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JOHN G. JOHNSON, JR.

September 12, 1989

The Honorable Alfred C. Sikes
Chairman
Federal Communications Commission
1919 M Street, Northwest
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SEP 12 1989

Federal Communications Commission
Office of the Secretary

In re: **A. C. Nielsen Company's Request for Permission
to Use Line 22 of the Active Television
Broadcast Video Signal on a Temporary Basis for
Coded Program Identification Signals (DA 89-
1060).**

Dear Mr. Chairman:

This letter is written on behalf of our client, Airtrax, a general partnership organized under the laws of the State of California ("Airtrax"), and responds to the letter to you dated September 11, 1989 from communications counsel to A. C. Nielsen Company ("Nielsen") concerning the above-referenced matter.

Nielsen's counsel's letter refers to a supposed "compromise resolution" of the conflict between Nielsen and Airtrax that is currently before the Commission, involving Nielsen's July 19, 1989 request for the Commission's permissive authorization to use Line 22 of the active portion of the television broadcast video signal for the transmission of coded program identification and verification signals (the "Request"), and Nielsen's related August 14, 1989 request for a special temporary authorization ("STA") to provide the service contemplated in the Request on a temporary basis (the "STA Request").

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Airtrax has opposed both the Request and the STA Request.

At two successive meetings held on September 7, 1989 in the offices of the Commission under the auspices of the Chief of the Mass Media Bureau (the "Bureau Chief"), attended by representatives of Airtrax, Nielsen, and the Bureau Chief, various avenues were explored whereby Nielsen might be promptly granted some form of interim relief to enable Nielsen to provide the service contemplated in the Request on a temporary basis, without causing significant damage to Airtrax.

STA FOR NIELSEN'S OPERATION ON LINE 23

One of those avenues involves an STA for Nielsen to provide its contemplated service on Line 23. At the conclusion of the second meeting on September 7, Airtrax's representatives understood Nielsen's representatives to have assented orally to an STA to Nielsen for the use of Line 23, albeit with certain concerns having been expressed by Nielsen's representatives to the effect that Nielsen's ten-year-old signal decoders will require some equipment modification and may be at the limit of their capacity to scan Line 23.

Although certain concerns were also expressed that television broadcasting interests might object to the use of Line 23 by Nielsen, even on a temporary basis, Airtrax submits respectfully that there is no basis in engineering fact or science for an objection that encoded signals on Lines 22 and/or 23 would result in visible degradation to the quality of the television picture, and any STA granted to Nielsen to test its codes on Line 23 could be conditioned accordingly.

"INTERVAL-CODING" STA FOR NIELSEN ON LINE 22

On the other hand, Nielsen's counsel's letter of September 11 to you supports an alternative STA for Nielsen.

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Under this alternative STA, characterized by Nielsen's counsel's September 11 letter to you as a "compromise resolution" of the Airtrax/Nielsen conflict, the syndicated television program post-production and tape duplication houses that are engaged in the encoding of Nielsen's Automated Measurement of Lineups ("AMOL") signals on syndicated television programs would undertake to refrain from encoding those portions of such programs that represent commercial "breaks" at the beginning, at the end, and during the course of those programs.

This so-called "interval-coding" procedure would presumably be designed to preclude the "overwriting" of the Airtrax Line 22 identification codes resident upon those commercial advertisements which have been integrated into those program "break" positions of the syndicated program, when the duplicating facility is in the process of "laying down" the AMOL Line 22 codes along the entire length of the program.

Airtrax respectfully opposes Nielsen's "compromise resolution," because it is neither a compromise nor a resolution.

The Nielsen-endorsed, interval-coding STA is not a compromise, because it would fail to protect Airtrax's essential need, as a "start-up" technology-oriented entrepreneur, to preserve the empirical reliability of its system from contamination resulting from third-party encoding errors that would cause AMOL codes to be written into commercial breaks in these syndicated programs.

Nielsen nor Airtrax can predict or control the behavior of third-party syndicated television program post-production and duplication houses in the encoding of Line 22 of such programs. In order for the Nielsen-advocated, interval-coding STA to achieve its desired end, such third parties must be educated to, and motivated toward, the necessity of adopting an entirely new encoding procedure, one with which they are not now familiar and have not become practiced.

Nielsen has provided no information to show that the education and motivation process that would be essential to the successful implementation of the interval-coding STA has been or could be undertaken within the time frame contemplated by Nielsen's pleas for immediate relief in the STA Request.

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Moreover, the interval-coding procedure assumes a level of technical skill and AMOL encoding equipment capability which is not current in syndicated television program post-production and/or duplication houses.

Syndicated programs are created in their original "master" form, with "black slugs" extant where the commercial advertisements will later be inserted. Typically, one-minute commercial advertisement slugs will be one minute and one second in length, two-minute advertisements will be two minutes and two seconds in length, *etc.*

When the commercial advertisements are edited into the master tape of the syndicated program, there is never more than fifteen frames (equivalent to one-half of one second in duration) between the ending video of the program segment and the starting video of the succeeding adjacent commercial advertisement.

Based upon Airtrax's knowledge of and experience with the post-production and duplication houses that encode Line 22 of syndicated television programs, the facilities in which the encoding is accomplished typically consist of a room in which thirty or more tape machines are present, and in which a single operator may be responsible for playing back two or three different master program tapes simultaneously, while making duplicate tapes of each in preparation for inserting the AMOL codes on to the duplicates.

The process of assembling the master tape, making the duplicate tapes, and inserting the AMOL codes on to the duplicates generally takes place in the post-midnight time period, and is usually accomplished by operators with lower-level skills.

Moreover, the input terminal for the insertion of the AMOL codes may be physically located in a separate room from the room in which the operator is making duplicate tapes from master tapes. A typical half-hour syndicated program may have three or four commercial advertisement breaks, with the intervening program segments having varying lengths.

Under these circumstances, an operator attempting to activate and de-activate the AMOL encoder on several duplicate program tapes at once, with the breaks for commercial advertisements in each of those programs appearing at different intervals within each such program and therefore

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demanding the operator's intense and particularized attention, cannot be expected to accomplish the task of confining AMOL codes to program segments to the level of accuracy demanded (*i.e.*, one-half of one second).

It is, therefore, highly unrealistic to expect that even with a proper motivational and educational campaign, the syndicated television program post-production and duplication houses would be able to adhere to the terms of Nielsen's recommended interval-coding STA.

Without such adherence, of course, the premise of the STA itself fails, and the suggestion that such an STA would represent a "compromise resolution" of the Airtrax/Nielsen conflict also fails.

Stated differently, where such a high degree of predictability exists that the STA will only result in significant harm to Airtrax, it is equally predictable that the parties to this dispute will be back before the Commission in short order demanding an alternative, and workable, resolution.

In the meantime, of course, the damage that would have been suffered by Airtrax would have been immense and possibly irremediable. Airtrax is still a relatively new company attempting to market a relatively new service that is dependent upon novel technological features. As such, Airtrax must establish, by demonstration and empirical testing to the satisfaction of current and potential clients, the reliability of Airtrax's commercial advertisement verification system.

Although the Airtrax system, in an uncontaminated environment, has enjoyed an extraordinarily high level of reliability in identifying and verifying broadcast commercial matter that includes Airtrax codes on Line 22, Airtrax's reputation and acceptance within the relevant marketplace remains to be fully established.

Under those conditions, even a temporary period of artificially-depressed reliability in tests of the Airtrax system, resulting from contamination caused by miscues in the implementation of the interval-coding procedure by syndicated television program post-production and duplication houses, could foreclose Airtrax from ever having a fair opportunity to establish itself and its new service offering.

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Thus, the STA that Nielsen perceives as a temporary palliative for its concerns would in fact represent a "final solution" for Airtrax. The Commission is respectfully urged to fashion a less drastic interim compromise.

It is ironic that Nielsen advocates the interval-coding STA, inasmuch as the effectiveness of that STA would depend entirely upon the as-yet-unknown willingness and ability of a universe of third parties (*i.e.*, syndicated television program post-production and duplication houses) to modify their behavior in order to make such interval-coding succeed, whereas the genesis of Nielsen's Request is the fact that Nielsen has been unable to cause another universe of third parties (*i.e.*, a still-unquantified number of television broadcasting stations) to modify their behavior in order to permit AMOL codes to be "passed" on Line 20 of the Vertical Blanking Interval (the "VBI"), where AMOL has operated since 1982.

In effect, Nielsen is attempting to persuade the Commission that a "compromise resolution" is at hand, when such a resolution necessarily rests upon the assumption that Nielsen will be able to succeed with post-production and duplication houses where it has admittedly failed with television broadcasting stations.

"ALTERNATE-FIELD" STA FOR NIELSEN ON LINE 22

Another kind of STA considered at the September 7 meetings is one that would take advantage of the fact that AMOL operates only on Field 1 of Line 20 of the VBI, and would not require both Fields 1 and 2 of Line 22.

However, Airtrax's commercial advertisement verification system currently occupies both Fields 1 and 2 of Line 22 (based, in part, upon consultations with a prior Bureau Chief). Therefore, in order to accommodate Nielsen's AMOL codes on Field 1 of Line 22, even for a temporary period, Airtrax's system would have to be completely redesigned and overhauled. During that entire period of time, of course, Airtrax's system would be non-operational.

Concerns were expressed at the September 7 meetings that even at the end of the process of redesigning Airtrax's system in order to accommodate AMOL on Field 1 of Line 22 and Airtrax's codes on Field 2 of Line 22, there could be a statistically-significant number of instances of inter-field "slippages," causing both sets of codes to become unreadable.

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Were that to occur, Airtrax would have unilaterally expended considerable sums of money and would have been forced to have suspended its operations for a substantial (and, for a start-up company, a critical) period of time, only to discover that the interim "solution" provides no solution at all.

Assuming that Airtrax at that point were still to retain any vitality as a business entity, one can rest assured that Airtrax would be back before the Commission demanding relief from a well-intentioned but ill-advised alternate-field STA.

CONCLUSION

One principle emerges clearly from the Commission's previous grants of authorizations to parties to operate on Line 22.

That principle is that the Commission has recognized that no such party could hope to compete with Nielsen's AMOL for the use of Line 20 of the VBI, and therefore the Line 22 authorization represented the most practical means of ensuring that the "client community" of advertisers, their agencies, program syndicators, and stations would not be forced to choose between AMOL--which Nielsen uses to publish its audience measurement ratings reports--and any of the newer technology-based services that are being developed on Line 22.

Nielsen's proposal to move its AMOL codes for syndicated television programs from Line 20 of the VBI to Line 22 (while retaining its AMOL service for television network programming feeds on Line 20) would, for the first time, compel the client community to choose between AMOL and ratings reports, on the one hand, and the novel technologies now undergoing testing and development on Line 22.

Representatives of the client community have already expressed to the Commission their desire that such a choice not be forced upon them.

The Line 23 STA for Nielsen's AMOL service for syndicated television programs represents an alternative that would obviate such a forced choice.

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The Commission is, therefore, urged to provide Nielsen interim relief by granting to Nielsen an STA to provide AMOL codes on Line 23 of the active television broadcast video signal, and not to grant to Nielsen either of the alternative interval-coding or alternate-field STA's which would cause substantial and potentially-decisive injury to Airtrax.

Very truly yours,


John G. Johnson, Jr.

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