FINAL REPORT OF HEARING OFFICER
REGARDING PROPOSED ADOPTION OF
MULTISTATE TAX COMMISSION REGULATION IV.18.(j)
(Publishing)

On November 9, 1990, the Executive Committee of the Multistate Tax Commission ("Commission") adopted a resolution ordering a public hearing to be held pursuant to Article VII(2) of the Multistate Tax Compact ("Compact") regarding a proposed allocation and apportionment regulation pertaining to the attribution of income from the business of print media (the affected industry is hereafter referred to as the "publishing" industry).

Bylaw No. 7 of the Commission requires the Hearing Officer to submit to the Executive Committee a report which shall contain a synopsis of the hearing proceedings and a detailed recommendation for Commission action. In the case of a hearing, such as the present one, that is held pursuant to Article VII(2) of the Compact, the final recommendation of the Hearing Officer is to include a proposed draft of the regulation which is the subject matter of the hearing.

This Final Report of the Hearing Officer is divided into three parts - the Hearing Officer's recommendation for Commission action concerning the adoption of the proposed Regulation; a synopsis of the public hearing proceedings which were held; and a discussion of the major substantive issues addressed.

I
RECOMMENDATION FOR COMMISSION ACTION

Based upon the discussion of the substantive issues and a description of the public hearing procedures that have been followed in this matter, the Hearing Officer recommends that the Multistate Tax Commission adopt proposed Regulation IV.18.(j)(Publishing) ("proposed Regulation") as set forth in

Exhibit 1. to this Report. Exhibit 2. sets forth the Resolution of the Executive Committee dated November 9, 1990 ordering the public hearing and the draft of the Regulation as it was originally proposed for public hearing.

The Hearing Officer further recommends that the Commission recommend to the states that adopt proposed Regulation IV.18.(j)(Publishing) that, to the extent practicable, it become effective with respect to the same tax year that Multistate Tax Commission Regulation IV.18.(h)(Television and Radio Broadcasting) becomes effective. It is in this manner that the two primary industries that compete for advertising revenue may be more fairly and similarly treated with respect to that competition.

II
SYNOPSIS OF PUBLIC PROCEEDINGS

A. Notices and Public Hearing.

Notices of the first two sessions of the public hearing to be held were provided as set forth in Exhibit 3. On March 28, 1991, the initial session of the public hearing was held in Washington, D.C. On May 7, 1991, the second public session was held in Los Angeles, California. Additionally, the public was invited to submit additional written testimony or submissions through and including May 15, 1991. Upon separate Notice of Hearing (Exhibit 4.), a third session of the public sessions was held in Washington, D.C. on September 24, 1991. The reasons setting forth the need for the third public session of the hearing are set forth in Exhibit 21. In addition to the two sessions of the public hearing, the Hearing Officer met with several industry representatives at the offices of Gannett Co., Inc. in New York City on April 9, 1991 and October 18, 1991.

Alan Friedman, General Counsel to the Multistate Tax

Commission, presided as Hearing Officer for the Commission. There were 22 persons in attendance at the first Washington, D.C. session; 11 persons in attendance at the Los Angeles, California session; and 8 persons at the second Washington, D.C. session. Those in attendance at the three public hearing sessions, as well as those at the April 9 and October 18, 1991 meetings, are listed in Exhibit 5.

B. Clarification of the Law Regarding the First Amendment and the Need for the Third Session of the Public Hearing.[1]

The subject regulation, as originally drafted, paralleled the wording of the Commission's Regulation IV.18.(h)(Television and Radio Broadcasting), which set forth the method by which net income from the business of television and radio broadcasting activities was to be apportioned among the adopting states. The reason for the parallel development of the language between the two regulations was the understanding that the law under the First Amendment to the United States Constitution might well require state government to treat alike for taxation purposes, to the extent practicable, the income earned from competing media that were protected by the First Amendment. This position was advanced by certain representatives of the television industry during the development of Reg.IV.(h)(Television and Radio Broadcasting) and accepted by the Hearing Officer as a legitimate concern. See, Exhibits 6. and 7. It was a position that had substantial support in prior case law. See, Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983) and McGraw Hill, Inc. v. State Tax Commission, (N.Y. App. Div. 1989).

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[1]. For a more complete statement of background regarding the Hearing Officer's decision to hold a third session of the Public Hearing, see Exhibit 21. (Interim Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(j)(Publishing) dated June 11, 1991).

On April 16, 1991, the Supreme Court decided the case of Leathers, Commissioner of Revenues of Arkansas v. Medlock, et al., ____ U.S. ____, 111 S.Ct. 1438 (1991). That case removed a substantial part of the concern previously held by the Hearing Officer that the states were required, under the First Amendment, to treat alike income of electronic media and print media derived from their respective advertising activities. The Supreme Court held that the First Amendment does not prohibit a state from according differential tax treatment (there a sales tax) to the different types of media. However, it must be noted that the Court did not decide whether the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prevented states from differentially taxing either members of the same media (cable vs. broadcast television) or members of competing media (print vs. electronic). For a more detailed discussion of the Medlock case, see Exhibit 26.

The unanticipated holding in the Medlock case provided the Hearing Officer with the opportunity to unhitch the proposed Regulation as originally drafted and modelled after the Television and Radio Broadcasting Regulation and to craft a regulation that pertained more directly and understandably to the publishing or print media. A second draft of the proposed Regulation was then prepared and distributed for the purpose of receiving comment. See Exhibit 11. A third public session of the hearing process was then provided to ensure that the states and the public had a fair opportunity for input as to this second version.

The Regulation proposed here is based upon the second version drafted by the Hearing Officer immediately after the Medlock decision was announced. It represents an approach that has been "unhitched", in a manner of speaking, from the language found in the Television and Radio Broadcasting Regulation. However, it must be emphasized that the general thrust of the proposed version of the Publishing Regulation remains consistent with the apportionment

philosophy and methodology adopted with respect to the television and radio broadcasting. The substance of both methods is to apportion the receipts factor on an analogous basis. For the broadcaster, the in-state audience that either sees or hears the television or radio programming is used as the measure, and for the publisher, the in-state readership or circulation is the measure. In the opinion of the Hearing Officer, therefore, even if the First Amendment or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution were to apply (either directly or indirectly through a constitutional provision of a state), such constitutional concerns have by-and-large been satisfied by the apportionment method contained in the proposed Regulation.

C. Material Submitted for the Record.

The oral statements of the witnesses and persons present at the public sessions were tape-recorded; and the recordings, which are made a part of the record, are available for review upon request to the Multistate Tax Commission. The following additional written materials have been developed by or submitted to the Hearing Officer and will be made a part of the hearing record:

Exhibit 6.	Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) (without Exhibits).
Exhibit 7.	Second Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) (without Exhibits).
Exhibit 8.	Resolution Regarding Adoption of Proposed Allocation and Apportionment Regulation IV.18.(h) dated August 31, 1990.
Exhibit 9.	Letter dated February 20, 1991 from Lorna Turner of the Tribune Company.

Exhibit 10.	Letter dated April 17, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 11.	Letter dated April 25, 1991 from the Hearing Officer to Christopher Baldwin of Gannet Co., including a 4/25/91 draft of "Multistate Tax Commission Proposed Regulation Art.IV.18.(j)(Publishing).
Exhibit 12.	Letter dated April 30, 1991 from Roger Stone, Revenue Audit Supervisor, State of Alaska Department of Revenue.
Exhibit 13.	Letter dated May 1, 1991 from Thomas H. Nied and Robert S. Tobin of The New York Times Company.
Exhibit 14.	Letter dated May 2, 1991, from Richard Chiogioji, Tax Audit Supervisor, Department of Taxation, State of Hawaii.
Exhibit 15.	Letter dated May 3, 1991 from Stanley A. Gottlieb of The Hearst Corporation.
Exhibit 16.	Letter dated May 6, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 17.	Written Summary of Comments dated May 7, 1991, presented by Karl H. Loring and Victor S. Rappa of Knapp Communications Corporation.
Exhibit 18.	Written Points for Discussion at MTC Hearing dated May 7, 1991 by Jack Plank/Don Mosca of The Times Mirror Company.
Exhibit 19.	Letter dated May 14, 1991 from Christopher W. Baldwin of Gannett Co. Inc. and Written Comments.
Exhibit 20.	Letter dated May 24, 1991 from Don McNeal, Acting Manager, Corporation Tax Section-Audit Division, Oregon Department of Revenue.
Exhibit 21.	Interim Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation

	IV.18.(j)(Publishing) dated June 11, 1991.
Exhibits 22a.-22d.	Audit Bureau of Circulations statements for Architectural Digest, Democrat & Chronicle, USA Today and Detroit Free Press (selected portions not copied).
Exhibit 23.	Letter dated July 1, 1991 from Charles B. Bayly, Jr., Senior Tax Counsel, CBS Inc.
Exhibit 24.	Letter dated August 22, 1991 from Heidi Heitkamp, North Dakota Tax Commissioner.
Exhibit 25.	Letter dated August 27, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 26.	Dyk and Kulwicki, "Taxing the Media: An Examination of Leathers v. Medlock", State Tax Notes (September 9, 1991).
Exhibit 27.	California Legal Ruling 367 (December 5, 1973).

III

SUBSTANTIVE ISSUES ADDRESSED

During the course of the public proceedings, many comments were received from both the states and industry representatives regarding several of the substantive provisions contained in the proposed Regulation. Many of the industry comments were directed at provisions that were included in the original version of the proposed regulation that were tied to the Broadcasting Regulation.

Based upon the Medlock decision, the Hearing Officer has determined that the publishing industry need not be treated strictly in lock step with the broadcasting industry with regard to income tax apportionment approaches. The Hearing Officer determined that in the interest of establishing a simpler and more accurate publishing industry apportionment method, many changes to the regulation as originally proposed should be made.

The Hearing Officer has also concluded that both the electronic media and the printed media compete, in a large degree, for the same advertising dollars; and each media measures the value of the delivery of its advertising messages in analogous ways through audience and circulation statistics. A sense of fairness and tax equity will be served, as the Uniformity Committee has consistently suggested, if both media are treated for tax apportionment purposes in a comparable manner, irrespective of the latitude found in the United States Constitution to do otherwise.

The Hearing Officer has, accordingly, agreed with certain of the comments and objections raised with regard to the originally proposed regulation and has rejected others. Several of the more substantive comments and objections and the Hearing Officer's conclusions and recommendations are set forth as follows:

1. Need for a Separate Special Industry Regulation.

Objection or Comment:

From the outset and consistently throughout the proceedings, industry representatives have urged that there is no need for the proposed regulation since the publishing companies are following the apportionment by circulation concept already. They suggest that the proposed regulation will merely add confusion to the area and not be in the interest of achieving uniformity. It was also suggested that if any action is required, the addition of a sentence or two to Reg.IV.17. that apportioned advertising receipts based upon circulation would be sufficient.

Conclusion and Recommendation:

The Uniform Division of Income for Tax Purposes Act (UDITPA) upon which the Multistate Tax Compact was substantially founded, was adopted by the National Conference of Commissioners on Uniform State Laws in 1957. The principal author of UDITPA, Professor William J. Pierce, wrote a brief background paper that described

the basic purposes of the Act and set out the pros and cons of several of its provisions. With respect to the issue of whether a special regulation is needed or appropriate here, Professor Pierce's comments are directly on point and compelling. He wrote:

> Another problem arises in conjunction with sales other than sales of tangible personal property. Section 17 of the uniform act attributes these sales to the state in which the income-producing activity is performed. If the activity is performed in more than one state, the sales are attributed to the state in which the greater proportion of the activity was performed, based upon cost of performance. In many types of service functions, this approach appears adequate. However, there are many unusual fact situations connected with this type of income and probably the general provisions of Section 18 should be utilized for these cases. If we assume that the activity involved is the servicing of industrial equipment, the formula in the uniform act would be easily applied and the result appears equitable. In contrast, assume that the sales item involved is advertising revenue received by a national magazine publisher. The state of activity would be difficult, if not impossible, to ascertain, so it would appear that this type of income may well be apportioned on the same basis as subscription income. The national conference considered this problem at length and concluded that for certain types of sales income, exceptions would have to be established by the tax collection agencies, since no formula seemed to be satisfactory for every conceivable factual situation. Generally, it was felt that the provisions of Section 17 were the best that could be designed to cover the greater proportion of the cases.

Pierce, "The Uniform Division of Income for State Tax Purposes", Taxes, Vol.35, No. 10, p.747, 780-781.

It is the Hearing Officer's conclusion that the adoption of the proposed Regulation, with its many provisions relating specifically to publishing,would serve the purposes of fair and uniform apportionment better than would a grafting of a sentence or two onto Reg. IV.17.[2] Additionally, the Hearing Officer firmly

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[2]. In addition, it would be impossible for the Hearing Officer to "graft a sentence or two" on existing Reg.IV.17., in any event, because of his lack of ability

believes that major changes to substantive apportionment provisions of Article IV. of the Compact that are required for specialized industries (industries other than those that are purely mercantile or manufacturing) should be accomplished through Reg.IV.18.

Lastly, given the adoption of the Broadcasting Regulation, the adoption of an analogous apportionment methodology that is clearly set forth for the publishing industry will more clearly reflect the states' intention to treat income derived from similar income-producing activities similarly to the extent practicable. The adoption of the proposed regulation in the form recommended will more directly support a finding of compliance with the Equal Protection clause of the United States Constitution, as well as any state constitutional requirements along those lines.

2. <u>The Proposed Regulation and the Concept of Nexus.</u>

Objection or Comment:

Industry representatives have objected that the proposed regulation should not be used either to create a new nexus standard or to circumvent P.L. 86-272 with respect to a state's taxing jurisdiction. From the outset of the proceedings, the publishing industry representatives have viewed the proposed regulation, in part, as an effort by the states to create a new nexus standard for their industry by treating advertising as an activity separate from the sale of printed material as tangible personal property.

The Hearing Officer understands the industry concern to be two-fold. First, it is suggested that by attributing the advertising receipts based upon a circulation factor that this somehow has a jurisdictional impact, i.e., that the mere act of

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to state even the most simple thought in a sentence or two.

attributing advertising receipts to the market state's numerator creates taxing jurisdiction. The second concern is that by treating the business activity of selling and delivering advertising as a service separate from the sale of the printed material in which it appears, the states would be dividing one business activity into two - the sale of the printed material as tangible personal property and the sale of advertising services. The dividing of these activities, the industry fears, would remove the protection of P.L. 86-272 from at least the advertising income, if not the income from the sale of tangible personal property as well.

Conclusion and Recommendation:

a. *The Nexus Concept in General.*

With respect to the industry's general concern that the proposed regulation seeks to establish a change from the traditional nexus standard, the Hearing Officer has repeatedly stated on the record that the proposed regulation is not intended to create a taxing nexus in circumstances in which such nexus does not otherwise constitutionally exist. Further, the Hearing Officer has consistently expressed his opinion that the concept of nexus rests, in the first instance, upon the Due Process Clause of the United States Constitution, which the states have no power to alter by their own action.

While states are permitted to follow a more conservative nexus standard than that permitted by the United States Constitution, states cannot lawfully assert their jurisdictional reach beyond that permitted by the Constitution and applicable federal statutes. Nor can the states lawfully create an expansive jurisdictional reach beyond that permitted in the United States Constitution or their own constitutions merely by the enactment of state statutes or administrative regulations that assert taxing jurisdiction

otherwise beyond their constitutional grasp. It is hornbook law that if such statutes or regulations attempt to expand a state's reach beyond what is constitutionally tolerable, they are simply invalid.

By enacting a statute or regulation a state may, however, advise affected taxpayers of what acts the state deems sufficient to constitute taxing nexus or jurisdiction. So long as the specified jurisdiction-creating acts possess a rational basis and are sufficient to support a constitutional taxing nexus, no overreaching results and the affected taxpayers are properly and fairly forewarned of what behavior will or will not result in a certain tax treatment. Such specification is merely descriptive of a standard; it does not create, by its mere statement, the constitutional underpinning for the standard.

The industry has requested the Hearing Officer to specifically include within the regulation his position - that the proposed regulation does not and cannot constitutionally create tax jurisdiction where it does not already exist. Since, as viewed by the Hearing Officer, the proposed regulation cannot create a lawful taxing nexus that does not otherwise constitutionally exist, the Hearing Officer has determined not to do so. The discussion above is sufficient for the industry's purposes; any such specific inclusion in the proposed Regulation would unduly burden it with irrelevant discussion.

b. *The Application of P.L. 86-272.*

P.L. 86-272 prohibits the states from imposing a net income tax upon an certain interstate sellers. Protected sellers include those whose only business activities within the state consist of (1) the solicitation of orders for tangible personal property, (2) which orders are sent outside the state for approval or rejection, and (3) which are filled by shipment or delivery from a point

outside the state. It is the application of P.L. 86-272 to the advertising aspect of the publishing business that is a basic issue here. The Hearing Officer recommends that the adopting states address at an early stage the issue of whether income earned from advertising revenue arises from the sale of tangible personal property or from the sale of a service. A brief discussion of this issue is set forth below.

Whether the receipts from the sale of advertising messages that are included in the printed material that are delivered to purchasers and subscribers are to be treated as arising from the sale of tangible personal property or from the sale of services will substantially impact the application of P.L. 86-272 to the publishing industry. The industry representatives assert that the publishing business is one that basically manufactures and sells only tangible personal property. They suggest that since advertisements are inextricably bound into the printed material, the receipts from such advertising are to be treated as receipts from the sale of tangible personal property. If so treated, those advertising receipts, along with the receipts from the sale of the printed material, would qualify for P.L. 86-272 protection if the law is otherwise satisfied.

As an initial proposition, the Hearing Officer concludes that which is the obvious - that the purchase price for a newspaper or magazine by a subscriber or purchaser is paid in exchange for tangible personal property. If the printed material contains no advertising (as would typically be the case with books, for example) then we would only be concerned with analyzing the application of P.L.86-272 to the sale of tangible personal property. Industry representatives take the position that the sale of advertising space by publishers should also be treated as the sale of tangible personal property. There is some judicial support for this industry position.

In The New Yorker Magazine, Inc. v. Department of Revenue, 543 N.E.2d 957 (Ill. App., 1 Dist. 1989), a panel of the Illinois Court of Appeals, faced with an apportionment approach taken by the Illinois Department of Revenue similar to that recommended here, set forth the arguments of the taxpayer and the Department as follows:

> No dispute exists here that the sale of the magazine constitutes the sale of tangible personal property (Time, Inc. v. Hulman (1964), 31 Ill.2d 344, 201 N.E.2d 374). The parties disagree, however, as to whether the revenue derived from the New Yorker's advertising transactions should be included in that category or treated separate from the circulation revenue as a sale of intangible property. The New Yorker asserts that the substance of its advertising transactions is the provision of the service of communicating a message to the public, wherein no tangible property is transferred to the advertiser. The Department, on the other hand, maintains that receipts from the sale of advertising space are sales of tangible personal property because the sale of advertising space is an integral part of the publication and depends upon the circulation of the magazine.

Concluding that the New Yorker was not in the business of advertising, but in "the business of publishing a magazine", and that the advertising revenue was "dependent upon and part and parcel of the publication and sale of the magazine", the court rejected the publisher's argument that receipts from its sale of advertising space in its magazine constituted a service. The result of the court's conclusion was that Illinois was permitted to treat together, as derived from the sale of tangible personal property, both the receipts from magazine circulation and the receipts from the sale of advertising space.

In District of Columbia v. Evening Star Newspaper Co., 273 F.2d 95 (D.C. Cir. 1959), the court addressed the issue of whether the net income of a newspaper from various activities - renting of property, circulation and advertising - could properly be divided into different streams of income for apportionment purposes. The court concluded that it was appropriate for the income to be

divided into "non-operating income", consisting of rental income, and "operating net income", consisting of both newspaper circulation and advertising income. The court held that both types of operating net income should be treated together without further separation. It discussed the issue as follows at p. 102:

> The balance of Taxpayer's income is from circulation and advertising revenue. We are faced with the question of whether these two items must be separated for apportionment purposes. We think that further separation is neither necessary or warranted. The interrelationship between the two is so intimate that a separation would of necessity be arbitrary and artificial. It is apparent that all revenues, (other than the non-operating revenues) rest ultimately upon circulation and readership....

The recommended apportionment method contained in the proposed Regulation is not dependent upon whether a publisher's receipts from the sale of advertising space are classified as arising from the sale of tangible personal property or from the sale of services of communicating the advertiser's message. Receipts from the sale of advertising are to be apportioned based upon a circulation factor irrespective of their nature. And circulation receipts are likewise attributed on a destination basis sourced to the state in which the ultimate purchaser or subscriber is located.

This similar treatment in the proposed Regulation of both circulation and advertising receipts logically flows from the nature of the publishing business and is consistent with the apportionment treatment found appropriate in the Evening Star and New Yorker cases. It is also consistent with California Franchise Tax Board Legal Ruling No. 367 (December 5, 1973) which concluded that -

> "... Since advertising included in magazines and periodicals is inextricably connected with the sale of those publications, it is concluded that advertising receipts are to be included in the numerator of the sales factor based upon the ratio which sales of magazines and periodicals in this state bears to the total sales of magazines and periodicals everywhere."

But, even though the proposed regulation operates consistently with those cases and California's current approach for apportionment purposes, the regulation is not premised upon the rationale found in the New Yorker case that the sale of advertising constitutes the sale of tangible personal property. Additionally, the Hearing Officer does not read either the Evening Star decision or California FTB Legal Ruling 367 as having clearly addressed, let alone decided, whether advertising found in printed material constitutes tangible property or the delivery of a service.

Despite the arguments raised by the industry to the contrary, the Hearing Officer concludes that there is sufficient basis to treat circulation sales activity and advertising sales activity separately, even though the two activities relate to and are dependent upon one another. See, Dinner Theater Associates v. Illinois Department of Revenue, 488 N.E.2d 288 (1985). As noted above, the principal drafter of UDITPA specifically came to the conclusion almost 40 years ago that the sale of advertising by a publisher constituted the sale of services and not the sale of tangible personal property. Based upon the foregoing, the Hearing Officer has concluded that the sale of printed material that includes advertising is both (1) a sale of tangible personal property (the magazine or newspaper) paid for by the subscriber or purchaser; and, (2) the delivery of a service (the communication of the advertisement) for which the publisher is separately paid by the advertiser.

The classification of publishing activities as either or both the sale of tangible personal property or the sale of services will not be important for apportionment purposes under the proposed regulation, except for a possible issue involving the "throw-back" of advertising receipts where jurisdiction is lacking in the subscriber or purchaser's state. However, this distinction has substantial importance in determining the appropriate application of P.L. 86-272 to a publisher's in-state activities. In the

interest of achieving increased uniformity, additional clarity and fair notice, the Hearing Officer has set forth the distinction in Reg.IV.18.(j)(3)(iii)B.1. and 2. Those two provisions distinguish between (but, again, operate the same for apportionment purposes) the receipts from print media sales to purchasers and subscribers (as derived from sales of tangible personal property) and the receipts from the sale of advertising space (as derived from sales other than sales of tangible personal property).

The Hearing Officer has concluded that this distinction, if adopted by a state, may well render P.L.86-272 inapplicable to protect publishers that include advertising in their publications. This conclusion is consistent with the Commission's guidelines adopted under the title "Information Concerning Practices of the Multistate Tax Commission States under Public Law 86-272" (hereafter "Guideline"). The MTC Guideline construes P.L. 86-272 as protecting only the sale of tangible personal property (to be defined under state law); and, under the Guideline, a sale that consists of a mixture of tangible personal property and services loses the immunity of the Public Law. See, MTC Guideline, Article I and Article IV.C.

It must be emphasized here that it is for the adopting state, itself, to determine whether to classify the sale of advertising as a service or as tangible personal property. This classification certainly could be accomplished through legislation; however, depending upon individual state law, it might also be established by regulation. Therefore, it is important for a state considering adoption of the proposed Regulation to examine this issue further and determine as a matter of its own state law and tax policy whether the inclusion of advertising in printed material delivered into the state should have a jurisdictional consequence under Public Law 86-272 and, if so, how to accomplish it. Should a state determine to treat the sale of advertising as a sale of tangible personal property for P.L. 86-272, as well as for apportionment

purposes, it should then delete the second sentence from (j)(3)(iii)B.2. of the proposed Regulation.

3. Exclusion of Outer-jurisdictional Property from the Property Factor.

Objection or Comment:

Comments received suggest that there is no justification for excluding outer-jurisdictional property, such as undersea cables and satellites, from the property factor. (See, Exhibit 2, Reg.IV.18.(j)(4)(ii)A.1. and B.1. for provision as originally proposed).

Conclusion and Recommendation:

The original exclusion for outer-jurisdictional property was based upon the exclusion of such property from the property factor adopted in the Broadcasting Regulation. (See, Reg.IV.18.(h)(4)(ii).A.2., B.3. and C.2. The exclusion of such property from the Broadcasting Regulation was adopted at the request of the broadcasting industry representatives and accepted by the Commission in the interest of accommodating the industry and reducing the administrative difficulty associated with including such property.

The Hearing Officer concludes that the request of the publishing industry representatives that outer-jurisdictional property should be included in both the numerator and denominator of the property factor likewise be accepted. The ownership and use of such property in the publishing industry appears much more limited than in the broadcasting industry. Therefore, the administrative burden associated with accounting for such usage would be relatively minimal and the inclusion of such property would be consistent with the normal operation of the traditional property factor.

The Hearing Officer also concludes that outer-jurisdictional property owned or leased by the taxpayer should be (1) valued at original cost and (2) attributed to the numerator of the property factor of the states having a connection to such property. Therefore, in the case of satellite transmissions, for example, both the state from which a transmission is sent and the state which receives transmissions delivered via owned satellites or circuits purchased or leased from the satellites of others should be attributed a proportionate amount of the cost of such property. The Hearing Officer's effort to describe a specific method by which to attribute the proportionate cost of the outer-jurisdictional property that is used in a state is set forth in subparagraph (j)(3)(i)B.2. This proposed provision applies the general Compact attribution rules with regard to owning or leasing tangible personal property (Reg.IV.10.-12.) to the taxpayer's ownership of a satellite or the leasing of half-circuits or other use of a satellite's transmission.

With regard to satellite property owned by the taxpayer in whole or jointly with others, the original cost, for denominator purposes, is readily obtained from the records of the taxpayer. The accounting for satellite usage in the context of an owned satellite may be reported in terms of connection time or other system of cost attribution adopted by the taxpayer satellite owner.

With regard to the taxpayer that leases the use of a communication satellite, the taxpayer will likely record the cost to it for the half-circuits it actually leases. If the number of half-circuits is reflected on the taxpayer's books and records, the half-circuits should be used to determine the proportion of satellite usage attributable to in-state transmissions sent or received by calculating the ratio that the half-units that were leased or purchased for the satellite transmissions that taxpayer sent from the state or received in the state bore to the total number of half-circuits leased or purchased for all satellite

transmissions. If such a unit of measurement is not available, then the proportionate cost shall be based upon the amount of time or other method upon which such time is billed for such transmissions. To the extent that the taxpayer and the tax administrator can agree on a fair allocation method based upon the particular circumstances, that method shall control. If no such agreement can be reached, the tax administrator shall select the method of attribution that fairly attributes to the property factor the proportionate cost of the data, voice, image or other information transmitted by satellite that are sent from and received in the state.

4. Permissible Inclusion of Independent Contractor Payments in the Payroll Factor.

Objection or Comment:

Comments received suggest that there is no justification for permitting either the taxpayer or the tax administrator to deviate from the normal rule of not including in the payroll factor payments made to independent contractors who provide services to the taxpayer. (See, Exhibit 2, Reg.IV.18.(j)(4)(iii)(A) for provision as originally proposed).

Conclusion and Recommendation:

The original permissible inclusion of payments to independent contractors for services was again based upon the inclusion of such a provision in the Broadcasting Regulation. (See, Reg.IV.18.(h)(4)(iii)A.2. and B. The justification for such inclusion in the broadcasting area was based upon the historical development of the practice of highly paid actors, directors and other talent incorporating themselves (primarily for federal tax purposes). These "alter ego" corporations would then contract their talent out to the studio where the talent would perform functionally as if they were employees of the studio.

The Hearing Officer finds that the type of independent contractor practice found in the broadcasting industry is not followed to any significant extent in the publishing industry. Therefore, the potential need for such a provision does not exist with respect to the publishing industry and its inclusion in a proposed regulation would add more confusion and opportunity for lack of uniformity than warranted. Therefore, the Hearing Officer recommends the deletion of such a provision from the proposed Regulation.

5. Exclusion of Foreign Based Sales from the Receipts Factor.

Objection or Comment:

Comments received suggest that there is no justification for excluding foreign receipts or other foreign factors from the apportionment formula when such factors exist. (See, Exhibit 2, Reg.IV.18.(j)(4)(iv)B.3. for provision as originally proposed).

Conclusion and Recommendation:

Again, this provision was the counterpart to that included in the Broadcasting Regulation. (See, Reg.IV.18.(h)(4)(iv)B.2. and 3.). During the course of the proceedings on the subject proposed Regulation, it became clear to the Hearing Officer that it was inappropriate to include such a provision in either the Broadcasting Regulation or the Publishing Regulation that excluded from the receipts factor sales made to foreign countries. Such a provision, of course, has no significance when the taxpayer's sales are wholly within the United States. However, such a provision may distort the apportionment result for those taxpayers with significant sales in foreign markets through foreign business activities that are not sufficiently disassociated or separated from their United States business activities. Therefore, the Hearing Officer has recommended that such a provision not be

included in the proposed regulation.[3]

6. <u>The Regulation Should Not Include the Publishing of Books in its Coverage</u>.

Objection or Comment:

Both industry and some state representatives suggested that since the book publishing business did not involve advertising revenue received from the circulation of books, then the proposed regulation should not apply to such publishing industry segment.

Conclusion and Recommendation:

The Hearing Officer has recommended the removal of the specific reference to books from the regulation as originally proposed, because books normally do not contain advertising and, therefore, their sale represents purely the sale of tangible personal property. (Compare the coverage provision of Reg.IV.18.(j)(1) in Exhibit 2 with that of Reg.IV.18.(j)(1) in Exhibit 1 of the proposed Regulation). The removal of the specific word "books", however, is not intended to eliminate application of the proposed regulation to the book publishing industry, but only to reduce any suggestion that book publishers are always affected by the Regulation.

Books, as well as certain magazines or other periodicals that do not contain any advertisements, will still fall within the definition of printed material found in Reg.IV.18.(j)(2)(iii) and,

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[3]. The Hearing Officer also recommends that the Commission entertain the removal of such a provision as found in the Broadcasting Regulation (Reg.IV.18.(h)(4)(iv)B.2. and 3.) after appropriate notice and public comment. It is to be noted that the state of North Dakota has already taken steps to remedy this defect in the manner it has adopted the Broadcasting Regulation. The Hearing Officer will formally make such a recommendation should the Executive Committee of the Commission authorize him to do so.

thus, be subject to the apportionment provisions of the proposed Regulation. In such a case, the absence of advertising from books or any other printed material would render some of the provisions of the proposed regulation inapplicable. For example, the apportionment provisions with respect to advertising receipts contained in paragraph (j)(3)B.2. would not apply to the income of a book publisher whose books did not contain any advertising; but the apportionment provision contained in paragraph (j)(3)B.1. would still apply as it related to the treatment of receipts from the sale of tangible personal property.

7. The Concept of "Print Media Property" with Respect to the Publishing Industry.

Objection or Comment:

Comments received from both state and industry representatives noted the inapplicability of the concept of "print media property" to the publishing industry and suggested its removal from the proposed Regulation.

Conclusion and Recommendation:

Print media property, as defined in the originally proposed regulation, meant "the original or master from which printed material is printed or otherwise produced, irrespective of whether or not such property is subject to copyright protection". (See, Reg.IV.18.(j)(3)(iii)) of Exhibit 2. This definition was based upon the Broadcasting Regulation's definition of "film or film programming" (Reg.IV.18.(h)(3) that was used to describe certain property that was not to be included in the property factor under that regulation.

Based upon the comments received from the publishing industry, the Hearing Officer has concluded that, with the principal exception of copyrighted book manuscripts, there is no property in the publishing industry that is analogous to that of "film

programming" and that the inclusion of a reference to "print media property" and the specific statement of exclusion of such property from the property serves no purpose but to add confusion.

With respect to the book publishing industry, it is anticipated that neither the value of original manuscripts nor the value of the copyright relating thereto will be included in the property factor denominator. To the extent that such value may be included, it would be reasonable to anticipate that the state would either seek to remove such value from the denominator or assign to its numerator an apportioned value thereof based upon the circulation factor. Therefore, the Hearing Officer recommends the removal of reference to "print media property" from the proposed Regulation.

8. The Fallback Use of In-State Versus U.S. Population Statistics for the Circulation Factor.

Objection or Comment:

As originally drafted, Reg.IV.18.(j)(3)(iv)B.2. contained a provision that permitted the use of population statistics to determine the readership (now circulation) factor should such services as the Audit Bureau of Circulation not be available or sufficient to measure the circulation of a publication. Comments received suggested that instead of using population statistics, the publisher's own books and records would be available and should provide more accurate measurement for the receipts factor.

Conclusion and Recommendation:

The Hearing Officer concludes that resort to using the publisher's books and records to determine the circulation component for the receipts factor will be more appropriate and accurate than the use of population statistics. Therefore, the proposed Regulation has been modified in this regard.

9. Application of a Throwback or Throwout Rule to Advertising Receipts.

Objection or Comment:

Comment was received from the California Franchise Tax Board suggesting that the proposed Regulation contain either a throwback or throwout mechanism for receipts from advertising that are not attributed to any state due to lack of jurisdiction over the publisher.

Conclusion and Recommendation:

To the extent that a publisher is not taxable in the state of the purchaser or subscriber of its printed material, the gross receipts from the sales and subscriptions of the printed material will be thrown back to the numerator of the state from which the printed material had been shipped under the throwback provisions of Article IV.16.(b) of the Compact and Reg.IV.16.(a)(1)(B) thereunder. If the industry representatives are correct in their assertions that the sale of advertising constitutes the sale of tangible personal property, then a throwback of those advertising receipts will follow when the publisher is not taxable in another state. The advertising receipts will then be thrown back to the state from which the printed material was shipped, the state with the last and most tangible contact with the tangible property.

On the other hand, if the Hearing Officer is correct in his conclusion that the sale of printed material consists of both the sale of tangible personal property to readers and the concurrent delivery of the advertising services separately contracted for by the advertiser, then the throwback provisions under UDITPA and the Compact may be held not to apply to the advertising receipts. As the Hearing Officer has already concluded, the two activities - the sale of printed material and the delivery of advertising space - are activities that "relate to and are dependent upon one another". Even so, the two activities need not be viewed or treated

identically for all purposes.

The throwback rule contained in Article IV.16.(b) of the Compact and Reg.IV.16.(a)(1)(B) is specifically limited to the circumstance involving the receipts from sale of tangible personal property. Application of the throwback principle to sales of tangible personal property theoretically would result in 100% of the gross sales being attributed to the states (including foreign countries as defined by the Compact). To the Hearing Officer's knowledge, however, throwback has not been applied to receipts from services or intangible property. The Hearing Officer concludes that the application of a throwback principle in this context would stray too far from the regularly accepted usage of that principle and would not, therefore, be likely to gain wide or uniform acceptance.

However, the Commission has recognized, in a different context, the application of a "throwout" principle to circumstances involving receipts from the sale or disposition of intangible property when the receipts therefrom "cannot readily be attributed to any particular income producing activity of the taxpayer ...". See, Reg.IV.18.(c)(3). In such a case, those particular receipts are "thrown out" of the factors by excluding them from both the numerator and denominator of the receipts factor.

If Professor Pierce's conclusion, as adopted by the Hearing Officer, is correct - that the delivery of advertising should be treated as the sale and delivery of a service - there will be fewer occasions to throw back or throw out the receipts from advertising. This is so because the taxing jurisdiction in the state of the purchaser or subscriber will more likely be sustained when P.L. 86-272 does not apply to create an additional jurisdictional hurdle. But, in those instances in which such taxing jurisdiction is not found, the Hearing Officer has determined that the more appropriate course would be to follow the practice already established under

Reg.IV.18.(c)(3) with respect to intangibles and to exclude such receipts from the receipts factor. Therefore, the Hearing Officer recommends and has included a throwout provision in the proposed regulation at Reg.IV.18.(j)(3)(iii)(C).

Should the Commission determine to follow, instead, a throwback approach with regard to the advertising receipts, the Hearing Officer has provided immediately below suggested language for such a provision:

> [The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:]
>
> * * * * * * * *
>
> "Reg.IV.18.(j)(3)(iii)B.3. Gross receipts derived from advertising when the printed material containing such advertising is shipped or delivered from an office, store, warehouse, factory, or other place of storage in this state and (i) the purchaser or subscriber is the United States government or (ii) the taxpayer is not taxable in the state of the purchaser or subscriber".

The remaining option for the Commission in this area would be to adopt neither a throwout (by deleting current paragraph (j)(3)(iii)C.), nor a throwback provision and allow such receipts from advertising to remain unattributed to any state when tax jurisdiction fails in the state of the purchaser or subscriber. This option, of course, would permit less than full accountability for the receipts.

IV.
CONCLUSION

Based upon the discussion above, the Hearing Officer recommends the adoption of the proposed Regulation IV.18.(j) (Publishing) as it is presented in Exhibit 1. to this Report. It is important to note that the recommended Regulation contains many

changes to the regulation as originally proposed (Exhibit 2), as well as many changes from the second version of the regulation (Exhibit 11). The changes that the Hearing Officer feels are of significance are those that relate to (1) the introduction of the term "terrestrial facility" in subparagraph (j)(2)(iv) and its use in relationship to outer-jurisdictional property in (j)(3)(i)B.3; (2) a more detailed explanation in (j)(3)(i)B.3. of the method by which to apportion the value of outer-jurisdictional property used in the state; (3) the introduction in (j)(3)(iii)B.3. of the concept of a limited attribution for advertising receipts derived from regional advertising; and (4) the introduction in (j)(3)(iii)C. of a throwout mechanism for advertising receipts not attributable to the state of the subscriber or purchaser.

Representatives of the publishing industry, while continually questioning the need for a special regulation with respect to their industry, have also been consistent in their willingness to provide input into this regulation development effort. Their submissions have been courteously and competently presented and the dialogue that was developed between the Hearing Officer and the industry bore fruit for both. While the Hearing Officer does not believe that any additional public hearing sessions are necessary, he does conclude that it would be appropriate to provide industry representatives with the opportunity to address any new material in the proposed Regulation before the Executive Committee refers the matter to the full Commission. The Hearing Officer, therefore, recommends that the Executive Committee permit his receipt of further written comments to the Regulation, as now proposed by this Report, and that such comments be forwarded to the Executive Committee prior to its meeting during the Commission's Annual Meeting in Kansas City, Kansas, on July 22, 1992. In addition, should a representative of industry members wish to make an oral presentation to the Executive Committee at that meeting, the Hearing Officer believes that that would be appropriate under the circumstances, assuming that the Executive Committee believes that

such a presentation would be of assistance in its deliberations.

Respectfully submitted on March 16, 1992.

Alan H. Friedman/jmw

Alan H. Friedman
Hearing Officer

printreg.fnl 3/16/92

EXHIBIT 1

Multistate Tax Commission

Proposed Regulation Art. IV.18.(j)

(Publishing)

Reg. IV.18.(j). Special Rules: Publishing.

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of newspapers, magazines, periodicals, trade journals or other printed material.

(1) **In General.** Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to [Article IV. of the Multistate Tax Compact and the regulations adopted thereunder].

(2) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(ii) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(iii) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material . Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(iv) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave or other relay system or device that is used to transmit or carry any data, voice, image or other

information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(3) **Apportionment of Business Income.**

(i) **The Property Factor.**

A. **Property Factor Denominator.**

1. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

B. **Property Factor Numerator.**

1. All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

2. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the original cost of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total original cost of such property that is attributable to its use in the taxpayer's business activities everywhere.

The cost of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of half-circuits that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of half-circuits that the taxpayer used for transmissions everywhere.

Should information regarding such half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the cost of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

3. Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed directly by the taxpayer in any manner in the

publishing, sale, licensing or other distribution of newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this regulation, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of $400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the total original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, were determined to have an original cost of $4,000,000 and such mobile property was used in this state for 95 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$3,000,000
Value of mobile property: 95/365 or (.2868) x $4,000,000:	$1,147,200
Value of leased satellite property used in-state: (.02) x $100,000,000:	$2,000,000
Total value of property attributable to state	$6,147,200
Total property factor %: $6,147,200/($500,000,000):	.01229

(ii) **The Payroll Factor.**

The payroll factor shall be determined in accordance with Article IV.14. of the Multistate Tax Compact and the regulations promulgated thereunder.

(iii) **The Sales Factor.**

A. **Sales Factor Denominator.**

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under Reg.IV.15 through 18 or subparagraph (3)(iii)C. hereof.

B. **Sales Factor Numerator.**

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

2. Except as provided in subparagraph (3)(iii)B.3., gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. Such receipts shall be considered to have been derived from a sale other than the sale of tangible personal property. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable resources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

3. When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the [Tax

Administrator] may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (3)(iii)B.2. Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

C. In the event that the taxpayer is not taxable in a state, the gross receipts from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state shall be excluded from both the numerator and denominator of the sales factor.

EXHIBIT 2

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE MULTISTATE TAX COMMISSION REGARDING THE HOLDING OF A PUBLIC HEARING UPON PROPOSED M.T.C. REGULATION IV.18.(j)

Attribution of Income from the Business of Print Media

WHEREAS, the Multistate Tax Commission (hereafter "Commission") possesses the authority pursuant to Article VI. of the Multistate Tax Compact (hereafter "Compact") to develop and recommend proposals for the purpose of increasing uniformity in the administration of state and local taxes; and

WHEREAS, the Commission has recently adopted a uniform regulation for the allocation and apportionment of income derived from interstate television and radio broadcasting; and

WHEREAS, during the proceedings relating to the adoption of said Television and Radio Broadcasting Regulation, an issue was raised by industry representatives as to whether the adoption of said Television and Radio Broadcasting Regulation discriminated against electronic media and in favor of printed media regarding the taxation of income derived from the dissemination of advertising; and

WHEREAS, the Hearing Officer addressed this issue in his Report of Hearing Officer, in part, as follows:

> "One industry representative .... suggests that the adoption of the proposed regulations will constitute a discriminatory action by the states and violate its First Amendment protection, because the regulation places a tax burden solely on the business activities conducted by radio, television and cable companies. It suggests that the regulation, to be constitutional, must also apply to businesses that are competitive and "functionally similar", such as magazine publishers, data-based retrieval systems businesses, motion picture and television production companies and the like....
>
> The First Amendment argument raised ..... is not without support in case law. See, Texas Monthly, Inc.

v. Bullock, ___ U.S. ___, 109 S.Ct. 890 (1989); Arkansas Writers' Project v. Ragland, ___ U.S. ___, 107 S.Ct. 1722 (1987); and Minneapolis Star & Tribune Co. V. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983). And, just recently, a New York appellate court held that it was an unconstitutional infringement upon a magazine publisher's First Amendment right not to afford it the same tax apportionment scheme (destination based) that was afforded to the television and radio media under 20 NYCRR 4-4.3(f)(2)discussed infra. See, McGraw Hill, Inc. v. State Tax Commission, Supreme Court of New York, Appellate Div. No. 57346 (May 11, 1989, slip. op.). Justice Mikoll's dissent in this case suggests reasons why no violation of the First Amendment occurs in applying differing tax treatment to print and electronic media that sell advertising.

The Hearing Officer recognizes that the First Amendment issue raised ...., at least with respect to the printed media, is not without merit and currently presents an open question that will be subject to judicial debate and decision in the near future. It is neither the role nor the intention of the Hearing Officer to offer an opinion as to the constitutionality of the proposed regulation, other than to recognize that it will remain an open question until addressed by the U.S. Supreme Court in the context of an appropriately developed record. Since New York, effective January 1, 1982, amended its tax laws to treat alike both printed and electronic media that disseminated advertising (apportioning advertising receipts on a destination basis), no further challenge can be anticipated to arise in that state in the near future. This is especially true, so long as the apportionment approach suggested in the proposed regulations remains unadopted by the destination states. It is clear that so long as the state of destination of the advertisements do not assert a right to apportion the advertising receipts, the disseminators of advertising by printed and electronic means will bear a lesser tax burden. The proposed regulation simply offers the missing piece of the jig-saw puzzle - a piece that bridges the advertising receipts gap [that] falls between the two coasts of the United States.

The Hearing Officer further concludes that substantially the same allocation and apportionment mechanism that is proposed here is readily suited for the printed media, as well as other disseminators of regional and national advertising. One of the recommendations to be made below is for the Multistate Tax Commission members to begin the process of determining the applicability of the proposed apportionment formula, or some derivative thereof, to other advertising

disseminators. Without prejudging the outcome of that possible future effort, it may be that no sufficient basis will be found for treating the electronic media different from the printed media in apportioning advertising income. But, even if no constitutional or other legal compulsion currently exists to treat the two media similarly in this context, the states may still determine that a destination based assignment of advertising revenue earned by <u>any</u> type of media constitutes a reasonable and fair measure of the income producing activity in the destination state...."; and

WHEREAS, the United States Supreme Court has recently decided to review the case of <u>Pledger v. Medlock</u>, No. 90-29, in which the issue is raised as to whether the First Amendment requires the state to treat electronic and print media the same for the purposes of the imposition of sales taxes. Therefore, the issue raised by the broadcasting industry representatives may well be address by the Supreme Court in the very near future; and

WHEREAS, the Uniformity Committee of the Commission has met on several occasions to study, develop and propose a uniform method for the attribution of income derived from the business of print media that operate on a multistate basis; and

WHEREAS, the Uniformity Committee has determined that, even if the adoption of an allocation and apportionment regulation for the print media that imposes a similar methodology to that adopted with respect to the broadcasting media is not constitutionally required, it is still in the interest of good state tax policy to do so; and

WHEREAS, the Uniformity Committee has recommended to the Executive Committee that a public hearing be held upon the proposed Regulation IV.18.(j). attached hereto; and

WHEREAS, the Executive Committee determines that it is in the interest of state taxpayers and state tax administrators alike that the states determine the most appropriate and administratively feasible method for uniformly applying their tax to the multistate business that is carried on by print media; and

WHEREAS, it is in the public interest that a public hearing be held upon said proposed regulation in order to receive public comments thereon.

NOW, THEREFORE, BE IT RESOLVED THAT a public hearing upon said proposed Regulation IV.18.(j)., a copy of which is attached hereto, be held at a convenient location to the interested public on such date and time as determined by the Hearing Officer pursuant to the provisions contained in Article VII. of the Compact; and

BE IT FURTHER RESOLVED, the mere resolution that a public hearing be held in this matter does not mean that the Executive Committee or any member thereof believes that the states are constitutionally required to treat the electronic and print media alike with respect to the taxation of their interstate business activities, but the doing so may be based on good state tax policy independent of any constitutional or other legal compulsion; and

BE IT FURTHER RESOLVED, Alan H. Friedman, General Counsel to the Commission, is hereby appointed to act as Principal Hearing Officer for the public hearing; that he is authorized to appoint such Assistant Hearing Officer or Officers as he deems necessary to execute his responsibilities herein; and that he is directed to submit his report and recommendations to the Executive Committee within a reasonable period of time following the completion of said public hearing and in advance of the Commission's Annual Meeting to be held in 1991.

Adopted by the Executive Committee this 9th day of November, 1990.

/s/Dan R. Bucks
Dan R. Bucks
Executive Director

EXHIBIT 3

Multistate Tax Commission

February 8, 1991

TO: Alan Friedman, General Counsel, and Hearing Officer for proposed MTC Regulation IV.18.(j): Attribution of Income from the Business of Print Media

FROM: Michael Mazerov, Director of Policy Research

SUBJECT: Amended certification of mailing of Notice of Public Hearing on said regulation

In compliance with Multistate Tax Commission Bylaw 7, the attached Notice of Public Hearing was mailed to the following elements of the mailing lists maintained by the MTC on the following dates:

On January 24, 1991

1) To the chief tax administrators of all 50 states and the District of Columbia

2) To all Alternates designated by the chief tax administrators of full member states and, where a designation was made, of associate member states.

3) To current members of all standing MTC committees (Audit, Uniformity, Litigation, and Nexus Advisory)

4) To the industry representatives shown on the attached photocopies of their mailing labels. Most of these individuals are members of the Publishers and Broadcasters Task Force, Committee on State Taxation, Council of State Chambers of Commerce. Several were specifically designated by you to receive the notice, and others have contacted the MTC for information concerning either the subject regulation or the apportionment regulation covering radio and television broadcasting.

The hearing notice was also sent to the editor of the "Tax Calendar" column at Tax Notes magazine with a request that it be printed there.

Finally, the hearing notice will be printed in the next issue of the Multistate Tax Commission Review, which I expect to be mailed at such a time as to meet the requirement contained in Bylaw 7 that at least 30-day notice of all uniformity-related hearings be given to the general MTC mailing list.

Headquarters Office:
444 North Capitol Street, N.W.
Suite 409
Washington, D.C. 20001
Telephone (202) 624-8699
Fax (202) 624-8819

New York Audit Office:
25 W. 43rd Street, Suite 212
New York, NY 10036
Telephone (212) 575-1820
Fax (212) 768-3890

Chicago Audit Office:
221 N. LaSalle Street, Suite 1906
Chicago, IL 60601
Telephone (312) 263-3232
Fax (312) 263-3441

Houston Audit Office:
15835 Park Ten Place, Suite 104
Houston, TX 77084
Telephone (713) 492-2260
Fax (713) 492-0335

Subsequent to the January 24, 1991 mailing, it was pointed out to us that the notice was in error in that May 7, 1991 is a Tuesday, not a Friday. The attached corrected version of the notice was mailed to those individuals described in item 4) above on February 8, 1991. Those individuals described in items 1) through 3) will receive the next issue of the Multistate Tax Commission Review containing the Hearing Notice. The printed notice will point out that some recipients may have received a first-class mailing that was unclear as to the May 7, 1991 date.

NOTICE OF PUBLIC HEARING

The Multistate Tax Commission will hold a public hearing upon proposed M.T.C. Regulation IV.18.(j): Attribution of Income from the Business of Print Media. The hearing will be held at the following locations and times:

Thursday, March 28, 1991 at the Hall of the States, 444 North Capitol St., N.W., Suite 341, Washington, D.C. beginning at 10:00 A.M.

Friday, May 7, 1991 at the Offices of the California Franchise Tax Board, Ronald Reagan State Office Building, South Tower, 5th Floor, 300 South Spring Street, Los Angeles, California beginning at 10:00 A.M.

The proposed regulation addresses issues concerning the apportionment of net income derived from the multistate sale and distribution of printed material of all kinds, including the advertising revenue derived therefrom. A copy of the proposed regulation may be obtained by contacting Michael Mazerov, Director of Policy and Research, Multistate Tax Commission, 444 No. Capitol St., N.W., Suite 409, Washington, D.C. 20001, tel. no. 202-624-8699.

The Commission invites all interested parties to participate in the hearing. Those desiring to make oral presentations to the Hearing Officer are requested to notify him at least ten days prior to the scheduled hearing session. Anyone desiring to submit written comments may do so with the Hearing Officer prior to May 7, 1990.

The Hearing Officer is:

Alan H. Friedman
386 University Avenue
Los Altos, CA 94022
Tel.: (415)-941-0556
1-800-327-1258 (outside California)

Multistate Tax Commission

CORRECTED

NOTICE OF PUBLIC HEARING

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The Hearing Officer is:

Alan H. Friedman
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MULTISTATE TAX COMMI ON
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TO: Fred Anton
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11th fl.
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MULTIST E TAX COMMISSION
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WASHINGTON, DC 20001

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Asst. VP & Dir. of Corp. Tax
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TO: Robert S. Tobin
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TO: Howard Wolosky
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106 Fulton Street
New York NY 10038

Multistate Tax Commission

May 8, 1991

TO: Alan Friedman, General Counsel, and Hearing Officer for proposed MTC Regulation IV.18.(j): Attribution of Income from the Business of Print Media

FROM: Michael Mazerov, Director of Policy Research MM

SUBJECT: Certification of mailing of Notice of Public Hearing on said regulation -- **Second and Final Amendment**

In compliance with Multistate Tax Commission Bylaw 7, the attached Notice of Public Hearing was mailed to the following elements of the mailing lists maintained by the MTC on the following dates:

On January 24, 1991

1) To the chief tax administrators of all 50 states and the District of Columbia

2) To all Alternates designated by the chief tax administrators of full member states and, where a designation was made, of associate member states.

3) To current members of all standing MTC committees (Audit, Uniformity, Litigation, and Nexus Advisory)

4) To the industry representatives shown on the attached photocopies of their mailing labels. Most of these individuals are members of the Publishers and Broadcasters Task Force, Committee on State Taxation, Council of State Chambers of Commerce. Several were specifically designated by you to receive the notice, and others have contacted the MTC for information concerning either the subject regulation or the apportionment regulation covering radio and television broadcasting.

5) To the editor of the "Tax Calendar" column at Tax Notes magazine. The attached notice of the Washington, DC hearing appeared in Tax Notes, beginning with the February 11, 1991, issue.

Subsequent to the January 24, 1991 mailing, it was pointed out to us that the notice was in error in that May 7, 1991 is a Tuesday, not a Friday. The attached corrected version of the notice was mailed to those individuals

Headquarters Office:
444 North Capitol Street, N.W.
Suite 409
Washington, D.C. 20001
Telephone (202) 624-8699
Fax (202) 624-8819

New York Audit Office:
25 W. 43rd Street, Suite 212
New York, NY 10036
Telephone (212) 575-1820
Fax (212) 768-3890

Chicago Audit Office:
221 N. LaSalle Street, Suite 1906
Chicago, IL 60601
Telephone (312) 263-3232
Fax (312) 263-3441

Houston Audit Office:
15835 Park Ten Place, Suite 104
Houston, TX 77084
Telephone (713) 492-2260
Fax (713) 492-0335

described in item 4) above on February 8, 1991. (The individuals described in items 1) - 3) received the corrected version of the notice in a mailing of the Multistate Tax Commission Review on March 22, 1991, described below).

On February 22, 1991:

The corrected notice was mailed to all paid subscribers to the Multistate Tax Commission Review and all individuals/organizations in the non-profit sector who receive it on a complimentary basis on this date. This latter group primarily encompasses academics, "public interest" organizations, and elements of the news media.

On March 22, 1991:

The March, 1991 issue of the Multistate Tax Commission Review, containing a corrected hearing notice (also attached) was mailed by first-class mail to those individuals described in items 1) - 3) of the January 24, 1991 mailing (above).

On March 29, 1991:

The March, 1991 issue of the Multistate Tax Commission Review was mailed to the entire mailing list maintained for its distribution.

NOTICE OF PUBLIC HEARING

The Multistate Tax Commission will hold a public hearing upon proposed M.T.C. Regulation IV.18.(j): Attribution of Income from the Business of Print Media. The hearing will be held at the following locations and times:

Thursday, March 28, 1991 at the Hall of the States, 444 North Capitol St., N.W., Suite 341, Washington, D.C. beginning at 10:00 A.M.

Friday, May 7, 1991 at the Offices of the California Franchise Tax Board, Ronald Reagan State Office Building, South Tower, 5th Floor, 300 South Spring Street, Los Angeles, California beginning at 10:00 A.M.

The proposed regulation addresses issues concerning the apportionment of net income derived from the multistate sale and distribution of printed material of all kinds, including the advertising revenue derived therefrom. A copy of the proposed regulation may be obtained by contacting Michael Mazerov, Director of Policy and Research, Multistate Tax Commission, 444 No. Capitol St., N.W., Suite 409, Washington, D.C. 20001, tel. no. 202-624-8699.

The Commission invites all interested parties to participate in the hearing. Those desiring to make oral presentations to the Hearing Officer are requested to notify him at least ten days prior to the scheduled hearing session. Anyone desiring to submit written comments may do so with the Hearing Officer prior to May 7, 1990.

The Hearing Officer is:

Alan H. Friedman
386 University Avenue
Los Altos, CA 94022
Tel.: (415)-941-0556
1-800-327-1258 (outside California)

Multistate Tax Commission

CORRECTED

NOTICE OF PUBLIC HEARING

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TO: Howard Wolosky
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106 Fulton Street
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tax calendar

HEARING ON TAX AND PENSION ISSUES

Monday, February 11

Presidential Campaign Funds. The Service will hold a hearing on the proposed regulations under sections 9006, 9008, and 9037 relating to the financing of presidential election campaigns. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Friday, February 15

S Corporation Stock. The IRS will hold a hearing on the proposed regulations under section 1361 relating to the one-class-of-stock requirement for S corporations. The hearing will begin at 1:00 p.m. in the IRS Auditorium.

Friday, February 22

Foreign-Owned Firm Reporting. The IRS will hold a hearing on the proposed regulations under sections 6038A and 6038C relating to information and records furnished by foreign-owned U.S. corporations. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Tuesday, February 26

Employment Tax Deposits. The Service will hold a public hearing on the proposed regulations under section 6302 on federal employment tax deposits. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Monday, March 4

Backup Withholding. The Service will hold a hearing on the proposed regulations under section 3406 relating to backup withholding on dividends and interest. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Friday, March 8

Stock-for-Debt COD Exception. The IRS will hold a hearing on the proposed regulations under section 108(e)(8)(A) relating to the stock-for-debt exception to cancellation of indebtedness income. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Thursday, March 28

Print Media. The Multistate Tax Commission will hold a hearing on proposed M.T.C. regulation IV.18(j): attribution of income from the business of print media. The hearing will begin at 10:00 a.m. in Suite 341 of the Hall of States.

Tuesday, April 2

Telecommunications. The Multistate Tax Commission will hold a hearing on proposed uniform legislation for the imposition of a state excise tax on telecommunications (vendor and vendee). The hearing will begin at 10:00 a.m. in Room 237 of the Hall of the States.

Monday, April 8

Consolidated Returns. The Service will hold a public hearing on the proposed regulations relating to sections 382 and 383 with respect to consolidated returns. The hearing will begin at 10:00 a.m. in Room 2615 of the Internal Revenue Building.

Water Transportation Tax. The Service has scheduled a hearing on proposed regulations under sections 4471 and 4472 that implement the tax on the transportation of passengers on covered voyages by certain vessels. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Friday, April 26

Luxury Tax. The IRS will hold a hearing on the proposed regulations relating to retaining excise taxes on certain luxury items. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

PERSONS TO CONTACT

Unless otherwise indicated, the persons to contact for further information regarding the hearings listed are:

Internal Revenue Service: Robert Boyer or Angela Wilburn, Technical Section, Legislation and Regulations Division, Internal Revenue Service, Washington, DC 20224. Telephone: (202) 566-3935.

MEETINGS AND SEMINARS

Monday, February 11

ERISA—Orlando. Prentice Hall Law & Business (PHLB) will hold a two-day conference on ERISA litigation. Contact: PHLB, 270 Sylvan Ave., Room 300, Englewood Cliffs, NJ 07632. Telephone: (800) 223-0231.

International Tax—Cambridge, Mass. The Harvard International Tax Program will sponsor a symposium on current directions in U.S. international tax legislation and policy. Contact: Rita Gilligan, Harvard ITF, 400 Pound Hall, Harvard Law School, Cambridge, MA 02138. Telephone: (617) 495-4406.

Tuesday, February 12

Europe 1992—New York. The World Trade Institute (WTI) will hold a two-day seminar on Europe 1992 tax planning. Contact: WTI, One World Trade Center, 55th Fl., New York, NY 10048. Telephone: (212) 466-3160.

Military Personnel—Washington. The D.C. Institute of Certified Public Accountants (DCICPA) will hold a conference on tax issues for military personnel. Contact: DCICPA, 1666 K St., NW, Ste. 907, Washington, DC 20006. Telephone: (202) 659-9183.

Multistate Tax Commission

REVIEW

Congress Disrupts State Taxation Of Air Carriers Through Passage Of 49 U.S.C. § 1513(f)

by Paull Mines, Counsel
Multistate Tax Commission

Legislative event and consequences. While imposing $16.9 billion in new direct costs on the states as part of the Omnibus Budget Reconciliation Bill of 1990 (the "Reconciliation Bill"),[1] Congress in the same act stealthily preempted certain forms of state taxation of the air transportation industry. This obscure legislation will significantly disrupt state taxation on or with respect to commercial aircraft and services or activities occurring on commercial aircraft. Section 9125 of the Reconciliation Bill amended §1513 of the Federal Aviation Act of 1958 (49 U.S.C. §1513) by adding a new subsection (f) (the "air carrier amendment"). The air carrier amendment reads as follows:

> (f) FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION. No State (as such term is defined under subsection (d)(2)(E)) or political subdivision thereof shall levy or collect any tax on or with respect to any flight of a commercial aircraft or any activity or service on board such aircraft unless such aircraft takes off or lands in such State or political subdivision as part of such flight.

See Air Carriers, Page 3.

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Litigation Under Section 306 Of The Railroad Revitalization And Regulatory Reform Act Of 1976: A Review And Critique

by Mary Jane Egr
Research Attorney, Federation of Tax Administrators

> Editor's Note: The following article is a revised and expanded version of the Introduction to a forthcoming Federation of Tax Administrators Research Report. The opinions expressed in this article are those of the author and do not necessarily reflect the views of the Federation of Tax Administrators.

In the late 1950's, the once-dominant American railroad industry found itself in dire financial straits.[1] Competition from such other industries as motor carriers and the airlines was eroding its customer base, and extensive federal regulation of rail transportation rates constrained its ability to adapt to economic change. In addition, the industry perceived its competitiveness to be hampered by discriminatory and inequitable taxes imposed by state and local governments.

Faced with a mountain of financial burdens that they could not overcome on their own, the railroads sought the assistance of the federal government. Congress intervened, authorizing a study group to evaluate the financial condition of the industry. The Doyle Report, issued on June 26, 1961, found that the railroads could not survive unless action was taken to subsidize and deregulate the industry, thereby placing it on equal footing with its competitors.

See Litigation Under Section 306, Page 9.

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If you receive the ***Review*** on a complimentary basis, you *must* act now to remain on our mailing list. Please see the form on page 43 for instructions.

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Volume 1991 Number 1 **March 1991**

MoSCITA, from Page 35.

sale or disposition of S corporation stock as a sale or disposition of an intangible?

- How well does the zero basis rule work for non-resident shareholders in the context of the profit environment which now exists for S corporations following the curtailment of most tax shelters, the adoption of the Tax Reform Act of 1986 and its repeal of the *General Utilities* doctrine and the difference between corporate and individual rates?
- Is it appropriate to limit adjustments to the income of a resident shareholder of an S corporation to "income attributable to a state" in light of a state's desire to impose tax policy limitations on its residents regardless of the source of their income?
- Does MoSCITA properly treat non-business income which is derived entirely from a passive investment, *i.e.*, should such income be passed through directly to an S corporation shareholder in a manner similar to what was adopted in *Appeal of Bass*, Cal. B.O.E. (January 29, 1989) (partnership case)?
- Are MoSCITA's state specific rules governing basis and the accumulated adjustment account too complex to be reasonably administrable?
- How well would MoSCITA operate in a state employing combined reporting for a unitary business?
- Would uniformity be better promoted by including within MoSCITA a rule which indicated how IRC §469's limitation on the use of passive activity losses is to be administered in the pass-through area–*i.e.*, on a state-by-state basis or a federal rule basis without regard to the geographical source of the passive income or losses?

Conclusion. There is no question that MoSCITA is a fine work of legal draftsmanship. The drafters of MoSCITA undoubtedly faced the ever-present tension that exists when attempting to develop a proposed uniform state tax rule–how far to press for uniformity in light of existing, divergent state tax policies. The MTC, if it endorses MoSCITA after the public hearing, may allow additional policy room to the adopting states by providing for possible modifications in its endorsement. The provision of modifications would not be a criticism of MoSCITA, but rather a reflection of the fact that some of the choices made by the ABA Subcommittee on State Taxation of S Corporations may not be totally acceptable to all states in the current state tax policy climate. Additionally, in reviewing MoSCITA, the Commission will also consider the advisability of attempting to apply state income tax laws at all to pass-through entities engaged in multijurisdictional business. Serious tax administration questions exist as to whether it would be more sensible to eliminate pass-through treatment in favor of entity taxation at the state level. This part of the public hearing may portend even greater long-term significance for state tax administration in this area of federal conformity, which has developed increased importance under the policy of the Internal Revenue Code of 1986.

Post script: From some of the comments received on the proposed amendments to MoSCITA being considered by the Multistate Tax Commission, it is apparent that the general intention of the amendments is not clear. The amendments are not proposed as absolute changes to MoSCITA. Thus, none of the proposed amendments are suggested as substitutes that would entirely replace the comparable provision of MoSCITA. Rather, the amendments have been developed as possible changes to MoSCITA for states to consider when consistent with their existing state S corporation tax policy. If a state's existing tax policy is better served by the proposed amendment rather than the original provision included in MoSCITA, the necessary statutory language has been developed. On the other hand, if MoSCITA as originally drafted better reflects a state's existing tax policy, then no suggestion is made by the proposed amendments to change MoSCITA. The amendments have been developed to assist the states to modify MoSCITA in those areas in which it was anticipated there might be some diversity in tax approaches of the states. In this manner the proposed amendments, if they are approved by the Commission, will lessen the need of states to tinker with the fully-integrated and tightly-written statute.

FOOTNOTES

1. MoSCITA is reproduced in its entirety as a part of the *Report of the Subcommittee on State Taxation of S Corporations: Model S Corporation Income Tax Act and Commentary*, 42 TAX LAW. 1001 (1989).
2. The drafters of MoSCITA were also opposed outright to some of the proposed modifications and, with respect to these proposed modifications, the drafters saw no need to modify MoSCITA by additional commentary or otherwise. The ABA drafters' statements that are a part of the issue paper that follows in this article clearly identify which of the six proposed modifications the ABA Subcommittee would not oppose as additional commentary and which of the six proposed modifications the ABA Subcommittee would oppose as additional commentary or otherwise.
3. Additional comments on other aspects of MoSCITA immediately follow this article's reproduction of the issue paper.

NOTICE OF PUBLIC HEARING

The Multistate Tax Commission will hold a public hearing upon proposed M.T.C. Regulation IV.18.(j): Attribution of Income from the Business of Print Media. The hearing will be held at the following locations and times:

Thursday, March 28, 1991 at the Hall of the States, 444 No. Capitol St., N.W., Ste. 341, Washington, D.C. beginning at 10:00 AM.

Tuesday, May 7, 1991 at the Offices of the California Franchise Tax Board, Ronald Reagan State Office Bldg., South Tower, 5th Flr., 300 So. Spring St., Los Angeles, California beginning at 10:00 AM.

The proposed regulation addresses issues concerning the apportionment of net income derived from the multistate sale and distribution of printed material of all kinds, including the advertising revenue derived therefrom. A copy of the proposed regulation may be obtained by contacting Michael Mazerov, Director of Policy and Research, Multistate Tax Commission, 444 No. Capitol St., N.W., Suite 409, Washington, D.C. 20001, Tel.: 202-624-8699.

The Commission invites all interested parties to participate in the hearing. Those desiring to make oral presentations to the Hearing Officer are requested to notify him at least ten days prior to the scheduled hearing session. Anyone desiring to submit written comments may do so with the Hearing Officer prior to May 7, 1990.

The Hearing Officer is: Alan H. Friedman, 386 University Avenue, Los Altos, CA 94022, Tel.: (415)-941-0556 or 1-800-327-1258 (outside California).

EXHIBIT 4

Multistate Tax Commission

March 13, 1992

TO: Alan Friedman, General Counsel, and Hearing Officer for proposed MTC Regulation IV.18.(j): Attribution of Income from the Business of Publishing

FROM: Michael Mazerov, Director of Policy Research

SUBJECT: Certification of mailing of Notice of Public Hearing for the September 24, 1991, Washington, DC session of the public hearing on said regulation

In compliance with Multistate Tax Commission Bylaw 7, the attached Notice of Public Hearing labeled "Public version" in the upper right-hand corner was mailed, together with the April 25, 1991 redraft of the proposed regulation, to the following elements of the mailing lists maintained by the MTC on August 8, 1991:

1) To the chief tax administrators of all 50 states and the District of Columbia

2) To all Alternates designated by the chief tax administrators of full member states and, where a designation was made, of associate member states.

3) To current members of the standing MTC committee on Uniformity.

4) To the industry representatives shown on the attached photocopies of their mailing labels. Some of these individuals are members of the Publishers and Broadcasters Task Force, Committee on State Taxation, Council of State Chambers of Commerce. Several were specifically designated by you to receive the notice, and others have contacted the MTC for information concerning either the subject regulation or the apportionment regulation covering radio and television broadcasting.

The attached Notice of Public Hearing labeled "Tax publication version" in the upper right-hand corner was mailed on August 8, 1991 to the editors at Tax Notes, State Tax Notes, Commerce Clearing House, and Prentice Hall Information Services. The cover letters transmitting the notice to these publishers are also attached. Also included is a calendar notice of the hearing that was published in the September 16, 1991 edition of Tax Notes. (No notice ever appeared in State Tax Notes). I do not know whether any summary of the hearing notice appeared in any CCH or Prentice Hall publications.

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Houston Audit Office:
15835 Park Ten Place, Suite 104
Houston, TX 77084
Telephone (713) 492-2260
Fax (713) 492-0335

Multistate Tax Commission

[Public version]

NOTICE OF PUBLIC HEARING

The Multistate Tax Commission will hold one additional session of a public hearing upon proposed M.T.C. Regulation IV.18.(j): Attribution of Income from the Business of Print Media. The hearing will be held at the following location and time:

Tuesday, September 24, 1991 at the Hall of the States, 444 North Capitol St., N.W., Room 341, Washington, D.C. beginning at 10:00 A.M.

A second version of the proposed regulation will be the primary focus of this public hearing session, but comment is invited with respect to both the original and the second version of the proposal, as the Hearing Officer has both versions before him for consideration. The second version was prepared by the Hearing Officer in response to input received from the public and after the entry of the decision of Leathers v. Medlock, No. 90-29 (April 16, 1991) by the United States Supreme Court. While this second version also addresses the apportionment of income derived from the multistate sale and distribution of printed material, including the advertising revenue derived therefrom, it no longer contains many of the provisions that were included in the original version that was patterned after M.T.C. Regulation IV.18.(h) that deals with the apportionment of income derived from television and radio broadcasting.

A copy of the second version is enclosed herein; the original version may be obtained by contacting Michael Mazerov, Director of Policy Research, Multistate Tax Commission, 444 N. Capitol St., N.W., Suite 409, Washington, D.C. 20001, tel. no. 202-624-8699.

The Commission invites all interested parties to participate in the hearing. Those desiring to make oral presentations to the Hearing Officer are requested to notify him at least ten days prior to the scheduled hearing session. Anyone desiring to submit written comments may do so with the Hearing Officer prior to September 24, 1991.

The Hearing Officer is:

Alan H. Friedman
386 University Avenue
Los Altos, CA 94022
Tel.: (415) 941-0556
1-800-327-1258 (outside California)

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Atlanta, GA 30319

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WASHINGTON, DC 20001

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Atlanta' GA 30367-6000

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300 S. Spring St.
Los Angeles, CA 90013

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TO: Ling Ta
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Multistate Tax Commission

[Tax publication version]

NOTICE OF PUBLIC HEARING

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A copy of both the original and second versions may be obtained by contacting Michael Mazerov, Director of Policy Research, Multistate Tax Commission, 444 N. Capitol St., N.W., Suite 409, Washington, D.C. 20001, tel. no. 202-624-8699.

The Commission invites all interested parties to participate in the hearing. Those desiring to make oral presentations to the Hearing Officer are requested to notify him at least ten days prior to the scheduled hearing session. Anyone desiring to submit written comments may do so with the Hearing Officer prior to September 24, 1991.

The Hearing Officer is:

Alan H. Friedman
386 University Avenue
Los Altos, CA 94022
Tel.: (415) 941-0556
1-800-327-1258 (outside California)

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Multistate Tax Commission

August 8, 1991

Editor, "Tax Calendar"
Tax Notes
6830 N. Fairfax Drive
Arlington, VA 22213

Dear Editor:

The Multistate Tax Commission would appreciate your running a summary of the enclosed notice of public hearing in the "Tax Calendar" column of Tax Notes. I have also mailed a copy of the notice to the calendar editor of State Tax Notes with a request that it be included there once it begins publication.

Thank you for your consideration of this request. Please feel free to contact me at 202-624-8699 if you have any questions.

Sincerely,

Michael Mazerov

Michael Mazerov
Director of Policy Research

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Multistate Tax Commission

August 8, 1991

Carolyn Caruso
State Tax Notes Ed. Desk
6830 N. Fairfax Drive
Arlington, VA 22213

Dear Ms. Caruso:

The Multistate Tax Commission would appreciate your running the enclosed notice of public hearing (or a summary thereof) in the events calendar of State Tax Notes commencing with its first issue. I have also mailed a copy of the notice to the calendar editor of Tax Notes with a request that it be included there until State Tax Notes begins publication.

I will also contact you by phone in the near future to discuss the Commission and its activities, since you may wish both to cover them directly and to use our staff as a source of information on multijurisdictional tax issues. In the meantime, I also enclose a few materials to familiarize you with our current activities.

Sincerely,

Michael Mazerov

Michael Mazerov
Director of Policy Research

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444 North Capitol Street, N.W.
Suite 409
Washington, D.C. 20001
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Fax (202) 624-8819

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Telephone (212) 575-1820
Fax (212) 768-3890

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Houston Audit Office:
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Telephone (713) 492-2260
Fax (713) 492-0335

Multistate Tax Commission

August 8, 1991

Mr. Ken Kovitz
Commerce Clearing House
P.O. Box 4900
San Rafael, CA 94913-4900

Dear Mr. Kovitz:

The Multistate Tax Commission would appreciate your running the enclosed notice of public hearing (or a summary thereof) in the appropriate CCH state tax publication(s). I would also appreciate your letting me know to whom future official notices from the MTC should be sent for this purpose. (You will, of course, be kept on our mailing list for this information, regardless of whether these items should be directed to you in the future).

Thank-you for your help on this matter. Please feel free to call me at 202-624-8699 if you have any questions.

Sincerely,

Michael Mazerov

Michael Mazerov
Director of Policy Research

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Multistate Tax Commission

August 8, 1991

Editor-in-Charge
State Tax Publications
Prentice-Hall Info. Services
240 Frish Court
Paramus, NJ 07625

Dear Editor:

The Multistate Tax Commission would appreciate your running the enclosed notice of public hearing (or a summary thereof) in the appropriate Prentice-Hall state tax publication(s). I would also appreciate your letting me know the name of the person to whom future official notices from the MTC should be sent for this purpose. (You will, of course, be kept on our mailing list for this information, regardless of whether these items should be directed to you in the future).

Thank-you for your help on this matter. Please feel free to call me at 202-624-8699 if you have any questions.

Sincerely,

Michael Mazerov

Michael Mazerov
Director of Policy Research

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tax calendar

HEARINGS ON TAX AND PENSION ISSUES

Monday, September 16

Pension Access. The House Ways and Means Subcommittee on Select Revenue Measures has rescheduled its hearing on pension access and simplification issues for 1:00 p.m. in Room 1100 of the Longworth House Office Building.

Tuesday, September 17

Mutual Funds. The House Ways and Means Subcommittee on Select Revenue Measures has scheduled a hearing on H.R. 2735, relating to the tax treatment of mutual funds. The hearing will be at 10:00 a.m. in Room 1100 of the Longworth House Office Building.

Friday, September 20

Estate and Gift Tax for Family Transfers. The Service has scheduled a hearing on proposed regulations under sections 2701, 2702, and 2703 providing special valuation rules for purposes of estate and gift taxes. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Monday, September 23

Partnerships. The IRS will hold a hearing on proposed regulations under section 752, relating to transactions between partners and partnerships. The hearing will begin at 10:00 a.m. in the IRS Auditorium.

Tuesday, September 24

Discounted Unpaid Insurance. The Service will hold a hearing on the proposed regulations under section 846 relating to the discounting of unpaid losses of insurance companies. No time has been set.

Insurance Losses. The Service will hold a hearing on proposed regulations under section 846 which would provide rules for discounting the unpaid losses of insurance companies. The hearing will be at 10:00 a.m. in the IRS Auditorium.

Print Media Income. The Multistate Tax Commission will hold an additional hearing session on M.T.C. Regulation IV.18.(j): Attribution of Income from Business of Print Media. The hearing will be at 10:00 a.m. at the Hall of States in Washington.

Wednesday, September 25

Earnings Stripping. The Service will hold a hearing on proposed regulations relating to earnings strippings under section 163(l). The hearing will be held at 10:00 a.m. in the Cash Room of the Treasury Building.

Life Insurance. The Service will hold a hearing on proposed regulations under section 7702(c)(3), regarding reasonable mortality charges for life insurance contracts. The hearing will be at 10:00 a.m. in the Commissioner's Conference Room (3313), Internal Revenue Building.

PERSONS TO CONTACT

Unless otherwise indicated, the persons to contact for further information regarding the hearings listed are:

Internal Revenue Service: Robert Boyer or Angela Wilburn, Technical Section, Legislation and Regulations Division, Internal Revenue Service, Washington, DC 20224. Telephone: (202) 566-3935.

MEETINGS AND SEMINARS

Monday, September 16

Employee Benefits—Washington. The Washington Employee Benefits Forum is sponsoring a luncheon meeting, "An Update on Matters Before the DOL." Contact: Washington Employee Benefits Forum, c/o Patterson, Belknap, Webb & Tyler, 30 Rockefeller Plaza, New York, NY 10112. Telephone: (800) 395-1753.

Thursday, September 19

Enrolled Agents Exam Training—Alexandria, Va. The Accountants Society of Virginia will sponsor a three-day preparation course for the enrolled agents exam. Contact: Accountants Society of Virginia, c/o Meredith & Company, 4115 Annandale Rd., Suite 103, Annandale, VA 22003-2500. Telephone: (703) 941-4493.

Nondiscrimination Rules—Various Locations. The American Bar Association will offer a four-hour satellite seminar on "Section 401(a)(4): Tax-Qualified Deferred-Compensation Plans." The program will be broadcast live in 65 locations. Contact: ABA—Division for Professional Education, Dept. HAALN, 541 Fairbanks Court, Chicago, IL 60611-33314. Telephone: (312) 988-6200.

Retirement Plans—Boston. The New England Employee Benefits Council (NEEBC) is hosting a seminar on "Current Retirement Plan Issues—Treasury, Internal Revenue Service, and Department of Labor Perspectives." Contact: Linda Viens, NEEBC, 45 William St., Suite 225, Wellesley, MA 02181. Telephone: (617) 239-1767.

Sunday, September 22

Property Taxation—Cambridge, Mass. The Lincoln Institute of Land Policy will hold an international conference on "Property Taxation and Its Interaction with Land Policy" September 22-26. Contact: Mrs. Ann Long, Registrar, Lincoln Institute of Land Policy, 26 Trowbridge St., Cambridge, MA 02138. Telephone: (617) 661-3016.

Monday, September 23

Corporate Accounting—Boston. Executive Enterprises will sponsor the 15th Annual SEC Accounting Institute, a two-day conference covering the latest accounting trends and their impact on the future of corporate accounting. Contact: Executive Enterprises, 22 West 21st Street, New York, NY 10010-6904. Telephone: (800) 831-8333.

Welfare Plan Administration—Chicago. Charles D. Spencer & Associates will offer a two-day "Benefit Administrators Compliance Conference" addressing issues that affect welfare plan administrators. Contact: Charles D. Spencer & Associates, 250 S. Wacker Drive, Suite 600, Chicago, IL 60606-5834. Telephone: (312) 993-7900.

EXHIBIT 5

Multistate Tax Commission

ATTENDANCE LIST

MULTISTATE TAX COMMISSION HEARING ON PROPOSED REG.IV.18(j)

Attribution of Income from the Business of Print Media

Washington, D.C.

March 28, 1991

NAME	REPRESENTING	ADDRESS
LLOYD J. LOORAM	ARTHUR ANDERSEN & CO.	1345 AVE. OF AM. NY, NY 10105
Joseph B. Tonne	IOMA	Newspaper Center Reston, VA 22091
ROBERT J. KASABIAN	INT'L NEWSPAPER FINANCIAL EXECUTIVES	NEWSPAPER CENTER RESTON, VA 22091
Reggie Hall	Int'l Newspaper Advertising & Mktg. Executives	Reston, VA
EUGENE F. FARRO	TIME WARNER IN	TIME & LIFE BLDG ROCKEFELLER CENTER NEW YORK NY 10020
Edward R. Koch	ADVANCE PUBLICATIONS INC.	c/o PAUL SCHERER & CO. 330 MADISON AVE., 15th FLR NY, NY, 10017
Robert Tobin	New York Times	229 West 43rd St. N.Y. N.Y. 10036
PRESTON BARNETT	COX ENTERPRISES, INC.	1400 LAKE HEARN DRIVE ATLANTA, GA. 30319
WILLIAM MAHER	NEW YORK TIMES	229 W 43 ST NY NY 10036
DOUG LINDHOLM	PRICE WATERHOUSE	1801 K ST. NW STE 700 WASH. DC 20006
Cynthia Knoll	Arthur Andersen	1666 K ST. NW Washington DC 20006

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ATTENDANCE LIST

MULTISTATE TAX COMMISSION HEARING ON PROPOSED REG.IV.18(j)

Attribution of Income from the Business of Print Media

Washington, D.C.

March 28, 1991

NAME	REPRESENTING	ADDRESS
Michael Lippman	KPMG Peat Marwick	2001 M St. N.W. Washington, D.C. 20036
Chris Batchelor	Gannett Co., Inc.	1100 Wilson Blvd. Arlington, VA. 22234
Kenneth H. Silverberg	Nixon, Hargrave, Devans & Doyle	1 Thomas Circle, Suite 800 Wash DC 20005
Anthony Lyddane	THE WASHINGTON POST COMPANY	1150 15TH STREET, NW. WASHINGTON, DC 20071
Kenneth J. Hagaman	THE TIMES JOURNAL COMPANY	6883 COMMERCIAL DR. SPRINGFIELD, VA 22159
Catherine Hubbard	Tax Notes	6830 N Fairfax Dr Arlington, VA 22213
STERLING LWEAVER	NIXON, HARGRAVE	P.O. BOX 1051 CLINTON SQUARE ROCHESTER NY 14603
James C Pinkard	D.C. Dept Finance + Revenue	PO Box 556 Room 2066 Washington DC 20011
Frank Ford	D.C. Dept. Finance + Revenue	Same as above (Mr. Pinkard
Richard Webster	State Advertising Coalition	1400 K St., N.W. #1000 Washington, D.C. 20005
Lauren Darling	BNA Publications	1231 25th St. NW N-517 Washington DC 20037

Multistate Tax Commission

ATTENDANCE LIST

MULTISTATE TAX COMMISSION HEARING ON PROPOSED REG.IV.18(j)

Attribution of Income from the Business of Print Media

Los Angeles, CA.

May 7, 1991

NAME	REPRESENTING	ADDRESS
Benjamin F. Miller	FTB, Calif	PO Box 1468 Sacramento
JACK PLANK	TIMES MIRROR	TIMES MIRROR SQ LOS ANGELES CA 90053
DONALD E. MOSCA	TIMES MIRROR	TIMES MIRROR SQ LOS ANGELES, CA 90053
KARL H. LORING	KNAPP COMMUNICATIONS	5900 Wilshire Blvd LA CA 90036
VICTOR S. RAPPA,	KNAPP COMMUNICATIONS	" "
Eugene F. Carrigan	Ernst & Young	Suite 650 555 Capitol Mall Sacramento, CA 95814
Larry May	FTB	300 S Spring Street L.A., CA 90013
TAM NGUYEN STEWART	FTB	300 S. Spring Street Los Angeles CA 90013
LING TA	FTB	300 S. Spring LA, CA 90013
Julie [illegible]	FTB	300 S. Spring LA, CA 90013
LAVERNE TILLIS	FTB	300 S. Spring ste 5704 L.A, CA 90013

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Multistate Tax Commission

ATTENDANCE LIST

MULTISTATE TAX COMMISSION HEARING ON PROPOSED REG.IV.18(j)

Attribution of Income from the Business of Print Media

Washington, D.C.

September 24, 1991

NAME	REPRESENTING	ADDRESS
Chris Baldwin	Gannett Co.	1100 Wilson Blvd Arlington, Va. 22234
ANTHONY LYDRANE	THE WASHINGTON POST COMPANY	1150 15th ST, NW WASH, D.C. 20071
David Coolidge	BNA Publications	1231 25th St., NW Washington, DC 20037
STERLING WEAVER	NIXON, HARGRAVE	ONE THOMAS CIRCLE WASHINGTON DC 20005
Kenneth H. Silverberg	"	"
Fred E. Ferguson	Price Waterhouse	1801 K Street, NW Washington, DC 20006
DOUG LINDHOLM	Price Waterhouse	455 CAPITOL MALL SACRAMENTO, CAL 95814
ARTHUR A. GUTHRIE	Tax Analysts	6830 N FAIRFAX DR ARLINGTON VA 22213

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Telephone (713) 492-2260
Fax (713) 492-0335

NATC PRINT MEDIA REGS MEETING 4/9/91

NAME	COMPANY	ADDRESS
CHRIS BALDWIN	GANNETT CO., INC.	1100 WILSON BL ARLINGTON, VA 222
SHELDON SINGER	PAUL SCHERER & CO (NEWHOUSE)	330 MADISON AVE NYC NY 10017
EDWARD R. KOCH	PAUL SCHERER & CO (NEWHOUSE)	330 MADISON AVE NYC, NY 10017
EUGENE F. FARRO	TIME WARNER INC	TIME + LIFE BLDG ROCKEFELLER CTR ROOM 4169 NEW YORK N.Y. 100 20
Bob Tobin	The New York Times Co.	229 W. 43rd St. N.Y. N.Y. 10036
Andy Rosen	The Hearst Corporation	1775 Broadway 3rd Flr NY NY 10019
STANLEY GOTTLIEB	THE HEARST CORP	"
James W. Keller	The Washington Post Company	1150 15th St. NW Washington DC 2007
Joseph Sampson	" "	" "
Jim Schroeder	THE THOMSON CORP.	245 PARK AVE NEW YORK, NY 10167
TOM NIED	The New York Times Co	229 West 43rd St New York NY 100 36
LORNA TURNER	TRIBUNE CO.	435 N. MICHIGAN

MEDIA MEETING LIST OF ATTENDEES - (ALPHABETICAL BY COMPANY)

Brenda Maddox	A. H. BELO CORPORATION
Richard Gair	AFFILIATED PUBLICATIONS, INC.
Vicki H. Sapp	ALLBRITTON COMMUNICATIONS COMPANY
Gail L. Allaman	AMERICAN TELEVISION & COMMUNICATIONS
Christina Aleksiewicz	BERTELSMANN, INC.
Patricia Mulligan	BERTELSMANN, INC.
Audrey Delphendahl	BERTELSMANN, INC.
Michael Liddick	BERTELSMANN, INC.
Howard Witt	CABLEVISION INDUSTRIES CORP.
Louis J. Boyd	CABLEVISION INDUSTRIES CORP.
James M. Goldberg	CAPITAL CITIES/ABC, INC.
Alvan L. Bobrow	CBS INC.
Martin A. Jaffe	THE CHRONICLE PUBLISHING COMPANY
C. Stephen Backstrom	COMCAST CORPORATION
Jennifer Taub	CONTINENTAL CABLEVISION
Robert T. Bauter, Jr.	THE COPLEY PRESS, INC.
Gary Meier	COWLES MEDIA COMPANY
Preston B. Barnett	COX ENTERPRISES, INC.
Katherine D. Morris	COX ENTERPRISES, Inc.
Richard J. Hiegel, Esq.	CRAVATH, SWAINE & MOORE
Paul H. Thompson	FOX, INC.
Carl Pock	FREEDOM NEWSPAPERS, INC.
Christopher W. Baldwin	GANNETT CO., INC.
Dan R. Kalp	GAYLORD BROADCASTING COMPANY
Joseph C. DePiano	GREATER MEDIA, INC.
Gairy Pelle	GRUNER & JAHR USA GROUP, INC.
Cathy Leeson	H & C COMMUNICATIONS, INC.

MEDIA MEETING LIST OF ATTENDEES - (ALPHABETICAL BY COMPANY)

Paul M. Zagortz	HALLMARK CARDS, INC.
Stanley A. Gottlieb	THE HEARST CORPORATION
Walter W. Foyt	HOUSTON INDUSTRIES, INCORPORATED
Philip W. Parker	HOUSTON INDUSTRIES, INCORPORATED
Paul J. Wittig	JOURNAL REGISTER COMPANY
Anne Y. Bell	KING BROADCASTING COMPANY
John Burdick	KING BROADCASTING COMPANY
Victor S. Rappa	KNAPP COMMUNICATIONS CORPORATION
Brad Reinert	KNIGHT-RIDDER, INC.
Scott Wiles	KNIGHT-RIDDER, INC.
Gary Rosen	KPMG PEAT MARWICK
Richard P. Galligan	LEE ENTERPRISES, INCORPORATED
Peter E. Maloney	LIN BROADCASTING CORPORATION
Frank J. Kaufman	McGRAW-HILL, INC.
Keith E. Piper	MEDIA GENERAL, INC.
Charles W. Eickenhorst	MEDIA NEWS GROUP, INC.
Michael A. Sell	MEREDITH CORPORATION
Alexa Heffernan	MEREDITH CORPORATION
Claudia I. Price	MULTIMEDIA, INC.
Alan H. Friedman, Esq.	MULTISTATE TAX COMMISSION
Arthur M. Angstreich	NATIONAL BROADCASTING COMPANY, INC.
Alan A. Todryk	NATIONWIDE INSURANCE COS.
Bruce R. Thompson	NATIONWIDE INSURANCE COS.
William Duggan	NEWSAMERICA PUBLISHING, INC.
Lyle Leimkuhler	NEWS-PRESS & GAZETTE COMPANY
Thomas H. Nied	THE NEW YORK TIMES COMPANY
Robert S. Tobin	THE NEW YORK TIMES COMPANY
William V. Maher	THE NEW YORK TIMES COMPANY
Joseph E. Sampson	NEWSWEEK, INC.
Randel N. Stair	PARK COMMUNICATIONS, INC.

MEDIA MEETING LIST OF ATTENDEES - (ALPHABETICAL BY COMPANY)

Paul Scherer	PAUL SCHERER & COMPANY (NEWHOUSE)
Sheldon Singer	PAUL SCHERER & COMPANY (NEWHOUSE)
James Kantor	PAUL SCHERER & COMPANY (NEWHOUSE)
Edward R. Koch	PAUL SCHERER & COMPANY (NEWHOUSE)
Andrew Solomon	PAUL SCHERER & COMPANY (NEWHOUSE)
Thomas P. Wharton	PEARSON INC.
Philip J. Hayes	PLAYBOY ENTERPRISES, INC.
Thomas Storms	RODALE PRESS, INC.
Michael W. Carroll	SCRIPPS-HOWARD
Beverly A. Bockrath	SCRIPPS-HOWARD
Robert B. Stafford	SCRIPPS-HOWARD
Gary Schmidt	STORER COMMUNICATIONS, INC.
Patrick W. Dixon	SUMMIT COMMUNICATIONS GROUP, INC.
Cynthia M. Aument	SUSQUEHANNA PFALTZGRAFF CO.
Lynn B. Jordan	SUSQUEHANNA PFALTZGRAFF CO.
Colin R. Stoner	TELE-COMMUNICATIONS, INC.
James W. Schroeder	THE THOMSON CORPORATION
Eugene F. Farro	TIME WARNER INC.
Peggy M. Harold	TIME WARNER INC.
Len Mitchell	TIME WARNER INC.
Linda A. Klang	TIME WARNER INC.
Michael Gutesha	TIME WARNER INC.
Frances Roberts	TIME WARNER INC.
Jack L. Plank	THE TIMES MIRROR COMPANY
Theodore Novak	TRIBUNE COMPANY
Gary Stamatkin	TRIBUNE COMPANY
Robert L. Sauban	TURNER BROADCASTING SYSTEM, INC.
Norman Stephens	UNITED ARTISTS ENTERTAINMENT CO.
Charles A. Trost, Esq.	WALLER LANSDEN DORTCH & DAVIS
John V. Berna	VIACOM INTERNATIONAL INC.
Helen Blackwood	VIACOM INTERNATIONAL INC.
Anthony Ippolito	VIACOM INTERNATIONAL INC.
Satoru Matsumoto	VIACOM INTERNATIONAL INC.
James W. Keller	THE WASHINGTON POST COMPANY
Anthony C. Lyddane	THE WASHINGTON POST COMPANY

EXHIBIT 6

1/20/90

SUPPLEMENTAL REPORT OF HEARING OFFICER
REGARDING PROPOSED ADOPTION OF
MULTISTATE TAX COMMISSION REGULATION IV.18.(h)
(Television and Radio Broadcasting)

This Supplemental Report is submitted pursuant to the resolution of the Multistate Tax Commission's Executive Committee dated July 27, 1989. (Exhibit 1.). That resolution delayed until February 15, 1990 Executive Committee action upon the Report of Hearing Officer Regarding the Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) dated June 14, 1989. That delay was granted at the request of the Broadcasting Industry State Tax Coalition ("Coalition") in order to provide the television broadcasting industry additional time to provide the further input it wished to the Hearing Officer regarding the proposed Regulation IV.18.(h). (Exhibit 2.).

By letter dated October 11, 1989, the Hearing Officer reminded the representative of the Coalition that the Hearing Officer would make himself available to meet with industry representatives at any time to discuss the proposal. (Exhibit 3.). A representative of the Coalition thereafter confirmed the willingness of the Hearing Officer to accept further industry submissions and the Executive Committee's request that any further delay in adoption of the proposed regulation be based upon discussions with the industry that were productive to developing a revised proposal. (Exhibit 4.).

By letter dated December 29, 1989, a representative of the Coalition advised the Commission and the Hearing Officer of its continued opposition to the adoption of the proposed regulation. (Exhibit 5.). By letter dated January 9, 1990, CBS, Inc. submitted its objections to certain provisions contained in the proposed regulation. In addition, CBS, Inc. suggested an alternative regulatory proposal. (Exhibit 6.).

The broadcasting industry failed to use the time provided for by the Executive Committee to engage in a constructive dialogue regarding the proposed Regulation. Instead, it again waited until the very last moment to provide its objections or suggestions. Because of the minimal amount of time made available to consider and react to the submissions just received from the broadcasting industry representatives, the Hearing Officer has not had the opportunity to fully contemplate, research or prepare a complete analysis of the matter. Notwithstanding that circumstance, the Hearing Officer does not wish to add further delay to these protracted proceedings. Therefore, the Supplemental Report below attempts to address the more substantive issues raised by the broadcasting industry representatives. Should the Executive Committee or the Commission desire that the Hearing Officer hear the matter further for the purpose of making a more detailed and studied Supplemental Report, the Hearing Officer stands ready to do so.

Broadcasting Industry Submissions and Hearing Officer Conclusions.

Most of the points submitted by industry representatives in their letters of December 29, 1989 (Exhibit 4.) and January 9, 1990 (Exhibit 5.) consisted of a reiteration or expansion of matters already submitted during the hearing process. To the extent that the following Supplemental Report ignores certain arguments raised by the industry, the Hearing Officer relies upon his June 14, 1989 Report in those regards. Below are some of the industry submissions that the Hearing Officer summarily responds to at this time, but will further supplement this Report if time permits.

1. First Amendment to the United States Constitution.

The industry suggests that its members are being discriminated against by being singled out under the proposed regulation and denied their right to be treated equally with other providers of information protected under the First Amendment.

Hearing Officer's Conclusion: Unless the states can show that a compelling state interest exists to apply a differential and more burdensome tax treatment to one of a group of providers of First Amendment protected information, the selected class may reasonably argue that its First Amendment rights are affected. See, Texas Monthly, Inc. v. Bullock, 109 S.Ct. 890 (1989); Arkansas Writers' Project, Inc. v. Ragland, 107 S.Ct. 1722 (1987); Minneapolis Star & Tribune Company v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983); Dow Jones & Company, Inc. v. State of Oklahoma [cite to be provided] (1989); and McGraw Hill, Inc. v. State Tax Commission, [cite to be provided](N.Y. App. Div. 1989).

The Hearing Officer does not make any definitive conclusions whether the states can make the showing required; or even whether such an argument will ultimately be successful. The only conclusion in this regard that can be reached with any degree of security is that the foregoing cases are cause for the states to study the issue fully before finally proceeding to adopt the proposed regulation without also addressing the need for the adoption of a similar allocation and apportionment method to other providers of First Amendment protected advertising.

2. Multiple Taxation.

The industry argues that it will be subject to multiple taxation by states applying the traditional attribution approaches to the property, payroll and receipts factor at the same time other states apply the methodology under the proposed regulation.

Hearing Officer's Conclusion: One of the lessons that is learned from the United States Supreme Court decision in Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983) is that an apportionment formula must be internally and externally consistent in order to meet the Commerce Clause requirements of the United States Constitution.

The internal consistency test is met by the proposed Regulation because if all states were to adopt it, the apportionment methodology would not result in more than all of taxpayer's business income being subject to taxation. The external consistency test is met because the proposed Regulation provides a set of apportionment factors that actually reflect "a reasonable sense of how income is generated" by the broadcaster. The Hearing Officer therefore concludes that the proposed Regulation does not violate the Commerce Clause in this regard.

3. Unconstitutional Selective Tax on Interstate Commerce.

The industry argues that because New York and California has chosen not to tax to the fullest extent the income of broadcasters that other states that exploit California and New York's position are acting in an unconstitutional manner in violation of the Commerce Clause and the ruling in New Energy Company of Indiana v. Limbach, 108 S. Ct. 1803 (1988).

Hearing Officer's Conclusion: In the New Energy case, the Supreme Court declared invalid as discriminatory under the Commerce Clause an Ohio statute that on its face deprived certain tax benefits to products simply because they were produced in certain other states. The products discriminated against were thus placed at a substantial commercial disadvantage in Ohio.

The proposed Regulation clearly is not of the protectionist nature found discriminatory and invalid under New Energy. The broadcasting industry has traditionally escaped full taxation of its advertising income because the states of California and New York recognized that other states, i.e., the states into which the advertising messages are delivered, were entitled to participate in the taxation of that income. See, Exhibits 6.a. and 8.c. to the Report of Hearing Officer dated June 14, 1989. The It is certainly understandable that the broadcasting industry opposes an approach that may require it to pay tax on income that has never been subjected to tax. But, the Commerce Clause is not violated in doing so.

4. Contrary to UDITPA's Statutory Policy.

The industry suggests that the use of a audience factor to attribute film or video tape property located outside the state to the state's numerator in inconsistent with basic UDITPA policy.

Hearing Officer's Conclusion: It should now be beyond debate, but bears repeating here, that UDITPA was developed in 1957 to deal with the apportionment of income earned through mercantile and manufacturing activities. Section 17. of UDITPA, allocating sales other than sales of tangible personal property, contains no commentary that could provide guidance in this matter. However, the commentary to Section 18. of UDITPA provides some insight as to the appropriate path to be followed should the allocation or apportionment provisions contained in other provisions of UDITPA, including Section 17., not result in a fair representation of the taxpayer's business activity in the state.

Section 18. of UDITPA was clearly intended to provide an escape hatch for states and taxpayers alike in the event that the other statutory allocation and apportionment rules did not fairly fit. The Comment to Section 18. provides, in part, that -

* * * * *

> Section 18 is intended as a broad authority, within the principle of apportioning business income fairly among the states which have contact with the income, to the tax administrator to vary the apportionment formula and to vary the system of allocation where the provisions of the Act do not fairly represent the extent of the taxpayer's business activity in the state. The phrases in section 18(d) do not foreclose the use of one method for some business activity and a different method for a different business activity. Neither does the phrase "method" limit the administrator to substituting factors in the formula. The phrase means any other method of fairly representing the extent of the taxpayer's business activity in the state.

The Hearing Officer concludes that one of the primary business activities that generate advertising income for the broadcasting industry is necessarily the delivery of its programming into the states for viewing or hearing by the in-state audience. Without the such delivery of programming, inclusive of commercial messages, to potential customers of their advertisers, the broadcasters will not earn advertising revenue.

The application of Section 17. to broadcasting activity would attribute all of the advertising revenue generated to the place from which the broadcasting signals are sent and

will attribute none to the state into which the signal is sent. The Hearing Officer concludes that

5. New Nexus Standard being Applied.

The most recent submission by CBS Inc. suggests that the proposed Regulation is based upon a new concept for establishing nexus over an interstate taxpayer. (See page 5. of Ex. 6.).

Hearing Officer's Conclusion: The proposed Regulation does not attempt to define or in any manner expand or limit the state's jurisdictional reach or nexus. It is assumed that the state imposing the proposed Regulation will have sufficient nexus to do so consistent with the United States Constitution and intends to apply its taxing jurisdiction to the fullest extent permissible under the Constitution.

The Constitutional standards may be satisfied by a number of different ways in which the broadcaster or its representative manifest their presence within the taxing state. For example and not by way of limitation, the broadcaster may own, lease, or license the use of property in the state; or it may maintain or send employees or independent contractors into the state; or it may maintain such continuing relationships with its affiliates that will satisfy Constitutional nexus standards. In any event, it is not the intention of the Hearing Officer to include in the proposed Regulation any recommendation regarding nexus, either to define it, expand it or limit it in any manner. It is merely presumed that the state will have sufficient nexus before the Regulation is applied.

EXHIBIT 7

Multistate Tax Commission

August 7, 1990

Mr. John James, Chairman
Multistate Tax Commission
c/o Minnesota Department of Revenue
10 River Park Plaza
St. Paul, MN 55146-7100

Re: Second Supplemental Report - Broadcasting Regulation

Dear Chairman James:

I am enclosing a copy of the "Second Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting). A copy of the Report has also been sent to all members of the Multistate Tax Commission, as well as to Tax Administrators of non-member states.

Because the Executive Committee requested that I provide it with alternative regulations, it is advisable to provide here a brief summary of what the Report contains. The Report Part II.A) contains a listing of the issues that have already been addressed by the Hearing Officer in some fashion in the previous two reports. Part II.B responds to the most recent submissions received from the broadcasting industry representatives and presents the Hearing Officer's conclusions and recommendations with respect to those issues. Those conclusions or recommendations are as follows:

1. The states possess the authority under the Multistate Compact to adopt, without additional statutory support regulations modifying the receipts and property factors as applied to the broadcasting industry.

2. If the property factor is to include attribution of television or radio programming to the numerators of the viewing-states' property factors, it should not contain any content-sensitive criteria. Therefore, programming of a news or topical nature, live sporting events and the like should be included in the programming property that is apportioned. This recommendation is based upon First Amendment considerations.

3. Film and radio programming need not be <u>physically</u> located in order to be "used" there and reasonably apportioned to that state.

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4. If the programming property is not to be attributed to the state of the audience or based upon some other apportionment method, a reasonable approach may be to throw-out such property from the factors altogether. This alternative would appear to be appropriate, at least on an interim basis (three to five year) should the industry members wish to study the matter more fully with the Commission before the adoption of a more permanent solution.

5. The payroll factor has been modified to follow the more traditional way of attributing payroll under Sections 13 and 14 of the Compact, so that talent payroll will not be assigned purely on the basis of place of performance.

6. The Hearing Officer has rejected the suggestion that apportionment of receipts be limited even when the state demonstrates satisfaction of the nexus requirement under the United States Constitution.

7. Each of the regulation alternatives extend its coverage to all broadcasters who derive income from broadcasting in interstate commerce. Therefore, independent stations whose signal crosses state borders will fall under the apportionment requirements of the regulation. This recommendation is also based upon First Amendment considerations.

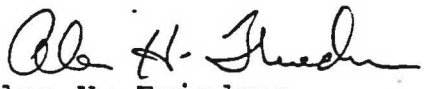
8. The Hearing Officer recommends against adoption of either CBS Inc.'s statutory proposal (Exhibit 1 to the Second Supplemental Report) and the proposal of the Broadcasting Industry State Tax Coalition. (Exhibit 2 to the Report). Both proposals limit the states ability to effectively tax the income producing activities that are occurring in the state of the viewing or listening audience. Should the member states wish to consider either of these proposals further, they should refer to Oregon's House Bill 2226 to the Report as Exhibit 1a; to the mark-up regulation attached to Exhibit 2; and to the Hearing Officer's modified version of that mark-up found in Exhibit 5 to the Report.

9. The film and radio programming properties should be attributed to the states by either the "audience" or "hours of programming" factors reflected in Exhibits 3 and 4. If, however, the Commission were to seek an interim solution for the purpose of arriving at a permanent resolution with additional input from the broadcasting industry, the member states could apply a "throw-out" methodology regarding such property. Exhibit 6 presents that alternative.

10. Lastly, if the Commission acts to adopt any one of the alternatives, the Commission should consider the print media for similar apportionment treatment to the extent the income producing activities of that media can be addressed in a manner similar to the electronic. This recommendation is also based upon First Amendment considerations. Even though the

United States Supreme Court has yet to require similar state tax treatment to the different types of medium that deliver First Amendment protected speech, the states should address the taxation of all deliverers of protected speech with the First Amendment clearly in mind.

Sincerely yours,



Alan H. Friedman
Hearing Officer

cc: All Tax Administrators

SECOND SUPPLEMENTAL REPORT OF HEARING OFFICER
REGARDING PROPOSED ADOPTION OF
MULTISTATE TAX COMMISSION REGULATION IV.18.(h)
(Television and Radio Broadcasting)

I. BACKGROUND TO SECOND SUPPLEMENTAL REPORT.

This Second Supplemental Hearing Officer's Report is submitted pursuant to the request of the Executive Committee of the Multistate Tax Commission made at its May 10, 1990 quarterly meeting. At that meeting, the Executive Committee was addressed by Charles Bayly on behalf of CBS Inc. and by Robert Matson, Ernst and Young, and Fred Ferguson, Price Waterhouse, on behalf of the Broadcasting Industry State Tax Coalition (hereafter "Coalition"), two members of which are Capital Cities/ABC, Inc. and National Broadcasting Company, Inc. CBS Inc. presented an additional written submission by letter dated April 12, 1990 and the Coalition submitted its letter dated April 16, 1990 (Exhibits 1. and 2. respectively). The positions more recently taken by these industry representatives that have not been earlier addressed by the Hearing Officer will be presented and discussed below in Section II.B.

II. ISSUES FOR DISCUSSION AND HEARING OFFICER'S CONCLUSIONS.

A. Issues Earlier Addressed by the Hearing Officer.

The Hearing Officer's two previous Reports of June 14, 1989 and January 20, 1990 addressed the following issues raised by industry representatives regarding the adoption of the proposed regulations:

1. Whether the regulation should be applied retroactivity[1];

2. The propriety of apportioning receipts by use of an audience factor;

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[1]. Another state court has recently required the state to first adopt a regulation before an audience factor could be applied to a television network's receipts. See, CBS Inc. v. Comptroller of the Treasury, No. 136 (Md. Ct. App. June 25, 1990).

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3. The inclusion of compensation paid to non-employee talent for purposes of the payroll factor;

4. The apportionment of films in the property factor;

5. The throw-out of "outer-jurisdictional" property from the property factor;

6. Discrimination and First Amendment issues[2];

7. Selective taxation and Commerce Clause issues;

8. Whether the proposal was contrary to UDITPA'S statutory policies; and

9. Whether the proposal was intended to establish a new nexus standard to the broadcasting industry.

Industry representatives have suggested that the Commission not adopt the pending regulations until, among other things, the Commission has "(1) responded to the enclosed proposal and the previous submission regarding the constitutional and other substantive issues ...". See Exhibit 2, p.2. Under Article VII. of the Multistate Tax Compact and the Bylaws of the Commission, the process for considering and adopting regulations requires that the Commission make its regulatory process open and accessible to the public before it makes any determination of what, if any, course of action it wishes to recommend to the states. The Commission has fully complied with the requirements of Article VII. by holding its public hearing, as well as by permitting representatives of the broadcast industry to meet with its Uniformity and Executive Committees on the matter.

In order to make its recommendations to its member states, the Commission must rely principally upon its Uniformity and Executive

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[2]. Since the submission of the Supplemental Report of Hearing Officer dated January 20, 1990, at least four additional cases have been decided by state Supreme Courts finding state taxation of members of the print and electronic media to violate the First Amendment. See, Newsweek, Inc. v. Commissioner of Revenue, S/C No. 88-54-I (Tenn. March 5, 1990) and Southern Living, et al. v. Commissioner of Revenue, S/C No. 88-53-I (Tenn. March 5, 1990) - imposition of sales tax on magazines, while exempting newspapers, held to violate First Amendment guarantees; Oklahoma Broadcasters Association v. Oklahoma Tax Commission, 789 P.2d 1312 (Okl. 1990) - sales tax on advertising by television and radio, but not by newspapers and magazines held violative of First Amendment; and Medlock v. Pledger, 785 P.2d 202 (Ark. 1990) - sales tax on cable television service but not on direct satellite broadcasters violates First Amendment. But see, Medlock, in which the Court suggests that it is impossible to apply a tax treatment having the same effect to both broadcast and cable television. Id. at p. 204.

Committee efforts to develop any proposal. Additionally, the Commission must necessarily rely upon its Hearing Officers to inform it of the public input and to provide recommendations they determine appropriate. It is primarily through the public hearing process that the Commission becomes more fully apprised of the issues raised. If industry input is either minimal or late in coming, the hearing process does not work at its optimum; and the entire tax community suffers somewhat from that lack of intellectual nutrition.

To the extent practical, this Hearing Officer has addressed each issue raised by the industry that the Hearing Officer determined significant enough to discuss.[3] This Second Supplemental Report addresses those few remaining issues of significance and describes the various positions now developed by industry representatives.

B. Discussion of Additional Issues Raised by Industry Representatives and Specific Conclusions of the Hearing Officer.

It goes without much discussion that the industry representatives heard from were not fully supportive of the proposed apportionment regulation. A variety of legal and policy arguments against changing the status quo have been presented. The industry membership, in part represented by CBS Inc. and in part by the Coalition, is, to a significant degree, in agreement with one another with regard to the arguments that are raised against adoption of the proposal.

CBS Inc. recognizes that an apportionment of receipts based upon some type of an audience factor would seem appropriate, but insists that it must be accomplished by a legislative or rule-making process that also satisfies concerns under the First Amendment to the United States Constitution. The Coalition's draft

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[3]. Reference is made to the Report of Hearing Officer and the Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting), dated June 14, 1989 and January 20, 1990, respectively, for the background of this proposed regulation and the process that has preceded this Report.

Additionally, no representative of the cable television broadcasting industry has made an appearance, either by oral or written submission, in these proceedings. Therefore, the Hearing Officer has had limited input regarding the effects of the proposal on that industry and must assume that the proposal adequately addresses the concerns of the cable industry.

language includes this concept as well. In addition, CBS Inc., as does the Coalition, strongly opposes any change to the property factor that spreads the film property in any manner. CBS Inc. suggests that such a change can only be accomplished through legislative action and cannot be done by regulation. See Exhibits 1 and 2 to this Second Supplemental Report.

In response to the Executive Committee's request that the industry provide constructive criticism of the pending proposal, CBS Inc. and the Coalition each provided different draft alternatives. The following discussion highlights the major points of those proposals and offers conclusions by the Hearing Officer with respect to those alternatives.

1. CBS Inc.

By its submissions of January 9 and April 12, 1990 (Exhibit 1 to this Second Supplemental Report and Exhibit 6 to the Supplemental Report), CBS Inc. prefers, for a variety of reasons, that the Commission adopt a more limited approach to the apportionment changes provided in the proposed regulation. CBS Inc. suggests that the Commission follow the approach statutorily adopted by Oregon in its last legislative session. See House Bill 2226 attached as Exhibit 1a to this Second Supplemental Report.

Hearing Officer's Conclusions: The Oregon statutory approach applies an audience factor to apportion only the gross receipts from interstate broadcasting by both independent and network broadcasters. In the opinion of the Hearing Officer this method of apportioning a broadcaster's receipts is fair and appropriate; but it is limited solely to the receipts factor.

The Oregon statute delegates to the Department of Revenue the authority to adopt limited regulations in furtherance of the statute. Therefore, it would appear that the Department, even if it desired to do so, could not adopt any regulation to alter the property or payroll provisions. CBS Inc. would suggest that should a state wish to alter either the payroll or the property factor apportionment provisions, the state should do so by further statutory amendments to UDITPA that would apply in a nondiscriminatory fashion to all service providers.

For reasons stated in prior Hearing Officer reports, as well as those found in paragraph II.B.2.a.3) of this report, the Hearing Officer has concluded that attribution to one or two states of the entire value of program property that is sent into, broadcast from, and actually "used" in all states for the purpose of delivering commercial messages ignores

economic reality and unfairly reflects the in-state business activities conducted by the broadcaster. It is just such circumstances that the drafters of UDITPA §18 intended that warranted addressing through either ad hoc adjustments to the apportionment formula of specific businesses or regulatory change to the traditional apportionment methodology.

The legislatures of the M.T.C. member states, as well as of those that have adopted UDITPA, anticipated and intended that Section 18 should be used as a basis of modification of the traditional apportionment methods. When "the allocation and apportionment provisions of this Article [Article IV.] do not fairly represent the extent of the taxpayer's business activity in this State ...", UDITPA's §18 permits a reasonable modification to the standard formula.

The states' rule-making proceedings that are contemplated to follow these proceedings flow directly from the original legislative intent contemplated under UDITPA. Even though there is nothing that prevents a Tax Administrator from developing modifications to the traditional apportionment formula through the legislative process, no additional statutory enactments are required by law to carry out, through the regulatory process, the directions that the Tax Administrators have already been provided by their respective legislatures.

All of the attached regulatory proposals are intended to uniformly guide the states in the apportionment of the income of broadcasters. It is the Hearing Officer's conclusion that uniformity in this matter is more apt to result from the regulatory process that follows these proceedings than would result from each state legislature adopting its own statutory version of an apportionment formula. The Hearing Officer interprets the submissions by CBS Inc. as providing substantive support with regard to the audience factor attribution of receipts. However, CBS Inc.'s statutory proposal falls short of permitting the states to address, by regulation, the property factor treatment appropriate to these circumstances, as well as other matters requiring special treatment.

2. Coalition.

Assuming that the Commission were to adopt regulations in this area, the Coalition would suggest an approach that differed from the current proposal as to the following

material matters:

a. Property Factor

1) **Coalition:** The property factor should not include news or sporting events. See, for example, the deleted language in paragraph (4)(ii)B.3. of Exhibit 3a.

Hearing Officer's Conclusions: The inclusion of news and sporting events in the property factor logically results from a fair reading of the current state of the law regarding the First Amendment. The states would run serious risks of tax schemes being held invalid should they wish to pick and choose (include or exclude), as a measure for taxation, any program or type of program based upon its content. Any content sensitive criteria for the purpose of taxation is always suspect, if not invalid under the First Amendment.

Thus, the Hearing Officer concludes that all programming, whatever its nature, should be treated similarly for taxation purposes. If film and radio programming are included in the property factor for any purpose, programming of all types transmitted should be used with no exceptions. C., Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983). When a tax is applied to a business that is entitled to First Amendment protection, that tax, to have a reasonable chance of being upheld, has to be a general tax and not permit censorship. Cf., Jimmy Swaggart Ministries v. Board of Equalization, ___ U.S. ___, No. 88-1374 (Jan. 17, 1990); Minneapolis Star & Tribune Co., supra; and Medlock v. Pledger, 785 S.W.2d 202 (Ark. 1990). While the corporate income tax is a general tax, peculiarly drafted apportionment provisions that are content based may run afoul of the First Amendment prohibitions as well.

2) **Coalition:** The inclusion of license or royalty fees received by the taxpayer from others who manufacture for sale or rental video cassettes of taxpayer's films should be capped at an amount no greater than the cost to make the reproductions. See Exhibit 2, paragraph (4)(ii)B.5. and the deleted language contained in paragraph (4)(ii)B.4. of Exhibit 3a.

Hearing Officer's Conclusions: The Hearing Officer has not been presented with any material information regarding this aspect of the property factor. In the interest of reducing the complexity of the proposed regulations and their potential for administrative burden, the Hearing Officer has concluded that the traditional valuation rules under M.T.C. Allocation and Apportionment Regulations IV.10.-12. should apply.

3) **Coalition:** In order to apportion any type of tangible personal property, including film and radio

programming, the property must have been physically located and used by the taxpayer in the state. See Exhibit 2, paragraph (4)(ii)C.1.

The Coalition would include film or radio property in the state's numerator only if the original or master is physically located and used in the state. And it only then apportion the value of such programming property on an audience or subscription based ratio or such other ratio as provided by law. See attachment to Exhibit 2. A version of the Coalition's proposal in this regard, as modified by the Hearing Officer, is attached as Exhibit 5.

Hearing Officer's Conclusions: Proposed regulation alternatives found in paragraph (4)(ii)C.2. of Exhibits 3 and 4 rest upon the language of UDITPA §10 that includes property in the property factor numerator that is "owned or rented and used" in the state during the tax year. Even though one typically associates the concept of "use" with the physical location of property, there is no doubt in the Hearing Officer's mind that the film and radio property that is either seen and heard through a television set or heard over the radio is "used" in the state in which the televisions or radios and, thus, the program audiences, are located.

Since the vast majority of film programming is transmitted either by satellite or over the telephone from either New York or California where the original tape or film of the property is located, under the Coalition's suggested treatment only those two states would be entitled to any attribution of the underlying program property. Neither New York, nor California attribute all of the film property physically located in those states to their property factor numerators, but permit apportionment thereof based upon an audience factor. See, Cal. F.T.B. Reg. 25137-8(c)(1)(C)(ii) (Exhibit 6.a to Report of Hearing Officer of June 14, 1989).

The programming property, along with the commercial advertisements included therein, is viewed and heard by audiences all states. It is being used to produce income in those other states; and "[w]ithout broadcasting [to an audience] there is no income.... ".[4]

The particular physical location of the programming medium in New York or in California or elsewhere is of minimal additional or substantive significance, other than a location

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[4]. See, The Hearst Corporation v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8511 (May 15, 1990).

from which it may be delivered electronically to the states. The broadcaster's station properties and the other property needed for such transmissions are appropriately reflected in numerators of the property factors for the states in which those properties are located.

The broadcasters deliver the program property to audiences in the states for entertaining, informing and selling the goods and services of the advertisers. An unfairly representative apportionment results it all such property, whether treated as tangible or intangible, is attributed to but one or two states when, for all practical purposes, that property was used in an equivalent fashion and for the same purposes in all of the states.

The Hearing Officer determines that a restrictive reading of UDITPA §10 that limits the attribution of the program property to the state in which it is physically located at the time of the broadcast is unreasonable. And, the preclusion of a fair attribution of the programming property to the states contributing to the broadcaster's total audience does not fairly represent the extent of a broadcaster's use of the program property in those states. Since the programming owned or otherwise obtained and used by the broadcaster is ordinarily of such a significant value, a portion thereof should be attributed to the property factor numerator of all of the states in which it is used to generate advertising income, if such factor is to reasonably represent the extent of the broadcaster's business activities in those states.

If a fair method of attribution for the programming property is not adopted, then the elimination of the programming property altogether from the property factor for all states would provide another alternative. See paragraphs (4)(ii)B.3. and (4)(ii)C.3. of attached Exhibit 6. This "throw-out" method would work to ensure more fairly that the property that is "used" in all of the states is not unreasonably attributed to but one or two. Therefore, if the Commission were not to adopt either of the apportionment methods proposed in Exhibits 3 or 4, then the method suggested in Exhibit 6 provides a reasonable alternative.[5]

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[5]. It should be noted that in Paris Mfg. Co. v. Commonwealth of Pennsylvania, 486 A.2d 890 (Pa. 1984), the Pennsylvania Supreme Court reversed an earlier decision upholding the state's use of a throw-out rule applied to the receipts factor. In Paris, the Court could not find that the sales factor did not fairly reflect the extent of the taxpayer's Pennsylvania business activities; therefore, it invalidated the "throw-out" type of formula modification. Here, the Hearing Officer concludes that the programming property is "used" in all of the viewing states. Under

b. Payroll Factor

Coalition: The Coalition would modify the provision in the proposed regulation that attributed payroll of directors, actors, newscasters and other talent to the state in which their services were performed. Under its suggestion, all compensation would be apportioned to the state under the traditional rules for the attribution of employees' salaries under the Compact and M.T.C. Reg.IV.13. and 14. See Exhibit 2, paragraph (4)(iii)B.

Hearing Officer's Conclusions: For the sake of administrative convenience in attributing payroll, the Hearing Officer concludes that it would be appropriate for the states and taxpayers to follow the traditional rules already in place under M.T.C. Compact IV.13 and 14 as augmented by M.T.C. Reg. IV.13 and 14. In addition, the Hearing Officer has retained his recommendation that under the appropriate showing as stated in paragraph (4)(iii)A.2. of the alternative regulations, amounts paid to non-employees may also be included in the payroll factor under circumstances demonstrating that such non-employee compensation represents a substantial portion of all compensation paid.

c. Sales Factor

1) **Coalition:** The Coalition would include receipts in a state's sales factor numerator under the following circumstances: (i) when the taxpayer maintained an office or other fixed place of business in a state; and (ii) when, even though the taxpayer did not have an office or a fixed place of business in the state, the state otherwise had jurisdiction under state statute or decisional case law to impose a net income tax upon the taxpayer. The Coalition proposes that if a state in which the taxpayer does not have an office or other place of business has jurisdiction to tax on some other basis, that the state apportion to its sales factor numerator only gross receipts from the sale or rental of cassettes; and receipts derived from network or station broadcasting of live or delayed coverage entertainment or sporting events that occur within the state. See Exhibit 2, paragraph (4)(iv)B.2.

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these unique circumstances, the states should be permitted to either (1) to attribute a reasonable portion of such property to their property factor numerators; or (2) to minimize (but not altogether prevent) the potential for duplicative weight being attributed to such property by conflicts that may arise between the state of physical location and the state of viewing audience by employing a "throw-out" rule.

Hearing Officer's Conclusions: The current proposal assumes that nexus is found by some physical or other nexus contacts that are constitutionally sufficient. It therefore assumes that the state may apply its apportionment scheme to the broadcaster's net income to the fullest extent permitted by the state and federal constitutions.

The proposed regulation does not articulate any nexus standard or limit the circumstances within which the state can constitutionally apply its jurisdictional reach. Such reach will be dependent upon the facts and circumstances of a particular broadcaster's connections with a state when viewed against constitutional requirements of the Due Process Commerce Clauses.

The language proposed by the Coalition (section (4)(iv.)B.1. and 2.) would inject nexus or jurisdictional language when none is needed. In addition, the proposed language contained in paragraph (4)(iv.)B.2. of Exhibit 5 would limit the right of the states to include all gross receipts arising from the business activities of the broadcaster in the state, even if the state had the appropriate jurisdiction to do so. Such a limitation is unwarranted under the circumstances and, therefore, the Hearing Officer concludes that the limiting language proposed by the Coalition should not be included.

2) **Coalition:** The Coalition would apportion gross receipts on the ratio that in-state viewing audience bears to the viewing audience everywhere, meaning world-wide. See Exhibit 2, paragraph (4)(iv)B.1.a.

Hearing Officer's Conclusions: Each of the attached alternatives attempt to eliminate from the receipts that are to be attributed to a state, those receipts derived from broadcasts to audiences in foreign countries which have jurisdiction to tax the broadcaster. The suggested method is designed so as not to include those receipts that are attributable to such broadcasting activities conducted in foreign countries; and the method appears to be a less administratively burdensome method than that proposed by the Coalition. Therefore, the Hearing Officer concludes that proposed paragraph (4)(iv.)B.4. be used in lieu of a factor dependent upon identifying and quantifying those audiences that may have viewed a broadcaster's program in other parts of the world.

C. <u>Expansion of Proposal to Include Broadcasters in Addition to Network Broadcasters</u>.

The First Amendment issue that has been discussed above and in the other reports of the Hearing Officer applies with equal force to any distinction that is made between apportioning the income of network broadcasters in a substantially different manner than that which is applied to independent broadcasters that broadcast into more than one state. It should be noted that Oregon's statutory approach (Exhibit 1a) recognizes this issue and solves it by applying its apportionment methodology with equal force to all interstate broadcasters, whether operating as a network or as an independent station.

In order not to propose a regulation that is subject the states to a substantial constitutional challenge against making a distinction between classes of interstate broadcasters, all of the alternatives presented have been drafted to apply to any broadcaster having the right to apportion income derived both from within and without the state. See paragraph (1) of the proposed alternatives. In many states this may present a new approach to the manner in which independent stations whose broadcast signals cross state borders have been reporting their income.

Since issues remain concerning a state's nexus over out-of-state broadcasters who broadcast their programming into the state, the states are cautioned to consider the potential tax effects. However, if the First Amendment protection of broadcasters extends to eliminating, for taxation purposes, any distinction between in-state and out-of-state broadcasters that broadcast interstate, then the states have very limited options remaining other than to permit or require apportionment of income for all such broadcasters.

III. RECOMMENDATIONS OF HEARING OFFICER.

Submitted with this Second Supplemental Report are Exhibits 3, 4, 5 and 6, four alternatives for allocating and apportioning the income derived from the business of radio and television broadcasting. Exhibit 3.a is provided as an example of a marked up version (with shaded insertions and lined-out deletions) of Exhibit 3. The mark-up has, as its starting point, the original regulation recommended for adoption by the Report of Hearing Officer dated June 14,1989. (See Exhibit 15 to that Report).

Each of Exhibits 3., 4., 5. and 6. contains identical provisions with regard coverage; the payroll and sales factors; and each apportions receipts based upon the identical audience factor. The major material difference among the four versions rests with the treatment of the property factor. All four versions exclude "outer-jurisdictional property", e.g., satellites and undersea cables, from the numerator and denominator of the property factor. It is the treatment of the film and radio programming in the property factor that is addressed differently by each version.

Exhibit 3, marked "Apportionment of Film and Radio Programming by Audience", provides for the attribution of a percentage of the film and radio programming properties to the states based upon a viewing or listening audience ratio. That percentage is determined by the ratio that the in-state audience bears to the total domestic audience of the broadcaster.

Exhibit 4, marked "Apportionment of Film and Radio Programming by Program Hours", provides for the attribution of the film and radio programming properties to the states based upon the ratio by which the number of programming hours delivered to audiences in the state bears to the total of program hours delivered to all states. No input has been received from the industry representatives regarding either the appropriateness or administrative feasibility of apportioning on this basis.

Exhibit 5, marked "Apportionment of Film and Radio Programming if Physically Present", provides for the attribution of the film and radio programming properties to the states in which they are physically located. This provision fairly closely tracks the property factor apportionment suggestions contained in the submission by the Coalition attached to Exhibit 2. However, one major difference is that the Coalition's proposal would apportion the programming property only if the master or original program film or tape is physically located in the state. It would be an extremely rare event for the master or original to be removed from storage once sufficient copies are made. Therefore, the Hearing Officer has concluded that the Coalition's suggested version would result in virtually no programming property being apportioned outside the states in which the originals are stored. Therefore, the Hearing Officer has drafted Exhibit 5 so that it would at least apportion the program property physically located in the state on those rare occasions that the broadcaster uses a copy thereof in the states for the purpose of broadcasting or rebroadcasting.

Exhibit 6, marked "Film and Radio Programming Excluded", deletes the program properties from both the numerator and the denominator of the property factor altogether. This represents the "throw out" method discussed above.

One reservation held by the Hearing Officer with regard to Exhibit 3 - "Apportionment of Film and Radio Programming by Receipts" - is that the use of the same method to assist in determining the property and the receipts factor (the application of an "audience factor) may be viewed as a duplication of one factor or the other. Here, the question is raised whether an attempt to value the in-state use of programing properties through application of the result of an audience factor being applied to measure receipts (1) is reasonable; and (2) provides both factors with independent significance. The Hearing Officer concludes that, under these very limited and unique circumstances, the application of an audience factor in part to determine both factors is

reasonable and lends each factor independent significance when the formula mechanism is viewed as a whole.

A reservation held with regard to the method proscribed in Exhibit 4 - "Apportionment of Film and Radio Programming by Program Hours" - is that, without some verification from the industry of its administrative feasibility, adoption of this method may create some auditing and compliance problems. The states, in deliberating the choices for adoption, are requested to apply their collective experiences in consideration of this issue to fill the void left by the lack of industry input.

Exhibit 5 - "Apportionment of Film and Radio Programming if Physically Present" - is not recommended by the Hearing Officer over any of the other alternatives for the reasons stated in paragraph II.B.2.a.3) above.

Exhibit 6 - "Film and Radio Programming Excluded" - represents a position that falls somewhere between Exhibits 3 and 4 on the one side and Exhibit 5 on the other. It reduces the distortive effects of attributing all programming property to its physical location. It also addresses the objections of the industry to the viewing states not apportioning in property that is physically located outside their borders.

Exhibit 6 also represents an approach that can be taken as an interim measure, at least, during the time needed for the states and the Commission to study and address problems by the application of Section 17 of UDITPA and the Compact to service providers. The broadcast industry, along with the other major media that provide the distribution systems for advertising materials, should be more carefully studied by the states with regard to their methods of operation and income-producing activities.

Based upon the foregoing discussion, as well as the prior reports submitted by the Hearing Officer, the Hearing Officer recommends the adoption of either the apportionment regulations proposed in Exhibit 3 or Exhibit 4. If the Commission states were inclined to continue working with the industry in an attempt to arrive at a more permanent solution to these difficult apportionment problems; and, if the industry were willing to support such dialogue free from continued disputes over a temporary apportionment methodology, Exhibit 6 offers such a potential interim solution.[6]

Lastly, the Hearing Officer wishes to note that he has also prepared a draft of a proposed regulation for the allocation and

---

[6]. A period of between three to five years after the effective date of the regulation would seem reasonable for such an effort.

apportionment of income derived from the activities of members of the print media. That draft will be submitted to the Uniformity Committee for its consideration at its meeting on August 28, 1990. The Hearing Officer suggests that the courts have been regularly invalidating tax statutes that have been applied in a discriminatory manner to members of First Amendment protected industries.[7] Therefore, the Hearing Officer recommends that the states that adopt any one of the alternative proposals with respect to the broadcasters also implement one that applies to the print media and make both regulations effective for the same tax periods.

While the issue is not yet settled as to how disparate the electronic media can be treated for tax purposes from the print media, the Hearing Officer is of the opinion that efforts should be taken to apportion the income derived from advertising by the electronic media in a manner similar, if possible, to that imposed on advertising income derived by the print media. Therefore, the Hearing Officer recommends that the Commission condition the adoption of any of the pending proposed versions of this regulation on its recommendation to the states that the effective date of any regulation adopted here and in the states coincide as to the adoption of a companion regulation attributing the income derived by print media. In order to maximize the states' chances of obtaining judicial rulings upholding any of these regulations, the states should treat similarly for taxing purposes all similarly situated providers of First Amendment protected speech.

Respectfully submitted the 7th day of August, 1990.

Alan H Friedman
(per PM)

Alan H. Friedman
Hearing Officer

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7. See the cases noted in the original Report of Hearing Officer and the Supplemental Report thereto, as well as those noted in footnote 2. in this Second Supplemental Report.

EXHIBIT 8

MULTISTATE TAX COMMISSION

Resolution Regarding Adoption of Proposed
Allocation and Apportionment
Regulation IV.18.(h)

Special Rules: Television and Radio Broadcasting

WHEREAS, on April 25, 1988, the Executive Committee of the Multistate Tax Commission by resolution directed a public hearing be held upon the proposed adoption of Allocation and Apportionment Regulation IV.18.(h). regarding the apportionment of income from the activities of television and radio network broadcasting; and

WHEREAS, on June 9, 1989, said public hearing was held in Los Angeles, California, with Alan H. Friedman, Hearing Officer, presiding; and

WHEREAS, time for public comment or for any additional testimony was made available by the Hearing Officer until April 30, 1989; and

WHEREAS, pursuant to Article VII of the Multistate Tax Compact said Hearing Officer filed his Report dated June 14, 1989, recommending that the Multistate Tax Commission adopt Regulation IV.18.(h). as reflected in Exhibit 15 to said Report; and

WHEREAS, the Broadcasting Industry State Tax Coalition, on July 26, 1989, requested that the adoption of proposed Regulation IV.18.(h). be delayed for the purpose of permitting said Coalition to provide additional information with respect to said proposal; and

WHEREAS, the Multistate Tax Commission found good cause therefore to temporarily delay the adoption of proposed Regulation IV.18.(h). and did resolve, on July 27, 1989, that the Commission's consideration of the adoption of said Regulation, as modified and recommended by the Hearing Officer, be set for no later than February 15, 1990; and

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Suite 409
Washington, D.C. 20001
(202) 624-8699

New York Audit Office:
25 W. 43rd Street, Suite 212
New York, NY 10036
Telephone (212) 575-1820

Chicago Audit Office
30 W. Washington, Suite 1000
Chicago, Illinois 60602
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Houston Audit Office
One Park 10 Place, Suite 128
Houston, Texas 77084
Telephone (713) 492-2260

WHEREAS, the Hearing Officer filed his Supplemental Report of Hearing Officer on January 20, 1990; and

WHEREAS, the Multistate Tax Commission, at the request of the broadcasting industry to submit additional proposals to the Commission with respect to said proposal, did again consent that consideration of the adoption of proposed Regulation IV.18.(h). be temporarily delayed and set for no later than August, 1990; and

WHEREAS, pursuant to Article VII of the Multistate Tax Compact, and at the request of the Executive Committee, the Hearing Officer filed his Second Supplemental Report dated August 7, 1990, pertaining to adoption of Regulation IV.18.(h)., as reflected in Exhibit 6 to said Report; and

WHEREAS, the Multistate Tax Commission finds adoption of said Regulation IV.18.(h)., as reflected in Exhibit 6 to said Report, and as further modified by this Commission, excludes, at this time, the attribution of film and radio programming properties to the states due to the controversy which exists between the Commission and the broadcasting industry regarding inclusion of said properties; and

WHEREAS, the Multistate Tax Commission finds adoption of said Regulation IV.18.(h)., as reflected in Exhibit 6 to said Report, and as further modified by this Commission, represents one method of appropriately reflecting the in-state business activity of the broadcasting industry with respect to the receipt of advertising revenues; and

WHEREAS, the Multistate Tax Commission finds adoption of said Regulation IV.18.(h)., as reflected in Exhibit 6 to said Report, as so modified, accommodates the request of the broadcasting industry to apportion employees' compensation to the states under the traditional rules for the attribution of salaries, pursuant to the Multistate Compact and Multistate Tax Commission Regulations IV.13. and IV.14.; and

WHEREAS, the Multistate Tax Commission finds adoption of said Regulation IV.18.(h)., as proposed by the Hearing Officer in Exhibit 6 to said Report, as modified, reasonably reflects the in-state business activities conducted by the broadcasting industry; and

WHEREAS, pursuant to Bylaw 7 of the Multistate Tax Commission Bylaws, said recommendation by the Hearing Officer has been circulated to the members of the Commission to consider the adoption thereof; and

WHEREAS, a majority of the members of the Multistate Tax Commission surveyed pursuant to Bylaw 7 have agreed to consider adoption of the uniform regulation adopted hereby; and

WHEREAS, the Multistate Tax Commission finds adoption of the proposed regulation furthers the goal of the Commission to promote uniformity in the administration of significant components of state tax system.

NOW, THEREFORE, IT IS RESOLVED that the proposed Regulation IV.18.(h)., as reflected in Exhibit 6 to said Report and as further modified by this Commission and attached hereto, is hereby adopted.

IT IS FURTHER RESOLVED that said Regulation IV.18.(h), as attached hereto, shall become effective for tax years beginning on or after January 1, 1991. Further, that it is the recommendation of the Commission that both this regulation and the regulation that is currently being drafted to attribute income derived by the print media should both be made effective in any adopting state commencing the same tax year.

IT IS FURTHER RESOLVED that the adoption of the attached version of Exhibit 6 shall not be construed as a rejection of the apportionment methodologies presented by either of the draft regulations reflected in Exhibits 3 and 4 to said Second Supplemental Report of Hearing Officer.

IT IS FURTHER RESOLVED that it is the intent of this Commission that the adopted regulation be interpreted and applied to allocate and apportion the income of all such broadcasters in a manner that fairly measures such income that is derived from the broadcasters' in-state business activities; and that measures such income in a manner that is consistent with the requirements of the United States Constitution and the constitution of this State; and

IT IS FURTHER RESOLVED that to the extent that the application of this regulation does not fairly represent a particular broadcaster's business activity in this state; or, if such application results in a discriminatory tax treatment in favor of one broadcaster over a competing broadcaster, then the broadcaster may petition for or the Tax Administrator may require the application of any of the relief provisions contained in Article IV.18. of the Multistate Tax Compact and Reg.IV.18. thereunder in order to remedy such unfairness or discrimination. For example and not by way of limitation, when a broadcaster derives income from both its owned stations that are operated independently from a network, as well as stations that are operated as network affiliated stations, the method by which receipts or programming costs are determined and/or booked may vary substantially between the two types of stations. In such event, if the method of combining or booking such receipts results in an unfair representation of the income-producing activity of the taxpayer in this State, then either the broadcaster or the State should be provided

an opportunity to make such further modifications in such a manner so as to fairly attribute the income derived from broadcasting activities conducted in this State; and

LASTLY, IT IS FURTHER RESOLVED that the Executive Committee and the Uniformity Committee be authorized and requested to continue their review of the attribution of film and radio programming properties to the states, to report and to make recommendations to the Commission on an annual basis regarding the status of said review, and to submit to the Commission a final recommendation, no later than three (3) years from the date of this resolution.

Adopted by the Multistate Tax Commission this 31st day of August, 1990.

Attest: Dan R. Bucks

Dan R. Bucks
Executive Director

Multistate Tax Commission

Proposed Regulation Art. IV.18.(h)

Television and Radio Broadcasting

Reg. IV.18.(h). Special Rules: Television and Radio Broadcasting.

The following special rules are established in respect to the apportionment of income from television and radio broadcasting.

(1) **In General.** When a person in the business of conducting television or radio broadcasts, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Article IV. of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation. This regulation shall also apply to telecasting by cable television systems.

(2) **Business and Nonbusiness Income.** For definitions, regulations and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. IV.1.

(3) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Film" or "film programming" means any and all performances, events or productions telecast, live or otherwise, on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, in the format of a motion picture, a video tape, disc or other medium.

Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.

(ii) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but which are not physically located in any particular state.

(iii) "Radio" or "radio programming" means any and all performances, events or productions broadcast, live or otherwise, on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, in the format of an audio tape, disc or other medium.

Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(iv) "Release date" means the date on which a film is placed into service. A film is placed into service when it is first telecast to the primary audience for which the film was created. Thus, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television series is placed in service when it is first telecast. A film is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for telecast or, merely because it is telecast to prospective sponsors or purchasers, or is shown in preview before a select audience.

(v) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

(vi) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

(vii) "Tangible personal property" used in the business, whether owned or rented, shall include, but not be limited to camera and sound equipment, sets, props, wardrobes, and other similar equipment or property, but shall not include film or radio programming.

(viii) "Telecast" or "broadcast" (used interchangeably) means the transmission of television or radio programming by an electronic signal conducted by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, or other conduits of communications.

(ix) "United States" shall include and be limited to the fifty states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions and territories thereof.

(4) **Apportionment of Business Income.**

(i) **In General.** The property factor shall be determined in accordance with Regulation IV.10 through 12., the payroll factor in accordance with Regulation IV.13. and 14., and the sales factor in accordance with Regulation IV.15. and 16.,

except as modified by this regulation.

(ii) **The Property Factor.**

A. **In General.**

1. In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like; except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

2. No value or cost attributable to any film or radio programming shall be included in the property factor at any time.

B. **Property Factor Denominator.**

1. All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

2. Audio or video cassettes, discs or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs or other medium containing film or radio programming for home viewing or listening, the value of said cassettes, discs or other medium shall include the license, royalty or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.

3. Outer-jurisdictional, film and radio programming property shall be excluded from the denominator of the property factor.

C. **Property Factor Numerator.**

1. With the exception of outer-jurisdictional and film or radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor. If tangible personal property (other than outer-jurisdictional and film or radio programming property) is located

or used in this state for part of the income year, it shall be included in the numerator of the property factor at a value determined by applying the ratio which the number of days the property is located or used in this state bears to the total number of days such property was owned or rented by the taxpayer during the income year.

2. Outer-jurisdictional, film and radio programming property shall be excluded from the numerator of the property factor.

Example: XYZ Television Co. has a total value of all of its property everywhere of $500,000,000, including a satellite valued at $50,000,000 that was used to telecast programming into this state and $150,000,000 in film property of which $1,000,000's worth was located in this state the entire tax year. The total value of real and tangible personal property, other than film programming property, located in this state for the entire income year was valued at $2,000,000; and the moveable and mobile property described in subparagraph C.1. was determined to be of a value of $4,000,000 and such moveable and mobile property was used in this state for 100 days. The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$2,000,000
Value of mobile and moveable property: (100/365 or .2739 x $4,000,000):	$1,095,600
Total value of property to be included in the state's property factor numerator without apportionment of outer-jurisdictional and film property:	$3,095,600
Total value of property to be used in the denominator ($500,000,000 - $200,000,000)	$300,000,000
Total property factor % ($3,095,600/$300,000,000):	.0103

(iii) **The Payroll Factor.**

A. **Payroll Factor Denominator.**

1. The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters and other talent in their status as employees.

2. Amounts paid or other consideration that is provided to another person, corporation or other business entity for providing the services of directors, actors, newscasters and

other talent for a live television broadcast, film or radio programming may be included in the payroll factor only upon a finding by the [Tax Administrator], supported by clear and convincing evidence, that (a) such payments or other consideration were at least twenty-five percent (25%) of the total compensation paid to employees; and (b) failure to include such other payments or consideration would prevent the apportionment formula from fairly representing the extent of the taxpayer's business activity in this state.

B. **Payroll Factor Numerator.**

Compensation for all employees who are engaged on location in the production of a live television broadcast, film or radio programming, as well any payments or other consideration for the providing of those talent services that are included in the payroll denominator pursuant to paragraph (4)(iii) A.2., shall be attributed to the state or states as may be determined by the application of the provisions of Reg.IV.13. and 14. For the purposes of applying said Reg.IV.13. and 14., the persons for whom compensation was included in the payroll denominator pursuant to paragraph (4)(iii) A.2. shall be deemed to be employees of the taxpayer.

(iv) **The Sales Factor.**

A. **Sales Factor Denominator.**

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Reg. IV.18.(c) and paragraph (4)(iv)B.4. hereof.

B. **Sales Factor Numerator.**

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts, including advertising revenue, from live television, film or radio programming in release to or by television and radio stations located in this state.

2. Gross receipts, including advertising revenue, from live television, films or radio programming in release to or by a television or radio station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks) within the United States.

The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total United States viewing (listening) audience. In the case of television, the audience factor shall be determined by reference to the rating statistics as reflected in such sources as Arbitron, Nielsen or other comparable resources or by the average circulation statistics published annually in the Television and Cable Factbook, "Stations Volume" by Television Digest, Inc., Washington, D.C., provided that the source selected is consistently used from year to year for such purpose. In the case of radio, the audience factor shall be determined by reference to rating statistics as reflected in such sources as Arbitron, Birch/Scarborough Research, or other comparable resources, provided that the source selected is consistently used from year to year for such purpose.

If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United States, as reflected in the most current population data published by the U.S. Bureau of Census, for all states which receive the broadcasts.

3. Gross receipts from live telecasts and films in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system in the United States. If the number of subscribers cannot be accurately determined from the records maintained by the taxpayer, the audience factor ratio shall be determined on the basis of the applicable year's subscription statistics published in Cable Vision, International Thompson Communications, Inc., Denver, Colorado, if available, or, if not available, by other published market surveys.

If none of the foregoing resources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United States as reflected in the most current population data published by the U.S. Bureau of Census for all states in which the cable system has subscribers.

4. To the extent that the gross receipts from such live television broadcasting, film, or radio programming, as determined pursuant to paragraph (4)(iv.)B.2. or 3., include receipts derived from broadcasts to audiences located outside of the United States ("foreign-based receipts"), the total gross receipts against which the audience factor shall be applied shall

be modified so that such foreign-based receipts are not used to affect the amount of receipts that are to be apportioned to the state. Such modification shall consist of deducting from total receipts, prior to the application thereto of the audience factor, that amount of receipts derived from broadcasts to audiences located outside the United States.

Example: XYZ Television Network Co. has gross receipts from all broadcasting of films of $1 billion of which a total of $200,000,000 was derived from advertising receipts and license fees attributable to releases of its films in foreign television markets and $800,000,0000 attributable to the United States market. Assume that the foreign countries into which its programming has been telecast or sold or licensed for telecast would have jurisdiction to impose their income tax upon XYZ Network Co., then its in-state gross receipts attributable to its telecasting activity would be determined as follows:

$1,000,000,000 - $200,000,000 ($800,000,000) x (audience factor)

5. Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in Reg. IV.16.

EXHIBIT 9

TRIBUNE COMPANY
435 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60611-4041

February 20, 1991

Alan H. Friedman, General Counsel
Multistate Tax Commission
386 University Avenue
Los Altos, California 94022

Dear Mr. Friedman:

Pursuant to your Notice of Public Hearing, the Tribune Company, a diversified media company engaged in newspaper publishing, newsprint manufacturing, television and radio broadcasting, and entertainment production, wishes to express its opposition to the proposed publishers' regulations. We feel that if these regulations are adopted, they will be in violation of standard UDITPA principles.

The following issues cause us the greatest concern:

- The elimination of outer-jurisdictional property is not consistent with the treatment of other industries. We feel that the elimination of outer-jurisdictional property for publishers would create a more burdensome tax on publishers. If property is owned by a corporation, it should be considered when determining the apportionment of business activity regardless of its location.

- We are opposed to the concept of the inclusion of compensation paid to persons other than employees in our compensation factor. This is clearly a doubling up on the compensation factor when the same wages are to be considered in the computation of income for both an independent contractor and a corporation.

- The elimination of foreign-based receipts will improperly distort income in the states a corporation is doing business. By eliminating these receipts from both the denominator and numerator, the regulations are throwing back income into states that is not properly represented by their apportionment factor.

These are not the only issues that concern us, but they are the ones we feel would have the most detrimental effect on

our business. We urge you to drop the idea of segregating the publishing industry from the business sector and subject them to discriminatory taxation.

Sincerely,

Lorna Turner
Supervisor - State/Local Taxes

EXHIBIT 10

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Mailing address:
Legal Division
P.O. Box 1468
Sacramento, CA 95812-1468
(916) 369-3320

In reply refer to
410:BFM:md:D-91-79

April 17, 1991

Alan H. Friedman
Hearing Officer
Multistate Tax Commission
386 University Avenue
Los Altos, CA 94022

RE: Proposed Regulation IV.18(j): Attribution of Income From the Business of Print Media

Dear Alan:

The Franchise Tax Board of the State of California is charged with administering the California Bank and Corporation Tax Law. This law is applicable to members of the print media business and, in particular, the provisions of the Uniform Division of Income for Tax Purposes Act (§ 25120 et seq., Cal. Rev. & Tax. Code) are applicable to those members of the print media business with activities within and without California. The Franchise Tax Board has had significant experience in attempting to apportion and allocate the income arising from print media activities within and without California. The Franchise Tax Board's present practices are similar to those contained in the Multistate Tax Commission proposal, and it is likely that California will conform to a final regulation adopted by the Commission to further uniformity in state tax practices.

It is our understanding that the proposed regulation is closely patterned on the Commission's regulation for the allocation and apportionment of the income of the broadcast media and, in part, is being promulgated to ensure equal treatment with respect to both the print and electronic medias. We believe such equal treatment is appropriate but would also note there are differences in the operation of the two businesses. Therefore, we do not believe that all of the proposed provisions for the print media are likely to be necessary.

The following specific comments are provided:

Introductory Paragraph

Would this definition make the regulation applicable to book publishers? We believe it would, but it should not be. We suggest substituting "similar" for "other" and perhaps add a phrase such as "which derive more than 10 percent of its receipts from advertising."

¶(3)(ii) "Print or printed material"

The definition parallels the "film and radio programming" definition in the broadcast media regulation. The Franchise Tax Board does not believe that it is necessary to specifically describe such property or to specifically provide for its treatment in the property factor. (¶(4)(ii)A., etc.) With respect to the broadcast media, a specific need for definition exists because of the fact that the physical embodiment of film properties is treated as tangible property for certain purposes. We do not believe the same problem exists with the print media. A manuscript is recognized as an intangible and therefore is excluded from the standard UDITPA property factor.

¶(4)(ii)A

The Franchise Tax Board has not utilized a throw-out rule for outer-jurisdictional property. We believe such property should be included in the property factor and assigned to the jurisdiction which uses it.

¶(4)(iii)A.2

This section addresses the potential use of "alter ego" corporations by individuals. We believe this practice is virtually nonexistent in the print media industry as compared to the motion picture or broadcast media industry and is therefore unnecessary. Inclusion of this provision may open the door for arguments concerning the inclusion of independent contractors in the payroll factor and might lead to non-uniformity.

¶(4)(iv)B.2

This provision deals with the assignment of revenues from the sale of advertising. We believe it is the single most important provision of the regulation and are generally in accord with its philosophy of assigning advertising revenue by readership.

The problem of allocating advertising sales was recognized from the very first. Indeed, the draftsman of the Uniform Act, Professor William J. Pierce, noted that Section 17 of the Uniform Act was not an appropriate means of allocating advertising sales, recognized that the states would have to resort to special formulas under Section 18 of the Uniform Act and suggested the approach this Department took in Legal Ruling 367. In The Uniform Division of Income for State Tax Purposes, 35 Taxes 747, 780-781 (1957), Professor Pierce said:

> "Another problem arises in conjunction with sales other than sales of tangible personal property. Section 17 of the uniform act attributes these sales to the state in which the income-producing activity is performed. If the activity is performed in more than one state, the sales are attributed to the state in which the greater proportion of the activity was performed, based upon costs of performance. In many types of service functions, this approach appears adequate. However, there are many unusual fact situations connected with this type of income and probably the general provisions of Section 18 should be utilized for these cases. If we assume that the activity involved is the servicing of industrial equipment, the formula provided in the uniform act could be easily applied and the result appears equitable. In contrast, assume that the sales item involved is advertizing revenue received by a national magazine publisher. The state of activity would be difficult, if not impossible, to ascertain, so it would appear that this type of income may well be apportioned on the same basis as subscription income. The national conference considered this problem at length and concluded that for certain types of sales income, exceptions would have to be established by the tax collection agencies, since no formula seemed to be satisfactory for every conceivable factual situation. Generally, it was felt that the provisions of Section 17 were the best that could be designed to cover the greater proportion of the cases." (Emphasis added.)

Professor Pierce's suggestion that the states apportion advertising revenue on the same basis as subscription income is particularly significant in view of his judgment that resort to

the relief provisions of the Uniform Act should be made only in rare and unusual situations.

The relationship between circulation and advertising revenue was well stated by Judge (later Supreme Court Chief Justice) Berger in District of Columbia v. Evening Star Newspaper Co., 273 Fed.2d 95, 103:

> "The balance of Taxpayer's income is from circulation and advertising revenue. We are faced with the question whether these two items must be separated for apportionment purposes. We think that further separation is neither necessary nor warranted. The interrelationship between the two is so intimate that a separation would of necessity be arbitrary and artificial. It is apparent that all revenues, (other than the nonoperating revenues) rest ultimately upon circulation and readership. Merchants place and pay for advertising because of those who buy and read papers. The advertising rates are directly related to circulation. The activities of the Taxpayer are directed to one end: the sale of newspapers, which contain news and ads from many and varied sources. That the advertising revenue is greater than the circulation revenues is not controlling; the former is the fruit of the latter. Essentially both are 'operating revenues.' In a sense advertising revenues are subsidiary since they are dependent upon circulation. Both types of revenues should be treated under one heading. It is not surprising that the Taxpayer takes this view, for it is a matter of common sense and business reality." (Emphasis added.)

We have several questions regarding the mechanics of the regulation, however.

First, is it appropriate to use a readership factor for all "other" receipts? The rule makes sense for advertising but not other items. We suggest this rule be limited to advertising revenue and that standard UDITPA rules be used for other receipts.

Second, why are we looking at only United States circulation? To the extent you have actual circulation data, there is no need to limit it to the United States and it is inappropriate to do so.

Third, if you believe there is a problem arising from the assignment of advertising receipts to areas other than where the advertising can be realistically expected to bring results, it might be appropriate to establish a rebuttable presumption that such revenues will be assigned only to distribution occurring in a particular area and exclude distribution made in other areas. For example, Newsweek or Time are U.S. publications. Readership outside the United States is unlikely to respond to advertisement, so you exclude all non-U.S. sales.

Fourth, what about regional editions of magazines? There are West Coast editions, New York editions, etc. Can we refine this in some manner? Allow taxpayers or administrators to utilize more sensitive data.

¶(4)(iv)B.3

This section removes foreign receipts which may or may not be appropriate (see third above), but it doesn't describe how you make the assignment, it assumes it. Furthermore, there is no justification for such a removal if you don't remove the income.

Example. The denominator in the example should be $5,000,000,000, the total of all sales and subscriptions plus advertising receipts. The calculation of the numerator elements is correct given the assumptions, but there is no justification for reducing the denominator. The example should also illustrate how it is calculated.

Unaddressed

Finally, there is an issue unaddressed by the regulation, application of the throwback rule. Presumably, as to actual magazine sales, the throwback rule would apply because they are tangible property. However, there is no throwback rule for sales of other than tangible property. Nevertheless, the "nowhere" income problem may still exist. It may be appropriate to add a safety net clause to attribute advertising revenue only to states where nexus is established and then do a sales assignment either by (1) throwing subscription/newsstand sales back for the assignment fraction or (2) excluding such sales entirely. We favor the latter approach in spite of our general reluctance to utilize a "throw-out."

I currently plan to attend the hearing in Los Angeles on May 7, 1991, and will offer oral comments if appropriate.

Very truly yours,

Benjamin F. Miller
Director, Multistate
Tax Affairs Bureau

EXHIBIT 11

Multistate Tax Commission

Multistate Tax Commission
386 University Avenue
Los Altos, CA 94022
Phone (415) 941-0556
Fax (415) 941-0557

ALAN H. FRIEDMAN, General Counsel

Multistate Tax Commission
444 North Capitol St., N.W.
Suite 409
Washington, D.C. 20001
Phone (202) 624-8699

April 25, 1991

Mr. Christopher W. Baldwin
Director of Taxes
Gannet Co., Inc.
1100 Wilson Blvd.
Arlington, VA 22234

Re: Proposed Regulation IV.18(j) - Print Media (Publisher) Regulation

Dear Chris:

I am sending to you a fax copy of a draft of a regulation for the allocation of income derived from the business of print media (referred to now as "publishing"). I apologize for asking you to distribute these materials to those that attended the New York meeting held at your offices on April 9th. I am away from my office and do not have ready access to the fax numbers of those who attended the meeting, or an easy way to distribute these materials in advance of the May 7th hearing in Los Angeles.

I want to emphasize that the enclosed draft is neither a proposal of the MTC Uniformity Committee or of the Executive Committee, nor is it even one that can be suggested as favored by me as Hearing Officer. It represents an effort to fashion an alternative proposal for possible consideration by the Hearing Officer that represents a partial response to the input provided at our April 9th meeting.

As Hearing Officer, I would appreciate industry input with respect to the enclosed draft, as well as any additional input with regard to the original proposal should industry members deem appropriate. Written or verbal presentations either before or at the May 7th hearing is invited. Since we now have the direction of the United States Supreme Court in the case of Medlock v. Pledger, different conclusions may now be more easily made with regard to the similarity of apportionment treatment that is required with respect to broadcasting and publishing industries. Therefore, I anticipate closing the public record very shortly after the May 7th hearing so that I can prepare the Hearing Officer Report for transmission to the Multistate Tax Commission Executive Committee.

Very truly yours,

Alan H Friedman /so

Alan H. Friedman

DRAFT: 4/25/91

Multistate Tax Commission

Proposed Regulation Art. IV.18.(j)

(Publishing)

Reg. IV.18.(j). Special Rules: Publishing.

The following special rules are established in respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of newspapers, magazines or other printed material.

(1) **In General.** When a person in the business of publishing, selling or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to Article IV. of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(ii) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression, including without limitation a play, story, article, column or other literary, commercial, educational or artistic work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property. Material that may fall both within this definition and the definition of "film and radio programming" contained in Reg.IV.18.(h)(3)(i) shall, for the purposes of attribution and apportionment of income, be treated as "film and radio programming" under Reg.IV.18(h) and not as "print or printed material" under this regulation.

(iii) A "subscriber" to a publication is the individual, residence, business or other outlet which is the ultimate recipient of a publication.

(iv) "United States" shall include and be limited to the fifty states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions and territories thereof.

(3) **Apportionment of Business Income.**

(i) **The Property Factor.**

A. In General. Except as modified by this regulation, the property factor shall be determined in accordance with Article IV.10. through 12. of the Multistate Tax Compact and Reg.IV.10. through 12. promulgated thereunder.

B. **Property Factor Denominator.**

1. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

C. **Property Factor Numerator.**

1. All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

2. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value or cost of such property that is used by the taxpayer in business activities in this state bears to the total cost or value of such property that is used in the taxpayer's business activities everywhere.

Example: Assume that ABC Newspaper Co. owns a total of $300,000,000 of property everywhere and that, in addition, it leases satellite linkage for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities located in other states. The total value of its real and tangible personal property, exclusive of outer-jurisdictional property, that was permanently located in this state for the entire income year was valued at $3,000,000. The total leasing cost for the satellite linkage (determined by 8 x lease cost) is $5,000,000 for the tax period of which 40% of the cost is attributable to its satellite linkage with this state. Assume further that the company's mobile property was determined to be of a value of $4,000,000 and such mobile propertty was used in this state for 100 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state: $3,000,000

Value of mobile property: 100/365 or (.2739) x $4,000,000:	$1,095,600
Value of leased satellite property used in-state: (.40) x $5,000,000:	$2,000,000
Total value of property attributable to state including apportionment of satellite property:	$6,095,600
Total property factor %: $6,095,000/($305,000,000):	.0199

(ii) **The Payroll Factor.**

The payroll factor shall be determined in accordance with Article IV.14. of the Multistate Tax Compact and Reg.IV.13. and 14. promulgated thereunder.

(iii) **The Sales Factor.**

A. In General. Except as modified by these regulations, the sales factor shall be determined in accordance with Article IV.15. through 17. of the Multistate Tax Compact and Reg.IV.15. through 17. promulgated thereunder.

B. **Sales Factor Denominator.**

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business.

C. **Sales Factor Numerator.**

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser in this state.

2. Gross receipts derived from business activities other than the sale of tangible personal property, including advertising revenue, shall be attributed to this state as determined by the ratio (hereafter "circulation factor") that the purchases and subscriptions of the taxpayer's printed material delivered or shipped to purchasers and subscribers in this state bears to the total purchases and subscriptions of all of taxpayer's printed material everywhere.

The circulation factor shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable resources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined by the ratio that the population of this state bears to the population of the United States, as reflected in the most current population data published by the U.S. Bureau of Census for all states.

EXHIBIT 12

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

Division Of Income & Excise Audit
Seattle Regional Office

United Airlines Building, Suite 770
2033 Sixth Avenue
Seattle, Washington 98121
Telephone (206) 448-7815
Fax No. (206) 448-4933

April 30, 1991

Mr. Alan Friedman, Hearing Officer
Multistate Tax Commission
386 University Avenue
Los Altos, CA 94022

Dear Mr. Friedman:

Alan, thanks for the chance to comment on the "possibly" proposed regulations on publishing. It seems you are or were traveling, but I'll aim my response at your California office and hope it reaches you.

In general, it looks like the regulations will accomplish what you're looking to do. I have the following comments and questions:

P.2 Property Factor Numerator 3c

- How many states allocate mobile property to the numerator based on days used in state vs out? This example in a regulation may create a presumption in favor of days vs. revenue miles or landings for other purposes as well.

- How does one determine the percentage of satellite or phone line applicable to any state? Minutes transmitting to or from the state over the satellite or line?

P.3 Sales Factor (iii)(c)(2)

- Where a publisher sends copies into a state that are not sold, so that the retailer is given a credit and the magazines are then destroyed in-state, are they included in the circulation factor? I prefer that we only use one "look;" that is, when they're sent out, printed, or distributed, and we don't subsequently adjust for returned copy. We'd be adjusting forever.

P4. (iii)(c)(2)

- No offense, but this "catchall" ends up with the chance that "Alaska" magazine sales would be assigned more often in New York City than in Alaska when the subscribers are, most probably, over 60% Alaskans. I assume magazines, newspapers, etc. are either sent to subscribers, or distributors. Why not just go for where sent, rather than population? The hole in this method is that taxpayers will send to non-income, non-sales tax states, then redistribute. Or, perhaps, a distributor will cover a territory which includes several states--for

printed on recycled paper

example, Spokane, Washington and Coeur D'Alene, Idaho, which are within 30 miles of each other.

General--How will you assign other revenues like wire service, story pickups, photo resales, customer list information, paid announcements that aren't advertising, etc?

Sincerely,

Roger Stone
Revenue Audit Supervisor

RS/bfl

EXHIBIT 13

THE NEW YORK TIMES COMPANY
229 WEST 43 STREET
NEW YORK, N.Y. 10036

THOMAS H. NIED
VICE PRESIDENT
TAXATION

May 1, 1991

Mr. Alan Friedman
Multistate Tax Commission
386 University Avenue
Los Altos, CA 94022

Dear Mr. Friedman:

The New York Times Company ("The Times") hereby submits comments with respect to the original Print Media Proposed Regulations Article IV.18.(j), which deal with the apportionment of income.

General Comments

It should be made very clear that these proposed regulations pertain only to the apportionment of income, and apply only if it is independently determined that nexus is created under the traditional tests established by the courts. A statement to this effect should be put in these proposed regulations and in the Hearing Officer's Report.

It is The Times' understanding that the Multistate Tax Commission promulgated the Print Media Regulations because of the previous issuance of the Broadcasting Regulations. The Commission believes that the First Amendment requires comparable treatment for the Print Media and the Broadcasting industries. Further, it is The Times' understanding that the present proposed Print Media Regulations were taken directly from the Broadcasting Regulations.

The Times makes the following observations:

- The nature of the Print Media Industry and the way it conducts its business is dissimilar to the Broadcast Industry in many ways. The Print Media Industry is more similar to other manufacturers in that they both manufacture and sell tangible personal property.

- Since the two industries (Broadcast Media and Print Media) are so different, we believe it is inappropriate to use the Broadcasting Regulations as a model for drafting the Print Media Proposed Regulations. We believe it is more appropriate to use the general Multistate Tax Regulations which apply to manufacturing companies, and modify them for special areas of the print media not adequately covered by the existing general regulations.

- The First Amendment does not require comparable regulation treatment between the Broadcasting and Print Media Industries to the extent that almost identical regulations must be promulgated. This was confirmed in the U.S. Supreme Court's decision in *Leathers v. Medlock*, which held that the Arkansas sales tax which was imposed on cable television and satellite services, while exempting print media, does not violate the First Amendment. The Court permitted Arkansas to tax these two forms of media differently.

- We are interested in supporting a set of regulations which provide for a fair and equitable apportionment of income to all appropriate taxing jurisdictions. We feel that circulation is the best readily available factor for our industry.

  We are willing to apportion to all states in which we have nexus. We are concerned about double taxation just as you are concerned about "nowhere" taxation. If your regulations apportion advertising based upon circulation, then we are troubled by the distortions in the cost of performance states. We are also concerned about administrative and compliance burdens and suggest strongly that reasonable *De minimis* rules be considered.

Specific Comments on the Proposed
Print Media Regulations - IV.18.(j)

Definitions

- Outer-jurisdictional property -- This definition should be deleted as it is unnecessary. As discussed below, since it is property it should not be excluded from the property factor.

- Print or printed material -- In the third sentence delete the phrase, "and may be contained on any medium or property." This phrase is inconsistent with the language in the introduction of the regulation which states that the regulation is applicable to "print media."

  - The second paragraph should be deleted as the meaning is unclear and vague.

- Print media property -- This definition should be deleted as it is unnecessary. As discussed below, print media property should not be excluded from the property factor.

- Publication date -- Since this term is not used anywhere in the regulations, it should be deleted as unnecessary.

- Published -- This term should be deleted since it is not used elsewhere in the regulation.

- Rent -- This term should include only the traditional definition, i.e., the right to use tangible personal property. Payments for the use of intangible assets should be excluded. Since rent is defined in the general regulations, there is no need to define it again here.

- Subscriber -- Since this term is not used elsewhere in the regulations, it should be deleted from the definition section.

- United States -- This definition should be deleted because, as discussed below, the apportionment factors should include property and sales worldwide.

Property Factor

- No separate property factor is necessary. The property factor rules in Regulation IV.10. through 12. are sufficient.

- B.1. -- Print media property should not be excluded from the property factor. The print media industry (as opposed to book publishing or broadcasting) has little or no "print media" property as defined in (3)(iii).

- B.1. -- You cannot draw artificial lines at national borders when corporations operate on a worldwide basis. There is no reason to exclude outer-jurisdictional property from the property factor; to do so creates a distortion of the apportionment of income. Outer-jurisdictional property is property and it should be included in the factor like any other property. Worldwide income should be subject to worldwide apportionment.

- It is unclear what paragraph B.2. refers to. If it refers to inventory, this section should be deleted as it is covered by the general property factor regulations.

- C.1. -- If the exclusion for print media and outer-jurisdictional property is removed, this paragraph should be deleted as it is covered by Reg. IV.10.(d).

  - The last sentence makes reference to movable property, a concept which is relevant in the Broadcast Industry. This concept, if relevant at all in the Print Media Industry, is immaterial as the only property to which this concept applies are cameras of photographers or portable computers of a few correspondents. Therefore, this reference should be deleted.

- This example is unnecessary and should be deleted as the concepts illustrated here have been deleted above.

<u>Payroll Factor</u>

- A.1. -- This statement is covered in Reg. IV.13.(a) and is therefore unnecessary here.

- A.2. -- The inclusion of independent contractors should be deleted. Although the Broadcast Industry may operate with many highly paid independent contractors, this is not so in the Print Media Industry. The administrative burden of determining where the services were performed (not captured at present) and distinguishing services from other items reported on a 1099 such as expense reimbursements or property sold (not captured at present) will outweigh the benefit of tracking this information regarding the modestly paid independent contractors in the Print Media Industry.

- If this section were left in, it would create a very significant recordkeeping burden relating to independent contractors. The IRS is an appropriate policing agency for the classification of workers. The payroll factor is appropriate since it is easily compiled and does not distort services rendered to the Print Media Industry by independent contractors.

Sales Factor

- B.1. -- This section should be deleted as it restates the general rule in Reg. IV.15.(a).

- B.2. -- The phrase "within the United States" should be excluded. There is no reason to exclude receipts outside the United States which may distort the sales factor. There will be more distortion in the overall scheme of things if you try to identify only U.S. source income and then apportion it among the states. The approach should be to include worldwide income and apportion it on a worldwide basis.

- In B.2. the term "readership" factor should not be used as it can be inaccurate. It could include, for example, multiple parties reading a magazine in a household. The term circulation should be substituted and defined.

- B.3. -- As discussed above, foreign receipts for advertising and circulation should not be excluded from the sales factor. Therefore, this paragraph should be deleted, as it is unnecessary.

  - The example should also be deleted as most of the concepts contained in it have been deleted.

We would like to discuss our comments with you before you finalize the regulations.

Very truly yours,

Thomas H. Nied

Robert S. Tobin

EXHIBIT 14

JOHN WAIHEE
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

RICHARD F. KAHLE, JR.
DIRECTOR OF TAXATION

ALFRED C. LARDIZABAL
DEPUTY DIRECTOR

LLOYD I. UNEBASAMI
DEPUTY DIRECTOR

RECEIVED
MAY 07 1991
MTC/DC

May 2, 1991

Multistate Tax Commission
444 North Capitol St., N.W.
Suite 409
Washington, D.C. 20001

Attention: Mr. Alan H. Friedman
Hearing Officer

Re: Proposed MTC Regulation IV-18(j) - Print Media (Publishing)

Dear Mr. Friedman:

At this extremely late date in the process, I would like to make an observation in regards to the numerator of the sales factor.

Item C(2), describes the construction of the "circulation factor" in terms of deliveries or shipments to purchasers or subscribers; seemingly suitable for the smaller scale publisher. The second paragraph, however, refers the taxpayer to a third-party rating bureau; seemingly suitable for a larger, nationwide publisher.

Since both of the above constructions use the term "shall", the potential for confusion exists. It seems that the second paragraph should be subservient to the first; therefore, subject to the impracticability of implementing the first paragraph.

The above is submitted for your information only. The substance of the regulation seems to be sound.

Very truly yours,

Richard Chiogioji

RICHARD CHIOGIOJI
Tax Audit Administrator

EXHIBIT 15

The Hearst Corporation

Stanley A Gottlieb
Assistant Treasurer and
Director of Taxation

1775 Broadway
New York NY 10019
212 649 2800

May 3, 1991

Alan Friedman, Esq.
Multistate Tax Commission
386 University Avenue
Los Altos, California 94022

Re: Proposed Regulation - Print Media

Dear Alan:

Pursuant to the commentary of the proposed regulations of the print media, we hereby submit the following comments with respect to proposed regulation Art. IV.1.8(j) which deals with the apportionment of income of members of the print media.

The regulation should contain a preamble that nothing in this regulation should be construed so as to create nexus with a state which does not exist under the traditional tests established by the courts of that state for determining the existence of nexus. This regulation should only apply to the apportionment of income to a particular state once it is determined that the company has nexus with that state. Without such a determination, the regulation should have no effect.

It should be noted that the media industry is, in most respects, the same as any manufacturing industry. The nature of the industry and the way in which it conducts its business is not similar to the broadcast industry. As a general principle, therefore, it is not appropriate to use the broadcasting regulation as the starting point for drafting the regulation applicable to the print media. It is more appropriate to start with the regulations applicable to manufacturing and modify them for the areas of the print media which the manufacturing regulations do not adequately address.

In addition, this regulation, as stated above, should only contain special rules applicable to the print media. Any rule already contained in the general regulations of the Multistate Tax Commission which applies to the print media should not be restated in this regulation.

Our comments on specific sections of reg. IV.18.(j) as originally proposed are as follows:

(3) Definitions:

(i) "Outer-jurisdictional property": This definition should be deleted. It is unnecessary since, as discussed below, this type of property should be included in the property factor.

Writer's note: leave definition in if proposed regulation contains a method of apportioning such property to each state.

(ii) "Print or printed material": Delete starting with the third sentence phrase "and may be contained" through the end. This regulation deals with the print media and not to "any medium or property" as specified in the definition. The inclusion of the deleted portion in the definition is inconsistent with the language at the beginning of the proposed regulation which describes the application of the proposed regulation to the print media. Separate regulations should be issued to address other media.

Thus, with the omission of the reference to other media, the language contained in the final sentence of the first paragraph becomes unnecessary.

The meaning of the second paragraph of this definition is vague. If it means that the circulation of each edition of a book, magazine, newspaper, etc. must be examined in order to determine the apportioning of advertising revenue in that particular edition, an intolerable administrative burden will be created. To require the analysis of each edition's circulation and advertising revenue is unreasonable. A yearly analysis of each magazine or newspaper circulation using the appropriate circulation figures from the recognized agencies (e.g. Audit Bureau of Circulation) should be sufficient.

If the paragraph has a different meaning, additional clarification as to that meaning must be included in the regulation.

(iii) "Print media property": Our comments with respect to this definition are the same as those with respect to "outer-jurisdictional property."

(iv) "Publication date": Since the term is not used anywhere in the regulation, it is not necessary to define it and, therefore, the definition should be deleted.

(v) "Published": Since the term is not used in the regulation, the definition should be deleted.

(vi) "Rent": The definition of rent should be the traditional definition of the payment for the right to use tangible property. No payments for intangibles should be considered as rent. The majority of the payments for intangibles such as license fees and royalties are for the right to reproduce and not for the unrestricted use of the intangible.

(vii) "Subscriber": Since the term is not used anywhere in the regulation, it is not necessary to define the term and, therefore,

the definition should be deleted. Distribution to wholesalers and other distributors should not be considered as the ultimate recipient and, therefore, not considered in determining circulation. Sales from wholesalers to end-users should be considered.

(viii) "United States": The definition should be deleted. This definition is unnecessary since, as discussed below, the apportionment factors should not be limited to property and sales within the United States.

A definition of "circulation factor" should be inserted and should be defined as the ratio that the taxpayer's in-state circulation bears to its total circulation. Circulation should be determined based on the end-user. Sales to wholesalers and others determined not to be the end-user of the printed material should be excluded. Sales from wholesalers to end-users should be considered.

The language in paragraph (iv)B.2 regarding the determination of circulation should be inserted here.

(4)(ii) The Property Factor:

A. This paragraph should be deleted. What is defined in the regulation as "print media property" and "outer-jurisdictional property" are material components used in the production of income which should be considered when apportioning income to the various states.

B. 1. This paragraph should be deleted. As discussed above in (3)(i) and (iii), the parenthetical should be removed. Once the parenthetical is removed, this paragraph does not add to or change the general regulations and, therefore, is not necessary. If this paragraph is retained, it should be expanded to include what basis of the property (e.g. cost or adjusted basis) should be used for owned property and how rent paid should be capitalized.

B. 2. We are unsure as to what this paragraph refers to. If it refers to inventory, then it is not necessary and should be deleted for the same reasons as paragraph B.1. If it refers to something else, then it must be clarified so that its meaning is clear.

C. 1. The exception referring to print media property and outer-jurisdictional property should be removed for the reasons stated for paragraph A. Once the exception is removed, this paragraph does not add to or change the general regulations and should, therefore, be deleted.

If this paragraph is retained, the last sentence dealing with moveable property should be deleted. The concept of moveable

property has relevance in the broadcast industry but does not in the print media industry. Property used by the print media is not generally moved from location to location.

C. 2. For the reasons stated for paragraph A. This paragraph should be deleted. In addition, this paragraph is redundant with paragraph A.

Since most of the concepts illustrated in the example have been deleted, the example should also be deleted. However, if the example is retained, the words "value" and, "worth" should be replaced with the word "cost" or "basis", whichever the correct standard of valuation is.

(4)(iii) The Payroll Factor:

A. 1. Since this paragraph merely restates the general rule, it should be deleted.

A. 2. Traditional common law or definition used for federal purposes should be applied to determine if a person is an employee or independent contractor. Once that determination is made, only wages paid to employees should be included in the factor.

Fees paid to independent contractors should not be included in the factor. Tracking these fees would be an enormous administrative burden at best and impossible at worst.

(4)(iv) The Sales Factor:

B. 1. This paragraph restates the general rule and, therefore is unnecessary and should be deleted.

B. 2. For states whose statutes provide for the apportionment allocation of advertising revenue based upon the cost of performance, that standard should be used. In states which do not provide for the apportioning of such revenue by statute, a "circulation factor" should be used.

B. 3. This paragraph should be deleted. Foreign circulation is considered in the print media industry in the calculation of circulation and advertising rates. Accordingly, this circulation should be considered when apportioning advertising revenue to a particular state where such advertising income is included in the tax base.

Since most of the concepts illustrated in the example have been deleted, the example should also be deleted. If the example is retained, it should be changed so that total advertising receipts does not equal the denominator of the factor in order to avoid confusion.

With respect to the alternative version of the regulation forwarded to us with your cover letter dated April 25, 1991, the comments above which refer to sections of the alternative regulation which were not changed from the original version remain the same. The following are additional comments with respect to the alternative.

(3)(i)(c)(2) - Including outer-jurisdictional property in the numerator in the manner as proposed is the same as excluding such property from both the numerator and denominator. Inclusion in this manner can have no effect on the factor since it is the same factor which determines the impact on the numerator.

For example: Assume a company has $20.00 of property (excluding outer-jurisdictional property of $40.00) everywhere and $3.00 in the state. Without considering the outer-jurisdictional property, the factor would be 15% (3 divided by 20). If 15% or $6.00 of the outer-jurisdictional property is included in the numerator, the factor would still be 15% (9 divided by 60).

The example needs to be clarified so that it demonstrates the determination of the amount of outer-jurisdictional property to be included in the numerator. The example simply concludes that 40% is attributable to the state and may be in conflict with the method prescribed by the regulation for determining that amount.

Very truly yours,

Stanley Gottlieb

SAG:ih

EXHIBIT 16

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Mailing address:
Legal Division
P.O. Box 1468
Sacramento, CA 95812-1468
(916) 369-3320

In reply refer to
410:BFM:md:1Friedman

May 6, 1991

Alan H. Friedman
General Counsel
Multistate Tax Commission
386 University Avenue
Los Altos, CA 94022

RE: Proposed Regulation Art. IV.18(j) (Publishing)
Draft of 4/25/91

Dear Alan:

Based upon a review of the revisions dated 4/25/91 to what was formerly denominated as "Special Rules: Print Media," we have the following comments:

(2)(iii) We assume the ultimate recipient of the publication is the party which purchases it to read or view or to make it available for others to read or view.

(3) One generalized statement that standard rules applied for all factors is appropriate rather than for each one. Furthermore, it may not even be necessary given ¶1.

(3)(i)B. To the extent you repeat the general rule specifically but don't include the subrule as to when property is considered used, i.e., available for use, you suggest the subrule isn't applicable.

(3)(i)C.2. No rule is provided for determining when outer-jurisdictional is used in a state. The Example provides no clue and, in addition, introduces mobile property which has no need to be included since it isn't otherwise discussed. The example also uses the term leased "satellite linkage" which is undefined. The term "value" is introduced in this paragraph without definition. Does this raise some value other than original federal tax basis?

(3)(iii)B. The statement modifies out the Reg. 17 exclusion of certain receipts.

(3)(iii)C.2. Is there any need to address anything other than advertising? To do so again changes the standard rules. For items other than advertising, there is no apparent need.

(3)(iii)(C) Second paragraph. We prefer the phrasing of the first draft which included "in-state circulation for its printed material bears to its total circulation" as determined by . . .

We would also suggest the taxpayer's own records might be the most appropriate source, if reliable, and used for marketing to advertisers.

The regulation is also silent with respect to regionalized advertising efforts which are now appearing in some national publications.

Very truly yours,

Benjamin F. Miller
Director, Multistate
Tax Affairs Bureau

EXHIBIT 17

Multistate Tax Commission, Hearing on Proposed Print Media Apportionment Regulations.

May 7, 1991, Los Angeles, California

Summary of Comments Presented By:

Knapp Communications Corporation

Karl H. Loring, Senior Vice President, Treasurer

Victor S. Rappa, Vice President, Taxes

We are appearing here today to express our opinions regarding the Multistate Tax Commissions proposed print media apportionment regulations. First, we want to thank you for the opportunity to contribute to this process. Second, we are aware of the issues that were discussed at the meetings held on March 28, 1991, in Washington D.C. and April 9, 1991 in New York. In general, we agree with the positions articulated by the publishers present at those meetings. Lastly, we applaud the revisions that have been made to the proposed regulations subsequent to those meetings.

1) We do not believe that there is a need for separate apportionment regulations for the print media.

2) The recent U.S. Supreme Court decision in Medlock v. Pledger appears to have eliminated the need for separate print media apportionment regulations, comparable to the MTC's 1990 broadcast media apportionment regulations.

3) Traditional "nexus" standards should in no way be affected either directly or indirectly by any proposed apportionment regulations.

4) The three factor apportionment formula that we have used for more than a decade has been carefully scrutinized and accepted by all the states we do business in.

   A. In general, the Property and Wages factors have been computed on the same basis as other non-media manufacturing concerns.

   B. The sales factor for this Company, (which includes magazine sales and advertising revenues), has been determined utilizing, circulation base apportionment data obtained from the publishers' Audit Bureau of Circulations ("ABC") report.

5) The Uniform Division of Income for Tax Purposes Act ("UDITPA") would be a desireable standard for uniformity that all states should adopt.

6) As mentioned above, we were pleased to see the revisions made to the original draft, but as we will explain below, further revision would seem desirable.

With these general comments as background, we would like to address specific items contained in your 4/25/91 draft:

1) Definitions:

A. We ask for deletion of the latter part of Section (2)(ii), starting with "and may be contained ..... under this regulation", there is no reason for leaving it in.

B. Is the definition of "United States" in Section (2)(iv) necessary?

2) Property Factor:

A. We assume that the definition of "value" is contained in Article IV.10 through 12 of the Multistate Tax Compact. If not, the regulation should use specific language, i.e. original cost, adjusted basis, etc. UDITPA as well as the MTC Regulations (Reg.IV.11.(a).(1)) use original cost.

B. In Section (3)(i)C.2., "value or cost of such property" should be revised to state only one valuation method not both.

C. We assume that the 40% for outer-jurisdictional property, reflected in the Example in Section (3)(i)C, is only a given. It would be useful to show a computation, since Section C.2, is not entirely clear. We believe that a time factor may be more appropriate. Consideration might be given to a formula for outer-jurisdictional property with "Time used in the State" as a numerator and "Total time available for use everywhere" as the denominator.

D. Since the print media does not generally use mobile property, is there some reason to specially mention it in the Example under Section (3)(i)C?

3) Sales Factor:

A. We agree that advertising revenues are inseparable from the revenues from the physical product, and consequently should be included in the numerator based on a circulation factor. In print media, the advertiser could not reach the intended market without the tangible personal property, i.e. the newspaper or magazine.

B. In Section (3)(iii)C.2., "purchasers and subscribers". Subscribers is defined in these regulations, purchasers is not.

C. For the "circulation factor" in Section (3)(iii)(c), last paragraph, is it appropriate to use U.S. population, if sales are worldwide? Should some consideration be given to reflect worldwide income in the factors?

EXHIBIT 18

The Times Mirror Company

Points for Discussion at MTC Hearing
May 7,1991

Jack Plank/Don Mosca

1. We have been briefed on the meetings in Washington D.C. and New York city with the hearing officer and we generally concur with and support the comments and recommendations made by the representatives of the publishers at those meetings. You are to be commended on the April 25, 1991 revised draft of the proposed regulations for the Publishing industry. We believe they go a long way toward allaying our concerns about the definitions and make up of the apportionment factors for Publishers.

2. It is our view that it should be made clear somewhere in the process-the Hearing Report or other appropriate document-that nothing in the regulation creates nexus with a state which does not already exist under the traditional court established nexus tests. The regulation should only apply to apportion income to a particular state once it has been determined the company has nexus with that state.

3. Since so many commentators have addressed the concerns of magazine and newspaper publishers we would like to make some comments on the book segment of publishing. Books publishers, like magazine and newspaper publishers, manufacture a product that is tangible personal property. To the best of our knowledge, advertising revenue is not an issue for book publishers and they do not use outer-jurisdictional property.

4. In the latest draft of the regulations we note that the word "books" has been eliminated from the language in Reg.IV.18(j)(1)&(2). However, the definition of "Print or printed material" seems to be broad enough to include books. The regulation should clarify whether or not books are covered by the regulation. In our view, the current regulations provide for the fair apportionment of income for book publishers and they should be excluded from the proposed regulations

5. As a practical matter, there is no need for specific regulations for any of the publishing industry. The only substantive issue in the revised draft regulation deals with the "circulation factor". Most taxpayers with advertising revenues already use this concept and the states have accepted it. It works well.

6. In view of the recent S. Ct. decision in Leathers vs. Medlock, there seems to be no reason the Broadcast regulations cannot be issued before the Publishing regulations. Further, as a result of that decision there appears to be no reason to issue regulations for Publishing at all since the current regulations for manufacturers adequately covers publishers. We suggest you re-think the First

Amendment issue in light of Medlock and address it in the Hearing Officers report on the public hearings.

7. Having said all this, if the MTC does issue regulations for Publishing we would restate that our comments are based on the assumption that your April 25, 1991, revised draft is the current proposed regulation. If the MTC were to return to the original draft we would have serious objections, specifically to:

   The exclusion of print media property and outer-jurisdictional property from the property factor.

   Inclusion of independent contractors in the payroll factor, particularly at the discretion of the tax administrator.

   Elimination of foreign receipts from the sales factor and the use of separate factors on the sale of property and readership of advertising.

EXHIBIT 19

May 14, 1991

Alan H. Friedman
General Counsel
Multistate Tax Commission
386 University Avenue
Los Altos, California 94022

Dear Mr. Friedman:

On behalf of Gannett Co. Inc., I hereby submit the attached comments in response to Proposed MTC Regulation IV.18.(j): Attribution Of Income From The Business Of Print Media. These comments amplify those I presented at the March 28, 1991 hearings in Washington, D.C.

I would be pleased to meet with you or other representatives of the MTC to discuss any portion of these comments in more detail.

Gannett appreciates the effort you and other MTC personnel have devoted to this Proposed Regulation. However, we believe that no need exists for such a regulation, and that in fact, implementation of the Proposed Regulation would be inappropriate for numerous reasons. We hope that on the basis of our comments and those of other responsible members of the industry, the MTC will agree to withdraw the Proposed Regulation.

Viewing the entire process of development of this Proposed Regulation in perspective, we would suggest that your April 25 revised proposal has reduced the matter to a single issue -- the use of a "circulation factor" for the sales factor of print media companies. The industry generally does not object to this, and in fact already reports on that basis in most cases. Most of our comments, and those we have noted from other print media industry sources, raise numerous other problems with the Proposed Regulation because it is not as detailed as existing MTC Regulations, or because it conflicts with existing Regulations or P.L. 86-272.

As I explained in our telephone conversation last week, we suggest that your objective could be accomplished, with the concurrence of the industry, by replacing this Proposed Regulation with a very simple alternative. One sentence could be added at the end of existing MTC Regulation IV.17.(1)., the section dealing with "Sales Other Than Sales of Tangible Personal Property." The new sentence would indicate that for purposes of the MTC Regulations, revenue from sales of advertising transmitted as a part of tangible personal property

1100 Wilson Blvd., Arlington, VA 22234 703/284-6000

would be considered to be revenue from the sale of the tangible personal property, rather than from the sale of intangible property or from the performance of a service.

This simple alternative would achieve your objective without the controversy attached to this Proposed Regulation. However, in the event you are not prepared to adopt this simple alternative, we offer the attached comments for your consideration.

The recent decision of the U.S. Supreme Court in Leathers v. Medlock has effectively eliminated from the MTC's consideration the concern that the First Amendment rights of the broadcast industry may be jeopardized unless print media regulations are adopted. In view of this development, we suggest that at a minimum:

1. The Proposed Regulation for print media should be referred to the MTC staff for further development of the industry's practices, which you stated were not sufficiently understood at the time of drafting.

2. No Proposed Regulation should proceed to consideration unless and until justification (other than the First Amendment concern) is identified. To date, no other rationale has been offered to suggest why existing MTC Regulations of general application are inappropriate for the print media industry.

In view of the Leathers decision we note that it should no longer be necessary to comment on the recent New York decision, McGraw Hill, Inc. v. State Tax Commission. Even though this decision deals with the same issue raised by the broadcast industry, we trust you will agree that Leathers effectively eliminates the need to conform the treatment of the print media and broadcast industries, and makes analysis of McGraw Hill unnecessary at this time.

We appreciate your attention to the attached comments.

Very truly yours,

Christopher W Baldwin

Christopher W. Baldwin
Director of Taxes

Enclosure

THE GANNETT CO. INC.

COMMENTS SUBMITTED TO THE MULTISTATE TAX COMMISSION
IN CONNECTION WITH PROPOSED MTC REGULATION IV.18.(j):
ATTRIBUTION OF INCOME FROM THE BUSINESS OF PRINT MEDIA

Respectfully submitted
Christopher W. Baldwin
Director of Taxes
Gannett Co. Inc.

May 14, 1991

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INTRODUCTION

The following represents the comments of Gannett Co. Inc., ("the Company").

The Company is a diversified news and information company that publishes newspapers, operates broadcasting stations and outdoor advertising businesses, and is engaged in research, marketing, commercial printing, a newswire service and news programming. The Company has facilities in 41 states, the District of Columbia, Canada, Guam, the U.S. Virgin Islands, London, Paris, Switzerland, Hong Kong and Singapore.

The Company's is the largest U.S. newspaper group, with 82 daily newspapers, including USA TODAY, a number of non-daily publications and USA WEEKEND, a weekly newspaper magazine. Total average paid daily circulation of the Company's daily newspapers in 1990 exceeded 6.3 million, more than any other newspaper group. The manufacture and sale of newspapers accounts for 81 percent of the sales volume of the Company. The Company also owns and operates 10 television stations, eight FM radio stations and seven AM stations in major markets. Gannett Outdoor is the largest outdoor advertising group in North America, with operations in 11 states and Canada.

The Company was founded by Frank E. Gannett in 1906 and incorporated in 1923. The Company went public in 1967. Its nearly 159 million shares of common stock are held by more than 15,000 shareholders of record in all 50 states and abroad. The Company has 36,600 employees, with corporate headquarters located at Arlington, Va.

These comments correspond to and amplify the testimony submitted by Christopher W. Baldwin, Director of Taxes, at the March 28, 1991 Multistate Tax Commission (hereafter, "MTC") hearings in Washington, D.C.

I. General Comment -- the Proposed Regulation is Unnecessary.

There is no demonstrated need for industry-specific regulations for the print media industry, since it is an industry composed of businesses engaged in the manufacture and sale of tangible personal property.

The preamble to Proposed Regulation IV.18.(j) (hereafter, "the Proposed Regulation") fails to identify a rationale for any new print media regulations. It should do so. The preamble apparently still states that the motivation for drafting these rules is the potential First Amendment objections which have been raised by representatives of radio,

television and cable broadcasting companies. However, as the revised draft of the Proposed Regulation seems to acknowledge, these concerns are no longer valid.

In Leathers v. Medlock, ___ U.S. ___, 74 U.S.L.W. L-1 (U.S. April 16, 1991), at p. 25, the Supreme Court stated ". . . differential taxation of speakers, even members of the press, does not implicate the First Amendment unless the tax is directed at, or presents a danger of suppressing, particular ideas." It concluded the Arkansas sales tax in question did not present such a danger.

Likewise, the MTC Broadcast Regulation presents no such danger. In fact, the suggestion of First Amendment deficiencies in the MTC Broadcast Regulation have neither been explained or substantiated.

The Court, in Leathers, upheld against a First Amendment challenge the discretion of the Arkansas legislature to impose a sales tax on cable television and satellite broadcast services, while exempting newspapers and certain other print media.

The tax at issue in Leathers, a generally applicable sales tax, covered various transactions ranging from the sale of electricity to telephone service to admission tickets for entertainment events. Other transactions, including over-the-counter and subscription sales of newspapers and subscription sales of magazines, were specifically exempted. According to the Court, legistatures "need not exempt speech from a generally applicable tax" like a sales or income tax; furthermore, a system of taxation "does not become suspect simply because its exempts only some speech." Leathers at L-4. Thus, the First Amendment rationale for the Proposed Regulation has been declared invalid by the U.S. Supreme Court. If other reasons exist for the Proposed Regulation, they have not been adequately developed to date. No new system of regulation should be promulgated by the MTC unless a justification is offered for that system. After Leathers, such justification must reflect some inadequacy in the application of the general MTC regulations to the print media industry.

In further support of the lack of necessity for the Proposed Regulation, the specific comments which follow deal with the substantive aspects of the Regulation.

II. Comments Related to Nexus and the use of P.L. 86-272.

The Proposed Regulation should contain an explicit cross reference to P.L. 86-272, and clearly indicate that it does not authorize state signatories to circumvent P.L. 86-272. Although the Hearing Officer has indicated this to be the intent of the Proposed Regulation, and has expressed a willingness to make this comment in his report, the comment should also be included in the text of the Proposed Regulation.

There is precedent for this cross reference in MTC Regulation IV.3.(c)., which specifically cross references P.L. 86-272. Without a similar reference in the text of this Proposed Regulation, the impression might be conveyed that the use of a destination-based apportionment system for advertising revenue is in some way an authorized exception to P.L. 86-272. Clearly, that is not the intention of the Hearing Officer, but the Hearing Officer's report will be very difficult for future generations of state tax administrators to locate as they propose and administer this Regulation.

We suggest that the most effective method of avoiding this incorrect inference is to reduce the entire Proposed Regulation to a single rule, dealing with the sale of advertising which is transmitted as a part of tangible personal property. The rule should make it clear that the revenue from such advertising is to be apportioned in the same manner as other revenue from the sale of the tangible personal property, using the principles of P.L. 86-272.

The preceding comment is in no way intended to contradict or diminish the point raised elsewhere in our submission that the Proposed Regulation is unnecessary. Further discusssion of the lack of necessity for regulations, and of problems with the Proposed Regulation follow below.

A. **The Proposed Regulation is improperly attempting to "fragment" print media into separate businesses, one of which would be composed of the dissemination of advertising.** The consequence of this fragmentation is to segregate a portion of an integrated business in a manner which would encourage the MTC's state signatories to avoid P.L. 86-272.

The newspaper business is an integrated activity which includes the collection of information, the creation of editorial and journalistic content, the solicitation of advertising, the production of the tangible property through which the advertising, journalistic and editorial content are communicated, and the distribution of this tangible property to subscribers and readers. This is an integrated income producing activity. It is improper to identify certain components of the newspaper business as income producing (i.e., the sale of advertising and the sale of newspapers) and disregard the income producing nature of the other activities. To "fragment" the newspaper business in this manner would imply, for example, that the collection of information and the creation of the editorial content of newspapers are not income producing activities, since the employees engaged in those components of the business do not directly deal with paying customers.

It would similarly be unreasonable to assert in the case of a manufacturing operation that the manufacturing component conducted within the four walls of a factory is not an income producing activity. In substance, the newspaper business is a manufacturing and distribution business just as is the manufacturing of other types of tangible property. As such, the proper application of P.L. 86-272 requires coverage of the entire newspaper business, including the sale of advertising.

B. **The MTC should not attempt to redefine lines of business which represent the manufacture and sale of tangible personal property. The MTC must limit its activities to those consistant with the purposes of the Multistate Tax Compact (hereafter, "Compact") and avoid improperly conflicting with P.L. 86-272, 15 U.S.C. 381-384 (hereafter "P.L. 86-272").** The promulgation of this Proposed Regulation represents an action in which the MTC is exceeding its authority under the Compact, in that it goes beyond its mission statement. The mission of the MTC is one of advocating uniformity, compatibility and simplification of State and local tax laws.

In Article I, the Compact expresses its purposes as the "equitable apportionment of tax bases," the promotion of "uniformity or compatibility" among tax systems, "the facilitation of taxpayer convenience" and the avoidance of duplicate taxation.

These purposes are reflected in the powers of the MTC. These powers, expressed in Compact, Article VI, Section 3 include the power to study various tax systems, the power to "develop and recommend proposals for an increase in uniformity or compatibility . . ." among tax laws, encouraging simplification and improvement and to do other things necessary to achieve the purposes described in Article I.

The impact of fragmenting advertising revenue into a separate business does not advance any of the objectives of the MTC, as described in the Compact. Nor does the potential recharacterization of newspaper, magazine or book sales as "film or radio programming", as does Proposed Regulation IV.18.(j)(2)(ii). These ideas do, however, represent the erosion of the P.L. 86-272 protection afforded to businesses which manufacture and sell tangible personal property.

The recently proposed recharacterization of certain print media sales as "film and radio programming" represents an especially disturbing and confusing regulatory initiative. At best, it represents a source of confusion for any print media company whose product may at some future date be the subject of a film or radio production. It is burdensome and unreasonable to expect the publisher of newspapers, magazines or books to predict whether its products "...may fall ..." within both definitions. Presumably, this could occur by virtue of the publisher's use of the product in a broadcasting business, or by virtue of a sale or license of reprint rights to an affiliate or a third party. However, this speculation would apparently be required by the Proposed Regulation in order to properly apply one or another set of MTC apportionment regulations.

The proposed reclassification represents an ill-advised change because it could be misinterpreted to create nexus in a jurisdiction where P.L. 86-272 would provide that no nexus exists. Sales of the product of print media companies, for whatever purpose the purchaser intends, are adequately dealt with under existing law and regulations, since the print media business is a tangible personal property business. P.L. 86-272 and existing MTC regulations should be left intact, and the Proposed Regulations should be withdrawn.

The MTC was designed to serve neither as a forum for, nor as a party to constitutional disputes. Its goal is not to represent its signatory states in an assault on Federal nexus legislation. Rather, its purposes are administrative in nature, and it should adhere to those purposes.

C. **The Proposed Regulation is promulgated in part to implement the MTC's P.L. 86-272 Guidelines. Both documents are inconsistent with existing MTC Regulations.** In its P.L. 86-272 Guidelines, adopted June 21, 1985, the MTC adopted a statement of policy which respects the enactment of P.L. 86-272. However, the Guidelines express the policy of construing P.L. 86-272 as narrowly as possible to apply "... only to those limited circumstances clearly and reasonably intended by Congress."

The Guidelines invite all states to adopt a policy of narrow construction of P.L. 86-272 in order to maximize the business income they will thereby make subject to tax. The MTC's state signatories clearly have the authority to interpret P.L. 86-272 to their advantage. However, the interpretation, in order to respect the supremacy clause of the United States Constitution, must reasonably respect the intention of the U.S. Congress, namely that the nexus standards described in P.L. 86-272 apply to business income centered around sales of tangible personal property. P.L. 86-272, Sec. 101(a)(1).

The general MTC Regulations already deal with the distinction between business and non-business income in a manner that properly interprets the intent of Congress in enacting P.L. 86-272. Regulation IV.1.A employs a concept of integrated business activities that may include the disposition of both tangible and intangible property which ". . . constitute integral parts of the taxpayer's regular trade or business operations." To go beyond this definition and declare advertising, which is an integral part of the print media business, to be beyond the protection of P.L. 86-272, directly conflicts with the Regulation IV.1.(a). concept of an integrated business activity. This appears to be an obvious attempt to circumvent P.L. 86-272, which would be inconsistant with Regulation IV.3.(c)., rather than an effort to pursue any proper objective of the MTC.

The MTC Guidelines also exceed the powers granted to the MTC under the Compact. None of the powers or purposes described above and in the Compact encompasses the intention to assist the state signatories in imposing their net income tax to the maximum extent by a narrow construction of P.L. 86-272. This position of the states may be appropriate and within the authority of a state tax administrator. However, the MTC must limit its interpretive actions to those authorized by the Compact, and leave the business of state government to the states.

In summary, the purpose of the MTC should be to defend a reasonable interpretation of P.L. 86-272, not the narrowest one possible. This would permit the MTC to retain its stature as an organization that objectively pursues its mission of encouraging uniformity and simplification. The revenue enhancement purposes of individual states should not become the agenda of the MTC.

II. COMMENTS REGARDING THE SALES FACTOR.

A. MTC Regulation IV.16.(a) adequately deals with the sales factor for the Print Media Business, since it is exclusively a business involving sales of tangible personal property. The existing regulation deals with sellers of

tangible personal property engaged in interstate commerce by generally employing a "destination" basis for the definition of gross receipts from sales. State signatories are currently employing a destination basis, with throwback as appropriate, to other sellers of tangible personal property. No reason exists or has been suggested to justify adding an additional set of special rules for the print media business.

MTC Regulation IV.16.(a) is more comprehensive than the Proposed Regulation regarding the application of the destination basis than the Proposed Regulation. Existing regulations are in fact cross-referenced in the proposed regulation for use in connection with the sale of tangible personal property, and this would demonstrate the belief of the drafter of the Proposed Regulation that existing regulations are adequate.

B. **Eliminate the Carve-Out of a Separate "Circulation Factor" for Allocation of Gross Receipts from Advertising.** Although the general use of the destination basis for advertising gross receipts is appropriate in the case of print media, this should be accomplished through the application of existing regulations. The technique of using a separate Circulation Factor could inappropriately imply advocacy of a different application of P.L. 86-272 in the determination of nexus. As described above, the sale of advertising is an integral part of the business of selling tangible personal property, and the allocation of advertising gross receipts to any destination state is merely a consequence of the sale of tangible personal property into that state.

We submit that the separate sales factor regulation in this proposal is unnecessary and should be withdrawn. However, if it is not totally withdrawn, the Proposed Regulation should make it clear that this use of a destination basis of allocating revenue from advertising sales, which deviates from existing Reg. IV.17., has no bearing on the determination on nexus.

C. **The possibility of exclusion of foreign sales from the Circulation Factor will inappropriately distort the allocation of gross receipts in businesses with advertising sales and foreign circulation.** This exclusion might occur under the Proposed Regulation if the tax administrator determines that the Audit Bureau of Circulation ("ABC") reports are not available or are not "... in form or content sufficient." In practice, the ABC reports are always available for any publication which has any significant amount of advertising. Attached as exhibits to these comments are several examples of ABC reports which reflect both interstate and international circulation audits. The industry uses ABC reports for actual pricing of advertising, a much more significant purpose than mere tax apportionment. To require any other standard for tax reporting would be unreasonable and inappropriate.

In some rare segment of the print media industry where ABC's might not be available, it is not appropriate to exclude foreign sales from the apportionment calculations. Rather, comprehensive taxpayer records should be the basis of the Circulation Factor. To do otherwise, excluding foreign sales, would amount to an inappropriate use of the throwback principle since it unrealistically increases both the absolute and relative volume of readership reflected in a domestic state.

If the circulation factor is intended to represent the proportion of a publication's readership generated from within a given state, foreign sales should be treated no differently from sales in another domestic state. Existing Regulation IV.16.(a). appropriately demonstrates the throwback principle in situations involving the sale of tangible personal property. An appropriate, similar, and uniform result would occur if foreign destination readership is included in the denominator of the "Circulation Factor."

In summary, reliance on any statistical base other than ABC reports, and the proposed exclusion of foreign sales are inconsistent with the mission and powers of the MTC, and are therefore inappropriate. This comment should not be interpreted to contradict in any way our previous comment that the Circulation Factor is inappropriate and should be deleted. It merely points out an additional defect in the proposal.

III. Comments related to the property factor

A. **The proposed treatment of outer-jurisdictional property in the numerator of the property factor is inappropriate.** This property, if it is owned or leased by the taxpayer, is tangible personal property used in the production process of print media. As such, its use in the property factor is correctly described in existing MTC Regulation IV. 10. and 11. The proposed changes to the treatment of outer-jurisdictional property will distort the property factor of print media companies by improperly increasing any property throwback to the MTC signatory jurisdictions.

MTC Regulation IV.10.(b) and (d) contain provisions for determining the extent to which stationary or movable property are included in the numerator of the property factor. They require a determination of the time the property is located and used or available for use within the state, and these provisions are entirely workable for outer-jurisdiction property.

Since the Proposed Regulation suggests no change in the treatment of mobile property, the use of mobile property in the example should be deleted. Its use in the example implies that some portion of this Proposed Regulation might supercede the treatment of mobile property in the present, comprehensive Section IV.10.(d).

More importantly, the Proposed Regulation conflicts with existing MTC Regulation IV.10.(b). regarding the computation of the denominator of the property factor, and this could cause

substantial taxpayer confusion, or could lead to potential double taxation. It fails to conform to existing regulations which require the property factor, presumably both numerator and denominator, to reflect the period of time property is available for use "...as reserves or standby facilties..." This is one example of why the existing regulations are more thorough than the Proposed Regulation, and already deal effectively with the print media business.

B. **The Proposed Regulation improperly introduces the concept of "value" into the property factor.** A second such example is the apparently interchangeable use in the Proposed Regulation of the concepts "value" and "cost." This is a serious policy shift that has been introduced without justification into the Proposed Regulation. Existing MTC Regulations deal extensively at IV.11.(a). with the proper measurement of the property factor, and prescribe a system that generally relies on original cost. There has been no suggestion why this system should be altered solely for the property factor of print media companies. In fact, such a change would cause a severe hardship for print media companies both large and small. It could lead to recurring appraisal requirements, inconsistancies among lines of business and among different jurisdictions. In short, it represents another example of why existing MTC Regulations are more thorough and satisfactory than the Propoed Regulation.

C. **No separate property factor regulation is required for the print media industry.** As described above, the proposed elimination of both outer-jurisdictional and print media property from the property factor used by print media companies is inappropriate. As a result, existing MTC Regulations IV.10., 11., 12., and 18.(b). are adequate to deal with property issues arising for print media companies. No industry-specific regulation is necessary, and this portion of the Proposed Regulation should be withdrawn.

EXHIBIT 20

OREGON

DEPARTMENT OF REVENUE

INTEROFFICE MEMORANDUM

DATE: May 24, 1991

TO: ALAN H. FRIEDMAN, Hearing Officer
Multistate Tax Commission

FROM: DON MCNEAL, Acting Manager
Corporation Tax Section - Audit Division

SUBJECT: Public Hearing on the Proposed MTC Regulation IV. 18 (j)
Print Media (Publisher) Regulation

It has taken me longer than anticipated to get back on track after attending the quarterly meeting in Nashville. It is after the May 15, 1991, date you indicated for providing comments on the proposed regulation, however I am providing them to you for your consideration.

Comments:

1. The proposed regulation is not consistent with the Broadcaster Regulation adopted by MTC in August 1990 regarding the treatment of "outer jurisdictional property". It was finally agreed upon by the broadcasting industry that such property would be excluded from the property factor of the apportionment formula. The proposed Print Regulation includes the outer jurisdictional property. We do not understand the justification for the inclusion in the case of the print industry.

2. In the sales factor computation, a "circulation factor" is used. If rating statistics ar not available, a ratio of the population of the taxing state to the population of the United States is used. This would appear to be appropriate if a national publication is being considered. Many publications have only a regional circulation and it would seem to be appropriate to include only the population of the states or regions where the publication is distributed for the denominator of the circulation factor in attributing receipts to the taxing states rather than the U.S. population.

Thank you for allowing Oregon to provide comments to the proposed regulation on the Print Media.

EXHIBIT 21

Multistate Tax Commission

INTERIM REPORT OF HEARING OFFICER REGARDING PROPOSED ADOPTION OF MULTISTATE TAX COMMISSION REGULATION IV.18.(j) (Publishing)

On November 9, 1990, the Executive Committee of the Multistate Tax Commission adopted a resolution ordering a public hearing to be held pursuant to Article VII(2) of the Multistate Tax Compact regarding a proposed allocation and apportionment regulation pertaining to the attribution of income from the business of print media (the affected industry is hereafter referred to as "publishing" industry). (See Exhibit 1)[1]. The regulation as originally proposed is set forth in Exhibit 2.

Bylaw No. 7 of the Multistate Tax Commission requires the Hearing Officer to submit to the Executive Committee a report which shall contain a synopsis of the hearing proceedings and a detailed recommendation for Commission action. In the case of a hearing, such as the present one, that is held pursuant to Article VII(2) of the Compact, the final recommendation of the Hearing Officer is to include a proposed draft of the regulation which is the subject matter of the hearing.

A Final Report of the Hearing Officer is normally divided into three parts. The first is a synopsis of the public hearing proceedings which were held; the second part is a brief discussion of the major substantive issues to be addressed; and the third part is the Hearing Officer's recommendation for Commission action concerning the adoption of the proposed Regulation IV.18.(j). Because the Hearing Officer has determined to hold one additional public hearing session before issuing his Final Report, only the synopsis of the public hearing proceedings held thus far will be set forth in this Interim Report, along with the reasons for holding the additional public session.

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[1]. Due to the length of some of the Exhibits and the fact that this is an Interim Report and not the Final Report of the Hearing Officer, only two exhibits - Exhibits 2 and 10 - shall be reproduced here. All other exhibits are available in the hearing record and will be incorporated into the Final Report. Those persons desiring a copy of any of the exhibits may obtain them by contacting the Multistate Tax Commission's Director of Policy Research, Michael Mazerov, by writing to him at 444 No. Capitol St., N.W., Suite 409, Washington, D.C. 20001.

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I

SYNOPSIS OF PUBLIC PROCEEDINGS

A. Notice and Public Hearing.

Notices of the two sessions of the public hearing to be held were provided as set forth in Exhibit 3. On March 28, 1991, the initial session of the public hearing was held in Washington, D.C. On May 7, 1991, the second public session was held in Los Angeles, California. Additionally, the public was invited to submit additional written testimony or submissions through and including May 15, 1991. In addition to the two sessions of the public hearing, the Hearing Officer met with several industry representatives at the offices of Gannett Co., Inc. in New York City on April 9, 1991.

B. Material Submitted for the Record.

The public sessions of the hearing, in accordance to the Notices of Public Hearing were called to order at approximately 10:00 A.M. on March 28, 1991 and May 7, 1991, in Washington, D.C. and Los Angeles, California, respectively, by Alan Friedman, General Counsel to the Multistate Tax Commission, who presided as Hearing Officer for the Commission. There were 22 persons in attendance at the Washington, D.C. session; and 11 persons in attendance at the Los Angeles, California session. Those in attendance at the two public hearing sessions, as well as those at the April 9, 1991 meeting are listed in Exhibit 4.

The oral statements of the witnesses and those present at the public sessions were tape recorded; and the recordings, which are made a part of the record, are available for review upon request to the Multistate Tax Commission. The following additional written materials have been submitted to the Hearing Officer and will be made a part of the hearing record:

Exhibit 5.	Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) (without Exhibits).
Exhibit 6.	Second Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) (without Exhibits).

Exhibit 7.	Resolution Regarding Adoption of Proposed Allocation and Apportionment Regulation IV.18.(h) dated August 31, 1990.
Exhibit 8.	Letter dated February 20, 1991 from Lorna Turner of the Tribune Company.
Exhibit 9.	Letter dated April 17, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 10.	Letter dated April 25, 1991 from the Hearing Officer to Christopher Baldwin of Gannet Co., including a 4/25/91 draft of "Multistate Tax Commission Proposed Regulation Art.IV.18.(j)(Publishing).
Exhibit 11.	Letter dated April 30, 1991 from Roger Stone, Revenue Audit Supervisor, State of Alaska Department of Revenue.
Exhibit 12.	Letter dated May 1, 1991 from Thomas H. Nied and Robert S. Tobin of The New York Times Company.
Exhibit 13.	Letter dated May 2, 1991, from Richard Chiogioji, Tax Audit Supervisor, Department of Taxation, State of Hawaii.
Exhibit 14.	Letter dated May 3, 1991 from Stanley A. Gottlieb of The Hearst Corporation.
Exhibit 15.	Letter dated May 6, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 16.	Written Summary of Comments dated May 7, 1991, presented by Karl H. Loring and Victor S. Rappa of Knapp Communications Corporation.
Exhibit 17.	Written Points for Discussion at MTC Hearing dated May 7, 1991 by Jack Plank/Don Mosca of The Times Mirror Company.
Exhibit 18.	Letter dated May 14, 1991 from Christopher W. Baldwin of Gannett Co. Inc. and Written Comments.

Exhibit 19.	Letter dated May 24, 1991 from Don McNeal, Acting Manager, Corporation Tax Section -Audit Division, Oregon Departmnet of Revenue.
Exhibits 20a.-20e.	Audit Bureau of Circulations statements for Architectural Digest, Democrat & Chronicle, USA Today and Detroit Free Press.

II

CHANGE OF CIRCUMSTANCE OCCURRING DURING THE PUBLIC PROCEEDINGS

The initial proposal that is the subject of this public hearing was modelled after MTC Reg. IV.18.(h)(Television and Radio Broadcasting). See Exhibit 2 attached hereto. This was because at the time that the initial proposal was drafted, it was thought that the United States Supreme Court may rule in a pending case that the First Amendment required both the electronic media and the printed media to be treated similarly for the purpose of state taxation. On April 16, 1991, the Supreme Court decided the case of Leathers, Commissioner of Revenues of Arkansas v. Medlock, et al., ____ U.S. ____, No. 90-29 (slip op.) that the First Amendment did not prohibit a state from imposing its sales tax on cable television services, while at the same time exempting the print media from such taxes.

A significant issue - the Equal Protection Clause - still remains to be decided as to the validity of discriminatory treatment among different classes of information-providers. However, such treatment based upon the First Amendment no longer is of significant legal concern. Therefore, shortly after the Leathers v. Medlock case was decided, the Hearing Officer, drafted another version of a print or publication apportionment regulation that did not tie itself directly to the treatment required of television and radio broadcasting. See Exhibit 10 attached hereto.

III

AN ADDITIONAL PUBLIC SESSION OF THIS HEARING IS APPROPRIATE

Due to the shortness of time existing between the date the Leathers v. Medlock case was decided (April 19, 1991), the drafting of the second version of the regulation (April 25, 1991) and the holding of the second session of the public hearing (May 7, 1991), an insufficient amount of time was permitted for dissemination of the second version for the purpose of receiving public comment. On May 17, 1991, at a meeting of the Committee on State and Local Taxation of the Tax Section of the American Bar Association, Mr.

Sterling Weaver, Esq. of Nixon, Hargrave, Devons & Doyle, noted the limited public distribution of the April 25th draft version and suggested that additional opportunity for public comment and appropriate reflection was advisable.

The Hearing Officer finds that the second version of the proposed regulation is one which has not been afforded sufficient circulation to the public, including representatives of the states. I further find that the changes made in such second version, as well as the notion of disengaging the proposal from the concepts embodied in the Television and Broadcasting Regulation, are substantial changes and require additional opportunity being made available for public comment.

On May 3, 1991, the Executive Committee of the Commission authorized the Hearing Officers for all hearing proceedings to determine the number of public sessions that are required for any proceeding and to hold same without the prior approval of the Executive Committee being required. In light of such authority, of the circumstances under which the second version of the proposal has been drafted and circulated, and public comment being received thus far, the Hearing Officer concludes that the holding of one additional public session of these proceedings would be proper and would serve the public interest of providing a fair opportunity for public input. Accordingly, a third session of the public proceedings will be conducted on public notice to be provided in the near future. At such third public session the Hearing Officer shall consider the initial proposal, the draft second version of April 25, 1991, and such other recommendations, comments, and submissions as may be submitted at that session. In the interim, the public record shall remain open until the holding of such additional public session.

Shortly after the conclusion of the third session, the Hearing Officer will issue his Final Report. Interested persons are hereby put on notice that one alternative available to the Executive Committee, should it be deemed appropriate, is to refer a final proposed regulation that it approves to a special meeting of the full Commission that would be held to coincide with a quarterly meeting of the Executive Committee. This matter, therefore, need not await its final resolution until the 1992 Annual Meeting of the Commission is held should the Executive Committee determine otherwise.

Respectfully submitted on June 11, 1991.

Alan H. Friedman
Hearing Officer

Exhibit 2

Proposed Regulation Art. IV.18.(j)

Multistate Tax Commission

Proposed Regulation

Print Media

Reg. IV.18.(j). Special Rules: Print Media.

The following special rules are established in respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of newspapers, magazines or other printed material.

(1) **In General.** When a person in the business of publishing, selling or distributing newspapers, magazines, books, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to Article IV. of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) **Business and Nonbusiness Income.** For definitions, regulations and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. IV.1.

(3) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(ii) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression, including without limitation a play, story, article, column or other literary, commercial, educational or artistic work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a newspaper, magazine, book, periodical, pamphlet, trade journal or any other form of printed matter and may be contained on any medium or

property. Material that may fall both within this definition and the definition of "film and radio programming" contained in Reg.IV.18.(h)(3)(i) shall, for the purposes of attribution and apportionment of income, be treated as "film and radio programming" under Reg.IV.18(h) and not as "print or printed material" under this regulation.

Each episode of a series of printed material shall constitute a separate "printed material" notwithstanding that the series relates to the same principal subject.

(iii) "Print media property" shall mean the original or master from which printed material is printed or otherwise produced, irrespective of whether or not such property is subject to copyright protection.

(iv) "Publication date" means the date on which print material is published or otherwise placed into service. Print material is placed into service when it is first distributed to the primary audience for which the printed material was created. Thus, a magazine is placed in service when copies of it are first publicly distributed for entertainment, educational, commercial, artistic or any other purpose. Each episode of a series of printed material is placed in service when it is first published. A printed material is not placed in service merely because it is completed and therefore in a condition or state of readiness and available for publication or merely because it is shown to prospective sponsors or purchasers or shown to a select audience.

(v) "Published" means the public distribution of printed material by any means.

(vi) "Rent" shall include license fees or other payments or consideration provided in exchange for the use or other publication or distribution of print material.

(vii) A "subscriber" to a publication of printed material is the individual residence, business or other outlet which is the ultimate recipient of the printed material.

(viii) "United States" shall include and be limited to the fifty states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions and territories thereof.

(4) **Apportionment of Business Income.**

(i) **In General.** The property factor shall be determined in accordance with Regulation IV.10 through 12., the

payroll factor in accordance with Regulation IV.13. and 14., and the sales factor in accordance with Regulation IV.15. and 16., except as modified by this regulation.

(ii) **The Property Factor.**

A. **In General.**

1. No value or cost attributable to any print media property or outer-jurisdictional property shall be included in the property factor at any time.

B. **Property Factor Denominator.**

1. All real property and tangible personal property (other than print media property and outer-jurisdictional property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

2. Copies or other reproductions made of print media property or any portion thereof and intended for sale to or license by third parties shall be included in the property factor at their original cost.

C. **Property Factor Numerator.**

1. With the exception of print media property and outer-jurisdictional property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor. If tangible personal property (other than print media property and outer-jurisdictional property) is located or used in this state for part of the income year, it shall be included in the numerator of the property factor at a value determined by applying the ratio which the number of days the property is located or used in this state bears to the total number of days such property was owned or rented and used by the taxpayer during the income year.

2. Print media property and outer-jurisdictional property shall be excluded from the numerator of the property factor.

Example: Assume that ABC Newspaper Co. has a total value of its property everywhere of $500,000,000, including $150,000,000 worth of excluded print media and satellite property that was used to send its news articles to its printing plant outside this state. The total value of its real and tangible personal property, exclusive of print media and outer-

jurisdictional property, that was permanently located in this state for the entire income year was valued at $3,000,000. Assume further that the company's mobile property described in subparagraph C.1. was determined to be of a value of $4,000,000 and such mobile property was used in this state for 100 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$3,000,000
Value of mobile property 100/365 or (.2739) x $4,000,000:	$1,095,600
Total value of property attributable to state without apportionment of print media and satellite property:	$4,095,600
Total property factor %: $4,095,600/($500,000,000 - $150,000,000) or $4,095,600/$350,000,000:	.0117

(iii) **The Payroll Factor.**

A. **Payroll Factor Denominator.**

1. The denominator of the payroll factor shall include all compensation paid to employees during the income year.

2. Amounts paid or other consideration that is provided to another person, corporation or other business entity for providing the services of reporters, writers, models and other talent may be included in the payroll factor only upon a finding by the [Tax Administrator], supported by clear and convincing evidence, that (a) such payments or other consideration were at least twenty-five percent (25%) of the total compensation paid to employees; and (b) failure to include such other payments or consideration would prevent the apportionment formula from fairly representing the extent of the taxpayer's business activity in this state.

B. **Payroll Factor Numerator.**

Compensation for all employees who are engaged on location in the production of print media property or any portion thereof, as well any payments or other consideration for the providing of those talent services that are included in the payroll denominator pursuant to paragraph (4)(iii) A.2., shall be attributed to the state or states as may be determined by the

application of the provisions of Reg.IV.13. and 14. For the purposes of applying said Reg.IV.13. and 14., the persons for whom compensation was included in the payroll denominator pursuant to paragraph (4)(iii) A.2. shall be deemed to be employees of the taxpayer.

(iv) **The Sales Factor.**

A. **Sales Factor Denominator.**

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Reg. IV.18.(c) and (4)(iv)B.3. hereunder.

B. **Sales Factor Numerator.**

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser in this state as provided in Reg. IV.16.(a).

2. Gross receipts derived from business activities other than the sale of tangible personal property, including advertising revenue, shall be attributed to this state as determined by the ratio (hereafter "readership factor") that the purchases and subscriptions of the taxpayer's printed material sold in this state bears to the total purchases and subscriptions of all of taxpayer's printed material within the United States.

The readership factor shall be determined by the ratio that the taxpayer's in-state circulation for its printed material bears to its total United States circulation. The readership factor shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable resources, provided that the source selected is consistently used from year to year for such purpose.

If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the readership factor shall be determined by the ratio that the population of this state bears to the population of the United States, as reflected in the most current population data published by the U.S. Bureau of Census for all states.

3. To the extent that the gross receipts from such printed material, as determined pursuant to paragraph (4)(iv.)B.2., includes receipts derived from the sale or other distribution of printed material to readership located outside of the United States ("foreign-based receipts"), the total gross receipts against which the readership factor shall applied shall be modified so that such foreign-based receipts are not used to affect the amount of receipts that are to be apportioned to this state. Such modification shall consist of deducting from total receipts, prior to the application thereto of the readership factor, that amount of receipts, including advertising receipts, derived from the publication, sale or other distribution of printed material to readership located outside the United States.

Example: Assume DEF Magazine Publishing Co. has gross receipts from all magazine sales and subscriptions of $1,000,000,000 ($800,000,000 in U.S. sales and $200,000,000 in non-U.S. sales); and $4,000,000,000 from all advertising receipts ($3,200,000,000 from U.S. advertisements and $800,000,000 derived from advertising receipts attributable to the non-U.S. market.) Assume further that $40,000,000 of magazine sales and subscriptions receipts are attributable to magazines delivered to purchasers in this state and that the readership factor for its magazines as determined by reference to the Audit Bureau of Circulation is five percent (.05). Assume further that the foreign countries into which its magazines were sold would have jurisdiction to impose their income tax upon DEF Magazine Publishing Co. Based upon these assumptions, DEF's gross receipts attributable to its in-state sales and advertising receipts would be determined as follows:

In-state magazine sales:	$40,000,000
Attributable U.S. advertising revenue ($3,200,000,000 x readership factor (.05)):	$160,000,000
Sales factor numerator:	$200,000,000
Total sales factor %: ($200,000,000/4,000,000,000):	.05

Multistate Tax Commission

Exhibit 10

April 25, 1991

Mr. Christopher W. Baldwin, Director of Taxes
Gannet Co., Inc.
1100 Wilson Blvd.
Arlington, VA 22234

Re: Proposed Regulation IV.18(j) - Print Media (Publisher) Regulation

Dear Chris:

I am sending to you a fax copy of a draft of a regulation for the allocation of income derived from the business of print media (referred to now as publishing). I am also enclosing a copy of a letter from Ben Miller, Director, Multistate Tax Affairs Bureau, dated April 17, 1991 regarding the pending proposal. I apologize for asking you to distribute these materials to those that attended the New York meeting held at your offices on April 9th. I am away from my office and do not have ready access to the fax numbers of those who attended the meeting, or an easy way to distribute these materials in advance of the May 7th hearing in Los Angeles.

I want to emphasize that the enclosed draft is neither a proposal of the MTC Uniformity Committee, nor of the Executive Committee. It represents an effort to craft what a final proposed regulation that may be supported by a Hearing Officer report, which is but again a recommendation to the Commission states that is subject to acceptance, rejection, modification, or referral back to the Uniformity Committee to note but a few possibilities.

As Hearing Officer, I would appreciate industry input with respect to the draft, as well as any additional input with regard to the original proposal should industry members deem appropriate. Written or verbal presentations either before or at the May 7th hearing is invited. Since we now have the direction of the United States Supreme Court in the case of Medlock v. Pledger, different conclusions may now be more easily made with regard to the similarity of apportionment treatment that is required with respect to broadcasting and publishing industries. Therefore, I anticipate closing the public record very shortly after the May 7th hearing so that I can prepare the Hearing Officer Report for transmission to the Multistate Tax Commission Executive Committee.

Very truly yours,

Alan H. Friedman

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Exhibit 10

DRAFT: 4/25/91

Multistate Tax Commission

Proposed Regulation Art. IV.18.(j)

(Publishing)

Reg. IV.18.(j). Special Rules: Publishing.

The following special rules are established in respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of newspapers, magazines or other printed material.

(1) **In General.** When a person in the business of publishing, selling or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to Article IV. of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(ii) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression, including without limitation a play, story, article, column or other literary, commercial, educational or artistic work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property. Material that may fall both within this definition and the definition of "film and radio programming" contained in Reg.IV.18.(h)(3)(i) shall, for the purposes of attribution and apportionment of income, be treated as "film and radio programming" under Reg.IV.18(h) and not as "print or printed material" under this regulation.

(iii) A "subscriber" to a publication is the individual, residence, business or other outlet which is the ultimate recipient of a publication.

(iv) "United States" shall include and be limited to the fifty states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions and territories thereof.

(3) **Apportionment of Business Income.**

(i) **The Property Factor.**

A. In General. Except as modified by this regulation, the property factor shall be determined in accordance with Article IV.10. through 12. of the Multistate Tax Compact and Reg.IV.10. through 12. promulgated thereunder.

B. **Property Factor Denominator.**

1. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

C. **Property Factor Numerator.**

1. All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

2. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value or cost of such property that is used by the taxpayer in business activities in this state bears to the total cost or value of such property that is used in the taxpayer's business activities everywhere.

Example: Assume that ABC Newspaper Co. owns a total of $300,000,000 of property everywhere and that, in addition, it leases satellite linkage for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities located in other states. The total value of its real and tangible personal property, exclusive of outer-jurisdictional property, that was permanently located in this state for the entire income year was valued at $3,000,000. The total leasing cost for the satellite linkage (determined by 8 x lease cost) is $5,000,000 for the tax period of which 40% of the cost is attributable to its satellite linkage with this state. Assume further that the company's mobile property was determined to be of a value of $4,000,000 and such mobile property

was used in this state for 100 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$3,000,000
Value of mobile property: 100/365 or (.2739) x $4,000,000:	$1,095,600
Value of leased satellite property used in-state: (.40) x $5,000,000:	$2,000,000
Total value of property attributable to state including apportionment of satellite property:	$6,095,600
Total property factor %: $6,095,000/($305,000,000):	.0199

(ii) **The Payroll Factor.**

The payroll factor shall be determined in accordance with Article IV.14. of the Multistate Tax Compact and Reg.IV.13. and 14. promulgated thereunder.

(iii) **The Sales Factor.**

A. In General. Except as modified by these regulations, the sales factor shall be determined in accordance with Article IV.15. through 17. of the Multistate Tax Compact and Reg.IV.15. through 17. promulgated thereunder.

B. Sales Factor Denominator.

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business.

C. Sales Factor Numerator.

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser in this state.

2. Gross receipts derived from business activities other than the sale of tangible personal property, including advertising revenue, shall be attributed to this state as determined by the ratio (hereafter "circulation factor") that the purchases and subscriptions of the taxpayer's printed material delivered or shipped to purchasers and subscribers in this state bears to the total purchases and subscriptions of all of taxpayer's printed material everywhere.

The circulation factor shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable resources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined by the ratio that the population of this state bears to the population of the United States, as reflected in the most current population data published by the U.S. Bureau of Census for all states.

EXHIBIT 22

Audit Bureau of Circulations
900 North Meacham Road, Schaumburg, Illinois 60173-4968

MAGAZINE PUBLISHER'S STATEMENT

ARCHITECTURAL DIGEST

LOS ANGELES, CALIFORNIA 90036

AVERAGE PAID CIRCULATION
For Six Months Ended June 30, 1990

632,302

Publisher's Compilation - Subject to Audit

ARCHITECTURAL DIGEST
Publisher's Statement
For 6 Months Ended June 30, 1990

12. GEOGRAPHIC ANALYSIS OF TOTAL PAID CIRCULATION for the March, 1990 Issue

Total paid circulation of this issue was 1.64% greater than average total paid circulation for period.

STATE	Subs.	Single Copy Sales	TOTAL	% of Circ.	% of Pop.
Maine	1,368	194	1,562		
New Hampshire	1,625	197	1,822		
Vermont	881	93	974		
Massachusetts	13,291	1,939	15,230		
Rhode Island	1,865	206	2,071		
Connecticut	10,091	1,101	11,192		
NEW ENGLAND	**29,121**	**3,730**	**32,851**	**5.58**	**5.45**
New York	44,129	7,801	51,930		
New Jersey	18,171	1,648	19,819		
Pennsylvania	18,076	2,095	20,171		
MIDDLE ATLANTIC	**80,376**	**11,544**	**91,920**	**15.61**	**16.24**
Ohio	16,093	1,733	17,826		
Indiana	6,601	663	7,264		
Illinois	26,224	3,959	30,183		
Michigan	15,176	1,482	16,658		
Wisconsin	5,682	557	6,239		
EAST N. CENTRAL	**69,776**	**8,394**	**78,170**	**13.28**	**18.40**
Minnesota	6,189	943	7,132		
Iowa	2,558	241	2,799		
Missouri	7,160	829	7,989		
North Dakota	377	41	418		
South Dakota	475	35	510		
Nebraska	1,850	208	2,058		
Kansas	3,838	311	4,149		
WEST N. CENTRAL	**22,447**	**2,608**	**25,055**	**4.26**	**7.59**
Delaware	1,148	134	1,282		
Maryland	10,545	1,207	11,752		
District of Columbia	3,717	913	4,630		
Virginia	13,033	1,513	14,546		
West Virginia	1,112	84	1,196		
North Carolina	8,922	1,186	10,108		
South Carolina	3,965	637	4,602		
Georgia	11,622	2,378	14,000		
Florida	30,118	6,161	36,279		
SOUTH ATLANTIC	**84,182**	**14,213**	**98,395**	**16.71**	**16.31**
Kentucky	4,033	447	4,480		
Tennessee	6,875	1,186	8,061		
Alabama	4,624	847	5,471		
Mississippi	2,236	375	2,611		
EAST S. CENTRAL	**17,768**	**2,855**	**20,623**	**3.50**	**6.47**
Arkansas	2,393	324	2,717		
Louisiana	5,293	759	6,052		
Oklahoma	4,472	565	5,037		
Texas	32,528	5,201	37,729		
WEST S. CENTRAL	**44,686**	**6,849**	**51,535**	**8.75**	**10.48**
Montana	753	82	835		
Idaho	1,261	81	1,342		
Wyoming	397	33	430		
Colorado	6,628	1,367	7,995		
New Mexico	2,433	293	2,726		
Arizona	7,762	877	8,639		
Utah	2,242	438	2,680		
Nevada	2,830	391	3,221		
MOUNTAIN	**24,306**	**3,562**	**27,868**	**4.73**	**5.02**
Alaska	871	160	1,031		
Washington	12,096	1,641	13,737		
Oregon	6,223	778	7,001		
California	118,329	18,206	136,535		
Hawaii	3,472	611	4,083		
PACIFIC	**140,991**	**21,396**	**162,387**	**27.58**	**14.04**
Miscellaneous					
Unclassified					
UNITED STATES	**513,653**	**75,151**	**588,804**	**100.00**	**100.00**
U.S. Circ. Percent of Grand Total				**91.62**	
Poss. & Other Areas	1,462	2,231	3,693	0.57	
U.S. & POSS., etc.	**515,115**	**77,382**	**592,497**	**92.19**	
Canada					
Newfoundland	6	48	54	0.27	2.25
Nova Scotia	49	177	226	1.13	3.45
Prince Edward Island	6		6	0.03	0.50
New Brunswick	23	124	147	0.73	2.80
Quebec	552	2,419	2,971	14.83	25.81
Ontario	2,078	8,510	10,588	52.84	35.96
Manitoba	90	417	507	2.53	4.20
Saskatchewan	29	239	268	1.34	3.99
Alberta	212	1,478	1,690	8.43	9.35
British Columbia	510	3,067	3,577	17.85	11.39
Northwest Territories	4		4	0.02	0.09
Yukon Territory	1		1	0.00	0.21
CANADA	**3,560**	**16,479**	**20,039**	**100.00**	**100.00**
Canada Circ. Percent of Grand Total				**3.12**	
Foreign	12,219	15,604	27,823	4.33	
Unclassified					
Military or Civilian Personnel Overseas	995	1,325	2,320	0.36	
GRAND TOTAL	**531,889**	**110,790**	**642,679**	**100.00**	

We certify that to the best of our knowledge all data set forth in this Publisher's Statement are true and report circulation in accordance with Audit Bureau of Circulations' Bylaws and Rules. 04-0065-0

CHITECTURAL DIGEST, published by Architectural Digest Publishing Corporation, a subsidiary of Knapp Communications Company, 5900 Wilshire Blvd., Los Angeles, California 90036

EVELYN CARLSON
General Manager

CARLA JOHNSON
Circulation Director

Date Signed, July 30, 1990

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PRINTED AND RELEASED
BY ABC JANUARY. 1991

Audit Bureau of Circulations

AUDIT REPORT: Newspaper

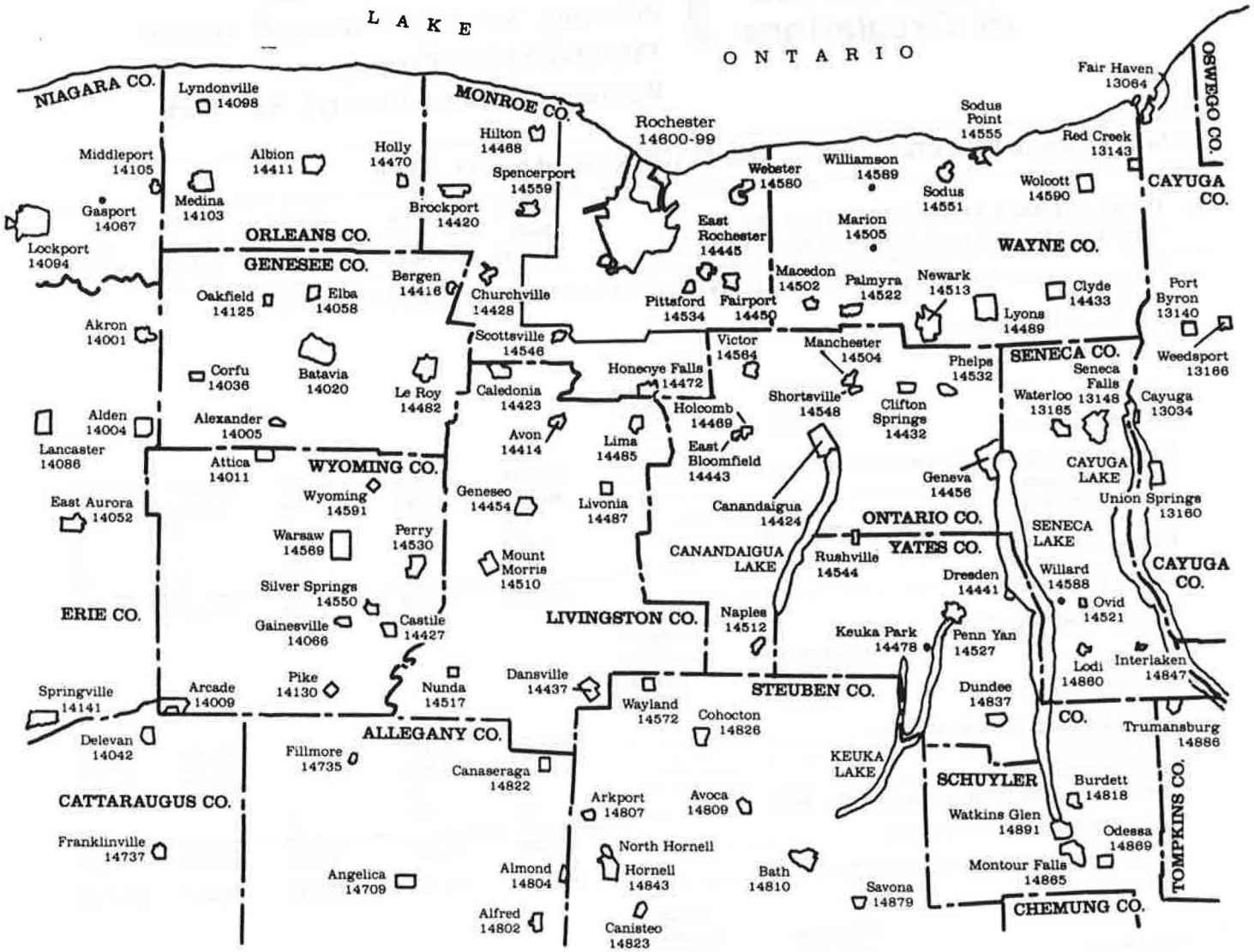
DEMOCRAT & CHRONICLE
(Morning, Saturday Morning & Sunday)
TIMES-UNION (Evening)
Rochester (Monroe County), New York

TOTAL AVERAGE PAID CIRCULATION FOR 53 WEEKS ENDED JULY 1, 1990:

	Combined Daily	Morning (Mon. to Fri.)	Evening (Mon. to Fri.)	Saturday Morning	Sunday
1A. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):	**215,781**	**129,459**	**86,322**	**203,950**	**258,408**
1B. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY ZONES: (See Par. 1E for description of area)					
CITY ZONE — Population / Occupied Households					
1980 Census: 623,173 / 229,655					
#12-31-89 Estimate: 619,900 / 239,400					
Carriers not filing lists with publisher, See Pars. 11(b) & (c)	113,695	64,386	49,309	119,442	129,537
Single Copy Sales	48,082	26,083	21,999	25,420	39,428
Mail Subscriptions	12	8	4	8	6
School-Single Copy/Subscriptions, See Par. 11(d)	1,052	1,025	27	1	8
Employee Copies, See Par. 11(e)	327	146	181	133	42
TOTAL CITY ZONE	163,168	91,648	71,520	145,004	169,021
RETAIL TRADING ZONE — Population / Occupied Households					
1980 Census: 468,811 / 153,135					
#12-31-89 Estimate 500,200 / 175,400					
Carriers not filing lists with publisher	36,070	25,319	10,751	44,190	49,841
Single Copy Sales	12,382	8,624	3,758	11,046	31,263
Mail Subscriptions	27	27		25	5
School-Single Copy/Subscriptions, See Par. 11(d)	770	767	3		
TOTAL RETAIL TRADING ZONE	49,249	34,737	14,512	55,261	81,109
TOTAL CITY & RETAIL TRADING ZONES	212,417	126,385	86,032	200,265	250,130
Population / Occupied Households					
1980 Census: 1,091,984 / 382,790					
#12-31-89 Estimate: 1,120,100 / 414,800					
ALL OTHER					
Single Copy Sales and Carriers not filing lists with publisher	2,854	2,720	134	3,311	7,692
Mail Subscriptions	510	354	156	374	586
TOTAL ALL OTHER	3,364	3,074	290	3,685	8,278
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	215,781	129,459	86,322	203,950	258,408
1C. THIRD PARTY (BULK) SALES:					
Hotels, Motels—Available for guests	150	107	43	235	289
Restaurants—Available for patrons	90	84	6	85	74
School Copies — From non-school funds provided directly to the newspaper	55	38	17	2	
TOTAL AVERAGE THIRD PARTY (BULK) SALES	295	229	66	322	363

#S&MM Estimate. See Par. 11(a).

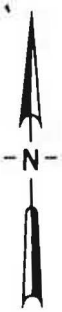
CITY AND RETAIL TRADING ZONES / ROCHESTER, NEW YORK



Scale: 1 inch - 15 miles
Numbers shown are Zip Codes

Map not intended to show circulation coverage.
See Paragraph 3 for distribution breakdown.

For detailed description of areas on this map,
see Paragraph 1E of Audit Report.



LEGEND

- COUNTY BOUNDARIES
- ROCHESTER CORPORATE LIMITS
- BALANCE OF ABC CITY ZONE
- ABC RETAIL TRADING ZONE

1D. METROPOLITAN STATISTICAL AREA – COUNTY OF PUBLICATION:

Answer optional and not made.

1E. CITY AND RETAIL TRADING ZONES:

CITY ZONE is the corporate limits of Rochester, towns of Brighton, Chili, Gates, Greece, Henrietta, Irondequoit, Penfield, Perinton, Pittsford and Webster, in Monroe County, New York.

RETAIL TRADING ZONE includes, with exception of City Zone, counties of Monroe, Genesee, Livingston, Ontario, Orleans, Wayne, Wyoming and Yates.

2. AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) IN NEWSPAPER DESIGNATED MARKET:

Answer optional and not made.

AUDIT STATEMENT

There was no adjustment made in the average paid circulation as shown in the Publisher's Statements for the period audited.

AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY QUARTERS for the previous three years and period covered by this report.

			Combined Daily	Morning	Evening	Saturday Morning	Sunday
6-30-86	to	9-28-86	227,963	128,658	99,305	188,023	256,898
9-29-86	to	12-28-86	225,431	127,169	98,262	187,787	259,371
12-29-86	to	3-29-87	219,044	122,394	96,650	185,942	257,548
3-30-87	to	6-28-87	222,782	125,465	97,317	187,532	259,893
6-29-87	to	9-27-87	225,104	128,402	96,702	186,332	258,735
9-28-87	to	12-27-87	222,694	127,626	95,068	193,128	261,345
12-28-87	to	3-27-88	214,825	123,029	91,796	200,246	255,928
3-28-88	to	6-26-88	218,487	125,673	92,814	203,549	258,437
6-27-88	to	9-25-88	221,804	129,564	92,240	203,783	257,719
9-26-88	to	12-25-88	221,847	129,518	92,329	205,868	261,769
12-26-88	to	3-26-89	214,650	125,922	88,728	199,828	255,570
3-27-89	to	6-25-89	214,280	126,358	87,922	203,866	259,248
6-26-89	to	9-24-89	216,348	129,394	86,954	204,225	255,089
9-25-89	to	12-31-89	218,007	130,875	87,132	204,754	260,169
1-1-90	to	4-1-90	214,200	127,799	86,401	202,724	258,692
4-2-90	to	7-1-90	214,563	129,744	84,819	204,037	259,679

3. ACTUAL ONE-DAY GROSS DISTRIBUTION AND ABC-ESTIMATED PAID CIRCULATION AVERAGES BY COUNTIES:

Morning, May 21, 1990; Evening, May 21, 1990; Saturday Morning, May 26, 1990; Sunday, May 20, 1990.

Occupied Households - #12-31-89 S&MM Estimate.

The listing below gives gross distribution for one day only and is greater or less than the average paid for the period covered by this report by the following percentages:

	Morning	Evening	Combined Daily	Saturday Morning	Sunday
City Zone	1.77% greater	13.29% greater	6.82% greater	2.74% greater	5.11% greater
Retail Trading Zone	5.23% greater	12.27% greater	7.30% greater	6.07% greater	7.04% greater
All Other	10.67% greater	3.79% less	9.42% greater	18.53% greater	13.66% greater
GRAND TOTAL	2.91% greater	13.05% greater	6.97% greater	3.93% greater	5.99% greater

The "Average Estimated Paid Circulation" or "Adjusted" figures appearing in this paragraph have been arrived at by relating the gross distribution figures reported to the appropriate percentages shown above.

State County	OCCUPIED HOUSEHOLDS #12-31-89 Estimate	Morning Actual Gross Dist.	Morning Average Est. Paid Circ.*	Evening Actual Gross Dist.	Evening Average Est. Paid Circ.*	Combined Daily Actual Gross Dist.	Combined Daily Average Est. Paid Circ.*	Saturday Morning Actual Gross Dist.	Saturday Morning Average Est. Paid Circ.*	Sunday Actual Gross Dist.	Sunday Average Est. Paid Circ.*
NEW YORK											
MONROE	269,700	101,873	99,825	87,974	77,712	189,847	177,537	165,876	160,938	199,751	189,654
ALLEGANY	17,900	352	318			352	318	467	394	1,157	1,018
CATTARAUGUS	30,200	27	24			27	24	30	25	52	46
CAYUGA	28,900	87	79			87	79	106	89	239	210
CHEMUNG	34,300									575	506
ERIE	362,300	95	86			95	86	116	98	208	183
GENESEE	21,500	2,194	2,085	596	531	2,790	2,616	3,004	2,832	5,101	4,765
LIVINGSTON	20,400	6,294	5,981	2,603	2,318	8,897	8,299	8,967	8,454	12,489	11,668
ONONDAGA	174,300	86	78			86	78	126	106	314	276
ONTARIO	33,900	6,850	6,510	1,889	1,683	8,739	8,193	11,575	10,913	19,093	17,838
ORLEANS	14,400	1,918	1,823	617	550	2,535	2,373	2,620	2,470	4,386	4,098
SENECA	11,900	824	744	14	15	838	759	942	795	1,719	1,512
STEUBEN	36,600	1,621	1,465	102	106	1,723	1,571	1,991	1,680	3,949	3,474
WARREN	21,300							200	169	401	353
WAYNE	32,300	8,535	8,111	3,554	3,165	12,089	11,276	12,933	12,193	19,146	17,887
WYOMING	13,900	856	813	30	27	886	840	1,007	949	1,712	1,599

YATES	8,700	1,302	1,237	52	46	1,354	1,283	1,608	1,516	2,805	2,621
Miscellaneous Counties		174	157	81	84	255	241	217	183	424	373
TOTAL IN NEW YORK STATE		133,088	129,336	97,512	86,237	230,600	215,573	211,785	203,804	273,521	258,081
All Other		136	123	82	85	218	208	173	146	371	327
GRAND TOTAL		133,224	129,459	97,594	86,322	230,818	215,781	211,958	203,950	273,892	258,408

#S&MM Estimate. County population and occupied household estimates appearing in ABC reports are obtained from Sales and Marketing Management's 'Survey of Buying Power'. Estimates for ABC defined newspaper markets and areas below the county level are projections based upon 'Survey of Buying Power' estimates.

*Arrived at by relating actual gross distribution figures to average paid circulation for the period covered by this report.

4. NET PRESS RUN AND ADJUSTED PAID CIRCULATION BY EDITIONS:

Press Time	Date Printed	Issue Date	Net Press Run	Sales Release See Note	Total Paid	Adjusted Paid Circulation* City Zone	Retail Trading Zone	All Other
Morning Issue for Tuesday, June 12, 1990.								
12:20 AM	6-12	6-12	32,067	C	29,429		26,486	2,943
1:30 AM	6-12	6-12	80,410	A-C	73,796	64,940	8,118	738
3:26 AM	6-12	6-12	28,585	A	26,234	26,234		
Total			141,062		129,459	91,174	34,604	3,681
Evening Issue for Tuesday, June 12, 1990.								
10:09 AM	6-12	6-12	24,927	A-C	23,800	18,564	5,236	
12:02 PM	6-12	6-12	24,730	A-C	23,613	19,363	3,778	472
12:54 PM	6-12	6-12	32,420	A-C	30,955	25,383	4,953	619
2:57 PM	6-12	6-12	8,330	A-C	7,954	7,715	239	
Total			90,407		86,322	71,025	14,206	1,091
Saturday Morning Issue for June 6, 1990.								
12:35 AM	6-9	6-9	46,300	C	43,884		39,934	3,950
1:44 AM	6-9	6-9	168,880	A-C	160,066	142,459	16,007	1,600
Total			215,180		203,950	142,459	55,941	5,550
Sunday Issue for June 10, 1990.								
10:17 PM	6-9	6-10	59,542	C	55,279		46,987	8,292
12:33 AM	6-10	6-10	218,795	A-C	203,129	166,566	36,563	
Total			278,337		258,408	166,566	83,550	8,292

For publisher's policy in respect to advertising carried, See Par. 11(f).
NOTE: A—Immediate sales release in City. C—Sales release on arrival at destination in Retail Trading Zone and All Other.

*The adjusted paid circulation figures have been calculated by projecting the net press run information against the averages in Pars. 1A & 1B.

5. AVERAGE UNPAID DISTRIBUTION:

	Combined Daily	Morning (Mon. to Fri.)	Evening (Mon. to Fri.)	Saturday Morning	Sunday
Arrears					
Advertisers, Agencies					
Complimentary, Sample, Service	1,429	992	437	1,892	2,339
Total	1,429	992	437	1,892	2,339

6. WERE RETURNS ACCEPTED OR ALLOWANCES MADE FOR UNDELIVERED, LEFTOVER AND UNSOLD COPIES?

Fully returnable.

The allowances for returns, undelivered, leftover and unsold copies for period covered by this report were found to have been: in the City Zone, Morning 3.64%, Evening 4.19%, Saturday Morning 2.27%, Sunday 3.33%; in the Retail Trading Zone, Morning 4.45%, Evening 6.71%, Saturday Morning 3.55%, Sunday 3.95%; in All Other, Morning 11.13%, Evening 11.04%, Saturday Morning 10.19%, Sunday 9.93%.

These percentages are based on the gross figures and have been deducted, leaving paid circulation shown in Par. 1.

ANALYSIS OF CARRIER AND MAIL SUBSCRIPTION SALES (NEW AND RENEWAL)
For Period Covered by this Report

7. PREMIUM, COMBINATION, SPECIAL OFFERS, CLUBS AND INSURANCE:
None of record, except as indicated:

—		Term Ordered 1 Mo.	3 Mos.	6 Mos.	1 Yr.	Misc. Periods
(e) Special reduced prices, See Par. 10(b)...	M		14,673			652
	E		3,303			354
	S		11,553			1,186
	Sat M & S		11,288			1,079
	M					1,792*
	E					30*
	Sat M					1*
	S					8*

*This figure does not represent the total number of subscriptions received, but represents the average number of copies served during this report period on School-Single Copy/Subscriptions sold at the price(s) shown in Par. 10(b).

8. (a) CONTESTS INVOLVING SUBSCRIPTION CONTRACT: None of record.

(b) CONTESTS NOT INVOLVING SUBSCRIPTION CONTRACT: None of record.

9. ARREARS AS AT MAY 21, 1990 FOR MAIL; JULY 1, 1990 FOR BALANCE:

M, E, Sat M & S	CITY ZONE Carriers	CITY ZONE Single Copy Accounts	CITY ZONE Mail	RETAIL TRADING ZONE Carriers	RETAIL TRADING ZONE Single Copy Accounts	RETAIL TRADING ZONE Mail	ALL OTHER Carriers	ALL OTHER Single Copy Accounts	ALL OTHER Mail
Arrears under 3 months	0.19%	7.49%	None	None	3.02%	None	None	0.13%	6.82%

10. PRICES:

(a) Basic Prices:

	By Mail 1 Yr.	6 Mos.	3 Mos.	1 Mo.	By Carrier 1 Yr.	6 Mos.	3 Mos.	1 Mo.	1 Wk.
CITY ZONE:									
M, E & S	$415.30	$207.65	$104.65		$234.80	$117.40	$59.15		$4.55
M & S.....	275.60	137.80	68.90		158.60	79.30	39.65		3.05
E & S	243.70	121.85	61.75		169.30	84.65	42.95		3.25
M only	171.60	85.80	42.90		93.60	46.80	23.40		1.80
E only.....	139.70	69.85	35.75		76.20	38.10	19.50		1.50
Weekend only ..	135.90	67.95	34.25						
S only.....	104.00	52.00	26.00		93.10*	46.55*	23.45*		1.75

*Includes Holidays as appropriate.

RETAIL TRADING ZONE: By Mail and Carrier, same as City Zone.

ALL OTHER: By Mail and Carrier, same as City Zone.

CITY ZONE, RETAIL TRADING ZONE AND ALL OTHER:

	By Motor Route 1 Yr.	6 Mos.	3 Mos.	1 Mo.	1 Wk.	Single Copy
M, E & S	$263.10	$131.55	$66.30		$5.10	
M & S.....	174.20	87.10	43.55		3.35	
E & S	182.30	91.15	46.30		3.50	
M only	109.20	54.60	27.30		2.10	35¢ (a-c)
E only	88.90	44.45	22.75		1.75	35¢ (a-c)
Sat M only						35¢ (a-c)
S only.....	93.40	46.70	23.55		1.75	1.25 (a-c)

(a) City Zone; (c) All Other.

Audit Bureau of Circulations

Newspaper Publisher's Statement

Subject to audit by **Audit Bureau of Circulations**, 900 N. Meacham Road, Schaumburg, IL 60173-4968

FOR 26 WEEKS ENDED SEPTEMBER 30, 1990

USA TODAY (Morning)
Washington, District of Columbia

	Morning (Mon. to Thurs.)	Friday Morning
1A. AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):	1,347,450	1,748,218
1B. AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):		
Carrier Delivery office collect system, See Pars. 11(a) & (b)	144,902	144,380
Carriers filing lists with publisher	15,288	15,235
Carriers not filing lists with publisher	46,769	46,606
Single Copy Sales	854,219	1,269,991
Mail Subscriptions	243,242	242,469
School-Single Copy/Subscriptions, See Par. 11(c)	27,569	14,164
Employee Copies, See Par. 11(d)	2,508	2,513
Group (Subscriptions by Businesses for Designated Employees), See Par. 11(e)	12,953	12,860
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	1,347,450	1,748,218
Days Omitted from Averages	None	None
AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY QUARTERS:		
April 2 to July 1, 1990	1,350,477	1,699,331
July 2 to September 30, 1990	1,344,365	1,797,104
1C. THIRD PARTY (BULK) SALES:		
Airlines — Available for passengers	20,255	23,528
Businesses — Available for employees	11,096	12,663
Hotels, Motels — Available for guests	323,574	331,246
Restaurants — Available for patrons	4,568	4,985
Other	32,897	41,369
TOTAL AVERAGE THIRD PARTY (BULK) SALES	392,390	413,791

3. PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY STATES BASED ON SEPTEMBER 25, 1990 ISSUE:
Total paid circulation of this issue was 2.87% greater than average for period.

STATE	Subs.	Single Copy Sales	TOTAL	% of Paid
Maine	1,516	4,152	5,668	
New Hampshire	2,261	6,856	9,117	
Vermont	959	3,905	4,864	
Massachusetts	6,684	23,138	29,822	
Rhode Island	1,173	4,390	5,563	
Connecticut	7,145	21,449	28,594	
NEW ENGLAND	**19,738**	**63,890**	**83,628**	**6.03**
New York	21,837	51,322	73,159	
New Jersey	12,499	24,382	36,881	
Pennsylvania	28,555	63,528	92,083	
MIDDLE ATLANTIC	**62,891**	**139,232**	**202,123**	**14.58**
Ohio	34,494	64,316	98,810	
Indiana	13,602	21,516	35,118	
Illinois	16,732	36,075	52,807	
Michigan	10,668	25,787	36,455	
Wisconsin	8,748	21,106	29,854	
EAST N. CENTRAL	**84,244**	**168,800**	**253,044**	**18.26**
Minnesota	8,224	12,560	20,784	
Iowa	3,784	7,572	11,356	
Missouri	13,279	17,488	30,767	
North Dakota	1,294	1,725	3,019	
South Dakota	1,811	2,155	3,966	
Nebraska	3,029	4,677	7,706	
Kansas	7,960	8,997	16,957	
WEST N. CENTRAL	**39,381**	**55,174**	**94,555**	**6.82**
Delaware	2,730	3,364	6,094	
Maryland	9,381	23,135	32,516	
District of Columbia	3,019	10,134	13,153	
Virginia	14,892	33,934	48,826	
West Virginia	3,429	8,773	12,202	
North Carolina	14,053	29,744	43,797	
South Carolina	4,459	15,757	20,216	
Georgia	15,345	31,578	46,923	
Florida	34,270	63,758	98,028	
SOUTH ATLANTIC	**101,578**	**220,177**	**321,755**	**23.21**
Kentucky	6,457	10,038	16,495	
Tennessee	14,885	24,537	39,422	
Alabama	9,163	16,172	25,335	
Mississippi	4,985	6,171	11,156	
EAST S. CENTRAL	**35,490**	**56,918**	**92,408**	**6.67**
Arkansas	2,059	3,825	5,884	
Louisiana	6,570	16,873	23,443	
Oklahoma	3,438	9,262	12,700	
Texas	18,316	31,843	50,159	
WEST S. CENTRAL	**30,383**	**61,803**	**92,186**	**6.65**
Montana	782	1,726	2,508	
Idaho	1,204	2,451	3,655	
Wyoming	955	2,871	3,826	
Colorado	4,825	10,466	15,291	
New Mexico	557	5,549	6,106	
Arizona	11,823	21,488	33,311	
Utah	2,543	6,236	8,779	
Nevada	3,988	10,699	14,687	
MOUNTAIN	**26,677**	**61,486**	**88,163**	**6.36**
Alaska	592	722	1,314	
Washington	7,159	14,750	21,909	
Oregon	3,870	7,778	11,648	
California	31,497	71,095	102,592	
Hawaii	813	5,532	6,345	
PACIFIC	**43,931**	**99,877**	**143,808**	**10.37**
Miscellaneous				
Unclassified				
UNITED STATES	**444,313**	**927,357**	**1,371,670**	**98.95**
Poss. & Other Areas	53	1,476	1,529	0.11
U.S. & POSS., etc.	**444,366**	**928,833**	**1,373,199**	**99.06**
Canada	28	6,558	6,586	0.48
Mexico		3,236	3,236	0.23
Foreign	24	2,989	3,013	0.22
Unclassified				
Military or Civilian Personnel Overseas	76		76	0
GRAND TOTAL	**444,494**	**941,616**	**1,386,110**	**100**

PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY STATES BASED ON SEPTEMBER 28, 1990 ISSUE:
Paid circulation of this issue was 3.37% greater than average for period.

STATE	Subs.	Single Copy Sales	TOTAL	% of Paid
Maine	1,540	5,302	6,842	
New Hampshire	2,289	8,854	11,143	
Vermont	948	5,832	6,780	
Massachusetts	6,722	31,469	38,191	
Rhode Island	1,214	5,676	6,890	
Connecticut	7,122	27,865	34,987	
NEW ENGLAND	**19,835**	**84,998**	**104,833**	**5.80**
New York	21,652	72,781	94,433	
New Jersey	12,453	32,144	44,597	
Pennsylvania	28,588	87,166	115,754	
MIDDLE ATLANTIC	**62,693**	**192,091**	**254,784**	**14.10**
Ohio	34,290	89,925	124,215	
Indiana	13,738	31,605	45,343	
Illinois	16,670	52,016	68,686	
Michigan	10,838	37,380	48,218	
Wisconsin	8,788	28,757	37,545	
EAST N. CENTRAL	**84,324**	**239,683**	**324,007**	**17.93**
Minnesota	8,277	19,109	27,386	
Iowa	3,840	11,224	15,064	
Missouri	13,309	25,475	38,784	
North Dakota	1,329	3,085	4,414	
South Dakota	1,848	3,957	5,805	
Nebraska	3,091	7,660	10,751	
Kansas	7,995	13,206	21,201	
WEST N. CENTRAL	**39,689**	**83,716**	**123,405**	**6.83**
Delaware	2,610	4,550	7,160	
Maryland	9,405	30,771	40,176	
District of Columbia	2,964	11,404	14,368	
Virginia	15,074	47,182	62,256	
West Virginia	3,484	11,972	15,456	
North Carolina	14,273	43,939	58,212	
South Carolina	4,612	22,455	27,067	
Georgia	15,059	41,433	56,492	
Florida	34,071	112,227	146,298	
SOUTH ATLANTIC	**101,552**	**325,933**	**427,485**	**23.65**
Kentucky	6,545	15,243	21,788	
Tennessee	14,897	36,419	51,316	
Alabama	9,615	23,797	33,412	
Mississippi	4,755	9,824	14,579	
EAST S. CENTRAL	**35,812**	**85,283**	**121,095**	**6.70**
Arkansas	2,112	6,126	8,238	
Louisiana	6,670	17,848	24,518	
Oklahoma	3,633	12,978	16,611	
Texas	18,974	48,841	67,815	
WEST S. CENTRAL	**31,389**	**85,793**	**117,182**	**6.48**
Montana	836	3,042	3,878	
Idaho	1,232	4,767	5,999	
Wyoming	994	4,426	5,420	
Colorado	4,882	15,133	20,015	
New Mexico	586	9,222	9,808	
Arizona	11,748	32,677	44,425	
Utah	2,618	9,938	12,556	
Nevada	3,944	15,741	19,685	
MOUNTAIN	**26,840**	**94,946**	**121,786**	**6.74**
Alaska	630	1,577	2,207	
Washington	7,214	23,715	30,929	
Oregon	3,891	13,531	17,422	
California	31,643	97,304	128,947	
Hawaii	841	10,531	11,372	
PACIFIC	**44,219**	**146,658**	**190,877**	**10.56**
Miscellaneous				
Unclassified				
UNITED STATES	**446,353**	**1,339,101**	**1,785,454**	**98.79**
Poss. & Other Areas	52	2,489	2,541	0.14
U.S. & POSS., etc.	**446,405**	**1,341,590**	**1,787,995**	**98.9[illegible]**
Canada	28	9,577	9,605	0
Mexico		5,610	5,610	0.[illegible]
Foreign	19	3,902	3,921	0.22
Unclassified				
Military or Civilian Personnel Overseas	83		83	0.01
GRAND TOTAL	**446,535**	**1,360,679**	**1,807,214**	**100.00**

4. NET PRESS RUN AND PAID CIRCULATION BY EDITIONS:

Morning Issue for Tuesday, September 11, 1990.

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Harrison, NY				
11:51 PM	9-10	9-11	53,326	32,942
2:28 AM	9-11	9-11	34,364	21,228
			87,690	54,170
Nyack, NY				
11:53 PM	9-10	9-11	35,189	21,738
2:33 AM	9-11	9-11	14,559	8,994
			49,748	30,732
Batavia, NY				
11:54 PM	9-10	9-11	42,118	26,018
2:44 AM	9-11	9-11	16,285	10,060
			58,403	36,078
Bridgewater, NJ				
11:55 PM	9-10	9-11	48,187	29,767
2:54 AM	9-11	9-11	19,568	12,088
			67,755	41,855
Lansdale, PA				
11:50 PM	9-10	9-11	41,862	25,860
2:50 AM	9-11	9-11	14,247	8,801
			56,109	34,661
[illegible]entum, PA				
[illegible]:00 AM	9-11	9-11	50,094	30,945
2:38 AM	9-11	9-11	29,029	17,932
			79,123	48,877
Springfield, VA				
11:52 PM	9-10	9-11	95,250	58,835
2:39 AM	9-11	9-11	54,719	33,802
			149,969	92,637
Norwood, MA				
11:51 PM	9-10	9-11	66,881	41,315
2:28 AM	9-11	9-11	40,839	25,228
			107,720	66,543
Columbia, SC				
11:54 PM	9-10	9-11	37,152	22,950
2:32 AM	9-11	9-11	11,603	7,168
			48,755	30,118
Atlanta, GA				
11:50 PM	9-10	9-11	44,789	27,668
2:52 AM	9-11	9-11	17,138	10,587
			61,927	38,255
Gainesville, GA				
11:58 PM	9-10	9-11	22,752	14,055
2:29 AM	9-11	9-11	11,574	7,150
			34,326	21,205
[illegible] Myers, FL				
11:50 PM	9-10	9-11	29,536	18,246

Morning Issue for Tuesday, September 11, 1990.

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Melbourne, FL				
11:49 PM	9-10	9-11	44,402	27,429
2:25 AM	9-11	9-11	8,626	5,329
			53,028	32,758
Miramar, FL				
11:54 PM	9-10	9-11	23,709	14,646
2:30 AM	9-11	9-11	15,008	9,271
			38,717	23,917
Port Huron, MI				
11:50 PM	9-10	9-11	54,009	33,363
2:32 AM	9-11	9-11	12,415	7,669
			66,424	41,032
Mansfield, OH				
11:48 PM	9-10	9-11	48,086	29,705
2:37 AM	9-11	9-11	39,077	24,139
			87,163	53,844
Greensboro, NC				
11:54 PM	9-10	9-11	44,627	27,568
2:40 AM	9-11	9-11	16,356	10,104
			60,983	37,672
Richmond, IN				
10:52 PM	9-10	9-11	56,808	35,093
2:01 AM	9-11	9-11	31,511	19,466
			88,319	54,559
Kankakee, IL				
10:53 PM	9-10	9-11	53,689	33,166
1:37 AM	9-11	9-11	21,968	13,571
			75,657	46,737
Chicago, IL				
10:51 PM	9-10	9-11	43,850	27,088
1:29 AM	9-11	9-11	37,949	23,443
			81,799	50,531
St. Cloud, MN				
10:53 PM	9-10	9-11	42,836	26,461
2:05 AM	9-11	9-11	15,181	9,378
			58,017	35,839
Farmer's Branch, TX				
10:53 PM	9-10	9-11	39,745	24,552
1:32 AM	9-11	9-11	31,272	19,318
			71,017	43,870
Hattiesburg, MS				
10:53 PM	9-10	9-11	42,681	26,366
1:50 AM	9-11	9-11	15,489	9,568
			58,170	35,934
Nashville, TN				
10:51 PM	9-10	9-11	55,673	34,391
1:53 AM	9-11	9-11	15,656	9,671
			71,329	44,062

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Tuesday, September 11, 1990.				
Pasadena, TX				
10:50 PM	9-10	9-11	24,406	15,077
1:28 AM	9-11	9-11	22,915	14,156
			47,321	29,233
Lawrence, KS				
10:53 PM	9-10	9-11	39,276	24,262
1:29 AM	9-11	9-11	21,647	13,372
			60,923	37,634
St. Louis, MO				
10:50 PM	9-10	9-11	28,207	17,425
1:26 AM	9-11	9-11	22,979	14,195
			51,186	31,620
Ft. Collins, CO				
9:53 PM	9-10	9-11	19,123	11,813
12:39 AM	9-11	9-11	18,753	11,584
			37,876	23,397
Salt Lake City, UT				
9:51 PM	9-10	9-11	13,865	8,565
12:27 AM	9-11	9-11	13,520	8,352
			27,385	16,917

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Tuesday, September 11, 1990.				
Chandler, AZ				
8:51 PM	9-10	9-11	23,580	14,566
11:27 PM	9-10	9-11	34,642	21,400
			58,222	35,966
San Bernardino, CA				
8:53 PM	9-10	9-11	63,394	39,161
11:34 PM	9-10	9-11	47,606	29,408
			111,000	68,569
Olympia, WA				
8:54 PM	9-10	9-11	34,346	21,217
11:39 PM	9-10	9-11	35,845	22,143
			70,191	43,360
San Rafael, CA				
8:53 PM	9-10	9-11	24,989	15,437
11:30 PM	9-10	9-11	50,482	31,185
			75,471	46,622
Total			2,181,259	1,347,450

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, September 14, 1990.				
Harrison, NY				
11:30 PM	9-13	9-14	62,954	38,890
2:00 AM	9-14	9-14	42,542	26,280
			105,496	65,170
Nyack, NY				
11:25 PM	9-13	9-14	40,696	25,140
2:12 AM	9-14	9-14	16,995	10,499
			57,691	35,639
Batavia, NY				
11:24 PM	9-13	9-14	53,068	32,783
2:48 AM	9-14	9-14	20,970	12,954
			74,038	45,737
Bridgewater, NJ				
11:34 PM	9-13	9-14	54,550	33,698
2:33 AM	9-14	9-14	28,459	17,580
			83,009	51,278
Lansdale, PA				
11:30 PM	9-13	9-14	42,916	26,511
2:45 AM	9-14	9-14	23,615	14,588
			66,531	41,099
Tarentum, PA				
11:35 PM	9-13	9-14	41,349	25,543
2:04 AM	9-14	9-14	61,480	37,979
			102,829	63,522
Springfield, VA				
11:26 PM	9-13	9-14	98,732	60,993
2:07 AM	9-14	9-14	86,249	53,280
			184,981	114,273

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, September 14, 1990.				
Norwood, MA				
11:30 PM	9-13	9-14	82,267	50,820
2:02 AM	9-14	9-14	53,244	32,891
			135,511	83,711
Columbia, SC				
11:35 PM	9-13	9-14	38,110	23,542
2:37 AM	9-14	9-14	29,651	18,317
			67,761	41,859
Atlanta, GA				
11:30 PM	9-13	9-14	51,411	31,759
2:16 AM	9-14	9-14	34,840	21,522
			86,251	53,281
Gainesville, GA				
11:35 PM	9-13	9-14	29,869	18,451
2:02 AM	9-14	9-14	14,896	9,202
			44,765	27,653
Ft. Myers, FL				
11:27 PM	9-13	9-14	37,233	23,001
Melbourne, FL				
11:21 PM	9-13	9-14	56,983	35,201
2:14 AM	9-14	9-14	13,793	8,521
			70,776	43,722
Miramar, FL				
11:30 PM	9-13	9-14	29,678	18,333
2:00 AM	9-14	9-14	25,809	15,943
			55,487	34,276

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, September 14, 1990.				
Port Huron, MI				
11:26 PM	9-13	9-14	44,817	27,686
2:10 AM	9-14	9-14	37,810	23,357
			82,627	51,043
Mansfield, OH				
11:20 PM	9-13	9-14	71,032	43,880
2:01 AM	9-14	9-14	42,652	26,348
			113,684	70,228
Greensboro, NC				
11:26 PM	9-13	9-14	52,017	32,133
2:10 AM	9-14	9-14	32,032	19,788
			84,049	51,921
Richmond, IN				
10:24 PM	9-13	9-14	58,647	36,229
1:51 AM	9-14	9-14	54,918	33,925
			113,565	70,154
Kankakee, IL				
10:28 PM	9-13	9-14	56,804	35,090
1:08 AM	9-14	9-14	45,667	28,211
			102,471	63,301
Chicago, IL				
10:25 PM	9-13	9-14	42,074	25,991
12:54 AM	9-14	9-14	59,839	36,965
			101,913	62,956
St. Cloud, MN				
10:27 PM	9-13	9-14	43,954	27,152
1:41 AM	9-14	9-14	32,680	20,188
			76,634	47,340
Farmer's Branch, TX				
10:25 PM	9-13	9-14	50,358	31,108
12:46 AM	9-14	9-14	32,595	20,135
			82,953	51,243
Hattiesburg, MS				
10:30 PM	9-13	9-14	37,773	23,334
1:35 AM	9-14	9-14	37,691	23,283
			75,464	46,617
Nashville, TN				
10:32 PM	9-13	9-14	45,378	28,032
1:25 AM	9-14	9-14	53,583	33,101
			98,961	61,133

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, September 14, 1990.				
Pasadena, TX				
10:27 PM	9-13	9-14	31,049	19,180
1:25 AM	9-14	9-14	28,147	17,388
			59,196	36,568
Lawrence, KS				
10:25 PM	9-13	9-14	41,207	25,455
1:12 AM	9-14	9-14	40,167	24,813
			81,374	50,268
St. Louis, MO				
10:26 PM	9-13	9-14	38,614	23,854
1:01 AM	9-14	9-14	28,935	17,874
			67,549	41,728
Ft. Collins, CO				
9:27 PM	9-13	9-14	28,502	17,607
12:03 AM	9-14	9-14	23,317	14,404
			51,819	32,011
Salt Lake City, UT				
9:28 PM	9-13	9-14	22,481	13,888
11:56 PM	9-13	9-14	18,010	11,126
			40,491	25,014
Chandler, AZ				
8:25 PM	9-13	9-14	34,908	21,564
11:02 PM	9-13	9-14	46,023	28,431
			80,931	49,995
San Bernardino, CA				
8:33 PM	9-13	9-14	65,128	40,233
11:31 PM	9-13	9-14	79,636	49,195
			144,764	89,428
Olympia, WA				
8:26 PM	9-13	9-14	51,702	31,939
11:43 PM	9-13	9-14	49,955	30,860
			101,657	62,799
San Rafael, CA				
8:27 PM	9-13	9-14	30,456	18,814
10:58 PM	9-13	9-14	67,076	41,436
			97,532	60,250
Total			2,829,993	1,748,218

For publisher's policy in respect to advertising carried, See Par. 11(f).

* The paid circulation figures have been calculated by projecting the net press run information against the averages in Pars. 1A & 1B.

4. NET PRESS RUN AND PAID CIRCULATION BY EDITIONS:

See Page 178(b).

5. AVERAGE UNPAID DISTRIBUTION:

	Morning (Mon. to Thu.)	Friday Morning
Arrears	2,765	2,765
Advertisers, Agencies	5,947	6,926
Complimentary, Sample. Service	25,048	25,254
Total	33,760	34,945

6. (a) RETURNS POLICY:

Fully returnable.

(b) Were these deducted, so that only paid is shown in Par. 1? Yes.

ANALYSIS OF CARRIER & MAIL SUBSCRIPTION SALES (New & Renewal)

7. PREMIUM, COMBINATION, SPECIAL OFFERS, CLUBS AND INSURANCE:

		Term Ordered 13 Wks.	26 Wks.	52 Wks.	Misc. Periods
(a) With premium and special offers, See Par. 11(g)	M	12,204	5,994	10,682	306
(c) With premium only, See Par. 11(h)	M	313			103
(d) In combination with outside publications only, See Par. 11(i)	M	322			3,313
(e) Special reduced prices, See Par. 10(b)	M	207,885	29,223	36,275	18,043
	M (Mon. to Thurs.)				27,569*
	Fri M				14,164*

*This figure does not represent the total number of subscriptions received, but represents the average number of copies served during this statement period on School-Single Copy/Subscriptions sold at the price(s) shown in Par. 10(b).

8. (a) CONTESTS INVOLVING SUBSCRIPTION CONTRACT: None

(b) CONTESTS NOT INVOLVING SUBSCRIPTION CONTRACT: See Par. 11(j)

9. ARREARS UNDER THREE MONTHS: (See Audit Report)

10. PRICES:

(a) Basic Prices:

	By Mail - U.S. & Poss. 52 Wks.	26 Wks.	13 Wks.	By Carrier - U.S. 52 Wks.	26 Wks.	13 Wks.
M	$130.00	$65.00	$32.50	$130.00	$65.00	$32.50
				Single Copy		
M				50¢		

(b) Special reduced prices: To schools for classroom use 25¢ per copy. To teachers, students and libraries at 30¢ per copy. Special offers to renewals and non-subscribers: 75%, 80%, 85% and 90% of basic prices for various terms of duration. 50% to 90% of basic prices for 13 week subscriptions, 50% to 85% of basic prices for 26 week subscriptions and 50% to 75% of basic prices for 52 week subscriptions were offered to renewals and non-subscribers. Special offer to Direct Mail Agent renewals, 13 weeks $25.95, 26 weeks $49.95 and 52 weeks $92.50. To employees of Gannett Co., Inc. and Gannett member newspapers, 50% of basic prices. Special combined rates to subscribers of Florida TODAY and USA TODAY in combination, $3.50, $3.75 per week; to subscribers of the Fort Myers News Press and USA TODAY in combination, $3.37 per week.

(c) Prices higher than basic: Rates to Canada and other foreign countries handled individually.

PRINTED AND RELEASED
BY ABC FEBRUARY, 1991

Audit Bureau of Circulations

AUDIT REPORT: Newspaper

USA TODAY (Morning)

Washington, District of Columbia

TOTAL AVERAGE PAID CIRCULATION FOR 53 WEEKS ENDED APRIL 1, 1990:

	Morning (Mon. to Thurs.)	Morning (Fri. only)
1A. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):	**1,355,745**	**1,715,976**
1B. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):		
Carrier Delivery office collect system, See Pars. 11(a) & (b)	150,550	150,108
Carriers not filing lists with publisher	72,788	72,583
Single Copy Sales	827,592	1,211,903
Mail Subscriptions	248,125	247,783
School-Single Copy/Subscriptions, See Par. 11(c)	43,480	20,248
Employee Copies, See Par. 11(d)	2,434	2,429
Group (Subscriptions by Businesses for Designated Employees), See Par. 11(e)	10,776	10,922
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	1,355,745	1,715,976
1C. THIRD PARTY (BULK) SALES:		
Airlines — Available for passengers	15,114	19,197
Businesses — Available for employees	6,096	7,136
Hotels, Motels — Available for guests	279,430	289,168
Restaurants — Available for patrons	4,686	5,207
Other	48,612	61,225
TOTAL AVERAGE THIRD PARTY (BULK) SALES	353,938	381,933

AUDIT STATEMENT

The difference shown in average paid circulation in comparing this report with the Publisher's Statements for the period audited is Morning (Mon. to Thurs.) 626 copies per issue deduction and Morning (Fri. only) 920 copies per issue deduction.

AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY QUARTERS for the previous three years and period covered by this report.

			Morning (Mon. to Thurs.)	Morning (Fri. only)	Morning (Mon. to Fri.)
3-31-86	to	6-29-86			1,138,831
6-30-86	to	9-28-86			1,171,841
9-29-86	to	12-28-86			1,258,637
12-29-86	to	3-29-87			1,317,516
3-30-87	to	6-28-87			1,335,748
6-29-87	to	9-27-87			1,285,357
9-28-87	to	12-27-87			1,308,323
12-28-87	to	3-27-88			1,354,248
3-28-88	to	6-26-88			1,324,152
6-27-88	to	9-25-88			1,334,864
9-26-88	to	12-25-88	1,325,059	1,644,460	
12-26-88	to	3-26-89	1,344,413	1,675,621	
3-27-89	to	6-25-89	1,339,616	1,641,490	
6-26-89	to	9-24-89	1,309,851	1,719,998	
9-25-89	to	12-31-89	1,372,667	1,739,766	
1-1-90	to	4-1-90	1,400,275	1,764,479	

3. ACTUAL ONE-DAY NET PAID CIRCULATION AND ABC-ADJUSTED PAID CIRCULATION BY COUNTIES:

Morning, January 29, 1990; Friday Morning, February 2, 1990.

Occupied Households - #12-31-88 S&MM Estimate.

NOTE: Total paid circulation of the January 29, 1990 issue was 7.44% greater than the Monday to Thursday average paid circulation for the 52 week period ended April 1, 1990. Total paid circulation of the February 2, 1990 issue was 0.67% less than the Friday average paid circulation of the same period.

"*BALANCE IN STATE" is comprised of the circulation in counties receiving less than 25 copies which is not identified with the towns, townships or minor civil divisions listed.

State County Town	OCCUPIED HOUSEHOLDS # 12-31-88 Estimate	Morning Home Delivery	Single Copy Sales	Net Paid Circ. Total	Adjusted Paid Total	Friday Morning Home Delivery	Single Copy Sales	Net Paid Circ. Total	Adjusted Paid Total
ALABAMA									
AUTAUGA	12,700	61	175	236	220	68	282	350	352
BALDWIN	35,700	426	809	1,235	1,149	434	1,094	1,528	1,538
BARBOUR	9,300	39	94	133	124	40	153	193	194
BULLOCK	3,400	25		25	23	28		28	28
BUTLER	8,000	28	108	136	127	28	135	163	164
CALHOUN	45,200	158	765	923	859	159	992	1,151	1,158
CHAMBERS	14,600	26	59	85	79	29	74	103	104
CHEROKEE	7,300	16	47	63	59	16	77	93	94
CHILTON	12,900	10	54	64	60	11	87	98	99
CLARKE	9,500	42		42	39	43		43	43
CLEBURNE	5,100	6	26	32	30	5	33	38	38
COFFEE	15,100	106	117	223	208	113	169	282	284
COLBERT	21,100	42	201	243	226	46	322	368	370
CONECUH	5,500	11	25	36	34	11	47	58	58
COVINGTON	14,600	25	106	131	122	25	164	189	190
CULLMAN	25,400	50	228	278	259	55	302	357	359
DALE	16,800	83	235	318	296	87	338	425	427
DALLAS	18,800	91	81	172	160	97	174	271	273
DE KALB	21,400	70	105	175	163	73	187	260	262
ELMORE	17,200	73		73	68	80		80	81
ESCAMBIA	12,700	34	119	153	142	37	142	179	180
ETOWAH	39,700	120	298	418	389	128	468	596	600
GENEVA	9,200	29		29	27	31		31	31
HENRY	5,600	22	33	55	51	23	55	78	79

State County Town	OCCUPIED HOUSEHOLDS # 12-31-88 Estimate	Morning Home Delivery	Morning Single Copy Sales	Morning Net Paid Circ. Total	Morning Adjusted Paid Total	Friday Morning Home Delivery	Friday Morning Single Copy Sales	Friday Morning Net Paid Circ. Total	Friday Morning Adjusted Paid Total
ALABAMA (Cont'd)									
HOUSTON	31,600	172	469	641	597	182	524	706	711
JACKSON	19,600	40	87	127	118	38	204	242	244
JEFFERSON	266,500	1,791	3,408	5,199	4,839	1,242	3,419	4,661	4,693
LAUDERDALE	32,400	217	297	514	478	221	397	618	622
LEE	32,500	352	777	1,129	1,051	1,415	875	2,290	2,306
LIMESTONE	18,500	100	315	415	386	106	353	459	462
MACON	8,800	63	134	197	183	66	160	226	228
MADISON	92,000	1,185	2,169	3,354	3,122	1,208	2,487	3,695	3,720
MARENGO	8,600	32		32	30	37		37	37
MARSHALL	28,400	73	173	246	229	84	287	371	374
MOBILE	143,400	1,664	1,538	3,202	2,980	1,682	2,063	3,745	3,770
MONROE	8,000	18	56	74	69	19	75	94	95
MONTGOMERY	81,400	992	1,443	2,435	2,266	502	2,122	2,624	2,642
MORGAN	38,000	403	472	875	814	412	592	1,004	1,011
PIKE	10,500	65	108	173	161	68	182	250	252
RANDOLPH	7,500	16	9	25	23	20	66	86	87
RUSSELL	18,800	26	63	89	83	30	113	143	144
ST. CLAIR	17,700	26	48	74	69	31	63	94	95
SHELBY	31,000	219	212	431	401	817	213	1,030	1,037
TALLADEGA	27,100	64	261	325	302	66	249	315	317
TALLAPOOSA	15,100	50	152	202	188	56	206	262	264
TUSCALOOSA	54,500	317	890	1,207	1,123	226	1,159	1,385	1,394
WALKER	26,400	30	124	154	143	29	182	211	212
*BALANCE IN STATE		242	4	246	229	259	6	265	267
TOTAL IN ALABAMA		9,750	16,894	26,644	24,798	10,483	21,292	31,775	31,990
ALASKA									
ANCHORAGE	83,000	130	405	535	498	157	876	1,033	1,040
FAIRBANKS NORTH STAR	24,800	160	125	285	265	161	286	447	450
JUNEAU	9,500	31	112	143	133	37	135	172	173
KENAI PENINSULA	15,300	27		27	25	31		31	31
KODIAK ISLAND	4,600	31		31	29	35		35	35
MATANUSKA-SUSITNA	13,700	20	14	34	32	21	15	36	36
NORTH SLOPE	1,200	11	15	26	24				
PRINCE-WALES-KETCHIKAN	1,500	15	14	29	27				

MARSHALL	14,900	79	238	317	295	80	249	329	331
MERCER	27,100	73	233	306	285	78	321	399	402
MINERAL	10,400	20	107	127	118	21	110	131	132
MINGO	12,500					26		26	26
MONONGALIA	29,200	401	920	1,321	1,229	415	1,143	1,558	1,569
MORGAN	4,500	36		36	33	37		37	37
NICHOLAS	10,500	14	25	39	36	15	29	44	44
OHIO	23,300	258	545	803	747	262	602	864	870
PLEASANTS	2,900	15	19	34	32	15	24	39	39
POCAHONTAS	3,700	14	72	86	80	14	164	178	179
PRESTON	11,200	43	20	63	59	45	23	68	69
PUTNAM	16,200	24	334	358	333	24	439	463	466
RALEIGH	32,100	68	401	469	437	74	507	581	585
RANDOLPH	10,400	35	153	188	175	38	164	202	203
RITCHIE	4,500	22	11	33	31	23	11	34	34
TAYLOR	6,000	27	44	71	66	27	44	71	72
TUCKER	3,400	4	69	73	68	4	79	83	84
UPSHUR	8,800	23	144	167	155	27	146	173	174
WAYNE	16,800	51	132	183	170	52	189	241	243
WETZEL	7,800	32	248	280	261	33	255	288	290
WOOD	36,200	410	666	1,076	1,001	436	838	1,274	1,283
*BALANCE IN STATE		174	4	178	166	174	8	182	183
TOTAL IN WEST VIRGINIA		3,651	9,164	12,815	11,927	3,803	10,712	14,515	14,613
WISCONSIN									
ASHLAND	6,400	54		54	50	60		60	60
BARRON	15,700	90	98	188	175	94	125	219	220
BAYFIELD	5,500	37	108	145	135	38	128	166	167
BROWN	72,000	466	770	1,236	1,150	473	941	1,414	1,424
BUFFALO	5,500	29		29	27	29		29	29
BURNETT	5,400	30		30	28	29		29	29
CALUMET	12,500	45	5	50	47	45	9	54	54
CHIPPEWA	19,100	150	165	315	293	153	163	316	318
CLARK	12,000	42		42	39	41		41	41
COLUMBIA	18,000	62	18	80	74	64	18	82	83
CRAWFORD	6,000	19	36	55	51	21	44	65	65
DANE	141,600	637	2,001	2,638	2,455	666	2,959	3,625	3,650
DODGE	26,800	73	150	223	207	78	186	264	266
DOOR	10,800	57	122	179	167	61	155	216	218
DOUGLAS	16,400	68	194	262	244	72	276	348	350
DUNN	12,200	65	129	194	181	64	126	190	191

State County Town	OCCUPIED HOUSEHOLDS # 12-31-88 Estimate	Morning Home Delivery	Morning Single Copy Sales	Morning Net Paid Circ. Total	Morning Adjusted Paid Total	Friday Morning Home Delivery	Friday Morning Single Copy Sales	Friday Morning Net Paid Circ. Total	Friday Morning Adjusted Paid Total
WISCONSIN (Cont'd)									
EAU CLAIRE	31,700	394	797	1,191	1,108	402	819	1,221	1,229
FOND DU LAC	32,400	116	431	547	509	123	449	572	576
GRANT	17,900	45	73	118	110	45	103	148	149
GREEN	12,200	51	228	279	260	50	256	306	308
GREEN LAKE	7,500	29	33	62	58	31	40	71	72
IRON	2,700	5	46	51	47	5	66	71	72
JEFFERSON	25,100	88	163	251	234	92	182	274	276
JUNEAU	8,600	21	105	126	117	23	128	151	152
KENOSHA	44,500	120	512	632	588	117	521	638	642
KEWAUNEE	6,900	24	53	77	72	25	67	92	93
LA CROSSE	36,200	353	766	1,119	1,041	364	890	1,254	1,262
LINCOLN	11,000	10	519	529	492	9	688	697	702
MANITOWOC	30,100	72	310	382	356	85	359	444	447
MARATHON	41,300	239	466	705	656	245	537	782	787
MARINETTE	16,100	79	66	145	135	78	106	184	185
MARQUETTE	5,600	35		35	33	36		36	36
MILWAUKEE	377,300	1,642	5,966	7,608	7,080	1,664	6,399	8,063	8,118
MONROE	13,600	39	191	230	214	40	287	327	329
OCONTO	11,900	34	51	85	79	34	71	105	106
ONEIDA	13,000	57	74	131	122	61	104	165	166
OUTAGAMIE	50,200	269	779	1,048	975	286	891	1,177	1,185
OZAUKEE	25,600	256	352	608	566	266	378	644	648
PIERCE	11,500	62	96	158	147	67	113	180	181
POLK	13,300	61	49	110	102	61	46	107	108
PORTAGE	20,300	58	338	396	369	59	457	516	520
PRICE	6,300	28	36	64	60	31	52	83	84
RACINE	64,800	180	698	878	817	193	766	959	966
ROCK	51,900	319	903	1,222	1,137	324	879	1,203	1,211
RUSK	5,800	32	3	35	33	34	3	37	37
ST. CROIX	17,100	87	133	220	205	90	166	256	258
SAUK	17,900	54	308	362	337	57	439	496	499
SAWYER	5,600	80	56	136	127	82	96	178	179
SHAWANO	14,200	45	46	91	85	45	75	120	120
SHEBOYGAN	38,400	186	543	729	678	194	532	726	730
TAYLOR	6,600	27		27	25	29		29	29
TREMPEALEAU	9,600	52	9	61	57	54	7	61	61

VERNON	10,200	31	29	60	56	31	44	75	76
VILAS	7,600	37	50	87	81	38	71	109	110
WALWORTH	27,700	200	402	602	561	206	457	663	668
WASHBURN	5,800	41	29	70	65	41	39	80	81
WASHINGTON	31,600	180	198	378	352	192	225	417	420
WAUKESHA	103,000	1,047	1,353	2,400	2,234	1,061	1,545	2,606	2,624
WAUPACA	16,700	58	78	136	127	59	106	165	166
WINNEBAGO	53,300	334	574	908	845	342	605	947	954
WOOD	29,700	76	338	414	385	81	528	609	613
*BALANCE IN STATE		129	8	137	127	143	10	153	154
TOTAL IN WISCONSIN		9,306	22,054	31,360	29,187	9,583	25,732	35,315	35,554
WYOMING									
ALBANY	12,100	112	147	259	241	123	179	302	304
CAMPBELL	11,800	49	201	250	233	57	326	383	386
CARBON	65,000	25	137	162	151	26	215	241	243
CONVERSE	4,600	41	49	90	84	42	82	124	125
FREMONT	12,400	45	168	213	198	48	172	220	221
GOSHEN	5,100	12	15	27	25	12	25	37	37
HOT SPRINGS	2,200	6	22	28	26	6	30	36	36
JOHNSON	2,600	9	38	47	44	9	47	56	56
LARAMIE	29,900	185	321	506	471	198	523	721	726
LINCOLN	5,300	34	46	80	75	36	47	83	84
NATRONA	25,600	206	428	634	590	215	523	738	743
PARK	9,000	45	113	158	147	46	181	227	229
PLATTE	4,200	13	47	60	56	13	84	97	98
SHERIDAN	10,100	23	108	131	122	25	168	193	194
SUBLETTE	2,000	22	30	52	48	26	41	67	67
SWEETWATER	15,600	71	487	558	519	72	447	519	522
TETON	5,100	23	522	545	507	25	663	688	693
UINTA	6,600	32	108	140	130	36	186	222	223
*BALANCE IN STATE		64	13	77	72	70	22	92	93
TOTAL IN WYOMING		1,017	3,000	4,017	3,739	1,085	3,961	5,046	5,080
TOTAL IN UNITED STATES		472,778	968,799	1,441,577	1,341,701	486,724	1,198,195	1,684,919	1,696,339

State County Town	OCCUPIED HOUSEHOLDS # 12-31-88 Estimate	Morning Home Delivery	Morning Single Copy Sales	Morning Net Paid Circ. Total	Morning Adjusted Paid Total	Friday Morning Home Delivery	Friday Morning Single Copy Sales	Friday Morning Net Paid Circ. Total	Friday Morning Adjusted Paid Total
PUERTO RICO									
SAN JUAN		16	1,542	1,558	1,450	15	2,227	2,242	2,257
UNDER 25 COPIES		28		28	26	29		29	29
TOTAL IN PUERTO RICO		44	1,542	1,586	1,476	44	2,227	2,271	2,286
CANADA									
UNDER 25 COPIES		30	6,851	6,881	6,404	30	8,569	8,599	8,657
MEXICO									
UNDER 25 COPIES			3,381	3,381	3,147		5,020	5,020	5,054
FOREIGN COUNTRIES									
UNDER 25 COPIES		119	3,123	3,242	3,017	124	3,491	3,615	3,640
GRAND TOTAL		472,971	983,696	1,456,667	1,355,745	486,922	1,217,502	1,704,424	1,715,976

4. NET PRESS RUN AND ADJUSTED PAID CIRCULATION BY EDITIONS: See Par. 11(f)

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Tuesday, March 6, 1990.				
HARRISON, NY				
11:46 PM	3-5	3-6	61,228	36,576
2:17 AM	3-6	3-6	40,034	23,915
Total			101,262	60,491
NYACK, NY				
11:41 PM	3-5	3-6	37,532	22,420
2:10 AM	3-6	3-6	13,827	8,260
Total			51,359	30,680
BATAVIA, NY				
11:43 PM	3-5	3-6	40,179	24,002
2:12 AM	3-6	3-6	15,370	9,181
Total			55,549	33,183
BRIDGEWATER, NJ				
11:45 PM	3-5	3-6	41,404	24,733
2:29 AM	3-6	3-6	28,011	16,733
Total			69,415	41,466
LANSDALE, PA				
11:39 PM	3-5	3-6	28,577	17,071
2:15 AM	3-6	3-6	31,116	18,588
Total			59,693	35,659
TARENTUM, PA				
11:41 PM	3-5	3-6	58,126	34,723
2:25 AM	3-6	3-6	24,716	14,764
Total			82,842	49,487
SPRINGFIELD, VA				
11:50 PM	3-5	3-6	103,788	62,000
2:16 AM	3-6	3-6	35,758	21,361
Total			139,546	83,361
NORWOOD, MA				
11:42 PM	3-5	3-6	59,291	35,418
2:12 AM	3-6	3-6	31,501	18,818
Total			90,792	54,236
COLUMBIA, SC				
11:47 PM	3-5	3-6	37,031	22,121
2:11 AM	3-6	3-6	11,455	6,843
Total			48,486	28,964
ATLANTA, GA				
11:42 PM	3-5	3-6	46,717	27,907
2:19 AM	3-6	3-6	18,355	10,965
Total			65,072	38,872
GAINESVILLE, GA				
11:41 PM	3-5	3-6	21,156	12,638
2:08 AM	3-6	3-6	11,159	6,666
Total			32,315	19,304

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Tuesday, March 6, 1990.				
FT. MYERS, FL				
11:41 PM	3-5	3-6	57,941	34,612
MELBOURNE, FL				
11:40 PM	3-5	3-6	55,115	32,924
2:10 AM	3-6	3-6	15,956	9,532
Total			71,071	42,456
MIRAMAR, FL				
11:45 PM	3-5	3-6	36,429	21,762
2:09 AM	3-6	3-6	22,737	13,582
Total			59,166	35,344
PORT HURON, MI				
11:43 PM	3-5	3-6	48,818	29,162
2:11 AM	3-6	3-6	12,283	7,338
Total			61,101	36,500
MANSFIELD, OH				
11:37 PM	3-5	3-6	56,259	33,607
2:14 AM	3-6	3-6	30,964	18,497
Total			87,223	52,104
GREENSBORO, NC				
11:44 PM	3-5	3-6	42,102	25,150
2:12 AM	3-6	3-6	15,851	9,469
Total			57,953	34,619
RICHMOND, IN				
11:40 PM	3-5	3-6	50,999	30,465
2:26 AM	3-6	3-6	35,773	21,370
Total			86,772	51,835
KANKAKEE, IL				
10:42 PM	3-5	3-6	54,416	32,506
1:25 AM	3-6	3-6	16,543	9,883
Total			70,959	42,389
CHICAGO, IL				
10:44 PM	3-5	3-6	48,800	29,152
1:33 AM	3-6	3-6	40,305	24,077
Total			89,105	53,229
ST. CLOUD, MN				
10:45 PM	3-5	3-6	40,132	23,974
1:19 AM	3-6	3-6	14,599	8,721
Total			54,731	32,695
FARMER'S BRANCH, TX				
10:40 PM	3-5	3-6	34,477	20,595
1:15 AM	3-6	3-6	37,507	22,405
Total			71,984	43,000
HATTIESBURG, MS				
10:40 PM	3-5	3-6	35,752	21,357
1:10 AM	3-6	3-6	28,210	16,852
Total			63,962	38,209

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Tuesday, March 6, 1990.				
NASHVILLE, TN				
10:41 PM	3-5	3-6	52,674	31,466
1:45 AM	3-6	3-6	20,609	12,311
Total			73,283	43,777
PASADENA, TX				
10:44 PM	3-5	3-6	28,425	16,980
1:19 AM	3-6	3-6	28,164	16,824
Total			56,589	33,804
LAWRENCE, KS				
10:42 PM	3-5	3-6	41,863	25,008
1:14 AM	3-6	3-6	24,561	14,672
Total			66,424	39,680
ST. LOUIS, MO				
10:42 PM	3-5	3-6	29,710	17,748
1:09 AM	3-6	3-6	20,353	12,158
Total			50,063	29,906
FT. COLLINS, CO				
9:42 PM	3-5	3-6	18,355	10,965
12:10 AM	3-6	3-6	16,999	10,154
Total			35,354	21,119
SALT LAKE CITY, UT				
9:41 PM	3-5	3-6	8,555	5,110
12:11 AM	3-6	3-6	12,685	7,578
Total			21,240	12,688
CHANDLER, AZ				
9:44 PM	3-5	3-6	25,829	15,429
12:11 AM	3-6	3-6	43,680	26,093
Total			69,509	41,522
SAN BERNARDINO, CA				
8:42 PM	3-5	3-6	71,077	42,459
11:26 PM	3-5	3-6	60,470	36,123
Total			131,547	78,582
OLYMPIA, WA				
8:43 PM	3-5	3-6	29,799	17,801
11:19 PM	3-5	3-6	29,357	17,537
Total			59,156	35,338
SAN RAFAEL, CA				
8:45 PM	3-5	3-6	27,715	16,556
11:15 PM	3-5	3-6	50,350	30,078
Total			78,065	46,634
GRAND TOTAL			2,269,529	1,355,745
Morning Issue for Friday, March 9, 1990.				
HARRISON, NY				
11:32 PM	3-8	3-9	75,718	47,439
2:19 AM	3-9	3-9	40,335	25,271
Total			116,053	72,710

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, March 9, 1990.				
NYACK, NY				
11:30 PM	3-8	3-9	32,476	20,347
2:17 AM	3-9	3-9	15,787	9,891
Total			48,263	30,238
BATAVIA, NY				
11:22 PM	3-8	3-9	47,303	29,636
2:38 AM	3-9	3-9	19,127	11,984
Total			66,430	41,620
BRIDGEWATER, NJ				
11:25 PM	3-8	3-9	49,491	31,008
2:23 AM	3-9	3-9	30,989	19,415
Total			80,480	50,423
LANSDALE, PA				
11:22 PM	3-8	3-9	32,964	20,653
2:44 AM	3-9	3-9	33,261	20,838
Total			66,225	41,491
TARENTUM, PA				
11:30 PM	3-8	3-9	47,762	29,924
2:23 AM	3-9	3-9	49,390	30,944
Total			97,152	60,868
SPRINGFIELD, VA				
11:32 PM	3-8	3-9	98,064	61,439
2:19 AM	3-9	3-9	61,758	38,693
Total			159,822	100,132
NORWOOD, MA				
11:25 PM	3-8	3-9	69,642	43,632
2:07 AM	3-9	3-9	37,435	23,454
Total			107,077	67,086
COLUMBIA, SC				
11:27 PM	3-8	3-9	50,823	31,842
2:08 AM	3-9	3-9	18,151	11,372
Total			68,974	43,214
ATLANTA, GA				
11:30 PM	3-8	3-9	44,259	27,729
2:19 AM	3-9	3-9	39,096	24,495
Total			83,355	52,224
GAINESVILLE, GA				
11:25 PM	3-8	3-9	25,526	15,992
2:08 AM	3-9	3-9	14,173	8,880
Total			39,699	24,872
FT. MYERS, FL				
11:23 PM	3-8	3-9	70,120	43,932
MELBOURNE, FL				
11:28 PM	3-8	3-9	64,574	40,457
2:25 AM	3-9	3-9	29,316	18,367
Total			93,890	58,824

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, March 9, 1990.				
MIRAMAR, FL				
11:27 PM	3-8	3-9	44,263	27,732
2:08 AM	3-9	3-9	34,906	21,869
Total			79,169	49,601
PORT HURON, MI				
11:19 PM	3-8	3-9	54,323	34,035
2:10 AM	3-9	3-9	15,856	9,934
Total			70,179	43,969
MANSFIELD, OH				
11:21 PM	3-8	3-9	65,792	41,220
2:16 AM	3-9	3-9	37,037	23,205
Total			102,829	64,425
GREENSBORO, NC				
11:23 PM	3-8	3-9	52,012	32,587
2:20 AM	3-9	3-9	24,870	15,581
Total			76,882	48,168
RICHMOND, IN				
11:21 PM	3-8	3-9	56,104	35,150
2:31 AM	3-9	3-9	50,765	31,806
Total			106,869	66,956
KANKAKEE, IL				
10:22 PM	3-8	3-9	63,649	39,878
1:25 AM	3-9	3-9	20,944	13,120
Total			84,593	52,998
CHICAGO, IL				
10:23 PM	3-8	3-9	52,000	32,579
1:21 AM	3-9	3-9	39,597	24,809
Total			91,597	57,388
ST. CLOUD, MN				
10:25 PM	3-8	3-9	50,450	31,608
1:42 AM	3-9	3-9	18,117	11,350
Total			68,567	42,958
FARMER'S BRANCH, TX				
10:25 PM	3-8	3-9	33,218	20,812
1:14 AM	3-9	3-9	50,555	31,674
Total			83,773	52,486
HATTIESBURG, MS				
10:22 PM	3-8	3-9	50,881	31,878
1:35 AM	3-9	3-9	25,398	15,912
Total			76,279	47,790
NASHVILLE, TN				
10:21 PM	3-8	3-9	61,200	38,343
1:58 AM	3-9	3-9	27,397	17,165
Total			88,597	55,508

Press Time	Date Printed	Issue Date	Net Press Run	Total* Paid
Morning Issue for Friday, March 9, 1990.				
PASADENA, TX				
10:28 PM	3-8	3-9	32,958	20,649
1:30 AM	3-9	3-9	28,069	17,586
Total			61,027	38,235
LAWRENCE, KS				
10:22 PM	3-8	3-9	50,243	31,478
1:22 AM	3-9	3-9	28,271	17,713
Total			78,514	49,191
ST. LOUIS, MO				
10:22 PM	3-8	3-9	34,849	21,834
1:18 AM	3-9	3-9	24,767	15,517
Total			59,616	37,351
FT. COLLINS, CO				
9:23 PM	3-8	3-9	27,722	17,370
12:19 AM	3-9	3-9	21,230	13,300
Total			48,952	30,670
SALT LAKE CITY, UT				
9:30 PM	3-8	3-9	13,553	8,491
12:09 AM	3-9	3-9	18,967	11,884
Total			32,520	20,375
CHANDLER, AZ				
9:21 PM	3-8	3-9	36,601	22,931
12:10 AM	3-9	3-9	55,523	34,787
Total			92,124	57,718
SAN BERNARDINO, CA				
8:22 PM	3-8	3-9	85,013	53,263
12:16 AM	3-9	3-9	76,415	47,875
Total			161,428	101,138
OLYMPIA, WA				
8:25 PM	3-8	3-9	39,349	24,653
11:19 PM	3-8	3-9	39,336	24,645
Total			78,685	49,298
SAN RAFAEL, CA				
8:24 PM	3-8	3-9	33,772	21,159
11:10 PM	3-8	3-9	65,377	40,960
Total			99,149	62,119
GRAND TOTAL			2,738,889	1,715,976

For publisher's policy in respect to advertising carried, See Par. 11(f).

*The adjusted paid circulation figures have been calculated by projecting the net press run information against the averages in Pars. 1A & 1B.

5. AVERAGE UNPAID DISTRIBUTION:

	Morning (Mon. to Thurs.)	Morning (Fri. only)
Arrears	5,874	5,893
Advertisers, Agencies	6,287	8,012
Complimentary, Sample, Service	25,302	24,614
Total	37,463	38,519

6. WERE RETURNS ACCEPTED OR ALLOWANCES MADE FOR UNDELIVERED, LEFTOVER AND UNSOLD COPIES?

Fully returnable.

The allowances for returns, undelivered, leftover and unsold copies for period covered by this report were found to have been: Morning (Mon. to Thurs.) 19.67%; Morning (Fri. only) 21.41%.

This percentage is based on the gross figure and has been deducted, leaving paid circulation shown in Par. 1.

ANALYSIS OF CARRIER AND MAIL SUBSCRIPTION SALES (NEW AND RENEWAL)
For Period Covered by this Report

7. PREMIUM, COMBINATION, SPECIAL OFFERS, CLUBS AND INSURANCE:

None of record, except as indicated:		TERM ORDERED 1 Wk.	3 Mos.	6 Mos.	1 Yr.	Misc. Periods
(a) With premium and special offer, See Par. 11(g)	M		40,780	21,381	9,840	18,704
(c) With premium only, See Par. 11(h)	M		248	2	4	10,084
(d) In combination with outside publications only, See Par. 11(i)	M		355			16,712
(e) Special reduced prices, See Par. 10(b)	M		600,787	77,521	53,244	98,675
	M					43,480*
	Fri M					20,248*

*This figure does not represent the total number of subscriptions received, but represents the average number of copies served during this report period on School-Single Copy/Subscriptions sold at the price(s) shown in Par. 10(b).

8. (a) CONTESTS INVOLVING SUBSCRIPTION CONTRACT: None of record.

(b) CONTESTS NOT INVOLVING SUBSCRIPTION CONTRACT: See Par. 11(j).

9. ARREARS AS OF JANUARY 29, 1990 FOR MAIL; FEBRUARY 2, 1990 FOR BALANCE:

M	Carriers	Single Copy Accounts	Mail
Arrears under 3 months	12.51%	20.42%	None

10. PRICES:

(a) Basic Prices:	By Mail - U.S. & Poss. 52 Wks.	26 Wks.	13 Wks.	By Carrier - U.S. 52 Wks.	26 Wks.	13 Wks.
M	$130.00	$65.00	$32.50	$130.00	$65.00	$32.50

	Single Copy
M	50¢

10. PRICES: (Continued)

(b) Special reduced prices: To schools for classroom use at 25¢ per copy. To teachers, students and libraries at 30¢ per copy. Special offers to renewals and non-subscribers: 75%, 80%, 85% and 90% of basic prices for various terms of duration. 50% to 90% of basic prices for 13 week subscriptions, 50% to 85% of basic prices for 26 week subscriptions and 50% to 75% of basic prices for 52 week subscriptions were offered to renewals and non-subscribers. Special offer to direct mail agent renewals, 13 weeks $25.95; 26 weeks $49.95 and 52 weeks $97.50. To employees of Gannett Co. Inc. and Gannett member newspapers, 50% of basic prices. Special combined rate to subscribers of Florida TODAY and USA TODAY in combination, $3.50 per week; to subscribers of the Fort Myers News Press and USA TODAY in combination, $3.37 per week; to subscribers of the Jackson Clarion-Ledger and USA TODAY in combination, $3.52 per week and to subscribers of the Poughkeepsie Journal and USA TODAY in combination, $3.00 per week.

(c) Higher than basic prices: Rates to Canada and other foreign countries handled individually.

11. EXPLANATORY:

Regular publishing days on which no paper was issued:

Morning (Mon. to Thurs.): May 29, 1989; July 4, 1989; September 4, 1989; November 23, 1989; December 25, 1989; January 1, 1990.

Morning (Fri. only): None.

In accordance with Bureau Rule C 1.7, the following issue(s) has been eliminated from the averages reported in Pars. 1 and 5. The net paid circulation for the issue(s) is as follows:

	Morning (Mon. to Thurs.)	Friday Morning
November 24, 1989 Holiday		1,534,745
December 12, 1989 Option	1,313,232	
December 13, 1989 Option	1,313,436	
December 22, 1989 Option		1,607,544
December 26, 1989 Option	1,224,741	
December 27, 1989 Option	1,224,367	

Par. 1B:

(a) Included in Carrier Delivery office collect system is an average of 2,124 copies per issue, representing copies served to subscribers that ordered delivery directly with and were billed by the newspaper and for which payment was not received.

(b) Included in Carrier Delivery office collect system is an average of 159 copies per issue, representing copies served in arrears for up to three months on short-term subscriptions.

(c) School-Single Copy/Subscriptions, averaging 43,480 copies per issue Morning (Mon. to Thurs.) and 20,248 copies per issue Morning (Fri. only), represent copies sold to schools for classroom use at the price(s) shown in Par. 10(b), payment being made by Board of Education.

(d) Employee Copies, averaging 2,434 copies per issue Morning (Mon. to Thurs.) and 2,429 copies per issue Morning (Fri. only), represent copies served to employees of the newspaper.

(e) Group Subscriptions, averaging 10,776 copies per issue Morning (Mon. to Thurs.) and 10,922 copies per issue Morning (Fri. only), represent copies sold in quantities of 2 to 500 to individuals and business concerns.

(f) Par. 4:

First Edition - (Printed in all plants). For general distribution to subscribers and through dealers, dispatched by most convenient truck schedules from plants.

Second Edition - (Printed in all plants except Fort Myers, FL). Editorial content updated for latest available news. For general distribution to subscribers and through dealers, to points where schedules permit later dispatch than first edition.

10. PRICES: (Continued)

(b) Special reduced prices: To employees, 67% of basic prices; Morning, 20¢ per copy; Evening, 20¢ per copy. To Clipping Bureau, 90% of basic prices. To other Gannett papers, 50% of basic prices. By Mail to servicemen, Morning, Evening or Sunday, 50% of basic prices for a minimum subscription of 3 months. To schools for classroom use, 50% of basic prices. To Sunday only subscribers, 10¢ per week discount for 13 week Saturday Morning and Sunday conversion with coupons. By Carrier to Sunday only subscribers, Saturday and Sunday $1.85 per week. Special offer, to new subscribers and Weekend subscribers, Morning or Evening, 85% of basic prices. To college students and professors, 3 months Morning and Sunday, 82% of basic prices; Evening and Sunday, 76% of basic prices.

11. EXPLANATORY:

Regular publishing days on which no paper was issued:

Morning (Mon. to Fri.): None.
Evening (Mon. to Fri.): July 4, 1989; September 4, 1989; November 23, 1989; December 25, 1989; January 1, 1990; May 28, 1990.
Saturday Morning: None.
Sunday: None.

In accordance with Bureau Rule C 1.7, the following issue(s) has been eliminated from the averages reported in Pars. 1 and 5. The net paid circulation for the issue(s) is as follows:

	Morning (Mon. to Fri.)	Evening (Mon. to Fri.)	Sunday
July 3, 1989	116,545	89,063	
November 24, 1989	116,125	80,952	
December 24, 1989			244,026
December 26, 1989	122,845	82,700	
December 27, 1989	118,971	81,257	
December 28, 1989	118,650	81,376	

Publisher's policy is to serve Saturday/Sunday only and Sunday only subscribers the Morning issue on Holidays when no Evening issue is published. The totals net paid circulation for these days was:

July 14, 1989	216,233
September 4, 1989	215,655
November 23, 1989	223,687
December 25, 1989	205,668
January 1, 1990	214,021
May 28, 1990	220,992

The average total net paid circulation of the Morning issue exclusive of these days was 127,414.

(a) County population and occupied household estimates appearing in ABC reports are obtained from Sales & Marketing Management's 'Survey of Buying Power'. Estimates for ABC defined newspaper markets and areas below the county level are projections based upon 'Survey of Buying Power' estimates.

Par. 1B:

(b) Included in Carrier Delivery office collect system and Office Prepays is an average of 396 copies per issue Morning, 333 copies per issue Evening, 234 copies per issue Saturday Morning, 796 copies per issue Sunday in the City Zone; 156 copies per issue Morning, 72 copies per issue Evening, 272 copies per issue Saturday Morning, 306 copies per issue Sunday in the Retail Trading Zone and 7 copies per issue Morning, 9 copies per issue Saturday Morning, 10 copies per issue Sunday in All Other, representing copies served to subscribers that ordered delivery with and were billed by the newspaper and for which payment was not received.

(c) Included in Carrier Delivery office collect system and Office Prepays is an average of 239 copies per issue Morning, 175 copies per issue Evening, 433 copies per issue Saturday Morning and 475 copies per issue Sunday, representing copies served in arrears for from one to three months on short term subscriptions.

11. EXPLANATORY: (Continued)

(d) School-Single Copy/Subscriptions, averaging 1,025 copies per issue Morning, 27 copies per issue Evening, 1 copy per issue Saturday Morning, 8 copies per issue Sunday in the City Zone and 767 copies per issue Morning, 3 copies per issue Evening in the Retail Trading Zone, represent copies sold to schools for classroom use at the price(s) shown in Par. 10(b), in most cases payment being made from school funds, in a few cases by students.

(e) Employees Copies, averaging 146 copies per issue Morning, 181 copies per issue Evening, 133 copies per issue Saturday Morning and 42 copies per issue Sunday in the City Zone, represent copies served to employees of the newspaper.

(f) Par. 4:

General advertising may be purchased in optional combination or separately in the Times-Union (Evening), or the weekday Democrat & Chronicle (Morning), or in the Saturday Morning or Sunday Democrat & Chronicle. Combination prices are for Morning and Evening and Saturday Morning or Sunday. When either combination is purchased, the same advertisement will be purchased in each newspaper within a calendar week starting or ending with Sunday.

(g) A "Lend A Hand" program was conducted on September 8, 1989. Volunteers sold the newspaper on the street. The net paid circulation of this program was 130,280 copies for the Morning and 71,036 copies for the Evening.

To Members of the Audit Bureau of Circulations:

We have examined the circulation records and other data presented by this publication for the period covered by this report. Our examinations were made in accordance with the Bureau's Bylaws and Rules, and included such tests and other audit procedures as we considered necessary under the circumstances.

In our opinion, the total average paid circulation for the period shown is fairly stated in this report, and the other data contained in this report are fairly stated in all respects material to average paid circulation.

Audit Bureau of Circulations

(Democrat & Chronicle (Morning, Saturday Morning & Sunday)
Times-Union, Rochester, NY, Page #28 - #153168 - #153169 - 677 - BK - FGB)
November, 1990 01-3115-0

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11. EXPLANATORY: (Continued)

(g) Par. 7(a):

Records show the following premiums and special offers were made during this report period:

A $5.00 rebate check, an $8.00 rebate check, a $5.00 AT&T Gift Certificate, a brass ornament, a cookbook, a set of two videos, a knife set, a telephone, a beverage can holder/cooler or a grocery certificate were offered with new 13-week subscriptions at 90% of basic prices.

A $10.00 rebate check, a $10.00 AT&T Gift Certificate, a movie poster and comic book, a brass ornament or a sports bag were offered with new 26-week subscriptions at 85% of basic prices.

A $15.00 rebate check, a $15.00 AT&T Gift Certificate, a moive poster and comic book or a brass ornament were offered with new 52-week subscriptions at 75% of basic prices.

A special offer was made to guests of Ramada Inns of 90% of 13-week, 85% of 26-week or 75% of 52-week subscriptions, plus various amounts of club bonus points for Ramada Inns.

An autographed baseball signed by Johnny Bench was offered with new, paid 52-week subscriptions at 75% of basic prices.

Grocery certificates, with a value of $10.00 for 13-week subscriptions and $15.00 for 26-week subscriptions, were offered with new subscriptions at 90% of basic prices.

(h) Par. 7(c):

Records show the following premiums were offered during this report period:

A discount coupon book, with a value of $15.00, was offered with 10 week subscriptions at basic prices.

Grocery certificates, with a value of $10.00 for 13-week subscriptions and $15.00 for 26-week subscriptions, were offered with new subscriptions at basic prices. An NFL Football Digest, with a value of $2.00, was offered with 6-week subscriptions at basic prices.

(i) Par. 7(d):

USA TODAY was sold in combination with Florida TODAY, Melbourne, Florida, at $3.50 per week; with the News Press, Fort Myers, Florida, at $3.37 per week, with the Clarion-Ledger, Jackson, Mississippi, at $3.52 per week, and with the Journal, Poughkeepsie, New York, at $3.00 per week.

(j) Par. 8(b):

Records show the following contests were conducted during this report period:

A "US Open Golf Sweepstakes" was conducted beginning prior to this report period and ending April 14, 1989. A total of $3,200.00 in prizes was awarded.

A "Kentucky Derby Sweepstakes" was conducted beginning April 17, 1989 and ending April 28, 1989. A total of $2,000.00 in prizes was awarded.

An "NBA Finals Sweepstakes" was conducted beginning May 1, 1989 and ending May 19, 1989. A total of $1,800.00 in prizes was awaded.

A "PGA Championship Sweepstakes" was conducted beginning May 1, 1989 and ending July 28, 1989. A total of $2,500.00 in prizes was awarded.

An "MLB All-Star Fan Balloting Sweepstakes" was conducted beginning May 8, 1989 and ending June 28, 1989. A total of $32,500.00 in prizes was awarded.

A "Hall of Fame Sweepstakes" was conducted beginning June 29, 1989 and ending July 14, 1989. A total of $2,000.00 in prizes was awarded.

A "License to Kill Sweepstakes" was conducted beginning July 12, 1989 and ending August 15, 1989. A total of $35,120.00 in prizes was awarded.

A "US Open Tennis Sweepstakes" was conducted beginning July 31, 1989 and ending August 25, 1989. A total of $2,500.00 in prizes was awarded.

A "Beat the Expert Sweepstakes" was conducted beginning September 18, 1989 and ending December 22, 1989. A total of $77,000.00 in prizes was awarded.

A "World Series Sweepstakes" was conducted beginning prior to this report and ending October 6, 1989. A total of $1,020.00 in prizes was awarded.

11. EXPLANATORY: (Continued)

A "Breeders' Cup Sweepstakes" was conducted beginning October 6, 1989 and ending October 27, 1989. A total of $1,500.00 was awarded.

A "Notre Dame vs. SMU Sweepstakes" was conducted beginning October 10, 1989 and ending November 1, 1989. A total of $1,500.00 was awarded.

A "Notre Dame vs. Miami Sweepstakes" was conducted beginning November 3, 1989 and ending November 15, 1989. A total of $3,031.00 in prizes was awarded.

A "Leonard vs. Duran Sweepstakes" was conducted beginning November 17, 1989 and ending November 29, 1989. A total of $1,500.00 in prizes was awarded.

An "Orange Bowl Sweepstakes" was conducted beginning December 1, 1989 and ending December 20, 1989. A total of $1,220.00 in prizes was awarded.

An "NFL/Miller Lite Sweepstakes" was conducted beginning prior to this report period and ending January 17, 1990. A total of $3,500.00 in prizes was awarded.

An "NBA All-Star Sweepstakes" was conducted beginning January 10, 1990 and ending January 31, 1990. A total of $2,000.00 in prizes was awarded.

A "Daytona 500 Sweepstakes" was conducted beginning February 1, 1990 and ending February 9, 1990. A total of $1,500.00 was awarded.

A "50,000.00 Shoot-Out Sweepstakes" was conducted beginning February 26, 1990 and ending March 29, 1990. A total of $20,800.00 in prizes was awarded.

To Members of the Audit Bureau of Circulations:

We have examined the circulation records and other data presented by this publication for the period covered by this report. Our examinations were made in accordance with the Bureau's Bylaws and Rules, and included such tests and other audit procedures as we considered necessary under the circumstances.

In our opinion, the total average paid circulation for the period shown is fairly stated in this report, and the other data contained in this report are fairly stated in all respects material to average paid circulation.

Audit Bureau of Circulations

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Audit Bureau of Circulations

PRINTED AND RELEASED BY ABC JANUARY, 1991

AUDIT REPORT: Newspaper

THE DETROIT NEWS (Evening)
DETROIT FREE PRESS (Morning)
THE DETROIT NEWS AND DETROIT FREE PRESS (Saturday Morning & Sunday)

See Pars. 11(a) & (b)

Detroit (Wayne County), Michigan

TOTAL AVERAGE PAID CIRCULATION FOR 12 MONTHS ENDED MARCH 31, 1990:

1A. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):	Combined Daily (Mon. to Fri.) (11-27-89 to 3-31-90)	Morning (Mon. to Fri.) (11-27-89 to 3-31-90)	Evening (Mon. to Fri.) (11-27-89 to 3-31-90)	Saturday Morning (11-27-89 to 3-31-90)	Sunday (11-27-89 to 3-31-90)
Carrier Delivery by independent carriers filing lists with publisher	688,082	331,212	356,870	696,231	829,795
Carriers not filing lists with publisher	96,080	62,122	33,958	93,947	118,474
Single Copy Sales	351,597	226,486	125,111	226,624	318,374
Mail Subscriptions	1,003	627	376	949	1,705
School-Single Copy/Subscriptions, See Par. 11(d)	23,218	15,586	7,632	756	432
Employee Copies, See Par. 11(e)	4,250	2,050	2,200	2,850	1,640
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	1,164,230	638,083	526,147	1,021,357	1,270,420

1B. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY ZONES:
(See Par. 1E for description of area)

CITY ZONE	Population	Occupied Households
*1980 Census:	1,437,286	521,217
#12-31-88 Estimate:	1,278,800	496,300

Carrier Delivery by independent carriers filing lists with publisher	191,896	77,019	114,877	202,101	227,743
Single Copy Sales	86,706	54,089	32,617	47,787	57,208
Mail Subscriptions	1	1		1	1
School-Single Copy/Subscriptions, See Par. 11(d)	9,244	5,673	3,571	98	121
Employee Copies, See Par. 11(e)	3,600	1,850	1,750	2,200	1,170
TOTAL CITY ZONE	291,447	138,632	152,815	252,187	286,243

RETAIL TRADING ZONE	Population	Occupied Households
*1980 Census:	3,334,674	1,139,512
#12-31-88 Estimate:	3,401,800	1,241,500

Carrier Delivery by independent carriers filing lists with publisher	496,186	254,193	241,993	494,130	602,052
Single Copy Sales	168,061	109,625	58,436	107,936	152,288
Mail Subscriptions	37	10	27	26	45
School-Single Copy/Subscriptions, See Par. 11(d)	7,357	4,879	2,478	361	284
Employee Copies, See Par. 11(e)	590	170	420	620	440
TOTAL RETAIL TRADING ZONE	672,231	368,877	303,354	603,073	755,109
TOTAL CITY & RETAIL TRADING ZONES	963,678	507,509	456,169	855,260	1,041,352

	Population	Occupied Households
*1980 Census:	4,771,960	1,660,729
#12-31-88 Estimate:	4,680,600	1,737,800

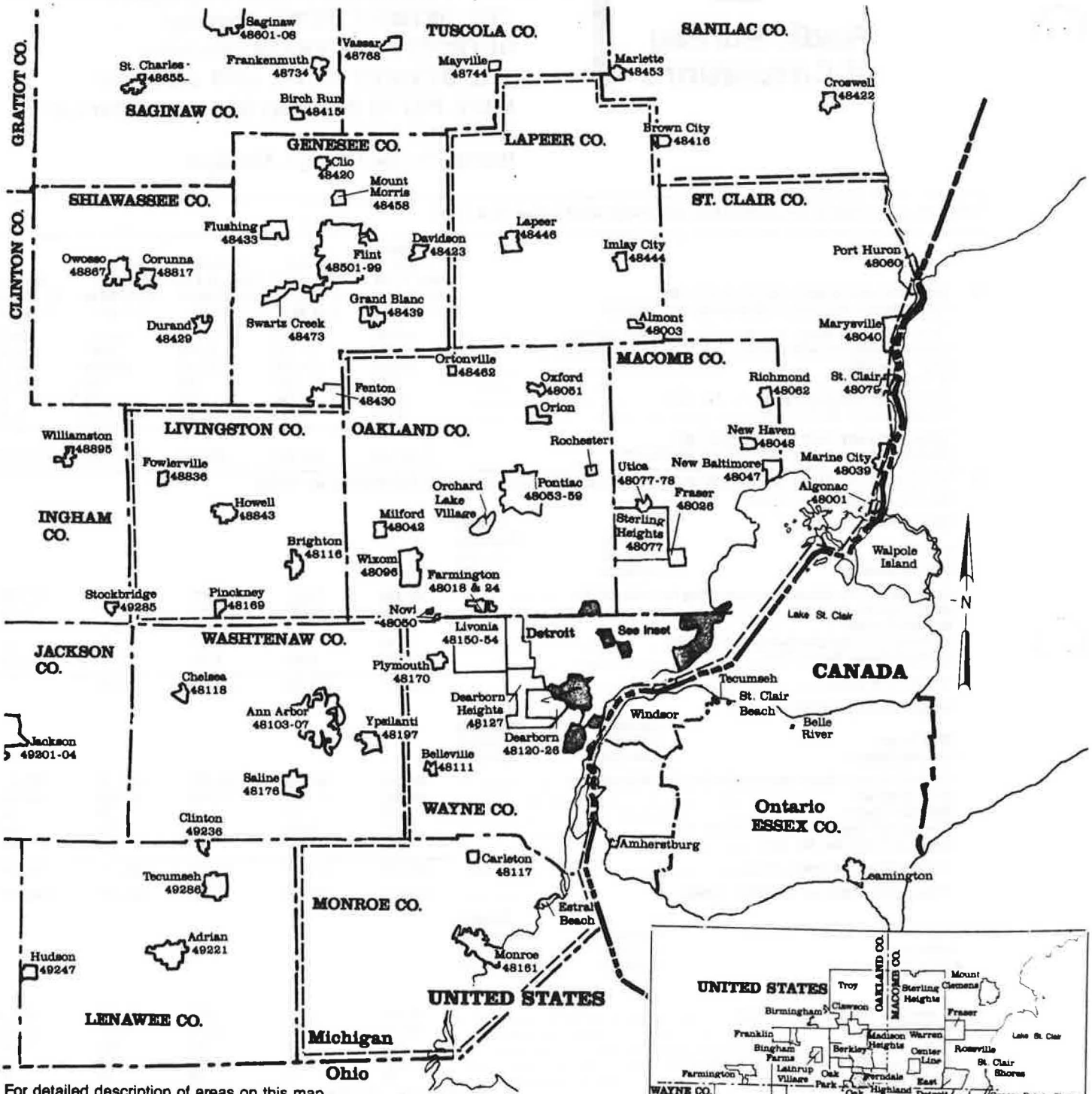
ALL OTHER					
Carriers not filing lists with publisher	96,080	62,122	33,958	93,947	118,474
Single Copy Sales	96,830	62,772	34,058	70,901	108,878
Mail Subscriptions	965	616	349	922	1,659
School-Single Copy/Subscriptions, See Par. 11(d)	6,617	5,034	1,583	297	27
Employee Copies, See Par. 11(e)	60	30	30	30	30
TOTAL ALL OTHER	200,552	130,574	69,978	166,097	229,068
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	1,164,230	638,083	526,147	1,021,357	1,270,420

1C. THIRD PARTY (BULK) SALES:					
Airlines — Available for passengers	13	13			
Businesses — Available for employees	421	395	26	277	216
Hospitals and Nursing Homes — Available for patients	768	768		31	30
Hotels, Motels — Available for guests	2,095	1,670	425	853	393
Restaurants — Available for patrons	1,383	1,348	35	1,022	594
Other	399	356	43	237	85
TOTAL AVERAGE THIRD PARTY (BULK) SALES	5,079	4,550	529	2,420	1,318

*1980 Census U.S.; 1986 Census Canada.
#S&MM Estimate. See Par. 11(a).

CITY ZONE, RETAIL TRADING ZONE AND NEWSPAPER DESIGNATED MARKET / DETROIT, MICHIGAN

Free Press



For detailed description of areas on this map, see Paragraph 1E of Audit Report.

Map not intended to show circulation coverage. See Paragraph 3 for distribution breakdown.

Scale: 1 Inch = 16 Miles

Numbers shown are ZIP Codes

MICHIGAN

LEGEND

- INTERNATIONAL BOUNDARIES
- STATE BOUNDARIES
- COUNTY BOUNDARIES
- DETROIT CORPORATE LIMITS
- BALANCE OF ABC CITY ZONE
- ABC RETAIL TRADING ZONE
- METROPOLITAN AREA
- NEWSPAPER DESIGNATED MARKET

1D. METROPOLITAN STATISTICAL AREA – COUNTY OF PUBLICATION:

Answer optional and not made.

1E. CITY AND RETAIL TRADING ZONES:

CITY ZONE is the corporate limits of Detroit, Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Shores (part), Grosse Pointe Woods, Hamtramck, Harper Woods, Highland Park, Lincoln Park, River Rouge, and the eastern part of Dearborn comprising 1980 Census Tracts 5742, 5744 to 5748 inclusive, 5754, 5755, and 5756, inclusive, in Wayne County; in Macomb County, balance of village of Grosse Pointe Shores; and in Oakland County, city of Ferndale. All in Michigan.

RETAIL TRADING ZONE includes, with exception of City Zone, the following area:
In Michigan - counties of Livingston, Macomb, Monroe, Oakland, Washtenaw and Wayne.
In Ontario, Canada - In ESSEX County, the area along the Detroit River five miles wide and eighteen miles long including city of Windsor, towns of Amherstburg and Tecumseh, and townships of Anderdon and Sandwich West.

2. AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) IN NEWSPAPER DESIGNATED MARKET:

Answer optional and not made.

AUDIT STATEMENT

The difference shown in average paid circulation in comparing this report with the Publisher's Statements for the period audited is Morning, 1,684 copies per issue deduction.

There was no adjustment made to the Evening, Saturday Morning or Sunday average paid circulation figures as shown in the Publisher's Statements for the period audited.

AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY QUARTERS for the previous three years and period covered by this report.

			Combined Daily	Morning	Evening	Saturday Morning	Sunday	News All Day	Free Press Saturday Morning	News Saturday Morning	Free Press Sunday	News Sunday
2nd	Quarter	1986		665,258				664,133	604,198	636,119	749,562	831,249
3rd	"	1986		647,695				691,901	597,580	660,045	744,973	844,493
4th	"	1986		645,643				682,991	582,037	644,989	734,015	848,746
1st	"	1987		634,179				667,353	568,148	626,179	714,670	825,952
2nd	"	1987		646,705				662,858	585,107	623,192	725,345	828,385
3rd	"	1987		651,509				704,056	596,393	643,710	740,276	845,941
4th	"	1987		654,747				689,605	592,956	634,459	730,557	843,830
1st	"	1988		640,353				679,661	573,095	620,487	713,017	826,992
2nd	"	1988		638,458				683,948	581,177	630,057	716,153	832,370
3rd	"	1988		620,024				668,690	576,645	623,201	704,535	822,958
4th	"	1988		641,020				676,991	576,848	621,131	702,276	825,152
1st	"	1989		618,300				671,205	558,195	612,535	685,610	814,776
2nd	"	1989		636,239				691,179	577,927	624,607	692,121	828,707
3rd	"	1989		616,312				689,640	572,694	635,419	682,952	836,059
10-1-89	to	11-26-89		638,776				691,611	574,813	622,072	684,527	845,853
11-27-89	to	12-31-89	1,255,566	659,923	595,643	1,093,094	1,320,599					
1st	Quarter	1990	1,135,687	631,258	504,429	993,766	1,249,513					

3. ACTUAL ONE-DAY GROSS DISTRIBUTION AND ABC-ESTIMATED PAID CIRCULATION AVERAGES BY COUNTIES:

Morning, March 23, 1990; Evening, March 23, 1990; Saturday Morning, March 24, 1990; Sunday, March 25, 1990.

Occupied Households - #12-31-88 S&MM Estimate; 1990 ABC Estimate, Canada.

The listing below gives gross distribution for one day only and is greater or less than the average paid for the period covered by this report by the following percentages:

	Morning	Evening	Combined Daily	Saturday Morning	Sunday
City Zone	3.79% greater	1.80% greater	2.74% greater	2.94% greater	7.28% greater
Retail Trading Zone	5.05% greater	0.27% less	2.46% greater	3.02% greater	3.47% greater
All Other	15.62% greater	9.90% greater	13.63% greater	7.28% greater	7.93% greater
GRAND TOTAL	6.94% greater	1.69% greater	4.57% greater	3.69% greater	5.13% greater

State County	OCCUPIED HOUSEHOLDS #12-31-88 Estimate	Morning Actual Gross Dist.	Morning Average Est. Paid Circ.*	Evening Actual Gross Dist.	Evening Average Est. Paid Circ.*	Combined Daily Actual Gross Dist.	Combined Daily Average Est. Paid Circ.*	Saturday Morning Actual Gross Dist.	Saturday Morning Average Est. Paid Circ.*	Sunday Actual Gross Dist.	Sunday Average Est. Paid Circ.*
MICHIGAN											
MACOMB	256,300	87,890	83,663	91,926	92,173	179,816	175,836	163,469	158,682	206,508	199,579
OAKLAND	397,700	141,055	134,315	90,794	91,002	231,849	225,317	204,336	198,357	257,445	248,571
WAYNE	811,600	262,571	251,568	260,751	258,320	523,322	509,888	469,075	455,514	556,986	528,009
ALCONA	4,300	457	395	410	373	867	768	885	824	1,361	1,261
ALGER	3,100	379	328			379	328	329	306	718	665
ALLEGAN	31,900	873	755	408	371	1,281	1,126	910	848	951	881
ALPENA	11,600	1,594	1,379	1,070	974	2,664	2,353	1,878	1,750	4,311	3,994
ANTRIM	6,600	890	770	177	161	1,067	931	1,237	1,153	1,722	1,596
ARENAC	5,800	466	403	249	227	715	630	533	497	877	813
BARAGA	3,000	110	95	24	22	134	117	96	89	426	395
BARRY	17,500	467	404	351	319	818	723	457	425	619	574
BAY	41,900	2,820	2,439	944	859	3,764	3,298	2,845	2,652	3,669	3,400
BENZIE	4,600	488	422	179	163	667	585	685	638	854	791
BERRIEN	63,000	1,354	1,171	811	738	2,165	1,909	1,680	1,566	2,486	2,303
BRANCH	15,100	1,109	959	541	492	1,650	1,451	1,373	1,279	2,673	2,477
CALHOUN	53,200	3,880	3,356	2,303	2,095	6,183	5,451	4,960	4,623	5,254	4,868
CASS	18,500	271	234	69	63	340	297	222	207	282	261
CHARLEVOIX	8,400	1,212	1,048	281	256	1,493	1,304	1,417	1,321	2,754	2,552
CHEBOYGAN	8,300	1,485	1,284	592	539	2,077	1,823	1,901	1,772	3,602	3,338
CHIPPEWA	10,200	1,839	1,591	338	308	2,177	1,899	1,864	1,737	3,387	3,138
CLARE	10,400	1,138	984	839	763	1,977	1,747	1,883	1,755	2,916	2,702
CLINTON	19,300	1,000	865	476	433	1,476	1,298	1,339	1,248	1,753	1,624
CRAWFORD	3,800	842	728	324	295	1,166	1,023	689	642	1,388	1,286
DELIA	13,800	976	844	107	97	1,083	941	891	831	1,847	1,711
DICKINSON	10,500	400	346	80	73	480	419	370	345	609	564
EATON	34,900	2,344	2,027	1,210	1,101	3,554	3,128	2,588	2,412	3,061	2,836
EMMET	9,400	1,672	1,446	558	508	2,230	1,954	2,009	1,873	3,932	3,643
GENESEE	161,700	17,086	14,777	9,319	8,479	26,405	23,256	16,943	15,793	17,118	15,861
GLADWIN	8,900	884	765	441	401	1,325	1,166	1,221	1,138	1,780	1,649
GOGEBIC	7,400	146	126	2	2	148	128	148	138	301	279
GRAND TRAVERSE	23,300	2,348	2,031	1,298	1,181	3,646	3,212	2,553	2,380	4,342	4,023
GRATIOT	14,000	1,471	1,272	393	358	1,864	1,630	1,635	1,524	2,494	2,311

State County	OCCUPIED HOUSEHOLDS # 12-31-88 Estimate	Morning Actual Gross Dist.	Morning Average Est. Paid Circ.*	Evening Actual Gross Dist.	Evening Average Est. Paid Circ.*	Combined Daily Actual Gross Dist.	Combined Daily Average Est. Paid Circ.*	Saturday Morning Actual Gross Dist.	Saturday Morning Average Est. Paid Circ.*	Sunday Actual Gross Dist.	Sunday Average Est. Paid Circ.*
MICHIGAN (Cont'd)											
HILLSDALE	15,400	1,151	995	735	669	1,886	1,664	1,683	1,569	3,435	3,183
HOUGHTON	13,500	487	421	149	136	636	557	449	419	1,794	1,662
HURON	13,600	1,313	1,136	1,008	917	2,321	2,053	2,316	2,159	4,139	3,835
INGHAM	103,200	11,153	9,646	7,677	6,985	18,830	16,631	11,025	10,277	12,554	11,632
IONIA	17,600	1,145	990	670	610	1,815	1,600	1,403	1,308	1,581	1,465
IOSCO	11,800	1,539	1,331	895	814	2,434	2,145	2,407	2,244	3,578	3,315
IRON	5,700	173	150			173	150	153	143	291	270
ISABELLA	17,600	2,509	2,170	1,412	1,285	3,921	3,455	3,048	2,841	5,187	4,806
JACKSON	52,800	3,490	3,018	2,848	2,591	6,338	5,609	5,658	5,274	5,651	5,236
KALAMAZOO	83,500	4,221	3,651	3,234	2,943	7,455	6,594	5,665	5,280	5,292	4,903
KALKASKA	4,900	844	730	254	231	1,098	961	473	441	529	490
KENT	182,500	9,755	8,437	4,511	4,105	14,266	12,542	9,171	8,548	5,915	5,481
LAKE	3,800	196	170	84	76	280	246	214	199	356	330
LAPEER	23,900	3,139	2,715	1,497	1,362	4,636	4,077	3,996	3,725	6,542	6,062
LEELANAU	6,200	370	320	107	97	477	417	448	418	843	781
LENAWEE	32,000	3,746	3,240	1,273	1,158	5,019	4,398	4,158	3,876	7,733	7,165
LIVINGSTON	37,300	5,272	5,018	6,239	6,256	11,511	11,274	10,557	10,247	17,675	17,082
LUCE	2,200	553	478	83	76	636	554	508	474	1,037	961
MACKINAC	3,900	1,125	973	138	126	1,263	1,099	1,066	994	2,139	1,982
MANISTEE	9,300	1,162	1,005	383	348	1,545	1,353	1,427	1,330	2,166	2,007
MARQUETTE	25,400	1,504	1,301	94	86	1,598	1,387	1,366	1,273	2,522	2,337
MASON	10,300	933	807	164	149	1,097	956	867	808	1,348	1,249
MECOSTA	12,600	1,435	1,241	868	790	2,303	2,031	2,156	2,010	2,479	2,297
MENOMINEE	9,700	257	222			257	222	240	224	413	383
MIDLAND	27,100	2,772	2,397	807	734	3,579	3,131	2,948	2,748	5,402	5,005
MISSAUKEE	3,900	330	285	134	122	464	407	696	649	880	815
MONROE	46,900	4,536	4,318	2,539	2,546	7,075	6,864	6,429	6,241	11,296	10,917
MONTCALM	18,800	1,499	1,296	562	511	2,061	1,807	1,501	1,399	1,944	1,801
MONTMORENCY	3,200	731	632	451	410	1,182	1,042	1,294	1,206	1,780	1,649
MUSKEGON	58,300	2,423	2,096	1,149	1,045	3,572	3,141	2,598	2,422	2,428	2,250
NEWAYGO	14,700	370	320	139	126	509	446	374	349	383	355
OCEANA	8,400	322	278	117	106	439	384	325	303	418	387

OGEMAW	7,000	754	652	537	489	1,291	1,141	1,108	1,033	1,727	1,600
ONTONAGON	3,500	202	175	1	1	203	176	203	189	276	256
OSCEOLA	7,600	775	670	242	220	1,017	890	881	821	1,500	1,390
OSCODA	3,000	367	317	236	215	603	532	522	487	797	739
OTSEGO	6,000	1,106	957	632	575	1,738	1,532	2,036	1,898	3,017	2,795
OTTAWA	60,200	2,927	2,532	874	795	3,801	3,327	3,819	3,560	2,662	2,467
PRESQUE ISLE	5,400	1,079	933	312	284	1,391	1,217	1,317	1,228	2,793	2,588
ROSCOMMON	8,500	1,741	1,506	1,091	993	2,832	2,499	2,914	2,716	3,633	3,366
SAGINAW	77,000	6,308	5,456	2,588	2,355	8,896	7,811	6,198	5,777	6,579	6,096
ST. CLAIR	52,000	6,259	5,413	3,785	3,444	10,044	8,857	9,717	9,057	17,127	15,869
ST. JOSEPH	22,500	1,230	1,064	487	443	1,717	1,507	1,395	1,300	2,298	2,129
SANILAC	15,400	1,497	1,295	1,235	1,124	2,732	2,419	2,501	2,331	4,401	4,078
SCHOOLCRAFT	2,900	497	430	103	94	600	524	503	469	984	912
SHIAWASSEE	24,500	1,899	1,642	655	596	2,554	2,238	2,242	2,090	3,828	3,547
TUSCOLA	19,100	1,328	1,149	1,196	1,088	2,524	2,237	2,151	2,005	3,525	3,266
VAN BUREN	26,000	842	728	404	368	1,246	1,096	705	657	1,483	1,374
WASHTENAW	101,300	20,306	19,329	2,819	2,827	23,125	22,156	17,671	17,154	22,930	22,161
WEXFORD	10,500	1,142	988	493	448	1,635	1,436	1,228	1,145	2,540	2,353
TOTAL IN MICHIGAN		662,231	619,813	525,176	516,915	1,187,407	1,136,728	1,036,151	999,634	1,300,256	1,237,034
CANADA**											
ONTARIO											
ESSEX	122,900	10,730	10,130	3,802	3,741	14,532	13,871	10,975	10,591	18,807	18,047
KENT	39,600	355	307	140	127	495	434	475	443	1,705	1,579
LAMBTON	48,800	310	268	267	243	577	511	440	410	1,345	1,246
MIDDLESEX	134,000	316	273	100	91	416	364	311	290	931	863
Miscellaneous Census Divisions		29	25	1	1	30	26	30	28	128	119
TOTAL IN ONTARIO, CANADA		11,740	11,003	4,310	4,203	16,050	15,206	12,231	11,762	22,916	21,854

**1989 ABC Estimate.

DISTRICT OF COLUMBIA											
WASHINGTON	255,200	55	48	18	16	73	64	73	68	70	64

State County	OCCUPIED HOUSEHOLDS #12-31-88 Estimate	Morning Actual Gross Dist.	Morning Average Est. Paid Circ.*	Evening Actual Gross Dist.	Evening Average Est. Paid Circ.*	Combined Daily Actual Gross Dist.	Combined Daily Average Est. Paid Circ.*	Saturday Morning Actual Gross Dist.	Saturday Morning Average Est. Paid Circ.*	Sunday Actual Gross Dist.	Sunday Average Est. Paid Circ.*
ILLINOIS											
COOK	1,967,800	25	22	20	18	45	40	45	42	67	62
Miscellaneous Counties		13	11	17	16	30	27	30	28	72	67
TOTAL IN ILLINOIS		38	33	37	34	75	67	75	70	139	129
INDIANA											
ELKHART	55,000	101	87			101	87	99	92	99	92
ST. JOSEPH	90,600	106	92	44	40	150	132	119	111	124	115
STEUBEN	10,600	140	121	155	141	295	262	240	224	400	371
TOTAL IN INDIANA		347	300	199	181	546	481	458	427	623	578
NEW YORK STATE											
NEW YORK	770,900	46	40	20	18	66	58	66	61	48	45
Miscellaneous Counties		22	19	10	9	32	28	32	30	48	44
TOTAL IN NEW YORK STATE		68	59	30	27	98	86	98	91	96	89
OHIO											
ALLEN	41,600	137	119			137	119	152	142	192	178
DEFIANCE	14,500	65	56			65	56	109	102	188	175
ERIE	29,400	250	216			250	216	350	326	501	464
FULTON	14,500	143	124	150	136	293	260	243	226	290	268
HANCOCK	25,200	2	2	1	1	3	3	185	172	349	323
HENRY	10,600	21	18			21	18	76	71	101	94
LUCAS	180,500	5,462	4,724	4,799	4,367	10,261	9,091	6,534	6,090	6,640	6,152

WILLIAMS	14,400	189	163	81	74	270	237	242	226	362	335
WOOD	39,000	1,176	1,017			1,176	1,017	1,422	1,325	1,552	1,438
Miscellaneous Counties		60	52	20	18	80	70	91	85	165	152
TOTAL IN OHIO		7,505	6,491	5,051	4,596	12,556	11,087	9,404	8,765	10,340	9,579
All Other		387	336	192	175	579	511	579	540	1,179	1,093
GRAND TOTAL		682,371	638,083	535,013	526,147	1,217,384	1,164,230	1,059,069	1,021,357	1,335,619	1,270,420

#S&MM Estimate. County population and occupied household estimates appearing in ABC reports are obtained from Sales and Marketing Management's 'Survey of Buying Power'. Estimates for ABC defined newspaper markets and areas below the county level are projections based upon 'Survey of Buying Power' estimates.

*Arrived at by relating actual gross distribution figures to average paid circulation for the period covered by this report.

State County Town	OCCUPIED HOUSEHOLDS 1980 Census	#12-31-88 Estimate	Morning	Evening	Combined Daily	Saturday Morning	Sunday
OHIO (Cont'd)							
MISCELLANEOUS COUNTIES							
Lima (Allen Co)			137		137	152	192
Napoleon (Henry Co)			21		21	76	101
Ottawa (Putnam Co)			21		21	37	39
Sandusky (Erie Co)			250		250	350	501
UNDER 25 COPIES			39	20	59	54	126
TOTAL MISCELLANEOUS COUNTIES			535	21	556	963	1,496
		(Adjusted Figure	463	19	482	898	1,386)
TOTAL IN OHIO			7,505	5,051	12,556	9,404	10,340
		(Adjusted Figure	6,491	4,596	11,087	8,765	9,579)
ALL OTHER STATES							
MISCELLANEOUS COUNTIES							
UNDER 25 COPIES			380	187	567	567	1,140
		(Adjusted Figure	329	170	499	528	1,056)
MILITARY SERVICE - DESTINATION UNKNOWN			4		4	4	33
		(Adjusted Figure	4		4	4	31)
CANADA (EXCLUSIVE OF ONTARIO)							
MISCELLANEOUS CENSUS DIVISIONS							
UNDER 25 COPIES			3	1	4	4	2
		(Adjusted Figure	3	1	4	4	2)
FOREIGN COUNTRIES							
UNDER 25 COPIES				4	4	4	4
		(Adjusted Figure		4	4	4	4)

SUMMARY

TOTAL MICHIGAN	662,231	525,176	1,187,407	1,036,151	1,300,256
" ONTARIO, CANADA	11,740	4,310	16,050	12,231	22,916
" DISTRICT OF COLUMBIA	55	18	73	73	70
" ILLINOIS	38	37	75	75	139
" INDIANA	347	199	546	458	623
" NEW YORK STATE	68	30	98	98	96
" OHIO	7,505	5,051	12,556	9,404	10,340
" ALL OTHER STATES	380	187	567	567	1,140
" MILITARY SERVICE - DESTINATION UNKNOWN	4		4	4	33
" CANADA (EXCLUSIVE OF ONTARIO)	3	1	4	4	2
" FOREIGN COUNTRIES		4	4	4	4
GRAND TOTAL	682,371	535,013	1,217,384	1,059,069	1,335,619
(Total Adjusted Figure	638,083	526,147	1,164,230	1,021,357	1,270,420)

4. NET PRESS RUN AND ADJUSTED PAID CIRCULATION BY EDITIONS:

Press Time	Date Printed	Issue Date	Net Press Run	Sales Release See Note	Total Paid	Adjusted Paid Circulation* City Zone	Retail Trading Zone	All Other
Morning Issue for Tuesday, March 6, 1990.								
10:04 PM	3-5	3-6	90,378	A-C	79,641	796		78,845
10:56 PM	3-5	3-6	88,201	C	77,723		35,753	41,970
12:05 AM	3-6	3-6	545,526	A-C	480,719	163,444	293,239	24,036
Total			724,105		638,083	164,240	328,992	144,851
Evening Issue for Tuesday, March 6, 1990.								
5:30 AM	3-6	3-6	262,068	A-C	246,436	61,116	115,825	69,495
8:16 AM	3-6	3-6	107,000	A-C	100,618	27,670	72,948	
10:08 AM	3-6	3-6	81,422	A-C	76,565	23,123	53,442	
11:00 AM	3-6	3-6	109,031	A-C	102,528	45,112	57,416	
Total			559,521		526,147	157,021	299,631	69,495
Saturday Morning Issue for March 3, 1990.								
10:00 PM	3-2	3-3	308,643	A-C	295,547	2,956	124,129	168,462
12:06 AM	3-3	3-3	476,944	A-C	456,707	123,311	333,396	
2:27 AM	3-3	3-3	281,026	A-C	269,103	142,625	126,478	
Total			1,066,613		1,021,357	268,892	584,003	168,462
Sunday Issue for March 4, 1990.								
8:12 PM	3-3	3-4	307,886	A-C	289,151	9,832	54,360	224,959
11:06 PM	3-3	3-4	499,896	A-C	469,478	79,811	389,667	
2:27 AM	3-4	3-4	544,951	A-C	511,791	281,485	230,306	
Total			1,352,733		1,270,420	371,128	674,333	224,959

For publisher's policy in respect to advertising carried, See Par. 11(f).
NOTE: A—Immediate sales release in City. C—Sales release on arrival at destination in Retail Trading Zone and All Other.

*The adjusted paid circulation figures have been calculated by projecting the net press run information against the averages in Pars. 1A & 1B.

5. AVERAGE UNPAID DISTRIBUTION:

	Combined Daily (Mon. to Fri.) (11-27-89 to 3-31-90)	Morning (Mon. to Fri.) (11-27-89 to 3-31-90)	Evening (Mon. to Fri.) (11-27-89 to 3-31-90)	Saturday Morning (11-27-89 to 3-31-90)	Sunday (11-27-89 to 3-31-90)
Arrears					
Advertisers, Agencies	1,742	1,648	94	1,213	1,066
Complimentary, Sample, Service	5,300	1,629	3,671	3,975	6,580
Total	7,042	3,277	3,765	5,188	7,646

6. WERE RETURNS ACCEPTED OR ALLOWANCES MADE FOR UNDELIVERED, LEFTOVER AND UNSOLD COPIES?

Fully returnable.

As only net sales were shown on the circulation records, the percentage of returns to the gross figure was not ascertainable.

ANALYSIS OF CARRIER AND MAIL SUBSCRIPTION SALES (NEW AND RENEWAL)
For Period Covered by this Report

7. PREMIUM, COMBINATION, SPECIAL OFFERS, CLUBS AND INSURANCE:
None of record, except as indicated:

—		Term Ordered 1 Mo.	3 Mos.	6 Mos.	1 Yr.	Misc. Periods
(e) Special reduced prices, See Par. 10(b).....	M					1,490
	E					21,618
	S					26,961
	M					15.586*
	E					7,632*
	Sat M					756*
	S					432*

*This figure does not represent the total number of subscriptions received, but represents the average number of copies served during this report period on School-Single Copy/Subscriptions sold at the price(s) shown in Par. 10(b).

8. (a) CONTESTS INVOLVING SUBSCRIPTION CONTRACT: None of record.

(b) CONTESTS NOT INVOLVING SUBSCRIPTION CONTRACT: None of record.

9. ARREARS AS AT FEBRUARY 25, 1990:

M, E, Sat M & S	CITY ZONE Carriers	CITY ZONE Single Copy Accounts	CITY ZONE Mail	RETAIL TRADING ZONE Carriers	RETAIL TRADING ZONE Single Copy Accounts	RETAIL TRADING ZONE Mail	ALL OTHER Carriers	ALL OTHER Single Copy Accounts	ALL OTHER Mail
Arrears under 3 months	8.05%	0.42%		0.98%			16.72%	8.41%	

10. PRICES:

(a) Basic Prices:

	By Mail 52 Wks.	26 Wks.	13 Wks.	4 Wks.	By Carrier 52 Wks.	26 Wks.	13 Wks.	4 Wks.	1 Wk.
CITY ZONE:									
M & S	$362.80	$181.40	$90.70	$27.90					$2.25
E & S	362.80	181.40	90.70	27.90					2.00
M only	252.20	126.10	63.05	19.40					1.00
E only	252.20	126.10	63.05	19.40					75¢
S only.....	110.60	55.30	27.85	8.50					1.00

RETAIL TRADING ZONE: By Mail and Carrier, same as City Zone.

ALL OTHER: By Mail and Carrier, same as City Zone.

CITY ZONE, RETAIL TRADING ZONE AND ALL OTHER:

	By Motor Route 52 Wks.	26 Wks.	13 Wks.	4 Wks.	1 Wk.	Single Copy
Same as by Carrier in City Zone. (a-b-c)						
M only						25¢
E only						25¢
S only						$1.00

(a) City Zone; (b) Retail Trading Zone; (c) All Other.

10. PRICES: (Continued)

(b) Special reduced prices: To Evening and Sunday subscribers, 13 weeks, 25¢, 35¢, 50¢, 65¢ or 95¢ discount with coupon. To Evening only subscribers, 13 weeks, 25¢ or 35¢ discount with coupon. To Evening only subscribers, 2 weeks $1.00, $2.00 or $2.50 discount with coupon. To Morning and Sunday subscribers, 13 weeks, 25¢, 35¢, 50¢, 65¢, 70¢, 90¢ or 95¢ discount with coupon. To Morning only subscribers, 13 weeks, 25¢ or 50¢ discount with coupon. To Morning only subscribers, 2 weeks, $1.80, $1.95, $2.25 or $2.50 discount with coupon. To accredited schools for classroom study, 50% of basic prices.

11. EXPLANATORY:

Regular publishing days on which no paper was issued:

Morning (Mon. to Fri.): None.
Evening (Mon. to Fri.): None.
Saturday Morning: None.
Sunday: None.

In accordance with Bureau Rule C 1.7, the following issue(s) has been eliminated from the averages reported in Pars. 1 and 5. The net paid circulation for the issue(s) is as follows:

	Morning (Mon. to Fri.)	Evening (Mon. to Fri.)
December 25, 1989 Holiday	477,867	428,315
December 26, 1989 Holiday	585,259	520,127
December 27, 1989 Holiday	583,584	481,573
December 28, 1989 Holiday	577,987	510,449
December 29, 1989 Holiday	573,224	508,570
January 1, 1990 Holiday	531,235	457,918

11. EXPLANATORY: (Continued)

(a) Effective November 27, 1989 The Detroit News and Detroit Free Press entered into joint agreement. Paragraph 1A reports average for the period November 27, 1989 to March 31, 1990. Reported below are the averages for the period April 1 to November 26, 1989.

1A. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS):	Free Press Morning (Mon. to Fri.)	Free Press Saturday Morning	Free Press Sunday	News All Day (Mon. to Fri.)	News Saturday Morning	News Sunday
Carrier Delivery by independent carriers filing lists with publisher	341,967	352,239	386,051	423,368	435,450	539,140
Carriers not filing lists with publisher	68,894	67,334	97,018			
Single Copy Sales	206,652	152,530	200,600	258,701	190,190	293,818
Mail Subscriptions	656	659	946	429	414	1,029
School-Single Copy/Subscriptions	9,225	460	248	4,701	131	169
Employee Copies	1,900	1,900	1,900	2,926	1,634	1,150
Group (Subscriptions by Businesses for Designated Employees)				573	533	541
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	629,294	575,122	686,763	690,698	628,352	835,847

1B. TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS) BY ZONES:
(See Par. 1E for description of area)

CITY ZONE	Population	Occupied Households
*1980 Census:	1,437,286	521,217
#12-31-88 Estimate:	1,278,800	496,300

Carrier Delivery by independent carriers filing lists with publisher	83,943	87,877	92,614	135,201	141,322	159,322
Single Copy Sales	54,508	34,929	42,382	44,535	23,602	42,784
Mail Subscriptions	1	1	1			
School-Single Copy/Subscriptions	3,157	60	70	1,528	26	41
Employee Copies	1,900	1,900	1,900	1,206	400	291
Group (Subscriptions by Businesses for Designated Employees)				16	13	16
TOTAL CITY ZONE	143,509	124,767	136,967	182,486	165,363	202,454

RETAIL TRADING ZONE	Population	Occupied Households
*1980 Census:	3,334,674	1,139,512
#12-31-88 Estimate:	3,401,800	1,241,500

Carrier Delivery by independent carriers filing lists with publisher	258,024	264,362	293,437	288,167	294,128	379,818
Single Copy Sales	98,383	71,407	90,572	92,891	66,887	115,889
Mail Subscriptions	10	10	10	27	26	35
School-Single Copy/Subscriptions	3,061	182	128	1,709	101	115
Employee Copies				1,610	1,166	835
Group (Subscriptions by Businesses for Designated Employees)				192	172	192
TOTAL RETAIL TRADING ZONE	359,478	335,961	384,147	384,596	362,480	496,884
TOTAL CITY & RETAIL TRADING ZONES	502,987	460,728	521,114	567,082	527,843	699,338

	Population	Occupied Households
*1980 Census:	4,771,960	1,660,729
#12-31-88 Estimate:	4,680,600	1,737,800

ALL OTHER						
Carrier Delivery by independent carriers filing lists with publisher	68,894	67,334	97,018			
Single Copy Sales	53,761	46,194	67,646	121,275	99,701	135,145
Mail Subscriptions	645	648	935	401	388	994
School-Single Copy/Subscriptions	3,007	218	50	1,465	4	13
Employee Copies				110	68	24
Group (Subscriptions by Businesses for Designated Employees)				365	348	333
TOTAL ALL OTHER	126,307	114,394	165,649	123,616	100,509	136,509
TOTAL AVERAGE PAID CIRCULATION (BY INDIVIDUALS AND FOR DESIGNATED RECIPIENTS)	629,294	575,122	686,763	690,698	628,352	835,847

(b) Effective November 27, 1989 the publishing plan of The Detroit News changed from All Day (Mon. to Fri.), Saturday Morning and Sunday to Evening (Mon. to Fri.), Saturday Morning and Sunday.

(c) County population and occupied household estimates appearing in ABC reports are obtained from Sales & Marketing Management's 'Survey of Buying Power'. Estimates for ABC defined newspaper markets and areas below the county level are porjections based upon 'Survey of Buying Power' estimates.

11. EXPLANATORY: (Continued)

Par. 1B:

(d) School-Single Copy/Subscriptions, averaging 5,673 copies per issue Morning, 3,571 copies per issue Evening, 98 copies per issue Saturday Morning, 121 copies per issue Sunday in the City Zone; 4,879 copies per issue Morning, 2,478 copies per issue Evening, 361 copies per issue Saturday Morning, 284 copies per issue Sunday in the Retail Trading Zone and 5,034 copies per issue Morning, 1,583 copies per issue Morning, 297 copies per issue Saturday Morning, 27 copies per issue Sunday in All Other, represent copies served to schools for classroom use at price(s) shown in Par. 10(b), payment made from school funds.

(e) Employee Copies, averaging 1,850 copies per issue Morning, 1,750 copies per issue Evening, 2,200 copies per issue Saturday Morning, 1,170 copies per issue Sunday in the City Zone; 170 copies per issue Morning, 420 copies per issue Evening, 620 copies per issue Saturday Morning, 440 copies per issue Sunday in the Retail Trading Zone and 30 copies per issue Morning, 30 copies per issue Morning, 30 copies per issue Saturday Morning, 30 copies per issue Sunday in All Other, represent copies served to employees of the newspaper.

(f) Par. 4:

National advertising is carried in all editions. Retail and National display advertising is sold on a zoned basis.

To Members of the Audit Bureau of Circulations:

We have examined the circulation records and other data presented by this publication for the period covered by this report. Our examinations were made in accordance with the Bureau's Bylaws and Rules, and included such tests and other audit procedures as we considered necessary under the circumstances.

In our opinion, the total average paid circulation for the period shown is fairly stated in this report, and the other data contained in this report are fairly stated in all respects material to average paid circulation.

Audit Bureau of Circulations

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EXHIBIT 23

CBS

CBS Inc., 51 West 52 Street
New York, New York 10019
(212) 975-4321

Re: MTC Regulation on Television and Radio Broadcasting

Dear Alan: July 1, 1991

Your presentation was excellent in the "debate" with Art Rosen and Bob Levering at the meeting of the ABA, Section of Taxation, Committee on State and Local Taxes in Washington, D.C., May 17, 1991. You also commented there on the MTC Regulations on Publishing and Broadcasting.

This letter is to review four issues arising out of comparison of the MTC Proposed Publishing Regulation with the MTC Broadcasting Regulation. They are:

1. First Amendment.
2. Interstate Commerce.
3. Effect on Constitutional issues by overturning of National Bellas Hess.

First Amendment

As a part of the ABA Report on this meeting a copy of your letter of April 29, 1991 to Chris Baldwin, Gannet, on the proposed MTC Print Media (Publisher) Regulation was enclosed. Therein your state - "Since we now have the direction of the United States Supreme Court in the case of Medlock v Pledger, different conclusions may now be more easily made with regard to the similarity of apportionment treatment that is required with respect to broadcasting and publishing industries." Accordingly the MTC has proposed a Print Media Regulation that follows the required traditional principles of apportionment and along with it jurisdiction to tax and makes even more apparent the unconstitutional discrimination against broadcasters in their Regulation.

Medlock v Pledger does not permit the MTC to discriminate against broadcasters compared to publishers or any other industry. Instead, the U.S. Supreme Court would still recognize under the First Amendment unconstitutional tax discrimination inherent in the Broadcasting Regulation, compared to the Publishing Regulation. This recognition requires that the Broadcasting Regulation be amended to be in line with the Publishing Regulation.

An analysis of Medlock v Pledger results in the following conclusions:

1. The grant of tax exemptions to some media protected by the First Amendment, while all other media remain subject to a broad-based sales tax, also taxing many other services, does not violate this Amendment.

2. Singling out one media for different (more burdensome and

differential) tax treatment than any other media and other taxpayers in general does violate this Amendment.

Thus, a tax on newspaper print and ink, not imposed on any other publisher, was unconstitutional under Minneapolis Star & Tribune Co. v Minnesota Commissioner of Revenue, 460 U.S. 575 (1983) because "the tax singled out the press for special treatment." This fundamental difference is made clear by contrasting the two different situations discussed in Medlock.

A brief comparison of the two MTC Regulations (Publishing and Broadcasting), also enclosed, reveals that:

1. The Publishing Regulation respects the traditional concepts of jurisdiction to tax as reflected in the apportionment factors. These concepts are that jurisdiction to tax is derived only from the taxpayer's employees and/or property regularly engaged in doing business in or otherwise deriving income from sources in the State.

2. The Broadcasting Regulation adopts the new economic benefit theory of jurisdiction by audience coverage to tax through the sales apportionment factor. Thereby, not only do out-of-State broadcasters and networks, but also all others deriving revenue by the same audience coverage, become taxable. The additional taxpayers are program suppliers and advertising agencies through their commercials when also aired.

3. To increase the impact of the sales apportionment factor the Broadcasting Regulation also treats in-State independent contractors, including corporations, as employees for the payroll apportionment factor and eliminates from the numerator and denominator of the property factor all broadcast programming property. These changes in apportionment are not proposed in the Publishing Regulation.

To eliminate all of this unconstitutional discrimination under the First Amendment against broadcasters, as confirmed by Minneapolis Star & Tribune and Medlock, the MTC must conform the Broadcasting Regulation to the Publishers Regulation.

Interstate Commerce

Another Constitutional reason requires this conformity. The reason is based on Trinova Corporation v Michigan Department of Treasury, 111 S.Ct. 818 (1991). Trinova is not just another case where the taxpayer failed to establish that UDITPA apportionment reached an unconstitutional result. In addition the decision held that the economic benefit theory of tax jurisdiction and allocation or

apportionment would be unconstitutional under the Second Prong (external consistency part of fair apportionment) and the Fourth Prong (tax fairly related to taxpayer's presence and activity in taxing state) of Complete Auto Transit. The first holding of Trinova is found in the following quotation:

> "We reject at the outset, however, arguments by Michigan and some amici curiae that the Michigan SBT can be analyzed as a tax upon "business activity [sales made into state]." Brief for Council of State Governments et al, as Amici Curiae 11. The statute does not say that the SBT is a tax upon business activity, but rather that it is a "tax of 2.35% upon the adjusted tax base of every person with business activity in this state which is allocated or apportioned to this state." Mich. Comp. Laws § 208.31(1) (1979) (emphasis added). While Michigan business activity is a threshold requirement for the tax, and value added is its measure, labeling the SBT a tax on "business activity" does not permit us to forgo examination of the actual tax base and apportionment provisions. "A tax on sleeping measured by the number of pairs of shoes you have in your closet is a tax on shoes." Jenkins, State Taxation of Interstate Commerce, 27 Tenn. L. Rev. 239, 242 (1960)."

The citation to Jenkins is from that part reported by the Tennessee Law Review of a panel presented by Prof. Elvin E. Overton, now Professor Emeritus, University of Tennessee College of Law. The quotation now adopted as law by the U.S. Supreme Court in Trinova, is immediately preceded by the statement that "a tax is as much a tax on the measure as it is a tax on the so-called subject."

As applied to the Michigan Single Business Tax, the Court held that the Tax is:

1. Not on business activity - sales into the State, measured by the tax base, but
2, On the tax base measured by the business activity.

As applied to the economic benefit theory a tax would be:

1. Not on the economic benefit that a taxpayer derives from a state, measured by sales into the state, but
2. On sales (or other base), measured by the economic benefit.

The measure of business activity is the apportion or allocation formula applied to the tax base. The formula must meet the Four Prong Test of Complete Auto Transit. They include the external consistency requirement of fair apportionment and relationship to the taxpayer's

in-state presence and activities in the State. External consistency requires that "the factor or factors ... must actually reflect a reasonable sense of how income is generated." This requirement is met when "the income attributed to the state is [not] in fact 'out of all appropriate proportions to the business transacted ... in that State.'" (underscoring added) Thus, income is generated by business activity and business activity is conducted by the taxpayer's employees and/or property in the taxing state.

Trinova upheld inclusion of the sales factor to apportion the Michigan tax base, not because sales alone constituted business activity, but because sales also measured business activity already there. Moorman Mfg. Co. v Bair, 437 U.S. 267 (1978). This conclusion is made clear in Trinova. Thus, "its sales offices [in Michigan] might have added significant value ..." and "Trinova's 14 Michigan sales personnel [were not] ... the source of all the value added that can be apportioned fairly to Michigan." In other words, the sales factor was approved, not as business activity, but as a measure of the Taxpayer's in-State business activity in making the sales there.

UDITPA codifies the conclusion that sales alone are not business activity. Thus, sales of tangible personal property delivered to purchasers in one state are recaptured (thrown-back) to the state of origin of the sales only when there is no taxable business activity already in the state of delivery to be measured. Instead, by increasing the business activity in the state of origin of the sale such sales measure business activity there. A taxpayer's business activity (property and/or employees) remains in one state. A change in UDITPA cannot move it from one state to another. Sales alone are not business activity. Therefore, as only a measure of business activity they can be moved from one state to another.

When the broadcaster-taxpayer has no business activity in the taxing state, the conclusion follows from Trinova that the sales factor of broadcast audience coverage alone, treated as business activity, is unconstitutional under the tests of external consistency and the relationship to services provided by the state to the out-of-state broadcaster's presence and activity there. Like delivery of tangible personal property sold to purchasers in the taxing state, broadcast audience coverage alone is not business activity. Like such sales, coverage is merely to measure business activity already conducted there by the traditional means (taxpayer's employees and/or property).

Furthermore, an electronic signal that a broadcaster has transmitted into Michigan or any other state is not fairly related to any services provided by that state to such signal. In-state broadcast coverage alone fails both tests of Complete Auto Transit. The MTC Publishing Regulation complies with these tests. Again, unconstitutional

discrimination under the Commerce Clause against broadcasters compared to publishers is manifest.

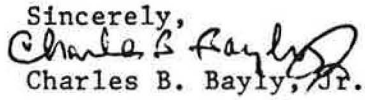
Effect of Constitutional Change by Overturning National Bellas Hess

A statutory change in apportionment to audience coverage without any in-state business activity to be measured thereby would still be subject to the two Constitutional objections, discussed herein. They would not be removed, even if the U.S. Supreme Court overturns National Bellas Hess.

The reason is that Constitutionally tax collection is different from tax payment. By overturning National Bellas Hess the Supreme Court would have established the First Prong of Complete Auto Transit (jurisdiction to require tax collection). Goldberg v Sweet, 488 U.S. 252 (1989) has already established the remaining three Prongs by finding compliance with respect to the real taxpayer (the one from whom the tax is collected), who is already in the taxing state. When the real taxpayer is outside of the taxing state, compliance with Complete Auto Transit must be found with respect to that taxpayer. These differences should also be considered in the two proposed Model Telecommunications Tax Acts (tax collected from users and tax paid by sellers).

As tax advisor to its member states the MTC has an obligation to present these Statutory and Constitutional objections at the coming Annual Meeting.

Sincerely,



Charles B. Bayly, Jr.
Senior Tax Counsel
Direct dial (212) 975-3226

Alan H. Friedman
General Counsel
Multistate Tax Commission
386 University Avenue
Los Altos, California 94022

cc: Alvan L. Bobrow

ENCLOSURES

MTC REGULATIONS ON PUBLISHING AND BROADCASTING COMPARED

	Publishing	Broadcasting
Taxpayers Covered	Newpaper Magazines, and other printed materials.	Television & radio networks & cable-television.
Property Factor	No change from UDITPA, except included in numerator are outer-jurisdictional property (satellite) and mobile equipment based on in-state use.	Films (videotaped) programs and outer-jurisdictional property excluded. Mobile equipment included based on in-state use.
Payroll Factor	No change from UDITPA.	Payments to independent contractors, including corporations as employee compensation to represent extent of in-state business activity.
Sales Factor	Sales from in-state sources include the newspaper & magazines delivered to purchasers in-state and business activities of advertising based on in-state circulation.	Sales from in-state sources, including advertising revenue from broadcast programming in release, not only by, but also to stations or networks based on their in-state audience.

MTC REGULATIONS ON NEXUS COMPARED

Nexus	Publishing	Broadcasting
General Definition[1]	Apportionment when income is from sources both in and out-of-state.	Same[2]
Nexus thru Sales Factor	Sales are from in-state sources limited to sales of printed materials subject to jurisdictional restriction of Federal Public Law 86-272 and advertising only when derived from in-state business activities.[3]	Sales are from in-state sources (audience coverage) expanded also to include gross re-receipts from program and agency revenue (commercials) broadcast over (in release to) stations or networks with state audience coverage.[4]

---

1 "Sources" are hereafter more specifically defined.

2 Separate statutory jurisdictional requirements (business activity by employees and/or property) are not necessary. Instead, what income the apportionment (here sales factor) attributes to the date, that state has jurisdiction to tax (jurisdiction through apportionment).

3 For publishing jurisdiction must be separately established - business activity in excess of solicitation under Federal P.L. 86-272 for sale of magazines and newspapers and business activities as defined in UDITPA regulations for advertising services.

4 For broadcasters "sources" are expanded to include, not only out-of-state broadcasters with such in-state coverage, but also suppliers of programs and commercials (advertising agencies) also deriving income from such coverage.

EXHIBIT 24

STATE OF NORTH DAKOTA
OFFICE OF THE STATE TAX COMMISSIONER
STATE CAPITOL
600 E BOULEVARD AVENUE
BISMARCK, NORTH DAKOTA 58505-0599
701-224-2770

Heidi Heitkamp
COMMISSIONER

August 22, 1991

Mr. Alan H. Friedman
Hearing Officer
386 University Avenue
Los Altos, CA 94022

Re: Proposed Regulation IV.18.(j). Special Rules Publishing

Dear Alan:

Our staff has reviewed the regulation draft dated 4/25/91, version 2. They had the following comments or questions:

1. As a matter of format, it would be much easier to follow revisions if overstrikes were used on deleted language and underlining was used for new language.

2. "Outer-jurisdictional" property is defined as not physically located in any particular state, yet when it is assigned, the language used is, "in this state." Taxpayer could argue that none is used "in this state." We would suggest deleting " ... and used in this state ... " from (3)(i)(C)(2).

3. Where does the 40% number come from in the property factor numerator example? We are unclear as to the term "linkage."

4. The change to computation of the sales factor numerator is good. However, we'd recommend deleting the last paragraph. Taxpayers will always know to which state printed material is sent. There is little or no use for the alternative computation offered in the last paragraph.

We appreciate the opportunity for input into this process. Please call if you have any questions.

Sincerely,

Heidi Heitkamp

Heidi Heitkamp
TAX COMMISSIONER
Phone: 701-224-2770

HH:jm

EXHIBIT 25

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Mailing Address:
Legal Division
P.O. Box 1468
Sacramento, CA 95812-1468
(916) 369-3320

August 27, 1991

In reply refer to
410:BFM:md:PRINT

Alan H. Friedman
General Counsel
Multistate Tax Commission
386 University Avenue
Los Altos, CA 94022

RE: Proposed M.T.C. Regulation IV.18.(j)
Attribution of Income from the Business of Print Media

Dear Alan:

The Franchise Tax Board endorses the approach taken by the M.T.C. in the second version of the Print Media regulation. The following observations are offered for consideration by the Hearing Officer.

1. The regulation by its terms is applicable to book publishers as well as the magazine\trade journal industry. We believe that there are no significant problems with regard to the assignment of the income of book publishers. Therefore, it would be appropriate to exclude that industry from the regulation. This could be accomplished by making the regulation applicable only to companies which have subscribers or perhaps to companies which have a regular\periodic distribution schedule.

   It is noted, however, that the regulation appears to have no material effect upon the book publishing industry. Therefore, attempting to write exclusionary language may not be worth the effort.

2. In terms of format, the regulation provides that its rules are applicable as exceptions to the standard rules and then sets forth the standard rules (Secs. (1), (3)(i)A. and (3)(iii)A. followed by (3)(i)B., (3)(i)C., (3)(iii)B. and (3)(iii)C.). This approach has what we believe is the unintended effect of removing the generalized exceptions which are set forth in the regulations, specifically those enumerated in Section 18 of the M.T.C. regulations. For example, the definition of the receipts factor eliminates the throwout rule.

3. Three comments are provided with respect to the sales factor numerator ((3)(iii)C.2.).

First, the numerator assignment rule applies to <u>all</u> receipts arising from other than the sale of tangible property. The problem areas seem to be with advertising income and perhaps the sale or use of mailing lists. Should the normal UDITPA rules be abrogated?

Second, the rule does not recognize the possibility of regional or even more specific customizing of distributions. We believe that some nationally distributed publications are tailoring their advertising to limited geographic areas. A modification of the general rule should be available to either the taxpayer or the administrator if receipts can be segregated by existing records. This could be accomplished by adding a sentence to the existing language.

Third, the proposed language of the fail-safe rule does not provide for any possibility of worldwide distribution. It is not clear that it is necessary to take foreign distributions into account because they would normally be so limited that no advertiser would be paying for access to the foreign market. Nevertheless, we suggest that a taxpayer be given the option of making such an allocation. If such a rule is provided, it should not be based on census figures.

Very truly yours,

Benjamin F. Miller
nd

Benjamin F. Miller
Director, Multistate
Tax Affairs Bureau

EXHIBIT 26

Special Report / Viewpoint

Taxing the Media: An Examination of Leathers v. Medlock

by Timothy B. Dyk and Laura A. Kulwicki

Timothy Dyk is a partner in the Washington office of Jones, Day, Reavis & Pogue. He has taught as an adjunct professor at the Yale, University of Virginia, and Georgetown law schools. Laura Kulwicki is special counsel to the Columbus, Ohio office of Jones, Day, Reavis & Pogue. Jones Day has represented media companies in connection with State Tax and First Amendment issues.

I. Introduction

In *Leathers v. Medlock*, 111 S. Ct. 1438 (1991), the United States Supreme Court held that the First Amendment does not ban differential taxation of distinct media of communication. In a 7-2 decision, the Court upheld an Arkansas sales tax that expressly taxed cable television services, while exempting newspapers and magazines from the tax. The Court held that the First Amendment did not prevent the state from singling out cable services for state taxes not imposed on the print media or on comparable satellite operators.

The outcome in *Leathers* is both unexpected in scope and far-reaching in consequence. It appears to have substantially limited the Court's earlier First Amendment/tax decisions, perhaps signaling a substantial shift in the Court's view of the First Amendment in the area of state taxation. By easing First Amendment restraints on state authority to tax in this context, the Court has opened the door for increased taxation of all segments of the media. *Leathers* will likely generate increased litigation as state taxing authorities, the media, and the courts struggle with the fallout from the Court's decision.

II. History And Background

A. Pre-*Leathers* Case Law

The history of the First Amendment and its language demonstrate a special commitment to protect the institutional press. The amendment's history also evidences a special concern with taxation that might impair First Amendment freedoms. In significant part, the First Amendment was designed to protect in response to the notorious "taxes on knowledge" that were imposed upon American colonists by the British government. Such taxes, typified by the Stamp Act of 1765,[1] were "intended to have the effect of curtailing the circulation of newspapers," to "prevent, or curtail the opportunity for, the acquisition of knowledge by the people in respect of their governmental affairs." *Grosjean v. American Press Co., 297 U.S. 233, 247 (1935).*

Some early decisions of the Supreme Court suggested that *any* tax on speech was unconstitutional. For example, in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), the Supreme Court invalidated a flat license tax imposed on the privilege of soliciting, canvassing, or distributing literature. The Court held that the tax violated the First Amendment, noting that "[a] state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." *Murdock*, 319 U.S. at 113.

Murdock's view that any tax on speech violates the First Amendment has been subsequently limited and replaced with a new line of more sophisticated analysis whose antecedents predate *Murdock* itself.[2] Beginning with *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1935), the Supreme Court has emphasized that the media is not immune from any of the ordinary forms of taxation. Tax legislation of general application, like other laws of general application, ordinarily does not raise First Amendment concerns, even if members of the media are subject to the tax.[3] First Amendment problems arise, however, when a tax fails to apply generally and instead impacts a small and selected class.

At issue in *Grosjean* was a Louisiana license tax on the business of publishing advertising. The tax applied only to

[1]In 1765, the British government imposed a tax on newspapers by sending stamps for newspaper duties to the American colonies. These taxes were designed to make newspapers too expensive for widespread distribution.

[2]This broad "tax immunity" aspect of *Murdock's* rationale was specifically called into question in *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983). Although *Murdock* and similar cases may remain valid under their specific factual circumstances, the Court has made clear that they do not preclude nondiscriminatory taxes on the sales, receipts, income or property of the press. *Minneapolis Star*, 460 U.S. at 586-87 n. 9. Indeed, a plurality of the Court indicated that Murdock should be regarded as partially overruled, to the extent that its language suggests that the sale of publications may not be included in a general sales tax. *Texas Monthly, Inc. v. Bullock*, 109 S.Ct.890, 903-05 (1989). (While *Texas Monthly* did involve media tax issues, its primary focus was on the freedom of religion guarantees of the First Amendment).

[3]There are interesting parallels in other areas of First Amendment jurisprudence where the Court has recently upheld generally applicable laws that may impinge on First Amendment rights. *See, e.g., Employment Division, Dep't. of Human Resources v. Smith*, 110 S.Ct. 1595 (1990) (laws of general application barring use of peyote not invalid under Free Exercise clause); *Barnes v. Glen Theatre, Inc.*, 59 U.S.L.W. 4745 (S.Ct. 1991) (law generally barring public nudity upheld against Free Speech challenge).

publications with circulations exceeding 20,000 copies per week. As a result, only thirteen of the state's 124 newspapers were subject to the tax. The selective impact was not coincidental. Indeed, the Court characterized the tax as a "deliberate and calculated device in the guise of a tax to limit the circulation of information," further noting that it was enacted with "the plain purpose of penalizing the publishers and curtailing the circulation of a selected group of newspapers." *Grosjean*, 297 U.S. at 250, 251. This improper motive, coupled with the selective impact of the tax, led the Court to invalidate the statute. The Court was careful to establish that the singularity of the tax, not taxation in general, created the constitutional difficulties:

> It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax, *but one single in kind*, with a long history of hostile misuse against the freedom of the press.
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> *Id.* (Emphasis added).

The Court did not address the issue of selective taxation of the media again for nearly fifty years. However, selective taxation of the press again proved constitutionally infirm in *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983). In a 7-2 decision, the Court invalidated a Minnesota statute that imposed a special use tax on the cost of paper and ink products consumed in the production of a publication. The tax applied only to the printing industry, and exempted the first $100,000 worth of paper and ink. Thus, differential treatment of the press occurred not only between the press as a whole and other businesses, but also between the press and certain of its targeted members. Both distinctions were inconsistent with the First Amendment.

The Supreme Court, in an opinion by Justice O'Connor, began its analysis by noting that states can subject newspapers to "generally applicable economic regulations without creating constitutional problems." 460 U.S. at 581. However, Minnesota singled out the press for special tax treatment, choosing to impose a "special tax that applies only to certain publications protected by the First Amendment," rather than merely subjecting the press to the state's general sales and use tax statutes. *Id.* Absent a very compelling rationale, such differential treatment of the press *vis-a-vis* other businesses is constitutionally impermissible.

Although the Court did not forbid differential treatment altogether in *Minneapolis Star*, it treated it as "presumptively unconstitutional" unless *"justified by some special characteristic of the press."* To validate selective taxation, the state must present a "counterbalancing interest of compelling importance that [it] cannot achieve without differential taxation." *Id.* at 585 (emphasis added). The Court noted that the state's interest in raising revenue, standing alone, will not satisfy this burden. 460 U.S. at 586.

The Court articulated the basis for this rule:

> A power to tax differentially, as opposed to a power to tax generally, gives a government a powerful weapon against the taxpayer selected. When the State imposes a generally applicable tax, there is little cause for concern. We need not fear that a government will destroy a selected group of taxpayers by burdensome taxation if it must impose the same burden on the rest of its constituency . . . . When the State singles out the press, though, the political constraints that prevent a legislature from passing crippling taxes of general applicability are weakened, and the threat of burdensome taxes becomes acute. That threat can operate as effectively as a censor to check critical comment by the press, undercutting the basic assumption of our political system that the press will often serve as an important restraint on government. 460 U.S. at 585.

To validate selective taxation, the state must present a 'counterbalancing interest of compelling importance that [it] cannot achieve without differential taxation.'

Interestingly, the Court struck down the special tax, even though it imposed a *lesser* burden than if the press had been subject to the state's general sales and use taxes. The Court justified its refusal to uphold the differential tax scheme because the "possibility of subsequent differentially *more burdensome* treatment" existed. *Id.* at 588. In addition, the Court was reluctant to analyze the costs and benefits of differential taxation, noting that "courts as institutions are poorly equipped to evaluate with precision the relative burdens of various methods of taxation." *Id.* at 589.

The tax also violated the First Amendment because it targeted a small group of newspapers. "The effect of the $100,000 exemption . . . is that only a handful of publishers pay any tax at all, and even fewer pay any significant amount of tax." *Id.* at 591. The Court concluded by noting that "we think that recognizing a power in the state not only to single out the press but also to tailor the tax so that it singles out a few members of the press presents such a potential for abuse that no interest suggested by Minnesota can justify the scheme." *Id.* at 592. Thus, *Minneapolis Star* identified two types of impermissible taxes: those that single out the press as a whole for differential treatment, and those that target a small group within the press for differential treatment. The Minnesota tax at issue in *Minneapolis Star* suffered from both types of unconstitutional discrimination.[4]

Several years after *Minnesota Star*, the Court considered issues of differential taxation between members of the same medium in *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987). In a 7-2 decision[5] written by Justice Marshall, the Court held that Arkansas' selective application of its sales tax to only certain types of magazines was unconstitutional. The Arkansas general sales tax was imposed on sales of general interest magazines, but expressly exempted religious, professional, trade, and sports journals as well as all types of newspapers. Thus, the tax discriminated both between media (i.e.,

[4]Only Justice Rehnquist felt that neither the special use tax on the press nor the exemption from the tax violated the First Amendment. Justice White concurred in the Court's result, finding that the tax was unconstitutional because the $100,000 exemption limited the burden of the tax to only a few newspapers. However, Justice White's views on differential taxation differed from those of the majority. He stated that he "[could not] agree that the First Amendment forbids a state to choose one method of taxation over another." 460 U.S. at 596.

[5]Justices Scalia and Rehnquist dissented.

magazines v. newspapers), as well as among media (i.e., general interest magazines v. religious, professional, trade, and sports journals).

The Court invalidated the tax for two reasons. First, the net effect of the tax scheme was that only a few Arkansas magazines would ever pay sales tax. The selective application of the sales tax to some, but not all, magazines targeted a small group within the press and therefore suffered from the second type of discrimination identified in *Minneapolis Star.*

Selective taxation of the press, an entire segment of the press, or individual speakers was generally viewed as constitutionally suspect.

More importantly, the taxing structure differentiated between magazines solely on the basis of content. Such content-based discrimination, observed the Court, "is particularly repugnant to the First Amendment." *Arkansas Writers' Project,* 481 U.S. at 229.

Because the Court found the statute unconstitutional due to the content-based discrimination between magazines,[6] it did not consider whether the differential treatment of newspapers and magazines was also unconstitutional. The Court expressly declined to consider the issue that would later be posed by *Leathers:* whether the First Amendment prevents a state from taxing only selected segments of the media. See *Arkansas Writers' Project,* 481 U.S. at 233.

The Court's pre-*Leathers* line of cases demonstrates a general unwillingness to sanction differential tax treatment where members of the media are concerned. Selective taxation of the press, an entire segment of the press, or individual speakers was generally viewed as constitutionally suspect, largely due to the threat of censorship and the unique role of the press as a "governmental watchdog."

When viewed in light of the historical background, it is clear that differential taxation of the press presents the potential for many of the dangers that the First Amendment was designed to prevent. Indeed, the Court in *Minneapolis Star* noted that "[t]here is substantial evidence that differential taxation of the press would have troubled the Framers of the First Amendment." 460 U.S. 583.

B. *Leathers v. Medlock*

In *Leathers,* the Court departed from these principles and rejected the proposition that differential taxation of the press is inherently harmful. The Arkansas gross receipts tax[7] at issue in *Leathers* exempted newspapers, magazines, television and radio broadcast services, and satellite broadcast services,[8] but expressly applied to operators of cable television services. Clearly, the tax discriminated among segments of the media.[9] Nevertheless, the Court held in a 7-2[10] decision that a differential burden on speakers is insufficient by itself to raise First Amendment concerns. "[D]ifferential taxation of speakers, even members of the press, does not implicate the First Amendment unless the tax is directed at, or presents the danger of suppressing, particular ideas." *Leathers,* 111 S.Ct. at 1446.

The fact that *Leathers* is conceptually at odds with *Minneapolis Star* is striking because Justice O'Connor authored each opinion. However, Justice O'Connor, writing for the majority, sought to synthesize the Court's prior cases by referring to the single theme of censorship. Her opinion analyzed *Grosjean, Minneapolis Star,* and *Arkansas Writers' Project,* and concluded that "[t]hese cases demonstrate that differential taxation of First Amendment speakers is constitutionally suspect when it threatens to suppress the expression of particular ideas or viewpoints." *Id.* at 1443. It then identified three types of impermissible discrimination in the state tax context:

1. A state tax that treats the press differently as a whole.
2. A state tax that targets a small group of speakers.
3. A state tax that discriminates on the basis of content.

In the Court's opinion, each of the above taxes is constitutionally suspect because it raises the spectre of censorship.

The Court examined the Arkansas tax and concluded that it did not fall into any of the identified categories. *Leathers,* 111 S.Ct. at 1444. First, it was a tax of general application that did not single out the press. Second, the tax did not select "a narrow group to bear fully the burden of the tax." *Id.* In fact, the Court emphasized that because the tax affected more than 100 cable operators, it did not resemble a "penalty for particular speakers or particular ideas." *Id.* at 1445. Finally, the Court noted that the tax did not discriminate on the basis of content. *Id.* Thus, the tax failed to fall within any of the three identified areas of impermissible discrimination, and, in the Court's view, did not pose a threat of censorship. As a result, the state was free to pick and choose among segments of the media, selectively taxing cable services while exempting more traditional news and information sources.[11]

III. *Leathers'* Impact on Media Tax Jurisprudence

A. Differential Tax Principles in General

The Court's affirmation of the selective tax scheme in *Leathers* has created a new and confusing approach to taxation of the media. Although the Court has never affirmatively held that all mass media must be taxed in the same way, the Court's

[6]The interest in raising revenue, the Court stated, no more justifies differentiations among members of the press than between the press and businesses generally. *Arkansas Writers' Project,* 481 U.S. at 231-32.

[7]Curiously throughout its opinion, the Court referred to the tax as a "sales tax." Unlike a sales tax (which is a tax assessed directly on the consumer, but collected by the seller), the gross receipts tax is a direct tax on the seller's receipts from sales of tangible personal property and specified services.

[8]The tax was later amended to extend to "all other distribution of television, video or radio services with or without the use of wires provided to subscribers or paying customers or users." After the amendment, therefore, taxable services included the provision of scrambled satellite broadcast television services to home dish-antennae owners, a service found by the state court to be "substantially the same" as the provision of cable television. *Leathers,* 111 S.Ct. at 1442.

[9]Prior to the subsequent amendment, it also discriminated within a medium. See *supra* n.10.

[10]Justices Marshall and Blackmun dissented.

[11]The Court found no First Amendment violation, even though the tax also before amendment differentiated between the similar services offered by cable and satellite television companies. "We conclude that the State's extension of its generally applicable sales tax to cable television services alone, or to cable and satellite services, while exempting the print media, does not violate the First Amendment." *Leathers,* 111 S.Ct. at 1447.

prior cases had always forced states to provide a high level of justification for differential tax schemes. In fact, the Court in *Minneapolis Star* earlier noted that "[d]ifferential taxation of the press . . . places such a burden on the interests protected by the First Amendment—that we cannot countenance such treatment unless the State asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxation." *Minneapolis Star*, 460 U.S. at 585. Noting that raising revenue is an "interest critical to any government," the Court nevertheless concluded that there were "alternative means of achieving the same." *Id.* at 586.

The Court's affirmation of the selective tax scheme in Leathers has created a new and confusing approach to taxation of the media.

After *Leathers*, however, a state's interest in revenue enhancement, with nothing more, appears to provide a sufficient reason for some types of differential taxation. *Leathers* apparently dispenses with the burden previously imposed upon the state to show that a differential tax was necessary and narrowly tailored to achieve the state's revenue goals, and instead finds that the state's interest in revenue enhancement is sufficient to support differential taxation. Where the Court previously refused to risk error in a First Amendment decision because "delicate and cherished First Amendment rights [were] at stake," *see Minneapolis Star, supra*, 460 U.S. at 590 n.12, it now permits states to chip away at these same rights in the name of revenue enhancement.

More importantly, the Court's decision in *Leathers* overlooks the Court's stated view that selective taxation of the press "poses a particular danger of abuse by the state." *Arkansas Writers' Project*, 481 U.S. at 228; *Minneapolis Star, supra*, 460 U.S. at 585. This principle does not lose its force merely because the tax singles out a particular segment of the media, rather than targeting individual members or the press as a whole. Selective taxation of an entire component of the press poses the same dangers of censorship inherent in any other form of differential media taxation. The state may target a substantial segment of the media in order to punish a single speaker; alternatively, government dissatisfaction or desire to confer favor may extend to an entire media segment, for example, network broadcasters or all newspapers in a particular community. The neutralizing effect that cross-media taxation provides is lost when the state is given the power to selectively burden a specific medium.

It was this fear of unbridled government power that seemed to most trouble the dissenters in *Leathers*. Justice Marshall, writing for the dissent, noted that "nothing in the majority's test prevents the State from singling out a particular medium for higher taxes, either because the State does not like the character of the services that the medium provides or because the State simply wishes to confer an advantage upon the medium's competitors." *Leathers*, 111 S.Ct. at 1452 (Marshall, J., dissenting). Thus, *Leathers* ignores "the potential for abuse inherent in the State's power to discriminate based on *medium identity*." *Id.*

Regardless of any actual censorial motive, the state's power to impose financial burdens on a selected class of speakers necessarily influences the conduct of the press. The power to single out an entire segment of the media for special tax burdens not shared by other members of the press may encourage self-censorship by all media organizations. The press may be less inclined to criticize, and more inclined to compliment, state government, to secure favorable tax treatment. Thus, the mere threat of burdensome taxation, even if never realized, "can operate as effectively as a censor to check critical comment by the press, undercutting the basic assumption of our political system that the press will often serve as an important restraint on government." *Minneapolis Star, supra*, 460 U.S. at 585.

Another difficulty with *Leathers* is that it failed to articulate clear standards to guide subsequent legal analysis. For instance, taxes that treat the press differently as a whole raise First Amendment concerns under the first criterion identified in the Court's opinion. However, the Court does not discuss what constitutes a general tax on the media. For example, to what extent are constitutional concerns raised if the media is subject to a general tax, but taxed at a slightly different rate or on a different basis? Does a tax singularly affect the media if special exemptions apply? Determining when a tax impermissibly treats the press differently as a whole, within the confines of the Court's opinion, is not simple.

Another difficulty with Leathers is that it failed to articulate clear standards to guide subsequent legal analysis.

A state tax that targets a "small" group of speakers is likewise suspect under the second criterion in *Leathers*. Yet the Court provides no guidance as to what constitutes an impermissibly "small" group. The dissent attacked the Court's failure to provide substantive guidelines on this issue:

> [T]he majority's approach provides no meaningful guidance on the intermedia scope of the nondiscrimination principle. From the majority's discussion, we can infer that three is a sufficiently "small" number of affected actors to trigger First Amendment problems and that one hundred is too "large" to do so. But the majority fails to pinpoint the magic number *between* three and one hundred actors above which discriminatory taxation can be accomplished with impunity. Would the result in this case be different if Arkansas had only 50 cable-service providers? Or 25?
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> *Leathers*, 111 S.Ct. at 1451 (Marshall, J., dissenting).

The Court's third criterion also raises questions. The Court does not expressly define what constitutes an impermissible content-based distinction. Obviously, patent subject matter distinctions like those considered by the Court in *Arkansas Writers' Project* will continue to be impermissible. Questions are raised, however, by more subtle content-based distinctions, for instance, the constitutional validity of statutes that contain both content-based and content-neutral considerations are uncertain.[12]

A final confusion introduced by the *Leathers* majority, and noted by the dissent,[13] results from the majority's apparent

[12]See *Hearst Corp. v. Iowa Dept. of Revenue*, 461 N.W. 2d 295, 303 (Iowa 1990), *Cert. denied*, 111 S.Ct. 1639 (1991), discussed *infra* at page 59.

conclusion that the validity of selective tax burdens on the press and the validity of tax deductions and exemptions for non-press speech (e.g., preferences for speech by veterans' organizations) are to be judged by an identical constitutional standard. Given the government's broad power to subsidize non-press speech, equating the two would give the government substantial power to make distinctions with respect to the press that are, in effect, content-based. It remains to be seen how this approach will be reconciled with the prohibition on content-based discrimination. The Court's attempted reconciliation in *Leathers*[14] was not convincing.

B. State Court Litigation

Before *Leathers* the state courts often, but not always,[15] gave a broad reading to the Supreme Court's decisions concerning state taxation of the media. For example, in *Louisiana Life, Ltd. v. McNamara*, 504 So.2d 900, 906 (La. App. 1 Cir. 1987), the Louisiana court struck down the state's selective sales tax on magazines, stating:

> [A] tax that provides 'differential taxation of the press,' is treatment that the United States Supreme Court found "would have troubled the Framers of the First Amendment." *Minneapolis Star*, 460 U.S. at 583, 103 S.Ct. at 1376.
>
> . . . The Louisiana sales tax, because it taxes the retail sale of magazines but not sale of newspapers, both of which are protected equally by the Constitution, is clearly unconstitutional as applied to *Louisiana Life*.

Similarly, in *McGraw-Hill, Inc. v. State Tax Comm'n*, 146 App. Div. 2d 371, 541 N.Y.S.2d 242 (A.D.3 Dept. 1989), *aff'd*, 75 N.Y.2d 852, 552 N.Y.S.2d 915, 552 N.E.2d 163 (1990), New York's highest court upheld a determination that a state franchise tax regulation violated the First Amendment because it treated print media and broadcast media differently by classifying radio and television broadcasting as nontaxable services. As a result, franchise tax was imposed on receipts from sales of advertisements contained in printed publications, but not on receipts from radio or television advertisements.

The state court agreed that such differential treatment violated the First Amendment. In doing so, the court expressed a strong presumption against selective taxation among segments of the media:

> A tax that singles out the press for differential treatment is 'presumptively unconstitutional' under the First Amendment and is not permitted unless a state can show 'a counterbalancing interest of compelling importance that it cannot achieve without differential taxation' . . . . [A] taxing scheme which taxes some members of the press but exempts others of the press does not escape First Amendment scrutiny even if businesses outside of the press are also not exempt . . . .
>
> *McGraw-Hill*, 541 N.Y.S.2d at 255.

The results in *McGraw-Hill* and *Louisiana Life* illustrate the strength of the skepticism with which state courts viewed selective taxation of the media prior to *Leathers*. *See also, Dow Jones & Co. v. State ex rel. Tax Comm'n*, 787 P.2d 843, 846 (Okla. 1990) (state tax that was imposed on publications sold for more than seventy-five cents or distributed by mail, but exempted publications sold for less than seventy-five cents or delivered directly by carrier violated the First Amendment, although there was "no hint of a legislative attempt at censoring the press"); *Newsweek, Inc. v. Celauro*, 789 S.W.2d 247 (Tenn. 1990), *cert. denied*, 111 S.Ct. 1639, *reh. denied*, 59 U.S.L.W. 3824 (1991) and *Southern Living, Inc. v. Celauro*, 789 S.W.2d 251 (Tenn. 1990), *cert. denied*, *Commissioner of Revenue v. Newsweek, Inc.*, 111 S.Ct. 1639, *reh. denied*, 59 U.S.L.W. 3824 (1991) (sales and/or use tax applied to magazines, but not newspapers, violated the First Amendment).[16]

The rationale underlying many of these opinions largely dissipated with *Leathers*. State courts must therefore reconsider their earlier views regarding selective taxation. Given the absence of clear guidance from the Court, inconsistency among future decisions is almost certain.

According to the Florida court, taxing one medium while failing to tax another was unconstitutional.

The immediate uncertainty created by *Leathers* is apparent in several current state decisions. Six days after deciding *Leathers*, the Court disposed of three cases on its docket which presented the question of whether states may tax magazines while failing to tax newspapers.

In *Department of Revenue v. Magazine Publishers of America*, 565 So.2d 1304 (Fla. 1990), *vacated sub nom. Miami Herald Publishing Co. v. Department of Revenue*, 111 S.Ct. 1614 (1991), the Florida Supreme Court had ruled that Florida had violated the First Amendment by imposing a sales tax upon magazines, but not newspapers. According to the Florida court, taxing one medium while failing to tax another was unconstitutional, even if the tax did not single out particular magazines and even if the differential treatment was not based upon the content of the publications.

Since the Florida Supreme Court's rationale expressly conflicted with *Leathers*, the Supreme Court vacated the Florida judgment and instructed the Florida Supreme Court to reconsider its decision in light of *Leathers*.[17] *Miami Herald Publishing Co. v. Department of Revenue*, 111 S.Ct. 1614 (April 22, 1991).

In *Newsweek, Inc. v. Celauro*, 789 S.W.2d 247 (Tenn. 1990), *cert. denied*, 111 S.Ct. 1639, *reh. denied*, 59 U.S.L.W. 3824 (1991), the Court refused to hear an appeal from a decision of the Tennessee Supreme Court which held that Tennessee's imposition of a sales and/or use tax on magazines, but not newspapers, violated the First Amendment. Although the Court's disposition of *Newsweek* might at first seem inconsistent with the decision in *Leathers* and the remand in *Magazine Publishers*, the Tennessee court had based its decision on the ground that the tax did discriminate on the basis of content. In order to qualify for the newspaper exemption, a publication had

[13] *Leathers*, 111 S.Ct. at 1449-50 (Marshall, J., dissenting).

[14] *Leathers*, 111 S.Ct. at 1445-47.

[15] For a discussion of contrary cases see page 59 below.

[16] But see, *Chesterfield Cablevision, Inc. v. County of Chesterfield*, 401 S.E.2d 678 (Va. 1991) (license tax imposed on operators of cable television service, but not on operators of a "television broadcasting station or service," did not violate the First Amendment).

[17] The parties are currently briefing the issues in the Florida Supreme Court.

to "contain matters of general interest and reports of current events." *Newsweek*, 789 S.W.2d at 249. *Newsweek* was therefore consistent with *Leathers*.

After *Leathers* the Court also refused to hear an appeal from an Iowa Supreme Court decision which held that a sales tax imposed upon magazines, but not newspapers, did not violate the First Amendment. See *Hearst Corp. v. Iowa Dept. of Revenue*, 461 N.W.2d 295, 307 (Iowa 1990), *cert. denied*, 111 S.Ct. 1639 (1991), stating:

> [A] statute meets the constitutional test if its meaning is fairly ascertainable by reference to similar statutes, other judicial determinations, and to the dictionary, or if the words themselves have a common and generally-accepted meaning.
>
> *Id.*

It seems unlikely that the confused opinion in Leathers will generate clarity in the state courts.

The Iowa Court noted that the tax did not create special obligations that applied only to certain publications, nor was it tailored in such a way that it singled out and targeted small groups of publications. *Hearst, 461 N.W.2d at 302*. The court further concluded that there was no impermissible content-based discrimination:

> While the classification of the writing as "news, articles of opinion (editorials), features, advertising, or other matter regarded as of current interest" is a consideration, the focus is not on the content of the journalism. Rather, *the form and frequency of the publication are the primary factors for determining whether a publication qualifies for the Iowa sales and use tax exemption . . . . Because the form of a publication is a noncontent based consideration*, the Iowa statute complies with the standards set forth by the Supreme Court in *Arkansas Writers' Project*.
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> 461 N.W.2d at 303

Hearst therefore differed from *Newsweek* because the state statute distinguished "newspapers" from other publications based upon "the form and frequency" of the publication, not its content. Since the distinction was not content-based, it did not violate the third criterion set forth in *Leathers*. To the extent that the Supreme Court's refusal to review Hearst may imply agreement with its reasoning, the Court's action is disturbing. *Hearst* suggests that the protection against content-based distinctions may not be applied if another criterion—found frequently—can be deemed to be "overriding."

One final state decision of note is *Globe Newspaper Co. v. Commissioner of Revenue*, 410 Mass. 188, 571 N.E.2d 617 (1991). In *Globe*, the Massachusetts Supreme Court struck down a state sales tax scheme that subjected newspaper publishers to different tax treatment from other manufacturers, including magazine publishers. The state taxed certain stages of newspaper production in the same manner as other businesses. However, the law denied newspaper publishers exemptions that were available to other manufacturers. The court invalidated the tax because it treated newspaper publishers differently from other manufacturers. *Globe*, 571 N.E.2d at 620, 621.

The Massachusetts Supreme Court's decision in *Globe* is perfectly consistent with *Leathers*. Because the tax structure treated the press as a whole differently from other businesses, the tax violated the first criterion identified in *Leathers*. The *Globe* also argued, however, that the tax was unconstitutional because it imposed a greater tax burden on newspapers than on magazines. Although the court did not reach this issue, it did note that *Leathers* held that differential taxation between selected segments of the media did not violate the First Amendment, "so long as the distinction made does not present the danger of suppressing particular ideas." *Globe*, 571 N.E.2d at 622 n.1. We can anticipate that many other state court decisions will address the meaning of *Leathers* in the near future,[18] and it seems unlikely that the confused opinion in *Leathers* will generate clarity in the state courts.

IV. Legislative Ramifications of *Leathers*

A. Impact on State Tax Legislation

Leathers also implicitly invites state efforts to increase revenue through media taxation. Supreme Court cases that uphold state taxes in the face of constitutional challenges always generate a flurry of legislative activity. Following the United States Supreme Court's decision in *D.H. Holmes Co. v. McNamara*, 486 U.S. 24 (1988), for example, many states amended their use tax statutes so as to tax the distribution of catalogs and other promotional materials. (*Holmes* expressly upheld a state tax on the distribution of catalogs printed and mailed from out-of-state to residents in the taxing state). States undoubtedly will use *Leathers* as a springboard to test their powers.

1. Taxation of Cable Systems. The impact of *Leathers* will be most immediately felt by cable providers nationwide. *Leathers'* express approval of cable taxes will certainly provide momentum to the legislative efforts of states, such as Pennsylvania,[19] that had cable tax bills pending prior to the Court's decision.[20] The high profile and publicity surrounding *Leathers* also insures that cable systems will not escape consideration by other state legislators seeking new areas of tax revenue.

2. Advertising Taxes. States are also likely to use *Leathers* to support new taxes on advertising revenues. In the past, state attempts to impose sales or use taxes on revenues generated by broadcast or print media advertising have been unsuccessful.

[18]The Arkansas Supreme Court recently relied on *Leathers* to uphold differential tax treatment of long distance telecommunication services in *Bosworth v. Pledger*, 305 Ark. 598 (1991).

[19]Pennsylvania did in fact pass legislation to tax cable services. In mid-August, the Pennsylvania Legislature extended its six-percent sales tax to premium cable services.

[20]Prior to *Leathers*, at least 16 states taxed cable services in some form. These states included: Arkansas (gross receipts tax on cable services); Connecticut (sales tax on cable services; gross receipts tax for cable operators); Iowa (sales tax on basic and premium cable services); Kentucky (utility gross receipts tax on receipts derived from cable services); Maine (sales tax on premium cable services); Minnesota (sales tax on cable services); Mississippi (sales tax on cable services); Nebraska (sales tax on cable installation services); New Mexico (gross receipts tax on cable services); Rhode Island (sales tax on cable services); Tennessee (sales tax on premium services); Texas (sales tax on cable services); Vermont (sales tax on cable services); West Virginia (sales tax on basic cable services); Wisconsin (sales tax on cable services).

For example, Florida enacted legislation in 1987 that extended the state sales and use tax to a wide range of services, including media advertising. Chapter 87-6, Laws of Florida, created a general tax on the sale or use of services consumed or enjoyed in the state. The state sales tax on services extended to advertisements in print or broadcast media.

In the past, state attempts to impose sales or use taxes on revenues generated by broadcast or print media advertising have been unsuccessful.

The Florida services tax created such enormous controversy that Florida's then-governor Bob Martinez (R) requested the Florida Supreme Court's advice as to the facial validity of the statute. See *In re: Advisory Opinion to the Governor*, 509 So.2d 292 (Fla. 1987). One of the questions presented to the court concerned the advertising tax in particular: "Whether a general tax on the sale or use of services consumed or enjoyed in the state, including advertising services, violates the freedom of speech, press or association of advertisers or of media in which the advertising is carried" in violation of the First Amendment. 509 So.2d at 298.

The Florida Supreme Court found that the tax did not abridge the First Amendment rights of the media.[21] In reaching this result, the court first noted that the tax was "one of general application and does not single out advertisers or the press for special taxation." *Id.* at 306. After analyzing *Grosjean*, *Minneapolis Star*, and *Arkansas Writers' Project*, the court found the tax to be "facially consistent with both the letter and the spirit of these three cases." *Id.* at 308. The court repeatedly emphasized that the Florida tax did not single out the press because it was "part of the same general sales tax provision that will apply to all other nonexempt businesses involved in the sale or use of services in Florida." *Id.* In addition, the tax did not impact only a selected number of advertisers or publications. Finally, the court found that the exemption provided for sales to religious, educational, and other nonprofit corporations was not an impermissible content-based distinction. *Id.*

Nevertheless, the Florida Legislature repealed the services tax less than eight months after its passage. See 1987 Fla. Law 548. Currently, there is apparently no state law in effect that imposes sales and use taxes on broadcast or print media advertising.[22] The apparent weakening of First Amendment constraints on state taxation of the media in *Leathers* will encourage more aggressive state tax policies in the area of advertising.

3. Income Apportionment. *Leathers* could also affect state income apportionment formulas for media entities. Before *Leathers*, income apportionment distinctions between the print and broadcast media were presumptively unconstitutional unless justified by a compelling state interest. See *McGraw-Hill, Inc. v. State Tax Comm'n*, 146 App. Div. 2d 371, 541 N.Y.S.2d 242 (A.D.3 Dept. 1989), *aff'd*, 75 N.Y.2d 852, 552 N.Y.S.2d 915, 552 N.E.2d 163 (1990). In *McGraw-Hill*, the state court invalidated a franchise tax apportionment regulation that included receipts from sales of advertisements in printed publications, but excluded receipts from broadcast advertisements. Since *Leathers* apparently dispels any strict duty to similarly treat all components of the press, states will no longer be required to provide similar apportionment schemes for both the broadcast and print media. *Leathers* may therefore increase differential treatment among segments of the press in the area of state income/franchise tax apportionment.

B. Impact on Federal Revenue Legislation

The Court's new approach to differential tax analysis may also renew federal efforts to impose charges on broadcasters for the use of the electromagnetic spectrum. A variety of federal spectrum fee proposals have been considered by Congress with little success since at least 1978.[23] The Court's decision in *Leathers* may reduce opposition to federal spectrum fees, and may encourage new spectrum fee proposals that are designed to generate additional federal revenue.

Prior to *Leathers*, federal spectrum fee proposals were constitutionally suspect since such fees would selectively tax the electronic media. The Court's decisions in *Minneapolis Star* and *Arkansas Writers' Project* suggested that the selective taxation of the broadcast media, especially when implemented for general revenue-raising purposes, was impermissible. Proponents of federal spectrum fees are likely to argue that *Leathers* removes First Amendment obstacles to a spectrum fee, and the Court's decision in *Leathers* may cause Congress to reexamine the feasibility of such measures.

V. The Practical Impact on Media Organizations

The *Leathers* decision, and the likely increase in state taxation of the media, come at a particularly difficult time for the press. The television networks, newspapers, magazines, and even cable[24] are experiencing financial difficulties.

A decline in the economic health of the press should create unique concerns, largely due to the essential role of the press as a check on governmental power. The existing financial constraints on the press may cause news providers to make more choices on news coverage based on economic considerations, rather than newsworthiness. In this environment the financial difficulties of the press may create particular vulnerability to state threats of increased taxation. The press may be less willing to serve as a critic of government in order to avoid new tax burdens.

However, these financial difficulties will also increase pressure on the media to seek new arguments to challenge selective taxes. Since *Leathers* did not foreclose all First Amendment

[21]Despite the court's views regarding the *facial* constitutionality of the statute, no court ever ruled on the constitutionality of an application of the tax.

[22]Prior to the Florida tax, Iowa and Arizona also imposed a tax on media advertising. Both states repealed these taxes prior to passage of the Florida statute.

[23]The most recent broad spectrum fee proposal arose in connection with the 1990 budget reconciliation process. M. Mills, *Tight Squeeze on Spectrum Tunes Out Competition*, 48 Congressional Quarterly 2823 (Sept. 8, 1990). A proposal to impose a more limited spectrum fee designed to recover the costs of federal regulation is currently pending. See H.R. 1674, 102d Cong., 1st Sess.

[24]*The New York Times* recently reported a marked decline in cable network profit margins, and predicts further declines in the 1990s. In addition, the article reports that "future growth based on increasing expansion of cable service appears to be limited," due in part to "the continuing increases in the cost of cable service . . . . See Carter, "Cable Networks See Dimmer Future," *The New York Times* (July 22, 1991).

challenges to differential tax structures, one class of arguments will be marked by refined efforts to invalidate such taxes on First Amendment grounds. Future First Amendment challenges to state media taxes will necessarily focus heavily on content distinctions and the risks of covert censorship posed by selective tax statutes.

Future First Amendment challenges to state media taxes will necessarily focus heavily on content distinctions and the risks of covert censorship posed by selective tax statutes.

Commerce Clause limitations provide another ground for attack. State taxes that affect media organizations, in addition to triggering First Amendment concerns, also implicate the Commerce Clause if the organization generates revenue from activities affecting more than one state. Such organizations will likely turn their attention to the four-prong test set forth in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). This test analyzes the validity of state taxes that affect interstate commerce by determining whether (1) the taxed activity has a substantial nexus with the taxing state, (2) the tax is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is fairly related to the services provided by the state. *Complete Auto*, 430 U.S. at 279.

Finally, equal protection claims are also likely to increase. The Supreme Court specifically left open the question whether differential taxation of members of the same medium in *Leathers* violates the Equal Protection Clause of the Fourteenth Amendment. The Court remanded the case to the Arkansas Supreme Court with instructions to resolve this issue.[25] Equal protection challenges to differential treatment of media entities will prove more difficult for the press, given the underlying differences in the nature of each medium. Nevertheless, such challenges are likely to become more prevalent as the media grapples with an increased judicial tolerance for selective tax structures.

VI. Conclusion

In sum, the Court's willingness to sanction selective taxation of the media in *Leathers* will have significant consequences. First, the Court' s departure from pre-existing principles will force state courts to re-think their approach to differential tax analysis. The re-examination of these issues after *Leathers* is certain to yield many inconsistencies, resulting in more litigation with further cases reaching the United States Supreme Court.

Second, the easing of First Amendment limitations on state power to tax the media is likely to generate an increase in legislation imposing taxes on the media, both on the state and federal levels. Possible areas of state tax expansion include cable taxes and advertising taxes on print and broadcast advertising revenue. *Leathers* may also provide momentum to fuel federal proposals for revenue-raising measures imposed on use of the electromagnetic broadcast spectrum.

Finally, *Leathers* will also affect media organizations in a very practical way. Increased tax burdens associated with new media taxes will adversely affect an already declining profit margin. At the same time, the Court's new analysis will force the press to consider new challenges to selective state taxation. Such challenges are likely to include commerce clause, equal protection and refined First Amendment theories. ☆

[25]The parties' briefs as to whether equal protection requires similar taxation of the similar services offered by cable and satellite television companies are due by mid-August.

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EXHIBIT 27

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FRANCHISE -- CORPORATION INCOME -- RECEIPTS FROM SALES OF ADVERTISING SPACE BY PUBLISHERS OF MAGAZINES AND PERIODICALS ARE INCLUDED IN THE NUMERATOR OF THE SALES FACTOR IN THE SAME RATIO AS SALES OF MAGAZINES AND PERIODICALS

Legal Ruling No. 367

CALIFORNIA FRANCHISE TAX BOARD

1973 Cal. FTB LEXIS 16

December 5, 1973

[*1]

Advice has been requested regarding the inclusion of advertising revenue in the sales factor of the apportionment formula under the Uniform Division of Income for Tax Purposes Act (UDITPA) for publishers of magazines and periodicals.

Receipts from the sales of magazines and periodicals and advertising space in magazines and periodicals by publishers gives rise to income from transactions and activity in the regular course of the taxpayers' trade or business constituting "business income" under Section 25120(a), Bank and Corporation Tax Law. Gross receipts from those transactions constitute "sales" as defined in Section 25120(e) which are required to be included in the sales factor (Section 25134) of the apportionment formula under UDITPA.

Tangible property is that which is visible and corporeal, having substance and body. Roth Drug, Inc. v. Johnson, 13 Cal.App.2d 720, 734 (1936). It is evident that a magazine or periodical has substance and body. Consequently, the sale of magazines and periodicals by the publisher to subscribers and newsstands are sales of tangible personal property. (cf. Time, Inc. v. Hulman, 201 N.E. 2d 374, 377, 31 Ill.2d 344.) Receipts [*2] from such sales are to be included in the sales factor in accordance with Section 25135 governing sales of tangible personal property.

The sale of advertising space in such magazines and periodicals is closely connected with the sale of the publication. The primary purpose of the advertiser is to reach the market provided by the publisher. The publisher in turn guarantees a particular circulation volume, or in other words, a market. Since advertising included in magazines and periodicals is inextricably connected with the sale of those publications, it is concluded that advertising receipts are to be included in the numerator of the sales factor based upon the ratio which sales of magazines and periodicals in this state bears to the total sales of magazines and periodicals everywhere.