

FLSA-496

December 16, 1971

This is in further reference to your letter of September 17, 1971, concerning the application of the overtime pay exemption under section 13(b)(9) of the Fair Labor Standards Act.

You pointed out in your letter that under section 793.16 of our Interpretative Bulletin, Part 793, the exemption provided in section 13(b)(9) of the act is only applicable to an employee employed by a "radio or television station," which is designated as such by the Federal Communication Commission. It is your opinion that this exemption should be available to a cable television system as well as to a radio or television station which broadcasts over the air waves.

In reviewing the legislative history of this exemption, the Senate Report No. 145, April 13, 1961, states that the section 13(b)(9) provided a new exemption for any announcer, news editor, or chief engineer of a radio or television station. The exemption was specifically limited to those employees who are employed primarily in the named occupations for the broadcasting companies by which they are employed. Thus, it is reasonably clear that the intent of Congress was to limit the exemption only to those radio and TV broadcasting companies so designated as such by the Federal Communications Commission. Therefore, unless the particular cable television system is licensed as a television broadcasting station the overtime pay exemption provided under section 13(b)(9) of the Fair Labor Standards Act would not be applicable.

This conclusion has a sound legal basis. It is well established in the law that exemptions from this humanitarian statute are to be narrowly construed, giving due regard to the plain meaning of the statutory language and congressional intent. Phillips Inc. v. Walling, 324 U.S. 490. The exemption here is for certain employees of a radio and television station. The words radio and television station in their commonly understood sense connote stations that broadcast their programs by radio waves. Your statement admits that a cable television system does not operate in this fashion. This being so, there would appear no warrant to extend the exemption "to other than those plainly and unmistakably within its terms". Phillips Inc. v. Walling, supra.

Sincerely,

Horace E. Menasco
Administrator