

CONCURRING STATEMENT
OF CHAIRMAN RICHARD E. WILEY
In re Applications
of United Community Systems,
Inc., et al., CAC-3722-3
IN WHICH COMMISSIONERS REID,
QUELLO AND WASHBURN JOIN

The prerelease problem is a legitimate concern where a network affiliate must withstand the carriage of that network's programming over a cable system in his community in advance of domestic network distribution. The anticipated adverse impact on the local affiliate's viewership is no different simply because the duplicate program is carried on a foreign rather than domestic signal, and is cablecast in his community in advance of local broadcast rather than simultaneously. Nevertheless, our recognition of that problem does not necessarily call for this agency to take corrective action where other parties may have a more immediate and lasting influence.

The difficulty apparently stems from the fact that program distributors offer prerelease opportunities in the exercise of their foreign distribution rights. As a result, foreign signals lawfully carried by cable systems in markets such as Seattle, Washington, carry network programming in advance of local affiliate carriage. The problem, moreover, extends beyond the cable industry. The construction of a higher transmitting tower is apparently underway in at least one large Canadian city which may have the effect of directly transmitting prereleased programs throughout several more markets in this country.

Because of my lack of confidence that rule making offers the best solution, I believe the networks should be encouraged to take whatever actions they lawfully can to persuade program distributors that the pre-release of programs may have an adverse impact on local broadcasting. In my opinion, such an essentially unfair practice should be terminated in the near future.