

1 A No.

2 Q Did you know those applications were filed
3 at the time they were filed?

4 A No.

5 Q When did you first learn that Raystay had
6 filed those applications?

7 A I don't recall the precise date that I
8 learned of the five low power television stations, but
9 it was in the year of 1990.

10 Q And how are you able to place it in 1990?

11 A That's when I became actively involved in
12 program format concept for those stations.

13 Q Who informed you about the stations? When
14 you first learned that the --

15 A I don't recall.

16 Q How did you become actively involved in
17 the program concept?

18 A When I became aware of the low power
19 television stations and in the interest of expanding
20 TV-40's activities, there was an opportunity to
21 increase the revenue flows to Raystay Company.
22 Consequently, I developed this concept, a concept I

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1 should say, for programming, for the purpose of
2 building those television stations and having a
3 successful product when we finished.

4 Q Did anybody ask you to develop such a
5 concept or to work on a plan?

6 A I don't recall the genesis of the
7 activity, whether it was mine or whether it came from
8 someone else.

9 Q Did anybody work with you on it or were
10 you working by yourself?

11 A I worked principally by myself. However,
12 I was in constant communication with David Gardner, as
13 well as keeping Mr. Gardner informed.

14 MR. COHEN: Mr. Gardner? Which Gardner?

15 THE WITNESS: George Gardner, excuse me.

16 MR. COHEN: Off the record.

17 (Whereupon, off the record briefly.)

18 BY MR. EMMONS:

19 Q How did David Gardner get involved?

20 A I needed information initially on the
21 location of the tower or the antennas or transmitters,
22 I should say, excuse me, and other relevant and

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1 pertinent information. In addition to that, I have
2 used David Gardner as a resource for ideas for a
3 number of years and I asked his advise on the concept
4 and kept him informed as I went through discussions
5 with operators.

6 Q Was it from David Gardner that you first
7 learned that Raystay had low power construction
8 permits?

9 A I do not recall.

10 Q Do you recall whether Raystay already had
11 the construction permits granted by the FCC by the
12 time you first learned of it?

13 A That's how I remember it, yes.

14 Q Do you remember approximately when in 1990
15 that occurred or what season it was at least?

16 A It would have been in the last quarter of
17 1990.

18 Q How do you remember it that way? How do
19 you place it in the last quarter?

20 A I remember having discussions about this
21 particular subject at the Atlantic Cable Show, which
22 happens in October.

1 Q I see. With whom did you have -- well,
2 let me back up. The Atlantic -- that's Atlantic City,
3 New Jersey?

4 A Yes.

5 Q Cable Show in October 1990, which you
6 attended.

7 A Yes.

8 Q Did anyone else from Raystay attend that?

9 A A number of people attended.

10 Q And do you remember discussions that you
11 had with whom?

12 A In particular, David Gardner.

13 Q You remember discussions with David
14 Gardner that occurred at the Atlantic City convention?

15 A Yes.

16 Q Okay. Is that your first recollection of
17 knowing about the Raystay's low power permits?

18 A It is the first clear remembrance that I
19 have, yes.

20 Q And what was the substance of your
21 discussions with David Gardner at the Atlantic City
22 cable show?

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1 A It was an opportunity to meet operators
2 and to discuss the concept with key operators that
3 were important to the concept.

4 Q You referred to the concept. What was the
5 concept?

6 A The concept was to create a six station
7 network that effectively covered a large geographical
8 area which could be programmed, interconnected by --
9 programmed similarly, interconnected by microwave.
10 They would also be able to act independently if a
11 program of local interest were to occur, so that we'd
12 be able to create principally a movie service which
13 would give operators the opportunity to replace any
14 existing service on their system because channel
15 capacity is always a constraint to add television
16 stations, particularly at that time.

17 The concept also included providing some
18 advertising time to operators as an incentive to place
19 the service on their system, to reach out to non-
20 subscribers in their marketplace so that we would be
21 able to save them operational costs by providing them
22 an alternative movie service, supplemented by local

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1 programmings of high interest which would gather
2 anticipated large numbers of viewers, allowing them to
3 market their product to non-subscribers and to
4 reinforce their existing subscribers.

5 Q And you said that you recall discussing
6 this concept at Atlantic City with David Gardner, for
7 one. Is that correct?

8 A Yes.

9 Q Did you discuss it at that convention with
10 cable operators?

11 A I cannot recall specifically talking to
12 any individual cable operator at the Atlantic Cable
13 Show.

14 Q But you recall having the concept at least
15 developed in your mind as of that time?

16 A It had been developed prior to that and
17 was developing at that time, yes.

18 Q So, I assume that you had spent at least
19 some amount of time thinking about this at least prior
20 to the occasion of the Atlantic City Cable Show?

21 A Yes.

22 Q Now, you mentioned, as I recall,

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1 geographic coverage, that the concept was that there
2 would be six low power stations that collectively
3 would cover a fairly large geographic area. Let me
4 make sure the record is clear now on the area that
5 we're talking about. Raystay already had an
6 operation, am I correct, one lower power station which
7 was Channel 40, licensed in Dillsburg, Pennsylvania.
8 Correct?

9 A W 40 AF, that's correct.

10 Q Known as W 40 AF or sometimes TV-40,
11 correct?

12 A Correct.

13 Q And that was an operating station already
14 at that point.

15 A Yes.

16 Q And the construction permits that Raystay
17 had secured from the FCC were for -- two permits were
18 for Lancaster, Pennsylvania, correct, and two were for
19 Lebanon and one was for Red Lion? Is that correct?

20 A I'd have to refer to the document to be
21 sure, but that's how I remember it, yes.

22 Q I think we'll all stipulate to that, that

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1 that's what the record shows.

2 Now, in relation to Dillsburg, which was
3 the location of the operating station, TV-40, how far
4 was -- is Lebanon in terms of air miles, roughly?

5 A I do not know.

6 Q Do you know how far it is between
7 Dillsburg and Lancaster?

8 A Not by air miles. At that time I was
9 aware of the distances and the anticipated range of
10 each transmitter site, but I do not remember those
11 numbers.

12 Q Okay. Is it your recollection that based
13 upon the location of the transmitter sites, the
14 engineering specifications for the various
15 construction permits, that if placed in operation the
16 stations collectively would have created a single
17 large coverage area that would be larger than TV-40
18 had at that point?

19 A That was the concept.

20 Q And there would be contiguous or
21 overlapping coverage within that region, the
22 Dillsburg, Lancaster, Lebanon, Red Lion region?

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1 A There would have been contiguous and
2 overlapping coverage as well as some areas that might
3 not receive complete coverage.

4 Q And that was the concept to create a
5 geographic area of large coverage?

6 A But the majority of the population within
7 what might be referred to as a circle would have
8 received the programming from those sites.

9 Q Now, you said you were aware of the
10 coverage characteristics. Did you undertake to
11 prepare or have prepared for you a coverage map of
12 some kind or some document that would reflect
13 geographically what the coverage was?

14 A Yes. As a matter of fact, we did have a
15 chart prepared.

16 Q Who prepared that?

17 A I had it prepared based on information
18 that I received from discussions with David Gardner
19 and George Gardner.

20 Q You had it prepared?

21 A I personally had it prepared.

22 Q Did you direct somebody to prepare it?

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1 A I had an agency prepare it.

2 Q I see. And who was that?

3 A I don't recall.

4 Q Do you remember getting back the product
5 from them?

6 A Yes.

7 Q Do you know where that is now?

8 A No, I do not.

9 Q You don't know what you did with it?

10 A I know that at one time I had sent it
11 forward to the Waymaker Company to Lee Sandifer. That
12 was the last time I saw it.

13 Q All right. And back to the concept again.
14 The programming on the stations, your concept was
15 what, that all stations would carry the same
16 programming or that they would carry some of the same
17 and some different or what was the concept?

18 A The concept was that they could either
19 carry all or the same programming or that they could,
20 if cable operators felt it desirable, could program
21 local events to specific geographical areas in any
22 combination that you might conceive of the six

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1 stations.

2 Q Now, was it part of your planning or
3 concept that once made operational, if I could be made
4 operational, this system, if I can call it a system,
5 would have contributed revenues to Raystay?

6 A Yes.

7 Q Now, at the time, and I guess we're still
8 talking about the last quarter of October of 1990, was
9 Channel 40, TV-40, contributing revenues or was it
10 losing money to Raystay?

11 A To the best of my knowledge it was losing
12 money.

13 Q Was it your thought that the development
14 of the additional stations and the creation of a more
15 regional service would improve the economic
16 performance of the Raystay low power operation?

17 A Yes.

18 Q Now, did you have discussions with George
19 Gardner about this concept back at the time as you
20 were developing it in late 1990?

21 A Yes.

22 Q Would you say that George Gardner was in

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1 agreement with your ideas?

2 A Yes.

3 Q Did he give you any ideas that you hadn't
4 already thought of?

5 MR. COHEN: Back in July?

6 MR. EMMONS: That's right. I'm focusing
7 on later 1990.

8 MR. COHEN: I'm not trying to be
9 difficult.

10 MR. EMMONS: No, you're being very
11 helpful.

12 MR. COHEN: But it's important the witness
13 get focused.

14 MR. EMMONS: I agree. Thank you.

15 THE WITNESS: It was difficult to have a
16 discussion with George where he doesn't contribute.
17 But I think I would say that the program concept was
18 largely mine. George's contributions would have been
19 assisting me in understanding the costs of capital
20 equipment.

21 BY MR. EMMONS:

22 Q The technical cost and equipment costs?

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1 A Yes.

2 MR. EMMONS: If we can take a very short
3 break.

4 (Whereupon, at 1:29 p.m., off the record
5 until 1:35 p.m.)

6 BY MR. EMMONS:

7 Q Mr. Etsell, that red volume of documents
8 that I've got there, would you turn to the very first
9 one? The first two pages of the document, pages 75143
10 and 75144, are entitled on the first page, "Low Power
11 TV Business Plan." My question to you is have you
12 seen that document or a version of that document
13 before?

14 A Yes.

15 Q Were you the author of this document?
16 Disregard the handwritten notations on this copy. But
17 apart from that, were you the author of this document?

18 A Yes.

19 Q What was the reason you offered this
20 document?

21 A To the best of my knowledge, the purpose
22 of this document was drafted as part of our

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1 refinancing effort at that time for the Raystay
2 Company.

3 Q Was it your understanding that the
4 document, the business plan, would be presented to
5 potential financing sources as a description of
6 Raystay's business plan for low power?

7 A It would be part of our submissions, yes.

8 Q Now, this document, this copy of the
9 document has on it at the top of the first page in
10 handwriting the word "Draft." Do you recognize that
11 handwriting?

12 A Yes, that's my handwriting.

13 Q That's yours. And do you see these -- on
14 the first page, on the first couple paragraphs,
15 there's a few handwritten notations. On the third
16 line at the top there's something crossed out and some
17 spelling corrections apparently are made in the second
18 paragraph. Are those yours as well?

19 A No, those are not mine.

20 Q Do you know who made those changes?

21 A I do not recall.

22 Q Okay. Over on the second page, at the

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1 bottom, in the handwriting is the word "Hal." Is that
2 your writing, do you know?

3 A No, that's not my handwriting.

4 Q Do you know whose it is?

5 A No.

6 Q Back to the first page. You just
7 testified that you wrote the word, "Draft" on there.
8 Was this the first draft of this document?

9 A I do not recall.

10 Q Do you know whether there was -- you don't
11 know whether there was an earlier draft than this?

12 A No, I do not.

13 Q Do you know whether there was a later
14 draft?

15 A I do not recall a later draft.

16 Q Do you -- to whom, if anyone, did you
17 present this draft?

18 A I don't recall specifically who I
19 presented the draft to.

20 Q Who do you think it likely you would have
21 given this draft to, if anyone?

22 A Most likely I would have given it to

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1 George Gardner.

2 Q Was this plan -- I'm going to call it a
3 plan because that's the title in the document. Was
4 this plan ever adopted as Raystay's low power
5 television business plan?

6 A It's my understanding this was our plan to
7 go forward with the construction of the five stations.

8 Q In the second paragraph on the first page
9 of the document, the second sentence of it, I'm going
10 to read it aloud. It says, "To become a viable outlet
11 for area advertisers, it is necessary to have access
12 to the major cable system operators in the area."
13 Would you explain what you meant by that?

14 A I think it speaks for itself. In order to
15 be successful, one has to have viewers. Since cable
16 is the predominant method of viewing television in
17 those areas which the lower power television stations
18 would serve, it would be necessary to obtain carriage
19 on cable television systems.

20 Q Would it be accurate to say then that in
21 your view the cable carriage of the low power stations
22 was essential to the plan?

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1 A Yes.

2 Q Was it your view that Raystay could not
3 viably operate five additional low power stations
4 without cable carriage?

5 A I don't know that I made that judgment at
6 this time.

7 Q Did you make that judgment at any time?

8 A No.

9 Q Well, you said in the sentence we've just
10 been looking at, you said that in order to become
11 viable it is necessary to have access to the cable
12 system operators. What did you mean by viable?

13 A I meant that I felt that success of this
14 particular plan was dependent upon carriage by cable
15 operators.

16 Q Did you feel that a successful operation
17 of any kind, whether pursuant to this plan or some
18 other operating theory, was necessary -- that cable
19 carriage was necessary for such success?

20 A Any television station, be it low power or
21 be it a normal VHF or UHF licensed station, will have
22 more success if it is carried by cable operators than

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1 if it is not. That's pretty much an accepted
2 standard. That does not mean that you could not have
3 a successful program without cable carriage under the
4 right format.

5 Q Were you influenced at all in your
6 judgment on this point by the operating experience of
7 TV-40?

8 A Would you restate that question for me,
9 please?

10 A Yes.

11 Q The sentence we've been looking at in the
12 memorandum concerning becoming a viable outlet, in
13 reaching that judgment were you influenced or did you
14 have in mind at all the experience up to that point,
15 and we're talking February 1991, of W 40 AF?

16 A I think the experience of W 40 AF is an
17 entirely different situation. One station in a small
18 market is an entirely different situation than six
19 stations working collectively in a much larger market.

20 Q Well, is it correct to say that W 40 AF,
21 as of February 1991, was still losing money?

22 A Yes.

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1 Q And it was still losing quite a bit of
2 money, was it not?

3 A I don't know the amount.

4 Q But your thought was that if you could
5 combine six stations as a regional system you would
6 improve the economic prospects for the success of the
7 operation. Is that correct?

8 A Of the total operation, yes.

9 Q But the experience of Channel 40, I take
10 it, up to that point at least, was that operating
11 stand alone it was difficult to make money.

12 A I don't know that the record showed that.

13 Q Now, did George Gardner agree with the
14 premise that cable carriage was necessary for this
15 plan to be viable?

16 A I don't recall a discussion on that
17 precise subject.

18 Q You have no sense of an impression whether
19 he agreed with that proposition or not?

20 A I don't think I want to speak for Mr.
21 Gardner, George Gardner.

22 Q Well, did he ever express to you any

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1 disagreement with that premise?

2 A No.

3 Q Was David Gardner, from your discussions
4 with him, was he in agreement with the premise that
5 cable carriage was necessary to make this a viable
6 proposition?

7 A I don't recall having a specific
8 conversation on that subject with David as well.

9 Q So, you couldn't say whether he agreed or
10 disagreed with that proposition?

11 A I will only say that I believe any prudent
12 businessman would agree that the more carriage and
13 coverage that you have of viewers would make any
14 business effort in television broadcast more
15 successful.

16 Q Turn, if you would, two pages over to a
17 document dated January 15, 1991, Memorandum to Bryan
18 Sweeney from Harold Etsell, Jr., with copies to George
19 Gardner and Lee Sandifer. This is a two page
20 document, pages 75139 and 75140.

21 I take it from the heading on this
22 document, Mr. Etsell, that you were the author of this

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1 memorandum. Is that correct?

2 A That's correct.

3 Q And under what circumstances or what
4 caused -- sorry. What caused you to author this
5 memorandum?

6 A To the best of my recollection, it was
7 again related to our refinancing effort. Mr. Sweeney
8 was involved with the company that was handling that,
9 or rather working with us, consulting with us on that
10 subject.

11 Q And that was Communications Equity
12 Associates?

13 A That's correct.

14 Q And was the purpose of this document to
15 educate Mr. Sweeney on the Raystay low power
16 operations?

17 A Yes.

18 Q Now, at the very bottom of the first page
19 of document, the last sentence, you say, "We are
20 presently negotiating a program contract that has the
21 potential to significantly improve our fiscal 1991
22 actual performance as compared to our existing

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1 budget." My question to you is with whom were you
2 negotiating the program contract referred to there?

3 A I personally was not negotiating that
4 contract. However, there were negotiations with TV-40
5 and a distributor for Anheuser Busch for a very large
6 advertising contract which would have supported the
7 production of sprint car racing.

8 Q I see. So, the program referred to in
9 that sentence or the program contract was a contract
10 for a sprint car racing program?

11 A Yes.

12 Q Now, who was negotiating that for Raystay?

13 A Robert Mosebach.

14 Q Was anyone else involved, to your
15 knowledge, in negotiations on behalf of Raystay?

16 A I was aware of his activities and would
17 have had oversight had that program actually been
18 implemented.

19 Q And the programming that was being
20 negotiated there, how much programming would that have
21 provided to Raystay in terms of hours per week?

22 A It was not a program that would have been

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1 hours per week. It would have been specific races
2 over a period of months. I don't recall the number.

3 Q When you say sprint car racing, is that
4 like stock car racing, a term I'm familiar with?

5 A Well, they're not stock cars, but it's
6 dirt track racing and you may know them as midget
7 racers or --

8 Q My younger colleague, Mr. Holt, is nodding
9 his head.

10 MR. HOLT: Fast go-carts.

11 BY MR. EMMONS:

12 Q Was that contract or contract for that
13 program ever signed?

14 A No.

15 Q Now, at the top of the next page, you say,
16 "We have also developed a new programming concept
17 which we intend to implement in late 1991. This new
18 program concept will be made possible through the
19 activation of five new low power television broadcast
20 stations with a potential to cover a market of" -- and
21 I think that number is 350 or 360,000. It is clearer
22 on another copy of this memorandum -- "homes," et

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1 cetera.

2 My question to you, Mr. Etsell, is that
3 the program concept that we were discussing a few
4 minutes ago that you began to develop in 1990?

5 A Yes.

6 Q And in the next paragraph you say, "This
7 new programming concept has been reviewed
8 preliminarily by the major cable TV operators in the
9 expanded service area." Which cable operators were
10 you referring to in that sentence?

11 A I had had discussions with first a non-
12 cable operator whose name was Doug Keppler and was the
13 President of Cable Adnet who happened to have as his
14 board of directors principals from the major cable
15 companies in the area and they were Sammons
16 Communications in Harrisburg, Pennsylvania.

17 Q Sammons, S-A-M-M-O-N-S?

18 A Yes, I believe that's correct. With the
19 Lenfest Group or perhaps known as Suburban Cable, with
20 Susquehanna Broadcasting which operated a system in
21 York, Pennsylvania. I might add Suburban Cable
22 operated in the Lancaster and Chester County areas,

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1 and with then known as ATC who operated the Lebanon
2 system and I believe some small communities in that
3 area. Also, ATC could have seen the signal on its
4 Reading system which was a very large operating system
5 adjacent but not necessarily perceived to be inside of
6 the coverage area. That kind of site could see the
7 signal, but their subscribers most likely could not.

8 Q I see. Their antenna site could see the
9 signals from the Lebanon station, the Lebanon low
10 power station?

11 A To the best of my recollection, that is
12 correct. And I had personal conversations with -- I
13 believe at the time it was John Scott for ATC, Jim
14 Munsel for Susquehanna Broadcasting and Harry Brooks
15 was my initial contact for the Lenfest Group or
16 Suburban Cable.

17 Q Let me ask you to come back to the first
18 document, the low power TV business plan.

19 A You said 75143 and 44?

20 Q Yes, that's correct. And on page 75144,
21 in the first full paragraph that's on that page,
22 starting with the second sentence, you say, "Much of

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