

MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Banner
Mr. Beyer
Mrs. Cafferata
Mr. Chaney
Miss Foley
Mrs. Ham
Mr. Malone
Mr. Price
Mr. Thompson

MEMBERS ABSENT: None

GUESTS PRESENT: Please see attached Guest List.

Chairman Stewart called the meeting to order at 8:05 a.m. and informed the committee he had received requests to hear testimony on a few bills that had not yet had a hearing.

Mr. Beyer made the motion to suspend the notice rules and place the bills on the agenda. Seconded by Mr. Thompson. Motion carried unanimously with Mr. Chaney, Mr. Price and Ms. Foley absent.

SB 320 REVISES PROVISIONS ON COMPUTATION OF GROSS REVENUE RECEIVED BY GAMING ESTABLISHMENTS.

John Stratton from the Gaming Control Board, introduced Patty Becker, Deputy Attorney General, Gaming. Mr. Stratton said this bill is what the industry and the Board agreed on. He suggested a few word changes: on page 2, line 5, "cannot be returned" should be changed to "cannot be produced." On page 3, line 9, use "Board" instead of "Commission."

Motion by Mr. Sader to AMEND AND DO PASS, seconded by Mr. Malone. Motion carried unanimously with Mr. Chaney, Mr. Price and Ms. Foley absent.

SB 535 PROHIBITS UNAUTHORIZED INTERCEPTION OF CODED TELEVISION SIGNALS.

Harry Reid, an attorney representing Nevada Pay Television, introduced Charles Zeigler, a partner in Nevada Pay Television. Mr. Reid said Robert Mulligan was also in the audience, who represents the Reno based MDS distributor.

Mr. Reid described how the system works: Nevada Pay TV takes from a satellite that circuits the globe programs such as HBO which is then transmitted to Black Mountain and then another operator disseminates it to Clark County. He said the problems with this are twofold: first, people are selling antennas (converters) illegally, taking their signal; and secondly, those people that are using the antennas are using them illegally.

He said that their investment in this company is being jeopardized by these people receiving their service for free. He said the Senate amended the bill to state that anyone setting up their own "earth station" should not be penalized by this bill. Mr. Reid said they agreed to this, as long as they were not obtaining the free service for personal gain.

He asked that the phrase in the bill "subscription television service" be changed to "multi-point distribution system."

Mr. Sader asked why they approved of the earth stations. Mr. Reid responded that the earth station obtains the signal from the satellite, as they do. He said the illegality is in buying a black market antenna and obtaining the signal from Black Mountain without paying for the service.

Mr. Sader asked who owned the satellite and contracted for the service. Mr. Reid said that RCA owns the satellite and HBO (Time Life in New York) contracts for the service.

Mr. Sader asked about scrambling the signal. Mr. Reid said it would cost them about \$2 million and was not feasible. Mr. Zeigler said that a comparable large company in southern California has attempted to scramble their signal and the "pirates" have obtained a disc that takes care of the scrambling. He said the companies that are being sued are called obvious names such as Black Bart TV and Pirate TV. Mr. Zeigler said that scrambling also limits the area the picture can cover and messes up the picture.

Mr. Zeigler said they would like the law to be more specific. He said the District Attorney in Washoe County agreed to prosecute as the law now reads, but the District Attorney in Clark County has some doubts.

In answer to a committee question, Mr. Zeigler said that there are several outfits operating in Clark County. He said they advertise in the small want ad newspapers and sell the antennas out of the trunk of their car. By the time they have an injunction against them, they are sold out and long gone. He said the companies have also changed their name after an injunction and they have to start all over again in the courts.

Mr. Malone asked how they can tell someone is using their service for free. Mr. Reid said the antenna is about 4-7 feet high and cannot be hidden in an attic. He said if it is pointed toward Black Mountain it is obvious and cannot be used for any other purpose such as a ham operator.

Mr. Malone said that when you buy a home, you don't own under the ground because of easements and mineral rights, but you are told you own up to the sky. Mr. Reid said that can be contested by Caesar's Palace who wants to build a 40 story tower and Clark County won't let them.

Mr. Price asked how many illegal antennas they estimate are in existence. Mr. Reid said 3,000 or more. Mr. Reid said an additional problem is that many that buy the illegal antenna, do not know how to properly hook them up. The man from the parking lot is long gone and they resort to calling a legal company to come hook it up properly and they lose more money than if they went to them in the first place.

Mr. Price asked if they did not look into this problem before they set up their business. Mr. Reid said that they were the second MDS operation in the United States, the first being in Alaska, and the pirating has only been a recent problem. They assumed the law could take care of the pirating, and then found that the law was not specific enough.

Mr. Price asked if they would not also have too much competition from the cable systems to survive in business. Mr. Reid said that the cable system is 8 to 10 years away in the Las Vegas Valley, and they don't mind competition from regular businesses, only from pirates.

Mr. Price asked who was being prosecuted in Washoe County. Mr. Reid said it was both antenna purchasers and pirate companies.

Mr. Thompson asked if you owned the antenna after obtaining service from their company. Mr. Zeigler said you did not, it was a deposit arrangement. If you disconnect it the first month, you get almost all your money back. The longer you have it, the less money you get back.

Mr. Reid presented a letter to Senator Hernstadt from a Washington, D.C. law office, attached as EXHIBIT A.

Mr. Chaney asked how they obtain new clients. Mr. Zeigler said they have had door-to-door salesmen for a brief period of time, but most through regular radio, TV and newspaper advertising. Mr. Chaney asked if other salesmen misrepresenting themselves as being from his company go door-to-door. Mr. Zeigler said it has happened and they have stopped a lot of it. Mr. Chaney said that he was concerned that someone would buy an antenna from the wrong salesmen and not know they were doing anything wrong and then be prosecuted. Mr. Reid said the new law would read "knowingly or willfully," which should prevent that from happening.

Mr. Reid noted that the illegal antennas may also be dangerous in that they can emit microwaves.

Mr. Thompson asked if someone were clever enough to make their own antenna, could they sell the instructions to make one. Mr. Reid said the bill covers assembling so this should not be a problem.

Mr. Zeigler said that some of them are emitting so much microwave that they are prohibiting a legal antenna nearby from receiving the proper signal.

Mr. Price asked again why an earth station is permissible and an illegal antenna is not. Mr. Reid said that the earth station intercepts the signal from the satellite and the antenna gets it from the company signal down lower. Mr. Price said he still was not sure as someone initially invested money whether in the satellite or in the company. Mr. Reid said it was basically to keep people happy that they eliminated the earth stations and that there would not be many of them.

Mr. Reid in closing again requested the two amendments be included that he had discussed earlier in the meeting.

Bill Macdonald from Humboldt County said he was representing the citizens of the rural counties and as a prosecutor. He said they want Subsection 2 to remain in the bill. He said many people live way beyond any company's ability to provide television service. He said the FCC used to license earth stations, but they no longer do this, thereby implying that it is not illegal to have one. He said the disc prices are now down around \$3,000 from \$12,000, so many people are now able to invest in them.

Essentially, Mr. Macdonald said, he would like subsection 2 to remain so that he does not have to police and prosecute the rural county citizens.

Ms. Foley asked if too many discs in an area would disrupt someone's signal. Mr. Macdonald said he thought a tall building next door might interfere. Mr. Zeilger answered from the audience that it would not affect it at all.

Orvis Reil, NRTA and AARP, expressed concern that this bill would prohibit ham operators from using their extensive equipment. Mr. Reid, Mr. Ziegler and Mr. Macdonald through discussion from the audience indicated that this was near impossible and should not be a problem.

Mark Penner, an electronics technician, said he deals with microwave transmission and reception. He said he was here today as a concerned individual and as a ham enthusiast.

Mr. Penner said: The band which they used is controlled and licensed by the FCC. This part of the public airways was first used by ham radio operators. This bill is designed to restrict reception on this band. If the ham operators were the first one's to initiate it and they are still licensed to transmit and receive on these bands, it will also affect them. The use of the multi-link or as they call it, the multi-point distribution system. This is a very inexpensive and relatively cheap way of setting up a cable type system. The maintenance, the cost, of initial installation and the local receiver units are very inexpensive. Since May of this year, I've been hired by a local church group to install a system such as the one that is described here as part of a local prototype system of a larger communications network operated by Bonneville Productions in Salt Lake City. My cost of setting this station up so far is \$3,000. It is a four meter dish. My broadcast

system cost \$6,700 to set up and transmit this signal from the satellite. Each down converter has cost me \$55 to build. As for the down converter, here is the actual size of it. This has been called dangerous. This cannot be dangerous, doesn't broadcast over 100 watts of power.

Mr. Penner continued: For this antenna to be considered as jamming a neighbor's reception, it would have to emit 100 watts power equivalent. The FCC would have determined that they were transmitting and would have come to him long before these people were determining that he was illegally receiving their signal by the noise emitted by his antenna.

He said: At present the FCC grants permission only to transmit on these airways. I've applied for my license for this station, and in my application, as my intended receiver, I've put down the public. Mainly I'm just transmitting to different buildings. Nowhere did it say I have the authority to restrict who can intercept my signal because I'm utilizing public airways which they will guarantee that someone else cannot transmit on them. This is the only thing that the FCC is involved in. This is worldwide as to this type of transmission.

Chairman Stewart asked if he thought this bill would interfere with what he wanted to do. Mr. Penner answered that in part it will. Since this is on the same type of band that the television company transmits on, the general public will be illegal if they use the band. Once the antenna is installed in someone's home, you cannot limit what they receive.

Mr. Penner reiterated that the FCC licenses the ability to transmit only. They cannot license who receives the signal. The antennas cannot be geared to just receive one of three signals. He said they are not stealing the signal from somewhere else, they are just utilizing a signal that is already hitting their house.

He said that a disc will be available soon through Penney's and Sears which cost \$3,000 and it is only 4 1/2 feet across.

Mr. Price asked Mr. Reid or Mr. Zeigler to comment on what had been said. Mr. Reid said that as far as he knew, no church could get into any area where they are competition with private industry and maintain their tax exempt status.

Mr. Ziegler said he knew the antennas they had in Las Vegas could not pick up channel 10 or the educational channel.

Mr. Reid said he was not trying to prevent the Christian network or the ranchers from receiving television. He said their company is suffering because of pirating and they had come to the Legislature for help.

Ms. Foley said that the bill reads that you must attached a device for intercepting or decoding for the purpose of receiving, and she though the church people would not be illegal therefore.

Mr. Price said what it all comes down to is that there will be many stations available in the next few years and people are not going to put up several antennas on their house for the various systems. The electronics industry has or can design an antenna to pick up a variety of systems. This bill is designed to make that illegal and he said he was concerned about doing this.

Mr. Price likened the situation to the video tape recorders. A few years back the movie industry said they were going to go out of business if the recorders were made legal, and that has not happened.

Mr. Zeigler maintained that each antenna/receiver is fine tuned to only receive one section of the band.

Mr. Penner explained how you can tune your receiver by a mixing oscillator to receive various signals. He said it is simply called a wide band receiver. He said a good example is the receiver on an airplane. They can't afford the complexity or weight of several antennas -- they have a wide band receiver.

Jim Joyce, representing HBO, said he has a degree in communications and it has not changed that much since he went to school. He said the concept that the airways belong to everyone is not true. He said it was the same as Justice Holmes saying that the freedom of speech does not give you the right to shout "fire" in a crowded theater.

He referred to EXHIBIT A, the last two sentences of the letter. He said this is a property right and they were trying to change the law to make it illegal to steal this property right. He said stealing is stealing.

Chairman Stewart said that the rest of the agenda would be carried over to the next morning and adjourned the meeting at 9:45 a.m.

Respectfully submitted,

Dorothy Mobley,
Secretary

ASSEMBLY JUDICIAL COMMITTEE

GUEST LIST

DATE: Tuesday, 26 May 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
✓ Bill Macdonald	Humboldt County			SB 535
✓ Mark Penner		SB 535		
ORVIS E. Rei	NRTA/AARP Nevada Joint State legislative Committee	SB 674		SB 674
Patty Becker	DAG - Gaming			SB 320
Bill Curran	Clark County DA Office			SB 703
Healan Elges	Gaming Control Bd.	SB 320		
John H. Shuttles	" " "	"		
Art Melitoni	674			SB 674
NORMAN ROBISON	AG	SB 658		
✓ Charles L Ziegler	Nevada Pay T.V.			
✓ HARRY KEID	" " "			
ROBBINS CATILL	NEVADA RESORT ASSOC	SB 320		
FERRY HIGGINS	GAMING IND ASSOC	"		

* Please Print

ASSEMBLY JUDICIAL COMMITTEE

GUEST LIST

DATE: Tuesday, 26 May 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
R.K. MULLIGAN	SATELLITE THEATRE	✓		SB 35
Jim Joyce	HBO			
Robert Manley	AG's Office			
GEORGE TACKETT	NEW DELL			

LAW OFFICES
GORDON & HEALY
 CHARTERED

1821 JEFFERSON PLACE, N.W.
 WASHINGTON, D.C. 20036
 (202) 785-5020

HAROLD GORDON
 ROBERT W. HEALY
 LARRY A. MILLER

OF COUNSEL
 ROBERT D. ROADMAN
 CABLE ADDRESS
 GORMIL

April 16, 1981

Re SB 505
 SB 535

Senator William Hernstadt
 401 S. Carson Street
 Carson City, Nevada 89710

Re: Act to prohibit unauthorized interception
 of coded television signals

Dear Senator Hernstadt:

As counsel practicing before the FCC the following is in response to your request for an opinion as to whether the proposed Nevada state law prohibiting the unauthorized interception of coded television signals, falls within an area preempted by federal law, it is our opinion that it does not. A brief outline of the federal statutes in this area is necessary to understand this conclusion.

In order for a state statute to be preempted by a federal statute there must be a clear Congressional intent to do so, Davies Warehouse Company v. Bowles, 321 U.S. 144 (1944), which intent must be clearly manifested by being definitely expressed or clearly implied. E.P. Welch Company v. New Hampshire, 306 U.S. 79 (1939). Federal preemption will occur when federal regulations are so pervasive as to make reasonable the inference that Congress left no room for the state to supplement it. Rice v. Santa Fe Elevator Corporation, 331 U.S. 218 (1947).

There is a line of cases which hold that no state may regulate an intrastate entity where it regulation would interfere with the reception of interstate radio communications. See Western Union Telegraph Co. v. Foster, 247 U.S. 105 (1918); Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U.S. (1978); Telerent Leasing Corp., 45 FCC 2d 204 (1974), aff'd sub nom. North Carolina Utilities Commission

Assembly Judiciary Committee
 Tuesday, 26 May 1981

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v. FCC, 537 F. 2d 797, cert. den., 429 U.S. 1027 (1976),
reaff'd, 522 F.2d 1036, cert. den. 4242 U.S. 874 (1977); and
Orth-O-Vision, Inc. 69 FCC 2d 657 (1978). However, in
these cases, state statutes were found to be incompatible
with federal statutes, since the state statutes acted to
frustrate the purpose of the federal statute. The proposed
Nevada statutes would not frustrate any federal statutes.
Instead it would bolster federal law and act to protect
property rights which is a permissible state function.

Section 605 of the Communications Act of 1934 as
amended, 47 USC §605, states, inter alia, that "... no
person not being entitled thereto shall receive or assist in
receiving any interstate or foreign communication by wire or
radio and use the same or any information therein contained
for his own benefit or for the benefit of another not
entitled thereto..." However, reception of radio communications
(radio includes video) intended to be received by the public
in general is exempted from this prohibition. (See attachment
for full text of statute).

Federal courts have split on the question of
whether subscription television (STV) service is the type of
broadcasting intended to be received by the public which is
exempt from the protection of section 605. In the most
recent case the Sixth Circuit Court of Appeals held that
subscription television service was protected by Section 605
from unauthorized use and that a subscription television
business has a private right of action against a defendant
who sold decoders or decoder schematics. Chartwell Communications
Group v. Philip Westbrook, 637 F.2d 459 (6th Cir. 1980).
However, in a decision which is under appeal, a circuit
court in California has held that subscription television
service is broadcasting intended for the public and thus not
protected by section 605. National Subscription Television
v. S&H TV, ___ F. Supp. ___, 48 RR 2d 379, (C.D. Calif.
1980).

In order to clear up any confusion which may exist
as to the applicability of section 605 to subscription
television service, an attempt is being made to introduce a
bill into Congress, similar to H.R. 7747 which was sponsored
last July by former Representative Richardson Preyer (D-
N.C.), which would prescribe criminal and civil penalties
for the unauthorized reception of subscription television
programming. If such legislation were enacted there might
be some question as to whether it preempted state laws on
the same subject. Until such time it is fairly clear that
states can act in this area.

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California has already passed such legislation. In 1980 California Assembly Bill No. 3475 was passed which, like the Nevada bill, prohibited the manufacture, sale or distribution of devices designed to intercept subscription television signals. However, the California bill also prohibits the sale of plans or kits for devices or printed circuits to assist in such unlawful interception. Since many dealers now offer such kits or instructions, it would be a worthy idea to add similar language to make the proposed Nevada bill more effective.

In order to make the proposed bill more effective, you may wish to consider giving a private right of action to persons who have had their signals intercepted by the prohibited devices. Enforcement of private civil actions by individuals might tend to supplement the enforcement capabilities of the state.

It might also be advisable to define subscription television service to include pay programming provided by multipoint distribution service (MDS) since this is normally not considered a television broadcast service. MDS stations are FCC common carriers not broadcast stations. MDS signals are transmitted on microwave frequencies which cannot be received on a television sets without a special antenna and down converter. Such MDS systems also provide pay TV service to hotels, homes and apartments and are also the target of pirate interception.

The Federal Communications Commission has also recently indicated an intent to prosecute manufacturers and sellers of non-approved subscription television decoders pursuant to section 302 of the Communications Act of 1934 as amended, 47 USC §302. (See attached Public Notice). The enforcement of this statute in and of itself, does not evidence an attempt by the federal government to preempt this area.

In conclusion, although there currently exist federal statutes which are being used to attempt to curb the unauthorized reception of subscription television signals, it does not appear that this area has been preempted by

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federal law and the states are free to enact legislation in this area to protect legitimate property rights of program originators. Obviously, this is a new industry and such unlawful interception may threaten its very existence before it gets off the ground.

Very truly yours,

GORDON & HEALY, Chartered

By 

Robert W. Healy