MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 24, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:10 a.m., Friday, April 24, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Sally Boyes, Committee Secretary

SENATE BILL NO. 535:

Prohibits unauthorized interception of coded television signals.

Mr. Harry Reid stated this bill was reviewed with experts on communication in Washington.. Some proposed amendments were drafted. See Exhibit C. Mr. Reid introduced several people in the audience that were supporting Mr. Reid in his testimony. See Exhibit A.

Mr. Ed Joyce stated this bill was critical to the television company represented at the hearing. The biggest problem of the industry has been the interception of the signal illegally by user pirates and sellers. This industry is made up of many eliments.

The system works through a process of transmitting programming through a satellite; the program is picked up from the satellite for a fee; then a signal is transmitted to an FCC licensed carrier who inturn transmits that signal from Black Mountain to the subscribers.

This industry employes hundreds of thousands of people all over the country, many of those in Las Vegas. The only way the industry will survive is to have protection; the property right must have protection to charge a reasonably fair fee for the services performed. Home Box Office has invested millions of dollars in equipment and programming in order to send the signal to the satellite. In order for the company to establish an operation, hire a staff and be in the position to offer a service, the investment has been over $700,000.00. That investment is in Las Vegas, Nevada. To develop this business an additonal investment was required of over $900,000.00. Last year over $800,000 was spent to purchase programming and make that programming available to the customers. In additon to the cost of the programming, an additional one million three hundred thousand dollars was spent to deliver that programming to the various customers. There was approximately two million dollars spent last year; over one and a half million was spent in Nevada and was paid to the citizens of Nevada in order for the service to be performed.

Senator Wagner asked if this service was connected with television prompter. Mr. Joyce stated the same principal applies. Senator Wagner asked if the amount of money stated above was directed to the community of Las Vegas primarily. Mr. Joyce stated this was the cost of a company like his to be in a position to sell subcription television. This money was related to the southern area of the state. He stated sister companies around the state would be spending like sums which would benefit more people of the state.

Chairman Close asked if the signal that came from the satellite was a scramble signal. Mr. Joyce stated it was not. Chairman Close asked if the amendment being proposed covered the earth stations situation. Mr. Joyce stated no. Chairman Close stated he felt the way it was worded, the amendment probably did cover that situation and asked why he would be going on to other than his own industry. Mr. Joyce stated the amendment was meant to preclude the illegal interception of the signal. When a program is put on the satellite, those people handling it are happy to sell it to anyone willing to buy it. Chairman Close asked what

would happen if a person had their own dish. Mr. Joyce stated he was not too familar with the earth station owners and the programmers. He felt the programmers had direct relationships with earth station owners. He stated his concern was with the illegal interception of the signal; should the illegal interception of the signal be made law, then the earth station owner would be affected. Chairman Close stated the bill as it was being amended was more broad; the bill originally referred to an attachment on a television receiver. Senator Raggio asked for an explanation of the amendment that was being proposed.

Mr. Joyce stated he asked experts in the field of communications whether they thought the bill as proposed would, in their opinion, be interpreted by the Judiciary Committee in the way that would prevent the unauthorized interception of microwave signals. It was their opinion, because of the body of law that was being developed in the various state courts, the language would have to be more specific. Otherwise, the intention of the bill as stated could cause a battle of experts as to the meaning of the language and its interpretation should a court case happen. The expert opinion was the bill should be changed so the intended benefit would come from it.

Senator Hernstadt stated the letter of referrence from his personal involment in communications would clear up the language problem involved. See Exhibit D. He stated he felt the original bill was effective but felt the amendment should have a stipulation in regard to the completed devises that permit interception as well as the kits that are available for that same purpose. Senator Wagner asked what a kit was. Senator Hernstadt stated that is a component that is assembled in pieces that included clear cut instructions on the assembly of the kit for interception. Senator Don Ashworth asked if that was in regard to the sale of those type of interception devices. Senator Hernstadt stated yes. Mr. Joyce stated the programmers that offer satellite programs charge a small fee for that programming; a person having a dish would not have difficulty entering into a legal relationship to pick up that programming. The problem that is faced is when someone does not enter into a relationship with the people that provide the programming, a contribution does not come from the person to help in the cost of providing that service. After the first year of operation, the company lost $208,000.00. Last year an additional two million dollars was spent and the company broke even. Our estimate is should the pirate users of the signal pay for the service, an additional one million dollars would come from the

revenue. As a result of that, a profit would be received and subscription rates could be lowered so the 13,500 customers who are paying for the service could have the same service for less money. He stated the company felt the rate was too high; it cannot be lowered because the company is not making money now. There is no revenue derived from the pirate users. Senator Raggio asked how the measure was made on pirate users. Mr. Joyce stated that has been done through costly litigation being conducted in Las Vegas to prevent the wholesalers and retailers from selling out of trunks the kits required to intercept the signal. Lists have been obtained of purchasers. We have also been visually viewing houses that have the equipment on roofs. Senator Raggio how many people were not paying for this service. Mr. Joyce stated it was over 4,000. Senator Don Ashworth asked how this would be enforced; was the concern more for stopping the sale. Mr. Joynce stated if the sale could be stopped, it would prevent other people from becoming pirate users. He stated it would be more fair for the legal users of the service if those pirate users were forced to stop using the equipment, could not buy the equipment and those that already had the equipment would either become subscribers or turn the equipment back and not have the service. Senator Don Ashworth stated the question of proof would still be involved; even though equipment is on the roof, use still has to be proved. Mr. Joyce stated two suits have been filed; his company has filed one so far. The case is pending so the outcome of it is still unknown. Mr. Harry Reid stated the case that was choosen to file suit against equipment was identified as not being that of the company, it could not be used for anything else, it was pointed toward Black Mountain, pictures have been taken, people have been in the homes and the converter was on the television set; in those cases, pirate use will be proven. He stated the cost involved and the amount of time spent in proving this action was not worth the cost of a subscriber; but it will set an example.

Senator Wagner stated there are people who pay for the subscription to teleprompter and still receive the benefit of Home Box Office. She said she understood this was done on the telephone pole and would not visuablly show on a house. How would a situation like this be handled. Mr. Joyce stated that situation is a cable hook up as opposed to the hook up that is used in his company. He felt that was also unfair to splice into a cable hook up and have the benefits from that service without the revenue benefit to the company involved. Senator Hernstadt stated this bill, as it is written, covers not only illegal reception but also the unscrambler device people also use.

Mr. Harry Reid stated he felt the language tele-communication was important in this bill and that legislation should be clarified so that people realize the problem is a misdemeanor and a cilvil action could be started against them.

Senator Wagner stated the bill should be designed to have the protection at the point of sale.

Senator Raggio asked what authority had to be given in order to get into this business. Mr. Joyce stated there was no federal authority involved; transmitting is done through a FCC licensed company and a relationship is established with that company. That company is selling some time to this company. Senator Raggio asked if there was a federal statute regarding this process or if this bill was the only one governing this operation. Mr. Reid stated there was a federal statute, but it did not apply to this situation. Mr. Reid stated it was a radio wave that was used in this system; even though the existing law used the term micro-wave and it was possible this system was protedted by that law, there is still the possibility that it would not be in a court of law.

Senator Wagner asked how many of these kits were manufactured with in the state of Nevada. Mr. Joyce stated to his knowledge there were none. He stated they were coming from Arizona and Florida. Mr. Reid stated the feeling is now there may be a location in North Las Vegas that is also manufacturing the kits.

Mr. Darold Roy, citizen, stated his concern was in regard to the earth stations. Senator Raggio asked how much an earth station cost. Mr. Roy stated $3,500 if a person builds the unit himself, and they can go as high as $12,000. He stated they are being sold in Reno in three locations. He felt the way the bill was worded it would also affect the people with earth stations.

Mr. Mark Penner, citizen, stated the FCC has regulations on transmission on public airways, but nothing on cables. There is no federal agency that controls the public airways. There are three stations that operate off the satellite, 24 carrier signals and time is leased from the satellite to carry the signal to earth; it is then retransmitted to be received by the subscriber of the program. He asked if violation of the law would be involved if that signal is received and a station that retransmitts that signal also receives it. Public airways means the public can receive that signal, otherwise that signal should be transmitted in another direction. Senator Hernstadt stated this bill referred

to the interception of a signal not to public airways. He stated earth station dishes could be handled with an amendment because they can receive the signal directly.

ASSEMBLY BILL NO. 232: (Exhibit F)

Clarifies age of and eliminated citizenship requirement for directors of corporations.

Senator Don Ashworth moved to amend and do pass S.B. 232.

Senator Wagner seconded the motion.

The motion carried. (Senators Ford, Keith Ashworth and Hernstadt were absent for the vote.)

SENATE BILL NO. 527:

Makes various changes to the laws regulating gaming.

Ms Patty Becker, Deputy Attorney General, stated page five, lien debtor would mean whoever had the license in the gaming establishment, an attachment would be made on whatever real property they had in the state of Nevada. This would insure when an extablishment went out of business and were no longer in the gaming industry, that did not effect the lien. It would have to be determined that the entity owed the state of Nevada money; a lien would be filed and real property would be attached in the state of Nevada.

Chairman Close asked if there were a corporate gaming licensee and there were another name on that license, would that other person also be responsible for the gaming tax. Ms Becker stated only if the corporate bail could be pierced.

Senator Don Ashworth stated anyone that could sign a check for that corporation and has their name on the account would be liable for that tax. Chairman Close stated anyone that could direct the money for the payment of taxes would be liable for that tax.

Ms Becker stated the rest of the section on page eight involved technical changes. Section 24 deletes the language of having the approval of the attorney general for outside consultants, the board of examiners contract approval would remain.

Senator Raggio stated the wording in sub-section four, line 11, should be changed to may furnish, as the wording in the original bill sounded as if it were mandatory.

Senator Hernstadt asked if the intention was to set up reciprocity with New Jersey. Ms Becker stated no information was given out unless there was a summones; everything is done to protect the licensee. See Exhibit E, page three. Ms Becker stated since the referrence was made to sections a,b, and c, that language could be added to section four. Senator Raggio asked why the word record was left out. Ms Becker stated that word should be in there, making the language tract.

Chairman Close read the change as was proposed: starting at line 12, be furnished to it under this chapter which may be otherwise obtained relative to the finances, earnings or revenue of a licensee and all information and data pertaining to an applicant's criminal antecendents and background furnished to or obtained by the board or commission from any source are confidential. Ms Becker stated the word record should also be included after the word criminal. Chairman Close asked if the term antecendent was in the bill elsewhere. Ms Becker stated that was in referrence to any background information on anyone. Senator Hernstadt asked why that should be confidential. Ms Becker stated that has always been confidential.

Mr. Robbins Kahill, representing Nevada Resort Associations, stated the F.B.I. will not give confidential information. Police agencies can obtain criminal records but that is all. Senator Hernstadt stated it must be concealed for federal reasons. Mr. Kahill stated whatever is released is not obtainable again.

The committee agreed to leave section four with the changes as stated, sub-section c would have the new wording, see Exhibit E, lines 18 - 31, leave section five the way it is. Ms Becker stated it would be better to include section five in section four because section five made referrence to section four.

Chairman Close stated that would be accepted. Senator Ford stated there would be two amendments on page 3, amendment 10.

Chairman Close stated the amendments on line 14, sub-section two, and lines 18 - 31 would be acceptable.

Ms Becker stated section 26 was to be amended as written on Exhibit E, and line 49 was covered in section eight, page two of

the original bill. Senator Ford stated sub paragraph E was not worded correctly to coincide with line 22 and should be marked for the bill drafter to correct.

Ms Becker stated section 26, line 48, was to be corrected as stated in Exhibit E; this was the language requested by the F.B.I. Section 27 changes the word commission to board and tracts with section 46 on the changes on the petition for redetermination. Section 28, page 12, sub-section c relates back to section 13 where the information was allowed to be confidential. Section 29 adds the word regulation on the top of page 13. Senator Raggio stated the other language was moved to page nine that was taken out of section 13. Line 25 was also in section nine, page three.

Section 30 has technical changes, on page 15, line four. Section 31 has two amendments; see Exhibit E. Section 32 handles the problem of a tie vote in the board, page 16, lines nine and 10. Section 33, page 17, lines 11 and 12 handle the taxing statutes and increases the penalty on line 19 from $25.00 to $50.00. The board's cost on the paper work involved for processing a penalty is about $40.00. Ms Becker stated in N.R.S. 401 it is stated that any remedy can be used as penalty for the non-payment of taxes. Senator Hernstadt asked if it was fair to close the entire place; could the show room just be shut down. Ms Becker stated the licensee is the one who pays the taxes; the closing of the entire casino is up to the committee to decide if it should all be closed down or just the show room. Section 34 is in the first page of the bill; there are technical changes. Section 35, adds new language on page 21, line 24, and it gives the option of revoking an employees work card if that employee is convicted of any felony crime involving moral turpetude. Section 36, page 22, lines 18 and 19 the committee agreed to change the wording on section 35 and 36 to felony and gross misdemeanor. Section 37 is changed to allow someone under 21 to work in the accounting room. Senator Hernstadt asked how young of worker was being considered. Ms Becker stated it could be as young as 16. Section 38, line 13, the penalty provision was changed. Section 39 there are two changes; page 24, line 10 the interest was changed from seven to 12%. Senator Hernstadt asked how much tax was paid if a business was started in the middle of the year. Chairman Close stated the full tax was paid. Senator Raggio stated he felt the fees should be prorated. Mr. Harlan Elges, Chief Tax and License for the Gaming Control Board, stated in 1964 there was a $10.00 fee per slot machine; What would happen is that rate would be prorated by three for a quarter. Taxes vary on the amount of games in a casino. It

would cause a lot of headaches. Mr. Elges stated the annual fee was very large and that was the one that bothered most people. Now legislation has been passed to allow 80% of the fee to be transferred to another owner. Senator Raggio asked Ms Becker to modify the wording and bring it back to the committee so a more even alotment would be given to a person just going into business. Ms Becker stated there should be a clarification on the refunds; there will be none. Line 13 and 14 is tracking the interest increase. Section 40 was amended to show definitions of a restricted and non-restricted operation. Section 41 involves the same thing. Section 42, page 26, lines 3 - 7, the board asked that be deleted. This is in regard to the annual fee on a poker table or a bridge table. Ms Becker stated an amendment could be drafted to include the gross revenue tax and it would include the revenue on poker games. Sub-section five would be deleted. Section 43 will be re-written. Section 44 will be re-written. Ms Becker stated the money the licensee is receiving should always be included in gross revenue and asked Senator Hernstadt if that was what he meant. Senator Hernstadt stated he felt that money should be included and it should be handled now.

The following Bill Draft Resolutions were presented and received for introduction:

BILL DRAFT RESOLUTION 2-1927: (S.B. 604)

Removes requirement of marginal notation by county recorder when real property is sold on execution.

BILL DRAFT RESOLUTION 7-1929: (S.B. 605)

Transfers duty of recording certain certificates of incorporation from county recorder to county clerk.

The meeting was recessed until 1:30 p.m.

Chairman Close called the meeting to order at 1:30 p.m.

Chairman Close stated the reason for not including proprietorship was because when one person sells to another, there is no continuity of ownership. Ms Becker stated the 80% rule was expanded as far as it could be expanded. Chairman Close asked to have the cost looked into.

Chairman Close asked for the changes in Section 45. Ms Becker stated the change was in the interest rate, from 7% to 12%. Senator Hernstadt asked if this was tracking all the way through. Ms Becker stated yes, and it will have to be changed all the way through if the committee in not happy with that increase. Section 46 is the petition for redetermination. The language in the bill was drafted to conform to the policy now. The Gaming Control Board issues an audit deficiency determination, the licensee appeales that to the commission and the commission has a hearing on it. If the licensee is still unhappy, a petition is made for judicial review.

Senator Wagner asked if this was the section asking for another level of due process or hearings and it is all new.

Ms Becker stated yes, the request was made that the board have a full hearing on it and then the commission would also have a full hearing. Senator Wagner stated she realized Ms Becker was not testifying for them, but wanted to know if she knew the reasoning behind this request. Ms Becker stated Mr. Russell did not make it clear as to why, but she felt it was to get another bite of the apple. It would be a serious business for the Gaming Control Board because a public meeting would have to be held, notice would have to be given and the meetings are getting longer and longer as it is. Ms Becker stated all audit deficiencies do have a board member signature. A board member has to approve it. Chairman Close asked if this was the way it was handled now. Ms Becker stated yes, that is in section 46, 47 and 48.

Senator Don Ashworth asked for a change on section 48, line 32, changing the time to 120 days. Senator Hernstadt asked if there would be an objection to that change. Ms Becker stated a notice of appeal was all that had to be filed and it seemed to her that four months was a great deal of time. Senator Don Ashworth asked if that was all it was. Ms Becker stated yes. The committee agreed to leave it.

Ms Becker stated in section 49 N.R.S. 463.385 was added to that section; that is the federal slot tax. It used to be there was a federal slot tax and last session the state took over the $250.00 annual fee and it was not added into this statute; this is the willful failure to pay that. It should be the same as the willful failure to pay any other fee. Section 50 raises the interest rate from 7% to 12%; that is on page 31, line 12, and it increases the penalty from $25.00 to $50.00, line 17.

Senator Wagner asked for an explanation of the new language in section 51.

Ms Becker stated this was the section that dealt with the licensee paying the casino tax. The auditors have no jurisdiction over someone just leasing a space; the books cannot be seen to verify whether or not the books are accurate. The licensee has the same problem of not being able to see the entertainment portion that is subject to the tax. Senator Hernstadt asked if a lease was required. Ms Becker stated this would allow access to those records. There has never been a problem until this last year. The auditors went in to do a check and the person who was running the casino entertainment said no. Senator Wagner stated that was a problem of access. Ms Becker stated that was right. Senator Hernstadt asked if there was authority to close the show in that case. Ms Becker stated no.

Ms Becker stated section 52 would allow the licensee to get the penalty payment from the person running the casion should the reason for the penalty be because the report was wrong or because there was no access to the books. Section 52 tracks with section 51. Section 53 are technical changes; section 55 deletes the language because of lack of good character, honesty or integrity; it tracks with S.B. 414. That same language was deleted from the other statutes. Sections 53 and 54 were both technical changes. Section 56 has changes on lines 10 and 11, stating all federal, state, county and municipal licenses have to be maintained. Section 56 also has an amendment to it on Exhibit E, amendmanet 10, page 4 of exhibit.

Chairman Close stated the way the amendment was drafted there would be a right to sell without board approval after the cessation of a business. He asked it that is what was intended. Ms Becker stated no, the amendment should the board. She asked if it should be limited to two years or that the board would be able to do so. Chairman Close stated he felt it should be in any manner the board decided on. Ms Becker stated there manufacturers and distributors license's for a reason; so much authority would circumvent the intent of that. Senator Don Ashworth stated the board has to approve it. Senator Wagner stated two years was plenty of time and there should be a limit in the amendment. Ms Becker said maybe the amendment should read "the holder of the state gaming license may, within two years of cessation of business, with the approval of the board, instead of "or upon specific approval." Chairman Close asked if this was for stopping business. Ms Becker stated yes. Chairman Close stated there may be a case where a casino would want to sell 10 slot machines and they cannot sell them because they are not going out of business. Senator Hernstadt asked how

obsolete machines were disposed of. Ms Becker stated it is sold to a distributor. Chairman Close asked if a slot machine could be bought for a hotel, for example. Ms Becker stated that cannot be done. Mr. Elges stated usually the machine is traded in; it goes through a distributor or a licensed dealer. Machines have to be bought from one of those sources. Chairman Close stated there are situations with no cessation of business; but that business desires to get rid of some machines. Senator Hernstadt stated a sale would have to be made through a dealer. Chairman Close stated he felt it was worded correctly now. He asked about sub-section four; was that new language. Ms Becker stated yes. Senator Wagner asked if there was a problem with that. Ms Becker stated it explains that the burden is on the applicant to prove suitability. That is stated in the regular license proceedure. It must never have said that in the manufactur and distributor section; she felt sure that was the intent because that is stated in every other gaming license. Chairman Close stated that would be taken out of lines 14 through 21. Ms Becker stated sub-section five states there must be compliance with all other provisions of the Gaming Control Act if a manufacture or distributor is also a corporation. Chairman Close asked what would be the purpose of exempting them from a license. Ms Becker stated they are not exempt from licensing; the corporate statutes in the Corporate Gaming Act say the commission can exempt any corporation at any time from any of those provisions as long as it is not inconsistent with state policy. This tracks with that.

Ms Becker stated section 57, page 34, line one, there is a misspelled word; greatly. The new language is on lines 11 and 12; this is consistent with N.R.S. 463.140, subsection three. It is also consistent with the new language in the bill that states a machine has to be approved by the board before it is put into play or if it is substantially modified. The industry had no objection to that. Section 58 has technical changes because of the split in N.R.S. 463.160. Mr. Daykin separated that statute and now parts of it are in section nine and 10 of this act. Section 59 referres to aliens holding a gaming license; it is on pari-mutuel wagering; it is consistent with what was done last session with the gaming control act. Section 60, lines 48 - 50 states the way the taxes are paid now; it was never set out statutorily. Page 35, lines 9 - 13 allows for a penalty provision for late payment or nonpayment of pari-mutuel wagering. The penalty is paid quarterly on or before the last day of the first month of the following quarter of operation. Mr. Egles stated should the payment be received late, an automatic penalty applies.

He stated the penalty still applies no matter what; should the payment be made one day or 30 days late. Before the license is considered surrendered, 30 days must lapse. Ms Becker stated before that time lapsed, an order to show cause or complaint would probably be filed. Sections 61, 62, 63 and 64 are all technical changes. Section 63 does not expand the peace officer provisions. Section 64 deals with the sealing of records. Senator Hernstadt asked what the use would be of having expungement without having the effect for all purposes. Senator Don Ashworth stated he thought Senator Raggio's point was that expungement be declared. Senator Wagner asked what the reasoning was for this. Ms Becker stated the Rosenthal case where records were sealed between one trial and the next. Once a record is sealed, it is as if the crime never occurred. Senator Hernstadt stated maybe this ought to be amended to provide that if for some reason that knowledge would become known, then it is a matter of the gaming control board's documentation and it is in the system and should be left in the system. If it has been sealed properly and it is not known, then it should not be able to be used. Chairman Close stated maybe it should be restricted to matters dealing with gaming violations only. Senator Don Ashworth asked if the question would be asked if there were any records that had been expunged that related to gaming violations. Senator Wagner asked if leaving the word inquire into and removing the word inspect would be better. Ms Becker stated inquire into and utilize for purposes of licensing under this act any record seal pursuant to. Senator Wagner felt this section was too broad. The committee asked Ms Becker to draft an amendment to this section.

Ms Becker stated section 65 tracks with section 64. Section 67 allows gaming control agents to get under cover driver's license. Section 68 is all repealed.

Senator Wagner asked about section 25, page 10, line 22; was the rest of the language removed. Ms Becker stated no, the other language was kept, there was an addition. Senator Wagner stated without language in the bill in regard to the protection of the personal property of board members, she could not move on this bill. Chairman Close asked for an amendment to the bill in regard to that. Senator Hernstadt suggested it be rereferred to the committee so it could be reprinted.

SENATE BILL NO. 527:

Makes various changes to the laws regulating gaming.

> Senator Don Ashworth moved to amend and rerefer S.B. 527 back to Judiciary Committee.

Senator William Hernstadt seconded the motion.

The motion carried four to 0. (Senators Ford, Raggio and Keith Ashwroth were absent for the vote.)

Ms Becker asked Chairman Close if language was to be drafted on proration for the annual fees, the gross revenue on the poker rake off and the fiscal impact. Chairman Close said that was correct.

The following Bill Draft Resolutions were presented and received for introduction:

BILL DRAFT RESOLUTION NO. 41-1193:

Verifies the cliff building of a licensing department where a gaming interest is transmitted into a living, irrevocable trust.

There being no further business, the meeting adjourned at 2:00 p.m.

Respectfully submitted by:

Sally Boyes

Sally Boyes, Secretary

APPROVED BY:

Mel D. Close

Senator Melvin D. Close, Chairman

DATE: April 30, 1981

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EXHIBIT A

SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Friday, Date April 24, Time 8:00 a.m.

S. B. No. 535--Prohibits unauthorized interception of coded television signals.

EXHIBIT B

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: April 24, 1981

PLEASE PRINT NAME	PLEASE PRINT PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Mark Penner	521 'C' ST Sparks Nev.	356-7465
Darrell L. Roy	1860 Radcliffe Reno NE [illegible]	[illegible]
R.K. Mulligan	Satellite [illegible] Sparks	73[illegible]-6125
Edward T Jorge	Nevada Pay TV -	312-726-2360
Paul Ziegler	Nevada P. T.V.	702-734-7444
Mr. Kr[illegible]		

1654

EXHIBIT C

(a.) Any person who:

(1) Knowingly carries out an unauthorized interception of a subscription telecommunication;

(2) Knowingly attempts to carry out or conspires to carry out an unauthorized interception of a subscription telecommunication;

(3) Knowingly uses an unauthorized interception of a subscription telecommunication for his own commercial advantage or financial gain; or

(4) Knowingly manufactures, distributes, sells, possesses or installs any device designed to carry out an unauthorized interception of subscription telecommunication;

shall be liable for civil penalty under subsection (b) and shall be subject to criminal penalty under subsection (c).

(b.)

(1) Any person who is aggrieved by any violation of subsection (a) may commence a civil action for actual damages, for damages under paragraph 1 hereof and for equitable relief against the person who is alleged to have committed the violation.

(2) Any person who willfully violates subsection (a) is subject to a civil penalty of $100.00 per day for each day of violation and for each act of violation. All civil penalties recovered shall be paid to the State of Nevada.

(c.) Any person who violates subsection (a) shall be guilty of a misdemeanor.

(d.) For purposes of this section:

(1) The term "interception" means the receipt of any subscription telecommunication.

(2) The term "subscription telecommunication" means any telecommunication which is intended for receipt in intelligible form only by a person who has agreed to pay a fee or charge to the person originating the telecommunication or his agent.

LAW OFFICES
REID & ALVERSON
REID & ALVERSON BLDG
428 SO FOURTH ST
LAS VEGAS NEVADA

(3) The term "telecommunication" means any transmission, emission, or reception of signs, signals, writing, images, and sound or intelligence of any nature by wire, radio, optical, microwave or other electromagnetic systems.

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89101

EXHIBIT D

LAW OFFICES
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HAROLD GORDON
ROBERT W. HEALY
LARRY A. MILLER

OF COUNSEL
ROBERT D. ROADMAN

CABLE ADDRESS
GORMIL

April 16, 1981

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. H.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 Unilities Commission

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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 of 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 penalities 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.

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

GORDON & HEALY
CHARTERED

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
Robert W. Healy

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tions transferred to the Commission by this Act, or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this Act.

(c) All records transferred to the Commission under this Act shall be available for use by the Commission to the same extent as if such records were originally records of the Commission. All final valuations and determinations of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communication, and all orders of the Interstate Commerce Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this Act.

(d) The provisions of this Act shall not affect suits commenced prior to the date of the organization of the Commission; and all such suits shall be continued, proceedings therein had, appeals therein taken and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, and duties from such agency or officer to the Commission under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Commission.

UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC. 605.[172] Except as authorized by chapter 119, title 18, United

[172] Section 605 was amended to read as above by Public Law 90-351, approved June 19, 1968, 82 Stat. 223. Section 605, enacted as Public No. 416, approved June 19, 1934, 48 Stat. 1103, formerly read as follows:

Sec. 605. No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and 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; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: Provided, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast or transmitted by amateurs or others for the use of the general public, or relating to ships in distress.

States Code,[173] no person receiving, assisting in receiving, transmitting or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communicaton which is broadcast or transmitted by amateurs or others for the use of the general public, or which relates to ships in distress.

WAR EMERGENCY—POWERS OF PRESIDENT

SEC. 606.[174] (a) During the continuance of a war in which the

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[173] 18 USC 2511(2)(a) and (b) authorizes certain interception of communications by communications common carriers and by the Federal Communications Commission as follows:

Sec. 2511(2)(a) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: Provided, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

[174] Joint resolution effective July 25, 1947, Public, No. 239, 80th Congress, 1st Session, Sec. 8, 61 Stat. 449 provided that in the interpretation of this Section "the date when this joint resolution becomes effective shall be deemed to be the date of the termination of any state of war heretofore

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

News media information 202/254-7674. Recorded listing of releases and texts 202/632-0002.

August 15, 1980 - G

MANUFACTURERS AND SELLERS OF NON-APPROVED SUBSCRIPTION TELEVISION (STV) DECODERS ARE CAUTIONED

Devices that are installed on television receivers to decode or unscramble television signals transmitted by a licensed Subscription Television (STV) station are part of complete communications systems required to be approved by the Federal Communications Commission prior to manufacture, import, sale, offer for sale, shipment, or use in connection with STV service. The Commission's rules relating to equipment and apparatus and subscription television systems are predicated on considerations of spectrum efficiency, prevention and minimization of harmful interference to authorized radio and television, as well as protection of the consumer against products which will degrade television reception performance. Such results can and may be caused by devices not meeting Commission technical standards. Moreover, the Commission's "systems approval" process assures the overall integrity of STV service as established by our regulatory scheme.

The Commission's statutory jurisdiction in these areas is contained in Sections 302,-303(e) and 303(r) of the Communications Act of 1934, as amended (47 USC Sections 302, 303(e)). Section 302(b) of the Communications Act states:

47 United States Code, Section 302

. . .

(b) NO PERSON SHALL MANUFACTURE, IMPORT, SELL, OFFER FOR SALE, SHIP, OR USE DEVICES WHICH FAIL TO COMPLY WITH REGULATIONS PROMULGATED PURSUANT TO THIS SECTION.

As noted, Subscription Television decoders are, pursuant to the Commission's rules, considered for approval in a "systems" context or configuration, and must also be found to be in compliance with the applicable technical performance strictures of Section 73.644 of the Commission's Rules before FCC approval may issue. One reason for approving STV devices only in a "systems" context is to establish compatibility and integrity between the transmission function, at one end, and the reception/decoding function on the other end. Moreover, this "systems" approach is necessary to assure that (1) technical standards for color, monochrome and aural signals are met, (2) spectral energy does not exceed limitations, (3) no increase in television bandwidth occurs, (4) the signal quality is comparable to conventional television without an increase in radiated power, (5) the signal is recoverable without material degradation, (6) internal modification of a subscriber's television set is not required, (7) there is no undue

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interference from such devices to other radio or television communications, and (8) STV systems are no more susceptible to interference than conventional broadcasting systems.

The manufacture, import, sale, offer for sale, shipment or use of a decoder that has not been approved by this Commission constitutes a violation of the Communications Act and the Commission's rules and subjects a person apprehended in such violation to the penal provisions of Title V of the Communications Act of 1934, as amended. Moreover, fines of not more than $500 for each and every day during which an offense occurs may be levied; or for wilfull or repeated violations, a forfeiture penalty not in excess of $2000 for each violation may be levied with each day of a continuing violation constituting a separate offense.

- FCC -

Family-viewing can of worms is reopened

Ferguson complies with appeals court order and sends case back to commission; eventual FCC decision can be appealed

The family-viewing case, which began in 1975 and which has been inactive for six months, is coming back to life, and it could be a long one. Last week in a U.S. district court in Los Angeles, the original judge in the proceeding, in conformity with an appeals court opinion overturning his decision, referred a portion of the case to the FCC. The FCC's decision, whatever it is, will itself be subject to appeal.

At issue is the action by the three networks in 1975 in adopting a policy of restricting the first two hours of prime time to material suitable for the entire family, and the National Association of Broadcasters' inclusion of the concept in its television code.

Hollywood writing, directing and acting guilds, as well as a number of individual writers, producers and directors and Tandem Productions, sued the commission, its members individually and the NAB. They claimed that the networks had acted in part at least as a result of pressure applied by then-FCC Chairman Richard E. Wiley, and that Wiley and the networks combined to coerce the NAB into adopting family viewing as part of its code. In sum, they said, the commission and broadcasting industry parties had combined to violate their First Amendment right to create programing, and the commission had violated the Administrative Procedure Act, as well.

Judge Warren J. Ferguson, then a district court judge but now a member of the U.S. Court of Appeals for the Ninth Circuit, ruled in favor of the plaintiffs; indeed he agreed with them on virtually every point (BROADCASTING, Nov. 8, 1976).

But a three-judge panel of the court of appeals for the Ninth Circuit agreed with the defendants that the case had been brought to the wrong forum; it unanimously held that the case, as a matter of original jurisdiction, belonged at the FCC. Thus, it directed the district court to refer the case against the FCC defendants to the commission. It also said the lower court should hold in abeyance the complaints against the networks and the NAB until the commission passed on the matter and any judicial review of the commission's decision was completed. The circuit's 12 judges later denied the plaintiffs' petition for rehearing, and the Supreme Court in October denied their request for review (BROADCASTING, Oct. 12, 1980).

So last week, lawyers for the Hollywood complainants, the FCC, the networks and the NAB were back in the U.S. district courtroom, with Ferguson sitting as a district court judge, to discuss the order in which Ferguson would send the case back to the commission.

The order itself is simple; it refers the complaints against the government to the commission, and says the action on claims against the private parties will be deferred pending judicial review of the FCC's decision on the matter referred to it. Ferguson orally directed the commission to issue a status report on the matter in 90 days.

There was some disagreement last week as to the extent of the issue referred to the commission. The networks contend that since the appeals court had vacated Ferguson's decision, the entire matter was before the commission—his factual findings as well as his legal conclusions. They asked the court simply to refer the entire matter to the FCC, and allow it to determine the procedures it will follow.

The plaintiffs, however, argued in court that the referral is narrow—that only the question of whether what the commission and the networks and the NAB did in terms of allegedly influencing programing was illegal; they say the commission should accept Ferguson's findings regarding the pressure he says was applied by Wiley.

It wasn't clear last week how the commission would proceed. However, one lawyer said the staff would probably recommend that the commission move swiftly to invite comments on that question, as well as on the merits of the plaintiffs' claims.

Although the hearing in Ferguson's court was called to consider the language of the order referring the matter to the commission, it was clear Ferguson was also interested in explaining his theory of the case, and his reason for ruling as he did. He said his aim was to enlarge broadcasters' First Amendment rights by making clear they need not succumb to government pressure; indeed, he suggested that the networks, in contending they had acted to head off formal government action by the commission or Congress, had demonstrated a lack of concern for the First Amendment.

Those observations were challenged by Timothy Dyk, counsel for CBS. He said that network's concern for its First Amendment rights has been demonstrated by the large sums it has spent defending them in court—not always successfully. He also said the networks have a right to engage in self-regulation as a means of heading off government action.

Anti-pay-piracy bill being readied for House

Legislation, based on last year's Preyer effort, would fine firms up to $1 million for unauthorized reception and resale of pay programing; NCTA, MPAA, Time among those supporting bill

Legislation, prescribing civil and criminal penalties as high as $1 million for the unauthorized reception of pay television may be introduced in Congress by early June.

Representatives of the pay television industry have come to general agreement on language for a bill, aimed at stopping the manufacturers, distributors and users of radio equipment designed to intercept the pay television broadcasts of MDS and STV operators and the point-to-multipoint satellite transmissions of the pay cable net-

works. They are now looking for sponsors in the House and Senate.

The drafters of the legislation, which is modeled on a bill introduced without success last year by former Representative Richardson Preyer (D-N.C.), represent several facets of the pay industry: the National Association of MDS Service Companies (NAMSCO); the National Cable Television Association; the Motion Picture Association of America; Microband Inc., a major MDS operator, and Time Inc., which includes Home Box Office among its diverse media holdings.

Charles Walsh, an attorney for NAMSCO, said the legislation would clear up existing ambiguities in the Communications Act. If the legislation were adopted, he said, there would "no longer be any misunderstandings that interception was a crime or a violation of a private right that will be prosecuted criminally or civilly." Experience has shown that successful prosecutions of pay television pirates in various cities has discouraged the practice there, Walsh added.

None of the Washington attorneys working on the legislation wanted to put a time frame on it, but Fritz Attaway of MPAA guessed that it could be introduced within two months and hoped that it would pass both houses of Congress within the year. He said he expects "very little credible opposition" to it.

Walsh is also fairly confident that the bill, once introduced, will move quickly through Congress. The issue has "enough action and enough pizazz" to attract attention and prompt action, he said. People are beginning to realize, he said, that without effective safeguards, pay programing could start drying up. "They foresee the time when the motion picture industry is not going to release its product to a medium it believes is insecure."

Walsh also suggested the bill might attract support from the data communications industry, which might have an even greater desire to protect its transmissions from unauthorized reception than does the entertainment industry. "Efforts are being made to develop regular communications with those companies," Walsh said.

The search for a House sponsor is focused on the House Telecommunications Subcommittee. The industry representatives have met with various subcommittee members and their staffs about particular provisions of the legislation and about sponsorship. According to one source, Henry Waxman (D-Calif.) seems the likeliest candidate. He has shown interest in the problem in the past and many of his constituents—his district encompasses Hollywood and West Hollywood—are involved in motion picture.

The representatives are not releasing the language of their new bill, but they admit that it is similar to the ill-fated H.R. 7747 introduced by Preyer last July. The bill was passed with some modification by the House Commerce Committee, but died with the House rewrite bill (H.R. 6121) to which it had been attached. Preyer, who lost his bid for re-election in November, is not around to resurrect the bill.

Under the provisions of Preyer's bill, a person who carried out or attempted to carry out an "unauthorized reception of a subscription telecommunication" or [illegible] uses the subscription telecommunication for his own commercial advantage" would have been subject to civil and criminal penalties. And the penalties were stiff. Under the civil subsection, individuals intercepting signals for their own benefit would be liable for damages of $100 per day, up to $1,000, and court costs. Individuals or companies making commercial use of the intercepted material would be liable for court costs and "such punitive damges as [the court] considers appropriate." Under the criminal subsection, individuals guilty of unauthorized reception could be fined up to $25,000 and imprisoned for no more than a year. Individuals guilty of intercepting programing for commercial gain would be subject to fines up to $250,000 and imprisonment up to 18 months. Companies found guilty of the same offense could be fined $1 million.

One of the forces that actively opposed the Preyer bill last year when it was introduced was the Society for Private and Commercial Earth Stations (SPACE), an association of manufacturers, distributors and users of stand-alone satellite earth stations. But there is a chance that SPACE may not oppose legislation this time around.

According to Richard Brown, SPACE's general counsel, if all the pay cable networks would agree to allow individual earth station owners and satellite master antenna television system (SMATV) operators to buy their programing at a reasonable "marketplace" rate, SPACE would not oppose the legislation.

Radio dereg survives stay request and goes into effect

Court rejects petition by UCC while NAB seeks clarification from FCC on several points

The FCC's order deregulating radio went into effect as scheduled on Thursday, despite efforts of the United Church of Christ to stay the order. But it wasn't only the church that found some fault with the order; the National Association of Broadcasters, while supporting its "general thrust," asked the commission for partial reconsideration. It said it wants to "insure that the themes of broader licensee discretion, less government involvement and reduced paperwork" are implemented as fully as possible.

The church, which has appealed the deregulation order to the U.S. Court of Appeals in Washington, had filed a motion with the court on Monday, requesting a stay. The court on Tuesday issued a brief statement denying the motion, without even waiting for the commission's response. The church filed its motion with the court after the commission, on March 27, rejected a stay request the church had filed with it.

NAB sought clarification and modification of the deregulation order in three areas:

- The "generalized obligation of commercial radio stations to offer programing responsive to public issues" should be clarified. The NAB said the commission should, for instance, state specifically what weight it will attach to issue-oriented programs carried at "higher listenership" hours as opposed to other hours of the broadcast day, and make clear when broadcasters can rely on the programing of other stations in making up their own program schedule.
- The order should be modified to reduce the paperwork required by modifying or eliminating the requirement that a licensee document the manner in which it determined a particular issue in the list of issues with which it said had dealt was one facing the community. The NAB said it agreed with Commissioner Anne Jones's statement that the requirement was "residual ascertainment" and could lead to a restoration of formal ascertainment which, she said, "should be buried forever."
- The licensee should not be required

EXHIBIT E

GCB Amendment No. 10
Date: 4/15/81

GCB FURTHER AMENDMENTS TO S.B. 527

As a result of the Joint Judiciary hearings on April 15 and 16, 1981, the following additional amendments are proposed to S.B. 527:

Section 7, page 2, line 30: When the definition of "work permit" was moved, the last sentence of the subsection was accidently omitted. Therefore, on line 30 the following should be added: "A document issued by any authority for any employment other than gaming is not a valid work permit for the purposes of this chapter."

Section 14, page 6, lines 29-39:

Subsection 2 should be amended to read as follows: "The commission shall schedule a hearing within 5 days after [the effective date of the order pursuant to the provisions of NRS 463.312 and] receipt of the notice of defense. [f]For the purposes of this hearing, the emergency order shall be deemed the complaint."

Subsection 3 should be amended as follows: "The emergency order must state [the time and place of the hearing and] the facts upon which the finding of the necessity for the suspension is based.

Subsection 4 should be amended as follows: "The person whose work permit is summarily suspended must file a notice of defense within [3] 30 days after the effective date of the emergency order. Failure to timely file this notice waives his right to a hearing before the commission and to judicial review of the final decision."

A new subsection 6 should be added as follows: "Except as otherwise provided in this section, the procedures outlined in 463.312 shall be followed."

Section 19, page 7, lines 22-25: This section should be amended as follows: "Every sheriff , district attorney and chief of police shall furnish to the board, on forms prepared by the board, all information obtained during the course of [investigating or prosecuting any person whenever] any significant investigation or prosecution of any person if it appears that a violation of any law relating to gaming has occurred."

Section 26, page 10, lines 36-39: Additional language should be added at the end of this paragraph e as follows: "The former licensee shall be required to maintain all books, papers and records necessary for the audit for a period of one year from the date of surrender or revocation of his gaming license. If the former licensee files a petition for redetermination or

seeks judicial review of the commission's determination, then all books, papers and records must be maintained until a final determination is rendered.

Section 25, page 9, lines [illegible]-31:

Subsection 3 on line 14 should be amended by adding at the beginning of line 14 the underscored language, "... and all information and data pertaining to an applicant's criminal antecedents and background furnished to or obtained by the board or commission from any source are confidential and must not be revealed in whole or in part except as ..."

Lines 15-17 remain unchanged.

Lines 18-31 should be deleted and replaced by: "The commission may reveal any information or data which is confidential under this section to an authorized agent of any agency of the United States government, of any state, or of a political subdivision of this state pursuant to regulations adopted by the commission."

Section 26, page 10, line 48: Add "... this state [.] and may exercise any proper law enforcement function or duty.

Section 31, page 15, lines 20-26: Amend as follows: "The board shall make its best effort to make its order upon an application for a position which cannot be held pending licensure or approval by the commission not longer than 9 months after the application and supporting data are completed and filed with the board. If denial of an application is recommended, the board shall prepare and file with the commission its written reasons upon which the order is based."

Section 56, page 33, lines 22-31: Amend as follows: "The holder of a state gaming license may, within [1 year] 2 years of cessation of business or upon specific approval by the board, dispose of by sale in a manner approved by the board, any or all of his gaming devices, including slot machines, without a distributor's license. [If the disposition is at the cessation of business, this exemption is valid for a single bulk of all gaming devices approved by the board.] In cases of bankruptcy of a state gaming licensee or foreclosure of a lien by a bank or other person holding a security interest for which gaming devices are security in whole or in part for the lien, the board may authorize [a single bulk sale] disposition of the gaming devices without requiring a distributor's license."

Section 57, page 34, line 1: The spelling of "greately" should be corrected.

Amendment No. 9
Date: 4/13/81

GCB AMENDMENTS TO S.B. 527

Section 2, page 1, lines 6-7: Amend as follows: "Controls, is controlled by or [engages in] is under common control with [another business organization] a corporate licensee and ...."

Section 12, page 5, lines 30-39: After the word "made" on line 30, all language through line 35 should be deleted. A new period should be added after "made" on line 30. Subsection 3 beginning on line 36 should be amended as follows:

"[3.] 2. The filing of a petition for redetermination which complies with the provisions of NRS 463.3883, or the filing of a petition for judicial review does not affect the lien or stay any action for the enforcement of the lien. If the amount due is modified upon redetermination or judicial review, the commission shall record a notice of the modification of the amount of the lien.

Section 15, page 6, line 43: Amend as follows: "[It is unlawful for any person to] No person shall operate or maintain in ...."

Section 31, page 15, line 22: Replace "without" with "pending" as follows: "... held [without] pending licensure or approval by the commission not longer than ...."

Section 42, page 26, lines 3-7: Subsection 4 on lines 3-7 should be deleted.

Section 42, page 26, lines 8 and 9: Add "463.373 or" as follows: "Slot machines for which a fee is paid pursuant to NRS 463.373 or 463.375 are exempt from the fees prescribed in this section."

Section 43, page 27, lines 17-18: Add "463.373 or" as follows: "Slot machines for which a fee is paid pursuant to NRS 463.373 or 463.375 are exempt from the fees prescribed in this section."

EXHIBIT F

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A. B. 232

ASSEMBLY BILL NO. 232—ASSEMBLYMAN SADER

FEBRUARY 25, 1981

Referred to Committee on Judiciary

SUMMARY—Clarifies age of and eliminates citizenship requirement for directors of corporation. (BDR 7-922)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to corporations; clarifying the required age for directors; eliminating the requirement that one director be a citizen of the United States; clarifying the type of agent appointed by certain corporations; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 78.115 is hereby amended to read as follows:

78.115 The business of every corporation [shall] *must* be managed by a board of not less than three directors or trustees, all of whom [shall be of full age and at least one of whom shall be a citizen of the United States, except that, in] *must be at least 18 years of age. In* cases where all the shares of the corporation are owned beneficially and of record by [either] one or two stockholders, the number of directors may be less than three but not less than the number of stockholders. Unless otherwise provided in the certificate or articles of incorporation, or an amendment thereof, [it shall not be necessary for] directors [to] *need not* be stockholders.

SEC. 2. NRS 80.010 is hereby amended to read as follows:

80.010 1. Before commencing or doing any business in this state, every corporation organized under the laws of another state, territory, the District of Columbia, a dependency of the United States or a foreign country, which enters this state for the purpose of doing business therein, shall file:

(a) In the office of the secretary of state of Nevada:

(1) A certificate of corporate existence issued by an authorized officer of the jurisdiction of its incorporation setting for the filing of documents and instruments related to the articles of incorporation, or the governmental acts or other instrument or authority by which the corporation was created. If the certificate is in a language other than English, a

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translation, together with the oath of the translator and his attestation of its accuracy, [shall] *must* be attached thereto.

(2) A statement executed by an officer of the corporation, acknowledged before an officer authorized by the laws of the place where the acknowledgment is taken to take acknowledgments of deeds, setting forth:

(I) The name and address of its [registered] *resident* agent in this state, who shall be a natural person residing in, or another corporation with its principal office located in this state;

(II) As of a date not earlier than 6 months before the filing date, the authorized capital stock of the corporation, the number of par value shares and their par value, and the number of no-par-value shares, as set forth in the articles of incorporation as last amended; and

(III) A general description of the purposes of the corporation.

(b) In the office of the county clerk of the county where the corporation has its principal office in Nevada, a copy of the certificate of corporate existence certified by the secretary of state.

2. The secretary of state shall not file the documents required by subsection 1 for any foreign corporation whose name is the same as, or deceptively similar to, the name of any corporation formed or incorporated in this state or any other foreign corporation authorized to transact business within this state or a name reserved for the use of any proposed corporation, unless the written acknowledged consent of that other corporation or person for whom the name is reserved to the adoption of the name is filed with the documents.