB agent. I'm very  
22 familiar with the liquor laws and familiar with the  
23 bars in this area, so --

24 ACTING CHAIRMAN LaGROTTA: Ms. Fisher,  
25 have you contacted -- and Detroit has been raised



1 several times throughout today's proceeding.

2 Have you talked to any of your colleagues  
3 or counterparts in that area to see -- and I  
4 understand that's the basis, the \$3 per stool fee  
5 is what they do in the Detroit Metropolitan Area.

6 MR. POWELL: Correct, and they have 3,600  
7 commercial establishments.

8 ACTING CHAIRMAN LaGROTTA: Have you talked  
9 to them in terms of how you determine what the  
10 impact is?

11 MS. FISHER: No, we have not, just across  
12 the State of Pennsylvania.

13 ACTING CHAIRMAN LaGROTTA: In your opinion  
14 as the -- your title is Executive Director of the  
15 Restaurant Association?

16 MS. FISHER: Yes.

17 ACTING CHAIRMAN LaGROTTA: Do you see the  
18 plan that -- you were here when Mr. Craig and Mr.  
19 Brugnone testified.

20 Do you see the plan that they laid out in  
21 some way being counterproductive to small  
22 businesses?

23 MS. FISHER: Yes, I do.

24 ACTING CHAIRMAN LaGROTTA: Do you feel  
25 somewhat more comfortable with the fact that your

1 establishments will have a choice in the matter as  
2 to whether or not they wish to pay the extra fees  
3 and whether or not they wish to subscribe to the  
4 service?

5 MS. FISHER: It still against the basic  
6 premise that KBL is offering to residential  
7 customers and they can get it at home.

8 It still should be offered in the same  
9 package to commercial customers. It goes against  
10 the basic premise. If it's not offered to the  
11 residential customer as an option, as ala carte as  
12 they have termed it, then it should not be offered;  
13 it has to go the same way.

14 Both residential and commercial customers  
15 have to be offered it the same way.

16 ACTING CHAIRMAN LaGROTTA: Just let me --  
17 obviously, I'm not disagreeing with you as the  
18 prime sponsor of the legislation, but let me play  
19 devil's advocate for a minute.

20 If somebody is watching a Penguin game at  
21 home with -- you know, in my case with my dad, we  
22 can't leave the house when the Penguins are on.  
23 Probably nobody would let us sit in their bar.

24 And somebody is using that service as KBL  
25 says and some of the tavern owners have said it

1 does in some way stimulate business.

2 You don't see a difference in commercial  
3 versus residential?

4 MS. FISHER: I don't see a significant  
5 amount of difference to justify the charge, no.

6 ACTING CHAIRMAN LaGROTTA: Okay.

7 Any other questions, gentlemen?

8 (No response.)

9 ACTING CHAIRMAN LaGROTTA: Okay, thank you  
10 very much.

11 Dennis Tovey is the next person to  
12 testify.

13 We are about seven minutes ahead of  
14 schedule. At 1:15 or 1:30, we are supposed to hear  
15 from Mark Driscoll.

16 Mr. Tovey, please identify yourself for  
17 the Stenographer.

18 MR. TOVEY: My name is Dennis Tovey, owner  
19 of Tove's Tap Inn in Penn Hills.

20 What I would like to do today is basically  
21 outline so that this Panel will have an  
22 understanding of exactly what the economic impact  
23 to the individual tavern owner or, in my case --  
24 I'm just using myself as an example because as you  
25 will see as we go along, this will pertain pretty

1 much to the industry as a whole.

2 In order for this Panel to have a working  
3 knowledge of the economic impact the decision will  
4 have on tavern owners affected by the outcome, I  
5 will present to you the numbers necessary in making  
6 an informed judgment.

7 Including in my testimony will be the  
8 accepted guidelines for controlling costs and  
9 overhead in our industry, as well as profit and  
10 loss and the feasibility of paying KBL the  
11 exorbitant amount that's requested.

12 Statistics gathered from the United States  
13 Census Bureau, as well as the PA Liquor Control  
14 Board, will be discussed in order for the Panel to  
15 understand the tavern owner's customer base in  
16 Allegheny County.

17 In closing, I will express my views on the  
18 Constitutionality and possible violation of our  
19 Civil Rights if the Panel chooses to rule in KBL's  
20 favor.

21 Now in order to do this, I'd like you all  
22 to know my background.

23 I have been in this industry for twenty-  
24 five years. I have a degree in Foodmatic Services  
25 as well as Hotel/Motel Management.

1 I managed the Grand Concourse Restaurant  
2 in town for three years. Also, was General Manager  
3 for TGI Fridays, Houlihan's, Steak 'n Ale, and for  
4 the past four years I have owned my own tavern.

5 The next page will show you the profit  
6 cost of sales breakdown for the food and service  
7 industry.

8 I previously stated the 2 to 5 percent.  
9 If we are doing everything possible, if we are  
10 doing everything right and being good managers, we  
11 can at this point without all the new tax laws and  
12 everything else that may come into effect, 10  
13 percent net profit, we're doing good. That's about  
14 all we can ask for. That's the top line.

15 Now, breaking that down 25 percent, that's  
16 25 cents out of our dollar goes to liquor costs.  
17 These are established food industry percentages;  
18 that's what we all live by. This is our Bible.

19 If we do these things right, we will get  
20 out 10 cents on the dollar.

21 Food cost is 32 percent.

22 Labor cost in order to pay our managers,  
23 our servers, provide good service, cook good food,  
24 is 18.5 cents out of our dollars.

25 Our rent, our mortgage and our utilities

1 should be established when we initially set up our  
2 business plans to open the business. It should be  
3 no more than 7.5 percent of our dollar; otherwise,  
4 it's not going to work.

5 And then another 7 percent to be used for  
6 advertising, your insurance, your professional  
7 fees, your supplies to do business, your repairs,  
8 your maintenance and you laundry, which leaves us  
9 with 10 cents on the dollar.

10 And I have provided on the next page my  
11 personal profit and loss statement for the first  
12 four months of this year, which is -- you can  
13 indicate in the year to date percentage in the last  
14 column. It shows my food cost is 31.7. My liquor  
15 cost is 26.4, and so on.

16 At the bottom of that I have -- I need to  
17 tell you a little bit about my personal restaurant  
18 so you can understand what I'm looking at here with  
19 KBL.

20 I have nine bar seats and in the bar I  
21 have two large screens and six screens of 25  
22 inches, so that every seat in the bar you can see a  
23 TV, and that's at all hours of the day.

24 At \$3 per seat, that's \$270 per month.

25 I'm an average size guy. I have 100

1 dining seats in the dining room, of which I also  
2 have a TV in there because I support the Penguins,  
3 the football games and what have you very much, and  
4 Friday night after the game, the coaches and  
5 everybody comes in. They want to watch the news to  
6 see the other sports and things like that, so I  
7 have a TV in there, also.

8 And when the -- like when the Penguins are  
9 -- like the Pens two years ago when they went all  
10 the way to the Stanley Cup, we were having overflow  
11 from the bar and people were sitting there also.

12 That was a good week, but that only  
13 happened once since I have been open in four years.

14 Then taking this figure of \$370 per month,  
15 that's what we are going to base everything on,  
16 okay?

17 And this particular one where my statement  
18 that you're looking at, it was the four months at  
19 \$370. If I paid KBL, it would be \$1,480.

20 You can see the bottom line of our net  
21 profit for this period was \$2,700, so KBL got 53  
22 percent of my profit.

23 I can't do it.

24 If you see, that's 1.6 net profit at the  
25 bottom. That's because in the first six months we

1 pay our insurance, we pay our professional fees.

2 I had a couple air-conditioners that broke  
3 down that I had to replace, so this wasn't a real  
4 good profit and loss statement for me.

5 By the same token, for KBL to ask for 53  
6 percent of my profit, I could send my children to  
7 school and they can't have it, so I will be one of  
8 the people who will not subscribe to KBL if this  
9 does pass.

10 The next two pages will show some facts  
11 that I have gathered in trying to present my case.

12 Fact: KBL's proposal would cost  
13 \$370,00 per month with 90 bar stools  
14 and 100 dining seats. \$370.00 times  
15 twelve equals \$4,440.00 per year.

16 Fact: Considering our 10 percent  
17 profit margin or 10 cents on the  
18 dollar, we would have to sell 44,400  
19 beers at \$1.000, which is what I see  
20 my 12-ounce draft for, to break even.  
21 That's for the year, and I'm giving  
22 all that to KBL.

23 Fact: KBL broadcasts ten Pirate games  
24 per month, each game lasting two and a  
25 half hours, which adds up to twenty-



1 five hours of total broadcast per  
2 month.

3 Fact: A \$370.00 levy per month with a  
4 10 cents per dollar profit margin  
5 needs 3,770 \$1.00 beers sold just for  
6 me to break even.

7 Fact: 3,770 \$1.00 beers in the  
8 twenty-five hours of broadcast is 148  
9 \$1.00 beers per hour just for me to  
10 break even and pay KBL.

11 Now according -- I want to establish my  
12 customer base just to maybe help you understand  
13 how tough this is going to be for us to reach  
14 the figures of 3,770 beers in order to break  
15 even to pay KBL.

16 Fact: According to the National  
17 Census Bureau, there are 998,000  
18 living adults over 21 in Allegheny  
19 County.

20 Fact: There are 500,000 living male  
21 adults over the age of 21 in Allegheny  
22 County.

23 Fact: There are approximately 250,000  
24 male sports fans over the age of 21 in  
25 Allegheny County.

1           Fact: There are approximately 125,000  
2 male sports fans over the age of 21 in  
3 Allegheny County who drink alcohol.

4           Fact: There are at the present time  
5 according to the PA Liquor Control  
6 Board, 2,205 licensed premises in  
7 Allegheny County with 105 held in  
8 escrow by the State.

9           Fact: With a customer base 125,000  
10 persons divided by 2,206 licenses,  
11 approximately 57 adult males over the  
12 age of 21 who drink and are sports  
13 fans are available for each tavern to  
14 draw from.

15           How many of these 57 are working  
16 during telecasts? How many stay home  
17 to watch games on KBL? How many won't  
18 drink and drive? And how many are  
19 there that have nothing else to do but  
20 watch every game in my bar on KBL?

21           Fact: So with a customer base of 10  
22 to 57 persons for each game and the  
23 need to sell 148 \$1.00 beers per  
24 Pirate telecast, KBL is asking us to  
25 do the physically impossible; to be

1 fiscally irresponsible to ourselves,  
2 our partners, and our employees. And  
3 to pay a fee that is not financially  
4 feasible.

5 Fact: KBL has 380,000 subscribers.  
6 The 2,205 licensee premises represent  
7 just 0.58 percent of 1 percent of  
8 total subscribers. To single out this  
9 vast minority of licensed premises to  
10 pay an exorbitant fee is both  
11 unconstitutional and also a violation  
12 of our Civil Rights.

13 Oftentimes when I'm not at work, I will go  
14 to the barber shop and watch the game and get  
15 my hair cut.

16 There are many other commercial  
17 establishments other than bars that should also  
18 be charged if we are charged.

19 That's it.

20 ACTING CHAIRMAN LaGROTTA: Dave?

21 MR. KRANTZ: Dennis, just to remark on my  
22 nineteen years with the House of Representatives, I  
23 find your testimony to be one of the very few that  
24 is well thought out.

25 Whether it agrees or disagrees, it's well

1 thought out and well presented. I'd just like to  
2 congratulate you on that.

3 MR. TOVEY: Thank you.

4 MR. KRANTZ: Thank you.

5 ACTING CHAIRMAN LaGROTTA: Frank?

6 REPRESENTATIVE DERMODY: Just a few.

7 Do you have a satellite dish or cable?

8 MR. TOVEY: No, just basic cable.

9 REPRESENTATIVE DERMODY: Okay.

10 So now if you don't buy the KBL package,  
11 you don't agree to pay the fee, instead of having  
12 the Pirate game on, what will you put on?

13 MR. TOVEY: See, I have a question also  
14 about the possibility -- I'd like to get the HBO  
15 channel in the bar, but TCI won't give it to me; I  
16 can't have it. I can't watch the fight, I can't  
17 get those. I can't get the other pay per view, so  
18 TCI might have a problem with me having to pay KBL.

19 REPRESENTATIVE DERMODY: I don't know  
20 about --

21 ACTING CHAIRMAN LaGROTTA: Before you  
22 continue, Frank, counsel, can you explain that? Is  
23 there some law that prohibits -- I know HBO can't  
24 be operating in a commercial establishment.

25 MR. GRIFFIN: If he would like to have a

1 fight in the commercial establishment, he could  
2 purchase it off of Joanne Productions in  
3 Philadelphia and the price is usually \$1,200 per  
4 fight.

5 ACTING CHAIRMAN LaGROTTA: No.

6 And my question is, why not regulate HBO  
7 for --

8 MR. GRIFFIN: Well, HBO -- most of HBO's  
9 product is provided by movie studios and movie  
10 studios, of course, don't distribute their products  
11 into commercial establishments other than movie  
12 theaters, so HBO has agreements with movie studios  
13 to prohibit HBO in letting service be viewed in  
14 commercial establishments.

15 That's why for instance you may find HBO  
16 in a hotel room, but you won't find it in the lobby  
17 of the hotel or in the bar of the hotel.

18 ACTING CHAIRMAN LaGROTTA: There's no law,  
19 Federal or State, that prohibits that. It's just  
20 simply HBO doesn't sell itself.

21 MR. GRIFFIN: It's the contractual  
22 arrangement between movie studios and HBO  
23 distributors.

24 ACTING CHAIRMAN LaGROTTA: And who  
25 determines what a commercial establishment is in

1 that contract, counsel?

2 MR. GRIFFIN: I would suspect that the  
3 cable operator would market the service, but I  
4 don't know for certain.

5 ACTING CHAIRMAN LaGROTTA: Sorry, Frank, I  
6 didn't mean to interrupt you.

7 REPRESENTATIVE DERMODY: No problem.  
8 There's a way for him to buy --

9 MR. GRIFFIN: Right.

10 MR. TOVEY: Say that the Penguins did get  
11 into the playoffs, would it be possible for us to  
12 buy the cable if it passes just for that two week  
13 period?

14 MR. POWELL: Yes.

15 Well, for instance the Penn Vision games,  
16 two of the games are playoff games and they would  
17 be pay per view at home.

18 And places in this instance, the bar owner  
19 can make a lot of money on that given night.

20 Just to inject something, I think the  
21 gentleman has too many seats in his establishment.  
22 If he would have some people stand, his monthly  
23 rate would be a lot lower.

24 REPRESENTATIVE DERMODY: You talked before  
25 about people having TVs and then hiding them, which

1 makes no sense to me if I have a bar and people  
2 want to come in and watch TV.

3 I don't know how you can criticize a guy  
4 for having 90 seats in the place because he wants  
5 his people to sit down.

6 Do you have a lot of people come in the  
7 place to watch that, use the seats?

8 MR. TOVEY: Watch the games?

9 REPRESENTATIVE DERMODY: Yes.

10 MR. TOVEY: As I explained here, there's  
11 only 57 possible guys. Our viewership is only --  
12 we only have of the base amount of 125,000 persons,  
13 only 57 that are over the age of 21 who drink.

14 REPRESENTATIVE DERMODY: Do people come in  
15 and use the seats?

16 MR. TOVEY: Sure.

17 For a typical Pirate game, it's part of  
18 the whole package. Usually we have the sound down  
19 because the jukebox is on after nine o'clock, and  
20 it's real loud. It's just part of the basic  
21 package.

22 I might see four or five guys that come in  
23 that are there to watch the game, if there's going  
24 to be a game. If it's a blowup, then they're going  
25 to say, well, put ESPN on or TBS. Let's watch

1 something else.

2 And a real sports fan, they want to see  
3 every game.

4 REPRESENTATIVE DERMODY: How many TVs do  
5 you have?

6 MR. TOVEY: I have one in the dining room  
7 where my hundred seats are, as I explained before,  
8 and I have one large screen at each end of the bar.  
9 I have six small ones, so you can see --

10 REPRESENTATIVE DERMODY: I would assume  
11 you can keep -- if the Pirates are getting blown  
12 up, you can keep the Pirate game on the TV and put  
13 the KBL or TBS on another one.

14 I don't think you want to hold it against  
15 the guy who wants to have the seat and, too, it  
16 makes no sense to me to have a TV and then put it  
17 in a corner where nobody can see it.

18 MR. TOVEY: Right, exactly.

19 And, again, that's what my business is,  
20 and everybody -- it trickles down. I mean whether  
21 I have 30 seats or I'm a Sports Garden with a  
22 thousand seats, the economic impact is going to be  
23 exactly the same because our industry is built  
24 around 10 cents on the dollar.

25 So the Sports Garden is going to pay for a



1 thousand seats, three thousand, or I'm going to pay  
2 \$370 for my seats, or another guy is paying \$90,  
3 you know. It's hard to say.

4 There was a statement before about 90  
5 percent of what KBL is going to do is going to fall  
6 into that 25 or less category.

7 I find that hard to believe. I can't see  
8 that happening. I don't know if anybody --

9 REPRESENTATIVE DERMODY: You aren't saying  
10 that 90 percent of the bars would fit into that \$25  
11 figure or less than eight seats?

12 MR. POWELL: No, I'm saying that 90  
13 percent of the bars in the Tri-State area are very  
14 small. In other words, they are not --

15 REPRESENTATIVE DERMODY: No, I don't  
16 believe that, either.

17 If you don't buy this because of the cost  
18 and because of what -- how will it affect your  
19 profit and loss statement; how will it affect your  
20 business? Do you have any idea?

21 Do you assume you will lose business?

22 MR. TOVEY: No, I won't, because the  
23 majority of my business -- I do a nice lunch. I  
24 have a nice dinner, and it's not going to affect me  
25 one way or another.

1           REPRESENTATIVE DERMODY: How about the guy  
2 that --

3           MR. TOVEY: I have guys that come in, like  
4 five guys that sit, maybe ten, to watch the game.  
5 But it's not going to -- I mean my profit -- if I  
6 sell each guy six beers in that half hour period  
7 and there's ten guys, that's sixty beers. I'm  
8 going to make \$6. That's not going to hurt me.

9           REPRESENTATIVE DERMODY: Do you have many  
10 people that come down specifically to see the  
11 Pirates that will say, okay, I can't come down  
12 tonight because the Pirates aren't on and will go  
13 to some other --

14          MR. TOVEY: No, I wouldn't say so.

15          The only specific time that I can say that  
16 KBL has really been of financial benefit to me was  
17 that one week during the Stanley Cup Playoff and we  
18 had an overflow of people that were sitting in the  
19 dining room.

20          I mean that did benefit us. But the fact  
21 that they want to charge me that 10 cent figure  
22 that they're talking about, that's not reality; the  
23 reality is the \$370 that they are going to make off  
24 me and the \$90 for the guy with 30 seats and the  
25 \$3,000 for the Sports Garden; it's not 10 cents a

1 seat. That's a false figure to put out.

2 Some people are saying what's wrong with  
3 that?

4 As I presented to you, there's a lot wrong  
5 with that and economically it's not profitable for  
6 us.

7 REPRESENTATIVE DERMODY: Thank you.

8 ACTING CHAIRMAN LaGROTTA: Any questions?

9 (No response.)

10 ACTING CHAIRMAN LaGROTTA: Thank you.

11 Last on the agenda is Mark Driscoll, who  
12 represents the Pittsburgh Pirates Baseball Club.

13 Go ahead.

14 MR. DRISCOLL: Good afternoon.

15 I'm Mark Driscoll, the Vice President of  
16 the broadcasting and advertising sales for the  
17 Pirates. We are appearing today at your request to  
18 provide background information and to answer any  
19 questions that you may have.

20 I want to give you some background on what  
21 agreement the Pirates have with KBL and what their  
22 rights are.

23 "The Pirates have granted KBL the  
24 exclusive subscription telecast rights within  
25 our home territory over the systems on KBL.

1           The systems are defined as the entities  
2 with which KBL has entered into an agreement  
3 with for the televising of KBL games by means  
4 of basic or premium cable television, satellite  
5 master antenna television, multipoint  
6 distribution services, and individual dwelling  
7 units for private viewing by means of equipment  
8 owned or operated by such individuals capable  
9 of receiving satellite delivered television  
10 programming directly from a satellite in the  
11 home territory.

12           KBL's contract with the Pirates provides  
13 them all rights to subscription telecasts in  
14 the home territory.

15           I just want to give you a little bit of  
16 background.

17           We have been a very aggressive  
18 organization televising our games. As a matter  
19 of fact, I think it started back when the team  
20 was at a low point in the mid-'80's with the  
21 down time that the team had, and we felt that  
22 it was important to showcase the guys coming up  
23 and that we saw some natural benefit from  
24 televising at that level.

25           We feel the Club's substantial level of

1 broadcasts serves our fan base very well.

2 The Pirates recognize the number of older  
3 Pennsylvanians that are in the area and we know  
4 that they are big Pirate fans. Because when  
5 there's something that happens to the broadcast  
6 they call me and a lot of them who call me are  
7 older.

8 The demographics in Western Pennsylvania  
9 are very old relative to the rest of the County  
10 and we know a lot of these fans can't get to  
11 games, but through our aggressive television  
12 schedule with KBL, we can reach those fans and  
13 share Pirate baseball with them.

14 So that's very important to us.

15 Our current schedule this year calls for  
16 us to televise 38 games from Three Rivers  
17 Stadium, 12 on KDKA and 26 on KBL. And the  
18 schedule worked out this year that 74 out of  
19 the 81 road games will be televised; 41 by KDKA  
20 and 33 by KBL.

21 As you can see from the attached chart, we  
22 will televise many more games than the other  
23 small market clubs.

24 We benefit -- I think Western Pennsylvania  
25 benefits from the broadcast and we get to see

1 the teams and we benefit from having a strong  
2 regional sports network that can deliver the  
3 games in the territory.

4 We think that's a plus and that lets us  
5 get the games out and, of course, that helps  
6 the Club promote its broadcasts and promote our  
7 home schedule also.

8 The large number of home games televised  
9 by the Pirates on KBL is a result of the rights  
10 fee the Club earns from KBL.

11 Fans who watch home games from taverns,  
12 buy food and beverage from the taverns rather  
13 than at the Stadium where the Club would  
14 receive a portion of their entertainment dollar  
15 if they attend the games in person through  
16 tickets and food and beverage.

17 And while the televising of Pirate road  
18 games on KBL in taverns does not directly  
19 affect our home attendance, fans are drawn to  
20 the taverns to watch the road games and the  
21 taverns benefit from the incremental sales of  
22 food and beverage.

23 It really comes down to, you know, we are  
24 here today to offer background and to answer  
25 questions, but the Pirates are really caught in

1 the middle of this discussion.

2 We are not experts in the cable business;  
3 we are not experts in the tavern business. And  
4 the Pirates really feel like this is an issue  
5 between the taverns and KBL.

6 We appreciate the opportunity to come  
7 forward and are happy to answer any questions  
8 of the Panel."

9 ACTING CHAIRMAN LaGROTTA: David?

10 MR. KRANTZ: No questions at this time,  
11 but an observation that if -- and I'm not singling  
12 out the Pirates because you're here; I'm singling  
13 out all sports. If they didn't pay such high  
14 prices for players, then you would not necessarily  
15 need the large amount of revenue.

16 MR. DRISCOLL: Well, baseball certainly  
17 has some specific problems.

18 Our President, Mark Sauers, is trying to  
19 get some things figured out so the owners can get  
20 together and we can renew our partnership with the  
21 players and really straighten out some aspects of  
22 our business.

23 REPRESENTATIVE DERMODY: If we could pay  
24 them, Dave, we'd be in the World Series.

25 MR. KRANTZ: There you go.

1           REPRESENTATIVE DERMODY: The exposure is  
2 good for the Pirates, correct?

3           MR. DRISCOLL: The exposure of the games  
4 is good, to a degree. I mean we always wrestle  
5 with how many home games we should televise.

6           REPRESENTATIVE DERMODY: So you think to  
7 televise some home games reduces the attendance at  
8 Three Rivers Stadium?

9           MR. DRISCOLL: I'm sure it does. It's a  
10 matter of measuring the revenue versus the rate fee  
11 that you get for the games versus what you get at  
12 the gate, and that's something we always kind of  
13 measure.

14           We try to be careful about the games that  
15 we televise so that for instance if we are having  
16 fireworks night, we think a lot of families will  
17 come to the see the fireworks with their kids.  
18 Then that might be a game that we put on television  
19 because it won't hurt us as much.

20           REPRESENTATIVE DERMODY: If this fee would  
21 reduce the exposure, the number of people seeing  
22 the Pirates on TV, would you take a position?

23           I mean the Pirates need exposure. They  
24 need to be on TV and they need to enlarge their  
25 television network as far as I can tell to become



1 more of a regional type.

2 MR. DRISCOLL: Well, the originality of  
3 what we are trying to do is important.

4 We have had a television network that  
5 covers West Virginia and up into Erie.

6 We have an over the air station in  
7 Johnstown that carries a full schedule of the  
8 games, so some of that exposure is important.

9 REPRESENTATIVE DERMODY: And KBL is in  
10 Harrisburg now. I can watch Pirate games in  
11 Harrisburg.

12 MR. DRISCOLL: And they serve a lot of our  
13 fans and deliver those games throughout Western  
14 Pennsylvania, especially when there are a lot of  
15 older Pennsylvanians who absolutely cannot find a  
16 way to get to Three Rivers because they're  
17 physically unable, really.

18 You know, that part of KBL is important  
19 and it serves -- it's a bigger question. It serves  
20 more than just tavern owners and some of the  
21 things. It's really the Club's television  
22 philosophy, and most people are constituents, too.

23 REPRESENTATIVE DERMODY: Thanks.

24 That's all I have.

25 ACTING CHAIRMAN LaGROTTA: You weren't

1 here at the beginning -- I don't believe you were  
2 here when Bill Craig testified.

3 MR. DRISCOLL: I heard Bill's testimony.

4 ACTING CHAIRMAN LaGROTTA: Good.

5 Do you recall that he talked about the  
6 disparity financially between markets in Pittsburgh  
7 and Chicago and Los Angeles and New York, the large  
8 market versus small market?

9 Do you think that the revenue sharing, the  
10 dollars that are proposed in Major League Baseball  
11 will eliminate some of that problem?

12 MR. DRISCOLL: I think that's the goal of  
13 the small market teams to share some of their  
14 revenue.

15 That's pretty far from whether a tavern  
16 owner should pay for KBL, but just to talk baseball  
17 for a minute, when we go to New York or we go to  
18 L.A., they play our teams and we are playing San  
19 Diego tonight and we are going to play the Dodgers  
20 Monday, Tuesday and Wednesday night. We are  
21 providing half of the cast of this ensemble and we  
22 certainly --

23 ACTING CHAIRMAN LaGROTTA: You want paid  
24 for it.

25 MR. DRISCOLL: Pardon?

1           ACTING CHAIRMAN LaGROTTA: The smaller  
2 teams want paid for that.

3           MR. DRISCOLL: Well, we figure we provide  
4 half the talent, we ought to get something more  
5 than what we are getting now. That's part of the  
6 crux of what's going on in the revenue sharing  
7 discussions.

8           ACTING CHAIRMAN LaGROTTA: Are you  
9 optimistic that some of that will take place, that  
10 it will happen?

11          MR. DRISCOLL: Well, I was not privy to  
12 the discussions in Culver last weeks, but Mark  
13 Sauer came back and said he was cautiously  
14 optimistic that they will get together.

15          I know they have another meeting planned  
16 in Boston in early September, and that's the  
17 business of baseball.

18          ACTING CHAIRMAN LaGROTTA: Frank Dermody  
19 asked you whether or not you would concerned with  
20 any trend that showed taverns and commercial  
21 establishments, whatever they are perceived to be  
22 in this final mix, if they stopped carrying KBL  
23 Pirate games.

24          I mean is that -- repeat that for me.

25          Would that impact on the Pirates at all?

1           MR. DRISCOLL: I suppose there's different  
2 sides to it. We could suffer from -- without  
3 taking a position, we could suffer from less  
4 exposure maybe for a road game. But we could also  
5 benefit from somebody saying I'm not going to stop,  
6 I'm not going to sit at their tavern because they  
7 don't have it any more, I'm going to go to the  
8 game.

9           I mean it could go on either side, that we  
10 could maybe have less exposure but the games  
11 wouldn't be as available in some of the taverns and  
12 maybe people would choose to come down to the game  
13 and buy a ticket, buy our beer, buy our popcorn.

14          REPRESENTATIVE DERMODY: It's cheaper than  
15 going to the bar.

16          MR. DRISCOLL: Some places, yes.

17          ACTING CHAIRMAN LaGROTTA: Do you think,  
18 or do you forecast as an expert in this sports  
19 broadcasting field, that if KBL is successful as  
20 other networks in other parts of the country have  
21 been in establishing a commercial rate, obviously  
22 their revenues are going to increase.

23                 Do you anticipate that the Pirates would  
24 want a bigger piece of that revenue when contract  
25 rights come up?

1 MR. DRISCOLL: I think the issue for  
2 contract rights is really separate from that.

3 Obviously, it benefits the Club in  
4 negotiations for rights if KBL has more revenue and  
5 more power to provide the programming for that.  
6 But when we are caught in the middle of this  
7 discussion between fans and tavern owners and how  
8 KBL operates its business and we don't have a say  
9 in how they do that and we don't -- the contract  
10 doesn't call for KBL to ask us can we charge cable  
11 systems for viewing KBL.

12 ACTING CHAIRMAN LaGROTTA: There's nothing  
13 in your language that guarantees that this will be  
14 carried as basic cable?

15 In other words, there's nothing in the  
16 language except for what they paid you for the  
17 rights to set up their cameras and broadcast the  
18 game?

19 MR. DRISCOLL: They have the exclusive  
20 subscription telecast rights for the specific  
21 number of games in the contract.

22 ACTING CHAIRMAN LaGROTTA: And what they  
23 do with it once they take it out of the Stadium is  
24 their business?

25 MR. DRISCOLL: Well, it's a legal

1 arrangement. We have an understanding of how they  
2 are going to operate. But that's really what the  
3 contract calls for, that they have rights to the  
4 games on basic or premium cable television.

5 Now Bill could tell you.

6 I think primarily in the Pittsburgh area  
7 you're on basic, but there are some areas where you  
8 are on premium.

9 MR. CRAIG: Yes, beyond a hundred miles.

10 MR. DRISCOLL: But that's not something  
11 that --

12 ACTING CHAIRMAN LaGROTTA: So you're not  
13 concerned about the level of exposure that the  
14 Pittsburgh Pirates Baseball Club gets from the  
15 contract, you're just concerned here's our games,  
16 here's our check and --

17 MR. DRISCOLL: Well, we are concerned  
18 about the -- we are certainly concerned about the  
19 exposure and that's part of what we are working  
20 with them on and what they're doing.

21 But it's not something that we have a  
22 contractual right to adjust.

23 ACTING CHAIRMAN LaGROTTA: I understand.

24 Any other questions, gentlemen?

25 (No response.)

1           ACTING CHAIRMAN LaGROTTA: Thank you very  
2 much, Mark.

3           Before we adjourn here, let me just  
4 indicate that Mr. William Wischman from Pass ProAm  
5 Sports Systems in Detroit, Michigan sends written  
6 testimony which is address to me dated August 10th.  
7 And I won't read the entire letter, but in his  
8 summation paragraph it says: "The theory is that  
9 if the signal or telecast is used for a purpose  
10 other than personal entertainment such as the  
11 taverns are doing to enhance their revenue, we can  
12 charge a corresponding fee.

13           I would strongly protest any proposal that  
14 allows persons or entities equal consideration when  
15 the purposes are not equal."

16           It's submitted by William J. Wischman,  
17 Jr., from ProAm Sports System.

18           And he asks that that be made part of the  
19 official record today, and I understand that copies  
20 of that letter have distributed.

21           MR. KRANTZ: Mr. Chairman, I would like to  
22 thank you on behalf of Representative Caltagirone,  
23 Chairman of the House Judiciary Committee, and your  
24 aide, Tom, for a very well put together hearing.

25           We are looking forward to continuing the

1 subject matter on the 31st of August in Harrisburg.

2 ACTING CHAIRMAN LaGROTTA: Let me just  
3 repeat what David said.

4 On the 31st, Chairman Caltagirone will  
5 convene another hearing on this issue so that folks  
6 from the Central and Eastern part of the State will  
7 have an opportunity to testify.

8 They found Western Pennsylvania an  
9 inconvenient destination.

10 Anyone here that offered testimony that  
11 chooses to do that can simply make myself or Dave  
12 aware of their desire to testify. We anticipate  
13 having cable providers and programmers from  
14 Philadelphia and the Harrisburg area offer  
15 testimony since this legislation would obviously  
16 affect the entire Commonwealth, even though the  
17 controversy seems to be brewing right now in the  
18 Western part of the State.

19 Thank you all for coming and participating  
20 today.

21 (The hearing concluded at 1:40 p.m.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence taken in the above-entitled matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

  
\_\_\_\_\_  
Dawn Forsythe, Reporter/slg