Cable Broadcast Sub-council, Telecommunications Council—18th Meeting
Meeting Proceedings

1. Date, Time & Place

Thursday, June 21, 2007; 13:00–14:35

Conference Room 1, Ministry of Internal Affairs and Communications (MIC)

2. Attendees (Sub-council Members) (honorifics omitted)

(1) Sub-council Members

Yoshiaki Nemoto (Chairperson), Chika Sekine (Vice Chairperson), Kazuko Ohtani (a total of three members)

3. Attendees (Staff Members)

(1) Information and Communications Policy Bureau

Yasuo Suzuki (Director-General, Information and Communications Policy Bureau), Mutsumi Nakada (Officer), Eisaku Ando (Director, Terrestrial Broadcasting Division),
Noboru Fujishima (Director, Regional Broadcasting Division)

(2) Secretariat

Hiroshi Matsumura (Assistant Director, General Affairs Division, Information and Communications Policy Bureau)

4. Agenda (Closed-door deliberation)

Consultation Nos. 1172, 1173, 1174, and 1175 were discussed.

Opening

○ Chairperson Nemoto: I would like to call the 18th meeting of Cable Broadcast Sub-council, Telecommunications Council to order now. Furthermore, I declare that, with three out of the five members present, the quorum is met.

I would also like to state that this is going to be a closed-door meeting according to Item 2, Paragraph 1, Article 9 of Rules for Conducting Telecommunications Council Meetings (concerning deliberations on issues listed under Items 1, 3 and 4 of Article 26 – Part 2 of Cable Television Broadcasting Law).

Agenda

Deliberations on Consultation Nos. 1172, 1173, 1174 and 1175

(1) Explanation by the Secretariat

○ Nemoto: We would like to conduct the meeting according to the agenda distributed to you.

To begin with, I ask the Secretariat to review the discussions we have thus far held and summarize the main points of contention.

○ Fujishima: Using handout 18-1, titled "Points of Contention," I would like to explain the main points.

Please look at page 1. Concerning the arbitration request made by four cable television companies in Oita, we held a consultation session on May 24 and heard the companies concerned on June 11. Since this is the third session on this issue, we would like to see our opinions converge toward the Sub-council's report. For that purpose, the Secretariat has summarized the points of contention in this handout as a springboard for discussion. I will explain them in order.

First, I would like to speak about the direction of thinking, which we put under the heading "Basic Stance." We start from the original objectives of the retransmission consent system.

Considering that the arbitration system is meant to support the retransmission consent system, all decisions need to be justified from the objectives of that system. The legislative intent of the retransmission consent system is stated as, "to ensure that the intent of the broadcaster will not be jeopardized or distorted." Even with digital broadcasting, possibilities remain where, through retransmission, the original editing intent of the broadcaster may be modified without their consent. We should thus conclude that the original editing intent of the broadcaster must be protected today as well as in the future.

Therefore, with respect to Item 5, Article 13 of the Law, the legitimate reasons for not providing consent should be the possibility that the original intent of the broadcast may be jeopardized or distorted through retransmission. Thus, in order to withhold consent, the broadcaster is required to supply concrete evidence suggesting the possibility that the intent of broadcast may be jeopardized or distorted through retransmission.

Further, it should be pointed out that, regarding the "concrete evidence suggesting the possibility that the intent of broadcast may be jeopardized or distorted through retransmission of analogue broadcasts," the so-called five criteria were made public in response to a question at the Diet in 1986. We have given due consideration to changes in time and environments that have occurred since that time, such as the wide-spread use of digital technology, and have listed several factors as candidates for legitimate reasons regarding retransmission consent that should be added from that perspective.

I would thus invite discussions from two viewpoints: first, whether there is concrete evidence suggesting that, through retransmission, the intent of broadcast may be jeopardized or distorted; and second, whether there are any factors that should be added to the objectives of the retransmission consent system, considering changes in time and environments such as the use of digital technology.

Specifically, we have listed Points of contention 1) through 9) outside the table, summarizing the arguments of the other side. I would like to go through them one by one.

First is Point of contention 1) on page 2, concerning the relationship between the "locality" and the prefecture-based licensing system.

To begin with, the broadcasters argue that the intent of the broadcast should be construed to include not only its editing intent, but also the intended geographical area of the program in question, and therefore, that which areas the retransmission may be allowed to cover should be

left to the discretion of the broadcaster. They are also of the opinion that allowing retransmission outside the intended area would undermine the prefecture-based licensing system, which permits broadcasters to broadcast within a specified area.

As we see it, there are two points here. First, whether the intent of broadcast should include the broadcaster's right to determine the area in which retransmission should be permitted. Second, past arbitrations have held that as long as there is no concrete evidence suggesting that the intent of the broadcast may be jeopardized or distorted, there is no legitimate reason for not granting consent. The issue here is whether this interpretation is actually undermining the prefecture-based licensing system.

As the basic stance respecting the objectives of the retransmission consent system, we are inclined to doubt that the intent of broadcast includes the broadcaster's right to determine in which area retransmission should be permitted. Further, since the prefecture-base licensing system is meant to govern broadcasting by electromagnetic waves because of the limited availability of wavelengths as resources and hence has little to do with cable television broadcasting, we do not find retransmission outside a specified area contradicting the prefecture-based licensing system. Therefore, we do not recognize any concrete evidence suggesting that through retransmission the intent of broadcast may be jeopardized or distorted and thus find no legitimate reason for not granting consent for retransmission.

Next is Point of contention 2), namely area-limited commercial features, on page 3. The broadcasters argue that broadcasting area-limited commercial features outside the specified area may run against the intent of the sponsors and may also cause confusion among Oita's subscribers, which they claim would jeopardize the broadcaster's intent of the broadcast.

The issue here would be whether broadcasting area-limited commercial features in Oita that were originally broadcast by Fukuoka's broadcasters would constitute concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted. Our basic view on this issue is that the argument that it may run against the intent of the sponsors does not constitute concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted. Also, taking the opinion brief of the Governor of Oita Prefecture into consideration, it seems that Oita's subscribers, when viewing retransmitted programs from Fukuoka, are well aware of area-limited commercial or campaign features. Hence, we are afraid that the argument that it would cause confusion among subscribers does not constitute concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted. In sum, we do not find any concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted through retransmission, and therefore do not find their argument to be a legitimate reason for not granting consent for retransmission.

Next is Point of contention 3), one-segment broadcast and data broadcast, on page 4.

The broadcasters point out that, whereas cable television broadcasters retransmit programs covering one-segment broadcast, subscribers are not provided with capabilities to view them using an ordinary one-segment broadcast receiver – for cable TV. They argue further that,

since there is no guarantee that the entire information services including data broadcast will be retransmitted 100% as they are, the intent of broadcast might be jeopardized. They are expecting, one day when it becomes possible to operate one-segment broadcast independently, to produce, for one-segment broadcast, programs using materials other than those for fixed receivers. When this happens, they argue, it will become the broadcaster's editing/production intent of broadcast to offer a total package of one-segment broadcast programs and fixed receiver programs.

What should be at issue here is whether broadcast is meaningless as a whole if subscribers cannot view every program, including one-segment and data broadcast, perfectly. Another point would be, supposing that cable TV broadcasters do retransmit all programs intact, whether the fact that subscribers cannot actually view one-segment or data broadcasts should be construed as concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted.

Our basic stance here is that, even if subscribers cannot view one-segment broadcast, one cannot say broadcast as a whole is meaningless and thus one would not find concrete evidence here suggesting that the intent of broadcast may be jeopardized or distorted. If cable TV broadcasters receive programs from ordinary broadcasters and then retransmit them intact, that there is no intention for them to jeopardize or distort the intent of broadcast should be understood, and hence one should be able to say that there is no concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted. If, on the other hand, they choose to edit the programs, e.g., by cutting data broadcast, during retransmission, one can say that there is concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted. That is the way we see it.

In this particular case, the applicant maintained that once consent was granted, it would retransmit the broadcast completely intact. We have therefore made it our basic stance that we do not see any concrete evidence suggesting that granting consent to retransmission will cause the intent of broadcast to be jeopardized or distorted, and thus we do not see any legitimate reason for not granting consent to retransmission

Next is Point of contention 4) on page 5, which is about the impact on business operation and the consent of local broadcasters.

The broadcasters argue that retransmission outside the specified area would significantly affect the business operation of local broadcasters, as it would cause the viewing rates and operating income to decline. In this regard, it would be essential to check what local broadcasters think. In addition, according to their argument, such business impact would make it difficult to maintain the affiliation network of broadcasters.

In view of the objectives of the retransmission consent system, we would rephrase these arguments into the question of whether the affect on the business operation of local broadcasters and the maintenance of the broadcasters' affiliation network would be construed as concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted.

Here is our basic stance. It is understandable that the financial and/or business issues on the part of local broadcasters, such as the viewing rate, operating income, and the maintenance of network affiliations, are part of the biggest concerns of the original broadcasters. This fact alone, however, would not directly translate into concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted. Thus we do not see any concrete evidence here suggesting that the intent of broadcast may be jeopardized or distorted, and hence do not see their argument as a legitimate reason for not granting consent.

Next is Point of contention 5) on page 6, on the handling of copyright.
The broadcasters argue that the cable TV broadcasters do not seem to have the correct understanding of the handling of copyright and thus are not handling copyright properly. They further argue that, since the cable TV broadcasters only take copyright measures for purchased programs as well as programs of their own production for their own areas of coverage, permitting retransmission in areas beyond their understanding may create problems.
It is our understanding that the retransmission consent system, which is intended to preserve the intent of broadcast, is separate from the copyright system, which is intended to protect creativity. The issue here would therefore translate into the question of whether it is necessary to take the handling of copyright into consideration today.
Here is our basic stance. The retransmission consent system under the Cable Television Broadcasting Law and the copyright system should be considered as two disparate systems with two different objectives, the former meant to preserve the intent of broadcast and the latter meant to protect creativity. It is therefore not necessary to consider the copyright system in our arbitration.
Also, financial issues should not be handled according to the Cable Television Broadcasting Law, but in the light of copyright and neighboring rights under the Copyright Law, which is a law governing private rights.

Next is Point of contention 6) on page 7, impact on subscribers and local economy.
On this issue, the broadcasters argue that, if local subscribers come to routinely watch retransmission channels that are broadcasting programs originally produced for areas other than their own, they would run the risk of missing local information or not receiving emergency announcements in a timely manner, which may negatively impact the life and assets of the residents of Oita Prefecture. In areas where there is a local broadcaster belonging to the retransmission broadcaster’s affiliate network, they argue, the local broadcaster’s programs should be watched. They further maintain that, if local subscribers come to routinely watch retransmission channels, it would accelerate over-concentration into Fukuoka, which would have a negative impact on the promotion of local culture and the vitalization of local economy.
It is our understanding that the retransmission consent system is intended to preserve the intent of broadcast. The issue here, as we see it, would be whether it is necessary to take the impact

on local subscribers and local economy into consideration.
Our basic stance is this. What kinds of information, including local information, to receive is a matter of subscriber choice, which should be respected in and of itself, and is not something that broadcasters should decide. It has nothing to do with whether the intent of broadcast may be jeopardized or distorted, and hence need not be taken into consideration in our arbitration. In addition, the argument that programs of local broadcasters should be watched has nothing to do with whether the intent of broadcast may be jeopardized or distorted, and hence need not be taken into consideration in our arbitration. Furthermore, the argument by the broadcasters outside the prefecture about the smooth dissemination of emergency information and announcements from the viewpoint of possible impact on the life and assets of Oita residents has nothing to do with whether the intent of broadcast may be jeopardized or distorted, and hence need not be taken into consideration in our arbitration.

Next is Point of contention 7) about the protection of analogue subscribers, on page 8.
The broadcasters argue that, since analogue and digital broadcasts are based on different licenses, they do not have to give consent for digital broadcast just because they did for analogue broadcast.
The issue here, as we see it, is whether the argument that digital broadcast is different from analogue broadcast has anything to do with concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted.

Our basic stance is this. While it is true that analogue and digital broadcasts are treated separately in terms of licensing for technical reasons, the argument that these two differ from each other is abstract without any concrete supporting explanations from the broadcasters. We do not see concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted by the retransmission by a cable television broadcaster in Oita. We therefore do not see concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted by granting consent to retransmission and therefore do not consider it a legitimate reason for not granting consent.

Next is Point of contention 8), about the observance of consent to retransmission of analogue broadcast, on page 9.
The broadcasters point out that one of the applicants had once retransmitted programs after the expiration of retransmission consent, and argues that this fact of illegal retransmission should be taken into consideration.
This issue can be summarized into two points. The first point is whether the fact of one applicant having retransmitted analogue programs after the expiration of consent should be taken into consideration in the arbitration over retransmission of digital broadcast. The second point, for the applicant who performed retransmission after the expiration of consent, is

whether it is necessary to consider the situation as specific to the case.
Our basic stance is as follows. How well cable TV broadcasters have observed the consent granted for analogue broadcast should have some bearing on judging whether the intent of broadcast will be preserved in digital broadcast as well. Furthermore, as for a company that retransmitted some analogue programs after the expiration of consent, in judging whether the intent of broadcast will be preserved in digital broadcast, it would be worthwhile to consider not only the mere fact of expiration of consent on paper, but also (a) the circumstances causing it to happen and (b) the actions taken by the parties concerned. In this particular case, that the original broadcaster explicitly told the cable TV broadcaster to stop retransmission has not been reported. Furthermore, after the fact of continuing retransmission after the expiration of consent was brought to light, the latter consulted with the former and obtained a renewal of the consent. From these circumstances, the possibility that the intent of broadcast will be jeopardized or distorted should be deemed low.

Next, on page 10, there is another point of contention about the observance of consent to retransmission of analogue broadcast.

One of the broadcasters points out that Oita Cable Network, Corp. once breached a contract on consent to retransmission in that the latter was not actually retransmitting programs although the consent had been granted, and argues that this fact should be taken into consideration.
This issue can be summarized into two points. The first point is whether the broadcaster's consent to retransmission binds the cable TV broadcaster to retransmit programs (in other words, whether not retransmitting programs after obtaining consent to do so constitutes a breach of the contract). The second point is whether it is necessary to take the fact that there was a breach of contract into consideration in our arbitration.
Here is our basic stance. Whether not retransmitting programs after obtaining consent constitutes a breach of the contract depends on how the contract is phrased. In this particular case, the contracts on consent between Oita Cable Network, Corp. and RKB Mainichi Broadcasting Corp. and between Oita Cable Network, Corp. and Kyushu Asahi Broadcasting Co., Ltd. include the provision "retransmission of broadcast shall be readily receivable at all times and shall not be intentionally interrupted." Thus, not retransmitting broadcast should be construed as a breach of the contracts. How well cable TV broadcasters have observed the consent granted for analogue broadcast should have some bearing on judging whether the intent of broadcast will be preserved in digital broadcast as well. Furthermore, as for a company which did not retransmit some analogue programs after obtaining consent, in judging whether the intent of broadcast will be preserved in digital broadcast, it would be worthwhile to consider not only the mere fact of not retransmitting broadcasts, but also (a) the circumstances causing it to happen and (b) the actions taken by the parties concerned.
Our basic stance is this. Oita Cable Network, Corp., which had obtained consent to

retransmission from RKB Mainichi Broadcasting Corp. and Kyushu Asahi Broadcasting Co., Ltd., discontinued retransmission without notifying the other parties, and hence should be considered to have breached the contracts. As a result, Kyushu Asahi Broadcasting Co., Ltd. chose not to grant consent. From these circumstances, it would be open to discussion, as to the retransmission of digital broadcast by this particular channel, whether the intent of broadcast may be jeopardized or distorted.

Last is Point of contention 9), the arbitration system, on page 11.
The broadcasters point out that the cable TV industry has grown since the introduction of the arbitration system and that the entire country is moving toward the age of four types of waves, and request, based on these facts, that the Government review the arbitration system, including the option of abolishing it altogether.

Under the “Point of contention” column, as you see, we take the proposed review of the arbitration system merely as a request for the Government and not as a legitimate reason for not granting consent.
Our basic stance regarding this issue is as follows. In handling this particular case, we are in a position to determine whether there is a legitimate reason for not granting consent, based on the retransmission consent system and the arbitration system under the current law. Therefore, we do not consider the request for a review of the arbitration system as a legitimate reason for not granting consent.

So far, I have explained the points of contention and our basic stances, using a handout. At this point, I would like to share with you, orally and without any handout, the comments we have received from Sub-council members Negishi and Nagamura, who are absent today but have taken the time to go over the materials.
To begin with, Mr. Negishi’s comment is as follows. “I still do not understand what the ‘public interest’ is, which practically lies at the heart of the current retransmission consent system and the arbitration system, that stipulates consent to retransmission must be granted as long as the intent of broadcast will not be jeopardized. However, as long as we accept the current compulsory retransmission system and the arbitration system, I do not see any alternatives than the basic stances set out in the material prepared by the Secretariat. One idea I would like to bring up is that it would be better if we can set guidelines encouraging payment of compensation. Would it be difficult?”
I would like to quote Mr. Nagamura next. “As for the overall direction, I concur with the basic stances set out in the material prepared by the Secretariat.”
With these supplementary comments, I would like to conclude the Secretariat’s explanation.

○ Nemoto: Thank you very much.

(2) Exchange of Opinions

○ Nemoto: We have already met a number of times to discuss this issue. At this point, let me review again how it was brought to our table. Since this was the first case of arbitration for digital broadcast, the Minister of Internal Affairs and Communications consulted the Cable Broadcast Sub-council. Looking back, I believe that, because it was probably a consultation from scratch, the intent was for us to study the issue from a variety of viewpoints, particularly considering the switch from analogue to digital.

The arbitration system was introduced in 1986, as I recall. The minutes of the deliberations at the Diet during that period list a variety of issues that were addressed, which makes it easy to understand that the system was established after those issues were solved. From this background, we have taken it upon ourselves to study the issue from a variety of angles, especially with regard to what changes digital would bring about. We have thus had hearings with the original broadcasters, cable TV operators and local broadcasters in Oita Prefecture. We have also invited an opinion from the Governor of Oita Prefecture about the local interests. Through these hearings, we have heard a variety of views and opinions, many of which sounded like a repetition of the deliberations in 1986, but some of which were very complex. Considering our mission to bring the matter closer to arbitration, we asked the Secretariat to sort out all these various points of contention and arguments.

Now, what we should discuss first towards arbitration would be, as put on page 1, how to set the criteria for decision as the Sub-council. I am afraid that without a clear definition of the decision criteria, our discussion would go in circles. As the Secretariat put it, the objective of the arbitration system is to support the retransmission consent system. To be more specific, granting or withholding of consent should be justified by a legitimate reason, and that is from the viewpoint of whether the intent of broadcast will be jeopardized or distorted. So far, we have been doing arbitration in accordance with the current rules. The first point I would ask you to discuss is whether we, as the Cable Broadcast Sub-council, should continue to perform arbitration in the same manner in accordance with the legislative intent while considering various situations. I would like to remind you that, at one of the most recent meetings, Mr. Negishi voiced his opinion that, while the legitimate reason would have to be based on whether it is in line with the five-point guidelines presented at the Diet, it would be better also to add a few more if we see fit. So please consider these views. Again, we, as the Sub-council, would like to make it our guideline for arbitration to follow the current rules and to focus on whether or not the intent of broadcast may be jeopardized or distorted, but at this moment would appreciate your candid opinions, especially whether it is necessary to add anything else.

○ Sekine: As Mr. Nemoto has just explained, the biggest point is whether the legislative intent is okay as it is. I personally would support it, but there is one thing I would like to have

clarified.

Perhaps the day before yesterday it was reported that the legal systems concerning telecommunications and broadcast were under review toward restructuring, and in particular, some changes would be introduced to the Broadcast Laws in respect to information and telecommunications. My question is, therefore, whether we should simply disregard these future moves.

○ Nemoto: What is the situation?

○ Nakada: The day before yesterday, our study group made an intermediate summary report on the legal system. They plan to conduct the study and to propose legislation at the regular Diet session in 2010. Their intent is therefore to consider mid- to long-range trends in revising the legal systems, especially with the integration of telecommunications and broadcast in mind. Thus, the report of the day before yesterday was about a rough framework of how to proceed. It will take a lot of fleshing-out and discussion before we see a set of positive laws. The consultation in hand, however, requires us to make judgment according to the current law. There is a considerable distance in between. It would be very difficult to bring a future legal framework into today's judgment based on the current positive law. I think we should separate the two matters.

○ Sekine: You are right. I just wanted to point out that, while understanding we should separate the issue, we might well need to consider the general trend. I think it is permissible, within the framework of the current legal system, to focus our discussion on whether or not the so-called legitimate reason will ensure that the intent of broadcast will not be jeopardized or distorted.

○ Ohtani: Through this series of discussions, I have come to realize that the retransmission consent system and the compulsory retransmission system which supports it are meant to ensure that as many citizens or residents as possible can reap the benefit of programs once they are broadcast, via either wireless or cable, as long as the intent of broadcast will not be jeopardized or distorted.

In sum, therefore, in view of the objectives of these systems as well as the objectives of the Broadcast Law and the Cable Broadcast Law, I do not see any problem with the proposed idea of basing our reasoning, or judgment of legitimacy, on whether the intent of broadcast may be distorted.

I would like, however, to point out two issues concerning this matter that we need to consider. First, while the legislative intent, which was revealed in answer to a question during the Diet session of 1986, should clearly be regarded as the official guideline, we cannot find anything like it anywhere in the Book of Six Major Laws. Thus, when asked by the MIC Minister about the criteria of judgment for arbitration, whether this legislative intent is indeed a self-evident truth shared by all broadcasters would emerge as a problem. Considering the fact that broadcasters are much more seriously engaged in arguments of a very different nature, for example, I am afraid it

is debatable how deeply the intents of the Broadcast Law and of the Cable Broadcast Law have taken root. I do not feel that it has a major impact on our decision this time, but I would like to point out that we need to consider this issue when planning the framework for the future system. This is my point No. 1.

The second point concerns the preservation of the intent of broadcast. At the heart of it lies the notion of the intent of editing, which, I think, is already well protected by the system of neighboring rights on copyright. Thus, I wonder what sense it would make to define it separately in the framework of broadcast laws.

Mind you, I do not consider it a waste of time to have discussed this issue. I would only like to draw your attention to the fact that this request for arbitration has been submitted, which reflects a lack of understanding regarding the retransmission consent system on the part of broadcasters, and it is depriving government employees of a lot of their precious time. This has made me think that this may be a sensible system after all if we were to reach a similar conclusion. Again, as I said earlier, this is not something that is so important it would influence our decision. It is permissible to make judgment based on the objectives of the existing laws.

Still another point I would like to make is what differences, if any, there are between digital broadcast and analogue broadcast in terms of legal requirements. Frankly, while the transition from analogue to digital has a great impact in other respects, I cannot think of anything substantial in respect to the issue at hand. From these perspectives, I totally agree with the basic stance, or the direction of thinking, as explained by the Secretariat.

○ Nemoto: Thank you very much. Now, as to the judgment criteria for arbitration, we would like to focus on the legislative intent as summarized by the Secretariat. As pointed out by some of the members, however, I feel that it is about time to re-introduce a sound legal system reflecting what it should look like through the hearings, including the issue of integration of telecommunications and broadcast. The record of Diet interpellation reveals a variety of opinions and assumptions. For example, one MP (Member of Parliament) argued that this was a matter to be determined between the parties involved, instead of something to undergo arbitration by the Government. Another said that this was the last resort, which should be avoided as much as possible. A third said that there were very few cable broadcasters and the number would not increase dramatically. I now feel that it is about time for the Government to put everything in order, including networks and the integration of telecommunications and broadcast. While I think it is a difficult task, they are planning to do it, as Mr. Nakada just explained, so we, as the Sub-council, would like to leave various issues brought up in the hearings to the study group and concentrate on the existing rules in this arbitration.

One question, which was raised by Ms. Ohtani, concerning whether the broadcasters were all aware of the five criteria for arbitration can be solved, I believe, by attempting to notify all the parties concerned via an appropriate means, so I would like to proceed to the next step.

We have identified nine points of contention through the hearings, as listed at the bottom of

page 1. I believe this covers everything. Just in case, is there anything missing…is it okay?

○ Nemoto: Very well, if you become aware of anything missing, then please bring it up at the end. I would now like to invite your opinions on these nine points from the viewpoint of arbitration.

First, on page 2, the relationship between the "locality" and the prefecture-based licensing system, about which the broadcasters expressed strong opinions, saying that the prefecture, as a territory, is a life and death matter for broadcasters. There was even a sense of crisis. Presented here is the view concerning this and the view that the intent of broadcast refers to the intent of editing and does not cover the areas of retransmission.

I believe that the arbitrations conducted so far have been based on this stance. Another point is that the prefecture-based licensing system is meant for a physical medium called wireless. The idea is to make effective use of the medium, which has no direct relationship with cable TV broadcast. Therefore, consent to retransmission would not contradict the prefecture-based licensing system. These are the thoughts presented here. What do you think of them?

In sum, our stance is that their argument does not constitute a legitimate reason for not granting consent to retransmission. What do you think of this?

○ Ohtani: May I ask a question?

○ Nemoto: Please go ahead.

○ Ohtani: When we speak of the intent of editing, I feel that who is going to view the program also has some bearing on editing. For example, the idea about the program guidelines spelled out in the Broadcast Law is based on the assumption that the program guidelines should be prepared and the editing strategy should be formulated in accordance with who the target of the program is. While I do not specifically see "locality" per se, I would feel there might be some contradiction with the background thinking of the Broadcast Law if somebody says what type of audience would view the program in other areas has no bearing on the intent of editing. What do other people think about this point?

○ Fujishima: Speaking about the intent of editing, I think that the editors and producers probably produce programs with the audiences that will view them in mind. They are probably aware of whether it is directed toward all the people in the country or a targeted audience such as a specific age group. One way of thinking would be that, even if they have such intent, it may not be as strong as not wanting other people to view it, or it may not be excluding such possibilities. There are many examples like this. They produced a program targeted at people in the metropolitan area, but subscribers in the suburbs also want to get the information. Then the producers or editors do not want them to view it. This may be rather hard to understand in the countryside. If we take the age group, there can be cases where they do not want youngsters to watch adult programs.

These examples can be well understood as examples of positive intent or public interest. Now, as to locality, if somebody says that the intent of broadcast may be positively jeopardized if

the program is to be watched by people in a certain geographical area and therefore they do not want them to watch it, then there must be a strong case, namely, a specific, concrete fact or reason.

Here the word “locality” is used in such a context. The producers and editors may indeed be thinking they are producing the program mainly for the people in their area, but I doubt whether you can say the editing intent of broadcast may be jeopardized if it is watched by people in other areas.

○ Ohtani: If that is the thinking behind it, then it follows that even if the program is watched by people living outside the prefecture, there is no adverse impact on the intent of editing or the intent of broadcast. If the broadcaster argues that there is indeed an adverse impact, then they would have to prove it. It would be more easily acceptable for you to say there was no explanation covering that point. If you say locality has nothing to do with this, then I would feel uncomfortable. At any rate, I accept the conclusion as it is. The only thing I would add is we would need to be more careful about how to explain this to the broadcasters.

○ Fujishima: I understand.

○Nemoto: Thank you very much. Speaking about licensing, I understand “prefecture-based” means inside the prefecture, including its borders, but even if the license is granted on a prefecture base, the broadcast naturally spills over the borders because of the nature of aerials and radio waves, which is inevitable. Spilled waves can be received, amplified and then broadcast via cable. In contrast, with cable TV, the broadcast cannot be received by wireless waves in any manner. It must be cable broadcast. Thus, would this situation not be considered a violation of the prefecture-based rule? What would be the criteria for judgment of violation? The licensee thinks he or she has the exclusive right, but the argument may arise that, since there are people outside the licensed area who can actually receive the broadcast, he or she is violating the license agreement. If so, how should we take it? Would the reasoning be that, since there are only a limited number who can receive the broadcast, there is only a small influence overall? Is it correct to think that there is no conflict with the prefecture-based licensing system established by MIC?

○ Suzuki: As pointed out now, wireless means that broadcast is done by using wireless waves. The other side is that the broadcast should reach the entire area specified, because law requires the broadcaster to endeavor to spread the broadcast. If we do not limit the area, we cannot determine the frequency range. The very existence of frequency ranges is the fundamental basis for licensing for ordinary broadcasters. We determine frequency ranges, and then individual areas are determined accordingly. This only means that individual assignments should be taken care of by the parties concerned.

In the case of CATV, there are no such physical limitations. As pointed out in one of the previous handouts, it is quite natural that there will be multiple broadcasters within a single

geographical area, so the question of whether it is necessary to treat wireless broadcast and cable broadcast at the same level arises.

○ Nemoto: Are you referring to the future trends?

○ Suzuki: Yes. In this respect, I believe, as pointed out here, that cable TV broadcast is different from wireless broadcast, which is based on scarce, limited resources. Of course, with cable TV broadcast, facilities can be installed on a permission basis, and operation can be accomplished on a notification basis, but we believe there is a difference.

○ Nemoto: Okay, so, you are saying that two different laws govern the two and you think that, since both are based on a permission system, the difference is overcome. Is that correct?

○ Fujishima: One more point here. The basic broadcast promotion plan establishes broadcast areas. As Mr. Nemoto has just pointed out, this should not be interpreted to mean that each broadcaster is assigned its own exclusive area where it is allowed to operate. Instead, the original intent is that, within each such area, all the subscribers can receive the same program at the same time. As Mr. Suzuki has just mentioned, it means that the broadcaster should ensure that all the residents within the area for which a wavelength is assigned should be able to receive the broadcast at that wavelength. It is not meant to grant an exclusive right within that area. Putting aside whatever effects it may have, or how the broadcasters interpret it, this is at least the public stance of the law. I am of the opinion that this fundamental point should be kept in mind.

○ Nemoto: I understand.

○ Sekine: Perhaps somehow related to this after all, the prefecture-based licensing system determines the area reached by the carrier wave—in other words, the area of the physical infrastructure, so to speak. I do not think it places any limitations on the content such as, for example, "this content should not be delivered to such and such area." Therefore, with regard to the intent of broadcast, is it permissible to think that assigning an area and sending data to it is just a matter of wavelength and has nothing to do with the content? In principle, is it permissible to assume that the prefecture-based license covers only the physical infrastructure, or is it not that simple?

○ Suzuki: What I explained just a few minutes ago was meant to make it simple, that is, there are physical limitations, and as a legal system, the same content should be delivered to all subscribers. The basic assumption is that everything should be delivered to everybody within the specified area. The Broadcast Law deals with programs; so, the intent is for the broadcaster to ensure that the programs will be delivered within the area without failure. Whether or not it succeeds as business is a secondary matter.

○ Ando: The Broadcast Law defines the area of broadcast coverage as an area within which the same program can be received at the same time; so, the key concept is a single program is the same. The concept of infrastructure becomes an issue only after an area is established within which the same program is broadcast; it is not that the infrastructure comes first. If we assume

that the infrastructure comes first, then there is no need to limit the area to one prefecture. There are many countries in the world where nationwide broadcast is the norm.

○ Sekine: You are quite right. I did not understand the broadcasters' argument that granting consent to retransmission would undermine the prefecture-based licensing system, and just wanted to know why.

○ Suzuki: I would like to make one point, that the "prefecture-based licensing" may not be literally limited to one prefecture. It is limited by whether or not the broadcast physically reaches the subscribers. For example, the Kanto Plain constitutes one area of broadcast coverage, and so do the Chukyo Area and the Osaka Area. Tottori and Shimane form one area, and Okayama and Takamatsu belong to another. This is partly because some islands between them can receive both broadcasts.

○ Nemoto: So, then, is everything okay, everybody? As for Point of contention No.1, may I confirm that, as written towards the bottom of the "Basic Stance" column, the intent of broadcast will not be jeopardized or distorted?

○ Sekine: We agree.

○ Nemoto: Then we would like to move on to Point of contention No.2, which is about area-limited commercial features.

There were two opinions. One was that it might go against the intent of the advertiser. The other, which was from the broadcasters, was that the intent of broadcast might be jeopardized. During the hearings we asked whether there had been any actual cases, but did not hear that there were any, as far as I recall. Our basic stance is presented here in the handout. Does anybody have anything to say?

Under item #2, the Oita Governor's opinion that it would be good for Oita residents was mentioned, and we are under the impression that it is not causing much trouble. Is this permissible?

○ Sekine: In large areas such as Kanto and Kansai, everyone is watching Tokyo stations. There would be no problem with Gumma residents, for example, viewing a Tokyo broadcast, so the broadcasters' argument struck me as very bizarre.

○ Nemoto: Is this correct? The point is that it does not constitute a legitimate reason for not granting consent to retransmission because the intent of broadcast will not be jeopardized, which is one of the basic points in the arbitration. Does everyone agree?

○ Sekine: Yes.

○ Nemoto: Thank you very much.

Next is Point of contention No. 3, which is about one-segment broadcast and data broadcast. The broadcasters responded in the hearing that their basic principle was to treat one-segment broadcast and ordinary broadcast as an integrated operation and that, although they were not doing it now, they might do it in the future. Their point was that, since there is such a possibility, they would only be able to show the intent of broadcast by having people watch

terrestrial broadcast and one-segment broadcast simultaneously. With cable TV, they maintained, the facility is not designed to receive one-segment broadcast, which would go against the intent of broadcast. The question here is therefore whether one-segment broadcast and data broadcast must be watched together.

The Secretariat says that there is no such concrete evidence. It is not being done at this time. It is unreasonable to say something is violated by assuming something that does not exist. Thus, the Secretariat's conclusion is that, since we cannot recognize any concrete evidence suggesting that the intent of broadcast may be jeopardized or distorted, we cannot consider this as a legitimate reason for not granting consent to retransmission. Is this okay?

○ Suzuki: May I point out one thing?

○ Nemoto: Yes.

○ Suzuki: We have submitted a draft amendment to the Broadcast Law to the current Diet session. Unfortunately, however, it has not been discussed yet because of a scheduling problem. At any rate, our draft amendment also considers this issue. The present system assumes that, as a supplementary broadcast, the same broadcast as the one that uses 12 segments, other than the segment assigned to one-segment broadcast, will be broadcast, and in this regard, it is indeed a supplementary broadcast discussed here. What we are proposing in the draft amendment is that an entirely different broadcast will take place, so that it will be put to independent use. In this regard, our proposed legal system is moving in a direction that is the total opposite of the packaged broadcast that was just explained. For example, our proposed draft amendment is based on an idea that will make it possible to broadcast a news program using 12 segments, and at the same time broadcast an entirely different program such as a drama using the one-segment broadcast, probably contrary to ordinary thinking. Thus, if they argue that supplementary broadcast is the only way to go, then our proposal for amendment would be meaningless. However, through a number of hearings we have had with broadcasters, we know that most of them want to broadcast different programs. That is why we are proposing such an amendment.

○ Nakada: As for one-segment broadcast, it would be the same with retransmission within the specified area. In addition, physically, compulsory retransmission cannot be received. If so, then the compulsory retransmission system would lose its grounds in the first place.

○ Nemoto: As Mr. Suzuki said, since they are to be treated as separate things, it seems to follow that, if you want to retransmit one-segment broadcast, you should reapply for it. Under the new law, then, we will treat them as two separate things. Is that correct?

○ Suzuki: Our intention is to make it possible to broadcast different programs within the current framework of broadcast licensing.

○ Nemoto: Within the same license, right? Yet they should not be regarded as the same, since they take different forms, is that right?

○ Suzuki: That is correct. In traditional radio terms, for example, we have multiple broadcasting,

which allows another program to be broadcast in parallel with the main program. Today this can also be done with one license only. We are thinking along these lines.

○ Nemoto: I would now like to apprise you of this kind of future trend and point out that there is no concrete evidence today that the intent of broadcast may be compromised. Therefore, I would like to confirm that it does not constitute a

legitimate reason for not granting consent to retransmission. Okay?

○ Sekine: Okay.

○ Nemoto: Thank you very much.

Then I would like to proceed to Point of contention No. 4, which is about the possible impact on business operation and the consent of local broadcasters. I personally feel that this is a fairly big issue. As summarized in the handout, the broadcasters presented their opinions about the financial situations of their affiliates as well as local broadcasters.

The point of contention, as we understand, is the objective of preserving the intent of broadcast. Thus, what we as the Sub-council should focus on should probably be whether there would be anything wrong from the viewpoint of whether the intent of broadcast may be jeopardized or distorted. Our conclusion is, as set forth in the Secretariat's draft, that there is no concrete evidence suggesting such possibilities. Therefore, it should not be considered a legitimate reason for not granting consent to retransmission.

This is a major issue for the broadcasting industry as a whole, but I am afraid it is not the kind of thing to be discussed by this Sub-council. What do you think about this?

○ Ohtani: Once summarized like this, it looks unobjectionable, but how about the setup in which retransmission of programs that have already been broadcast once does not involve any financial compensation…? On the one hand, there may be some impact on business operation, I suppose. There may have been some explanation, but I am afraid I did not understand it quite well. Supposing that there is some impact, I cannot help finding something uneasy about the present consent system that does not grant any right to remuneration for giving consent to retransmission. This reservation I feel also applies to the issue of copyright, which will come up later. While it may not be necessary to go as far as to grant the right of injunction appeal, there should at least be something like a right to remuneration when it comes to copyright or any right to be protected by law. Unless we financially evaluate the possible impact on business operation and the benefits brought about by retransmission and, if necessary, think up a scheme for compensation or remuneration, we cannot get rid of such arguments, or in our terms, such irrelevant opinions, for the last time. This may not be central to the issue in hand, but I just wanted to say what I feel. I think this may be one of the considerations that we need to give when planning to revamp the system altogether.

○ Nemoto: Thank you very much.

Mr. Negishi also commented that he would be happy if he could provide some guidance on

remuneration or compensation. I believe, therefore, that the current study group on the integration of telecommunications and broadcast has this issue on the agenda. I think it would be better to have it discussed in such a forum. What would you think?

○ Nakada: What has been pointed out, I believe, is indeed a very valid argument. It would be unreasonable to make money by taking advantage of somebody else's works, which must have cost him or her some money, and not pay any compensation. While it is a valid argument, the problem is that it is not handled properly under the present legal system. The point is how to solve the problem, namely, whether it should be discussed within the framework of consent under the Cable Broadcast (CATV) Law or whether it should be dealt with as a matter of compensation when granting consent according to the Copyright Law. I do not think the present system of consent to retransmission is meant to provide mediation seeking mutual agreement. Instead, it deals with whether the intent of broadcasters will be jeopardized, which is a kind of black-and-white matter. Thus, the question we should ask ourselves would be what forum is the best in which to discuss such an issue. The discussion will then move toward an argument of whether it is necessary to introduce a more comprehensive legal system that would solve both retransmission consent and copyright compensation. The situation would then go beyond our power.

○ Nemoto: How about including a special note from the Sub-council, to the effect that a study into this issue is desirable, in our report?

○ Fujishima: It is acceptable, I believe, to add a special note or request to the main text of the report.

○ Nemoto: This issue is one of the biggest challenges for the nation, one that cannot be neglected for a long time. As momentum is gained over time, better solutions will be devised, I believe, so it is a good idea to take every opportunity to make an appeal.

○ Suzuki: I have a couple of comments to make regarding the inclusion of a special note. First, the current statement of consent to retransmission already embraces the right to claim, that is, it clearly states that the consenting party reserves the right to demand compensation for the rights associated with copyright. This means that they are indeed aware of it, but no compensation is paid in actuality.

Second, in determining the amount of compensation for copyright from cable TV operators to the broadcasters, it will become necessary to consider the balance with that paid from a broadcaster to another broadcaster.

○ Nemoto: You are right.

So, let us come back to the special note some time later. For now, concerning the Point of contention No. 4, is it permissible to conclude that we do not consider it a legitimate reason for not granting consent because we did not find any concrete evidence?

Okay, then, let us make this our conclusion.

Point of contention No. 5, which is another big issue, namely, how to handle copyright, is next.

It has been brought to our attention that copyright may not be handled properly. Our understanding of this point is that preservation of the intent of broadcast may be separate from the copyright system, which is meant to protect copyright. Thus, whether this Sub-council needs to take the handling of copyright into consideration becomes an issue. Our basic stance is that, since the retransmission consent system and the copyright system have two different legislative intents, they should be regarded as two separate systems, and therefore we do not need to take copyright into consideration. It is our thinking that financial compensation should be handled within the framework of the copyright and neighboring rights on copyright. Overall, about the handling of copyright, our basic stance on arbitration is that it is not jeopardizing the intent of broadcast and hence should not constitute a reason for not granting consent. What are your opinions about this point?

During the hearings, the broadcasters strongly pointed out that the Minister of Education, Culture, Sports, Science and Technology had said that the broadcasting by cable TV operators clearly violated the Copyright Law. Is it our understanding, then, the copyright issues should be referred to MEXT?

○ Yamane: It is not that MEXT should take care of it, but rather that the party whose right is infringed upon should make a claim.

○ Nemoto: In other words, if your right is infringed upon, take it to court?

○ Yamane: Yes, because the right to license exists.

○ Nemoto: Does that mean that there is no need to take a new legal measure?

○ Yamane: Although this has long been viewed as a problem, there has been no actual case in which a broadcaster took a cable operator to court for infringement of copyright.

○ Sekine: If I remember correctly, copyright infringement requires the filing of a formal claim, so I am afraid it is not a kind of law that would hold you liable unless it is obvious to everybody that you have infringed upon somebody else's right.

○ Yamane: It is a right to license, so the mere fact that broadcast was made without license suffices.

○ Sekine: I think, unless there is a right that has been infringed upon, one cannot make a petition, because, again, copyright infringement requires the filing of a formal complaint.

○ Ohtani: The fact that, they have not exercised the right to claim even though they have it should be interpreted to mean that they are not willing to make a claim, but it does not mean that the door is closed. In sum, it seems that even if the MIC Minister's decision on arbitration grants consent to retransmission, it does not automatically mean any sort of decision has been made on the handling of copyright. Is that correct?

○ Sekine: You are right.

○ Ohtani: I believe that is the case.

○ Nemoto: So, after all, can I confirm that we agree on this?

○ Ohtani: Well, let me make one minor point, if I may, referring to the statement under the basic

stance. It is true that the two are separate systems, and I totally agree that we need not consider this in our arbitration. However, if you explicitly say that the intents of the two are different, I have some reservations. I do not think the fact that the two, which are originally separate systems, have two different legal intents constitutes a valid reason, because there is a great deal of overlap between the two. Rather, I would say, since they are two separate systems, the handling of copyright has nothing to do with whether consent is granted. It is as simple as that. It might be better if you rephrase this part to make that clear.

○ Nemoto: Thank you very much.

○ Suzuki: One more thing before we go on. I would like to mention, for your reference, that an officer at the Agency of Cultural Affairs gave a clear answer to a question on this point during the deliberation of the amendment. Please refer to our handouts from the previous two meetings.

○ Nemoto: Okay, so are we finished with Point of contention No.5?

If so, we would like to proceed to Point of contention No.6, which is about the possible impact on subscribers and the local economy. We heard a variety of comments or arguments concerning such as an emergency, a natural disaster, local programs, and over-concentration into the Fukuoka area.

In sum, the point is whether there will be any great impact in respect to the objective of preserving the intent of broadcast. Our basic stance is that we do not need to consider such issues because, namely, they are outside our scope. Any opinions or comments?

○ Ohtani: If, as argued here by the broadcasters, it is true that missing local information leads to missing emergency information and it causes a big problem, then it should be taken into consideration, even though there may be a variety of decision criteria. However, after listening to what they had to say, I understand that subscribers still have a choice of channels if need be, and since the areas are next to each other, information on natural disasters easily comes across the boundary, and so there should be practically no problems. I therefore totally agree with the conclusion here. One thing, however, is that, if it is actually the case that the lives and assets of local residents will be affected, then it should probably be taken into consideration one way or another, although the decision criteria would be different. However, since this looks like an argument just for the sake of argument, I would totally agree with the conclusion.

○ Nemoto: Thank you very much.

○ Suzuki: At the previous hearing, when Mr. Nemoto asked whether there had been any actual problems, the broadcasters said "No."

○ Nemoto: I believe that, in the event of an emergency that may expose them to any danger, subscribers would choose the information to receive by themselves. I think that is their second nature.

○ Suzuki: On the other hand, there are possibilities that CATV would get information more quickly. For example, an ongoing experiment with CATV broadcasts a warning that predicts

the seconds until an earthquake arrives after P and S waves are detected and the difference between them calculated.

○ Sekine: That is quite true concerning natural disasters. I think the NHK Broadcasting Culture Research Institute is probably looking seriously into what media the public would use as the basis of action in the event of an emergency. The Government is also conducting research on how to send information to everyone's mobile phone in a "push" mode. I therefore do not quite support the argument that no information will be transmitted if television does not function.

○ Nakada: Also, if subscribers are watching a national broadcast on DBS or CS, they would not get any information concerning a local disaster, and an argument as to what we should do with those DBS and CS viewers could arise. We would then be thrown into an endless car chase.

○ Sekine: That is correct.

○ Nemoto: Okay, so let us conclude that this issue will not constitute an obstacle to us granting consent to retransmission.

Next is Point of contention No. 7, which is about the protection of analogue subscribers.

The broadcasters argued that analogue and digital licenses are two different licenses, and that they had invested a lot of money in facilities and equipment. However, as to whether there was concrete evidence suggesting that the intent of broadcast was jeopardized or distorted, they did not provide any concrete explanations. Therefore, our conclusion is that this, again, cannot be considered a legitimate reason for not granting consent to retransmission.

○ Nemoto: Can I confirm that there is no objection?

Then we can go on to Point of contention No. 8, which is about the observance of consent to retransmission of analogue broadcast. They pointed out that one cable TV operator was once retransmitting broadcast after the expiration of the contract on consent to retransmission and that the latter had once broken the law. The point here, as I see it, is how we treat the fact that a cable TV operator once retransmitted analogue broadcast after the consent had expired when making our judgment on arbitration of consent to retransmission of digital broadcast. We might as well consider individual situations. As we head towards the era of digital broadcast, this issue may have some significance in assessing whether the intent of broadcast will be preserved in digital broadcast. Further, retransmission after the expiration of the consent may have various ramifications, according to which situations may also vary. In the particular case in hand, there has been no factual evidence that the broadcaster explicitly told the cable TV operator to stop retransmission. It was revealed in the hearing that the broadcaster had forgotten to send the official papers. Consider the fact that, after the fact of expiration became known, consent was granted again. We have thus concluded that the possibility is low that the intent of broadcast will be jeopardized or distorted or, in other words, that there is little danger of an action that should naturally be taken, such as obtaining consent, being neglected. This also applies to digital broadcast. What do you think about this?

○ Sekine: Speaking of carelessness, it sometimes also happens that you lose your driving

license by slipping up and missing the expiry date.

○ Nemoto: It surely does.

○ Sekine: You see, especially when both parties are aware, as in this case, since we hear that the other party knew about the expiry, I would say there should not be a legal problem, since consent was granted again afterwards. What do you think about this point?

○ Nemoto: You are right. At least they straightened the situation out when it was brought to light, so it should not be something that you make an issue of later. Does everyone agree?

○ Ohtani: I agree.

○ Nemoto: Then, as to (1) of Point of contention No.8, we would like to approve the proposed conclusion.

As for (2), Oita Cable Telecom actually did not retransmit the broadcast, although they had obtained consent to retransmission. Not broadcasting is interpreted as a breach of the contract. I believe the issue now boils down to whether, in the broadcasting industry, consent to retransmission binds the other party to retransmit the broadcast, in other words, whether not doing retransmission really means a breach of the contract. After all, as asked during the hearing also, why did Oita discontinue the retransmission?

○ Fujishima: In the first place, Oita Cable Telecom sends digital broadcasts to their subscribers. Analogue programs they receive, however, need to be converted into digital format before retransmission, which deteriorates image quality, so they didn't find any particular advantage and therefore discontinued the retransmission. At least that is what I heard.

○ Nemoto: After all, our conclusion is that this is just a matter of this particular business case, which does not constitute a reason for not granting consent, since it does not jeopardize the intent of broadcast, but how does it look from the viewpoint of rules?

○ Sekine: Is it interpreted as a deliberate breach?

○ Fujishima: What we are saying here is that compliance is actually a matter of trust, such that the receiving party will continue to keep their promise and retransmit the broadcast in the future. The issue of illegality we have just discussed can also be viewed from the point of trust, that is, whether the way they handled the illegality was so bad as to hamper trust in the future. Now, as to this point, whether it exactly fits any of the five criteria is indeed a bit questionable, but it may fall under No. 4, which is the aptitude as a business operator. On the other hand, from the viewpoint of conventional wisdom or common sense, so to speak, I am inclined to find that not giving legal protection to business operators that are extremely questionable in terms of compliance is a valid judgment.

○ Sekine: If the demand is not very strong, then it may not be a problem.

○ Ohtani: After all, their stance of not taking the contract seriously stands out, which makes it unpleasant for us, does it not? In terms of whether you can trust them as somebody who will not distort the intent of broadcast, well, I have some reservations, since I feel there might be a

good reason for being called untrustworthy. On the other hand, I also understand that what the likelihood is that the intent of broadcast will be jeopardized or distorted differs a little from whether the parties can trust each other. It may still be permissible if you can objectively show that the other party is going to retransmit the received broadcast as it is without chopping it up into pieces once consent is given. The only way to disprove it would be just the fact that there is no trust between the parties, so it is very hard to determine one way or the other.

○ Sekine: Indeed. I do not feel comfortable, either, from the viewpoint of deliberately discontinuing the retransmission. The fact of not having retransmitted the broadcast despite the contract is a little disturbing, but according to the explanation just made, quality deteriorates when analogue programs are converted into digital format, right? This reason can then be put in a more positive light in terms of not compromising the original broadcast, right? You may argue that you did not retransmit bad-quality programs so as not to jeopardize the intent of the broadcast.

○ Nemoto: Interesting.

○ Sekine: That is one way of interpreting it.

○ Nemoto: Then it may become necessary to get assurance from them that they would not do it in digital broadcast. During the hearing, they did say that they would do it right when things become digital, correct?

○ Sekine: That is correct.

○ Fujishima: They did say so.

○ Nemoto: It may have been the case that they had to discontinue the broadcast because they did not want to retransmit broadcast with downgraded quality…

○ Sekine: A little difficult to say…

○ Ohtani: But, it appears that they did not inform the other party.

○ Fujishima: That looks like the case.

○ Sekine: How did they find out about the breach of the contract? Who found it out?

○ Nemoto: They may be policing around.

○ Sekine: As was pointed out just a few minutes ago, the issue is whether you can argue that somebody who breached a contract will do so again in the future. It is a matter of how you interpret compliance.

○ Ohtani: It may be possible to presume that they will do it right as long as quality is good, correct?

○ Nemoto: Shall we investigate it again? For example, how often it happened and how much inconvenience they thought it would cause the subscribers. We may need to get a kind of write-up explaining how it happened and promising that they will do it right if there are no technical problems. Okay, then, based on today's discussion, we would like to ask Oita Cable Telecom to submit a written memo that will explain the situation again and state their way of thinking and stance towards the future.

Next, Point of contention 9), which is about the arbitration system. The broadcasting industry

would like to request the Government to review the arbitration system, including its possible abolishment. Well, that would be outside our scope of mission since it would be addressed to the Government, and therefore, we do not take it as a legitimate reason. Is this permissible?

○ Sekine: I agree.

○ Nemoto: Thank you very much.

So far, we have discussed the nine points of contention as summarized in the handout, and would like to confirm our conclusion that, except for an additional inquiry to Oita Cable Telecom, we do not find any reason for not granting consent to retransmission.

Does anybody have anything else to say? Once again, we would like to contact the two members who are absent today, and to conclude everything at the next meeting. With that perspective, today's meeting should be viewed as a discussion in the direction of approving consent, is this all right?

○ Sekine: Alright.

○ Nemoto: If you can think of anything else that should be studied by the next meeting, please bring it up now… Is everything okay now?

Closing

○ Nemoto: This concludes today’s discussion about the application for consultation. Please note that the next meeting is scheduled for July 11. Now I would like to declare the meeting closed. Thank you very much.

—— End ——