DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., NW
Washington, DC 20530
(202) 514-2401/(202) 616-2645 (f)

[stamped 3/7]

James J. Popham, Esquire
Vice President, General Counsel
Association of Independent Television
Stations, Inc.
Suite 300
1320 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Popham:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal under which your trade association would collect information from its members about the prices they are paying to A.C. Nielsen Company for television ratings services, aggregate the information to mask the identity of the reporting stations and issue an annual report on its findings.

The Association of Independent Television Stations, Inc. ("INTV") is a nonprofit association of television stations that are not affiliated with the ABC, CBS or NBC television networks. Its members, some 465 in number, are located throughout the United States. There are over 1100 commercial television stations in the United States. Commercial television stations derive their revenues primarily from selling advertising time to local, regional and national advertisers. You have indicated that the price paid television stations for advertising time is based, in large part, on the estimated size and demographic composition of the audience at the time that the advertising material is broadcast. Estimates of the size and demographic composition of audiences for particular television programs are obtained by a "ratings" firm that polls representative groups of

actual and potential viewers and sells the resulting information to television stations and advertisers.

You have informed us that prior to 1994 two firms--Arbitron Company and A.C. Nielsen Company--competed to sell ratings services to television stations, including your members. Arbitron, however, withdrew from the television ratings business at the end of 1993, leaving A.C. Nielsen as the sole supplier of such services.

Since its members are faced with a single supplier of ratings services, INTV proposes to obtain and publically disseminate information that would indicate whether A.C. Nielsen had significantly raised its rates in general or was charging different prices for the same services sold to similarly situated members of INTV subsequent to Arbitron's withdrawal from the television ratings business. If the information gathered indicates that A.C. Nielsen has raised its rates substantially, INTV hopes that publication of that information would induce new entry into the television ratings business. If the information gathered indicates that similarly situated INTV members are being charged different rates by A.C. Nielsen, INTV's members will take whatever individual action, if any, each deems appropriate. INTV would limit its role to the collection and preservation of data in a confidential manner and publication of that data in an aggregated form that masked the identify of prices paid by individual members.

To preserve the anonymity of member responses, INTV proposes to send each member a "return form" and a "response form". A completed "return form" would identify the member and contain a certification by a responsible official of the member station that a "response form" had been accurately completed and separately mailed to INTV. The "response form" would not identify the responding station/member, but would identify the specific ratings information purchased from A.C. Nielsen, the price paid, the market size category, program format, and frequency range (VHF or UHF) of the station, and whether the station purchased ratings information from Arbitron prior to its announced withdrawal from the ratings business. Two separate preaddressed envelopes would be supplied, one for the "return form" and the other for the "response form", and each envelope would be addressed to a different INTV official. Return of the information to INTV by any means other than the U.S. Postal Service using the pre-addressed envelopes would not be permitted. Only two INTV officials would have access to the "response forms". A single, different, INTV official would receive and have access to the "return forms". That single official would keep a list of those members who had filed "return forms" and would prepare followup letters to those members who had failed to respond. Any "return forms" or "response forms" that were not filled out in the directed manner would be turned over to INTV's Vice President, General Counsel, who would return the material to the erring sender and request a new submission in the appropriate manner.

The information received by INTV from its members would be aggregated in a manner that, when published, would disclose the mean and median price paid for each type of television ratings information provided by A.C. Nielsen, and the number of stations reporting, by a number of categories, e.g., by market size, program format, frequency range, date of contract, and relationship with Arbitron prior to its withdrawal from the television ratings business.

Based on the information and assurances that INTV has provided to us, the Department has no current intention to challenge the exchange and publication of information in the manner contemplated by INTV'S proposal. To the extent that the information is exchanged and published in accord with the statements and commitments in the materials submitted to the Department, the information exchanged is not likely to result in concerted decisions by INTV members with respect to prices paid for rating services. The prices paid to A.C. Nielsen by individual member-stations will be masked by the controls imposed on the gathering and maintenance of the information and the fact that only aggregated information will be disclosed. Any information disseminated should be sufficiently aggregated that recipients will not be able to identify the prices charged to individual stations/members. The members of INTV will continue to deal with A.C. Nielsen on an individual basis.

Even if INTV's proposed information exchange actually has the effect, through bilateral negotiation between individual INTV members and A.C. Nielsen, of reducing differences in the prices paid to A.C. Nielsen by similarly situated members, the Department cannot predict in advance that the result would be anticompetitive. While there are circumstances in which concerted purchasing action that provides rivals with a high degree of common costs can facilitate collusion in the rivals' selling markets (here television advertising), that is not likely to be the case here because the purchase of ratings services constitutes a very small portion, approximately two percent, of television station costs. In addition, INTV members face strong rival, non-member television stations in their local markets.

It is possible that INTV's proposal will have procompetitive effects. To the extent that it increases information available to INTV members or induces new entry in the television ratings business, INTV's proposed information exchange could result in increased efficiency and output.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed information exchange proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

[S]
Anne K. Bingaman
Assistant Attorney General