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STATE OF NEW JERSEY

C A T V S T U D Y C O M M I S S I O N

R E P O R T

to the

Governor and Legislature

(Pursuant to Assembly Concurrent
Resolution No. 2041 of 1971)

January 4, 1972

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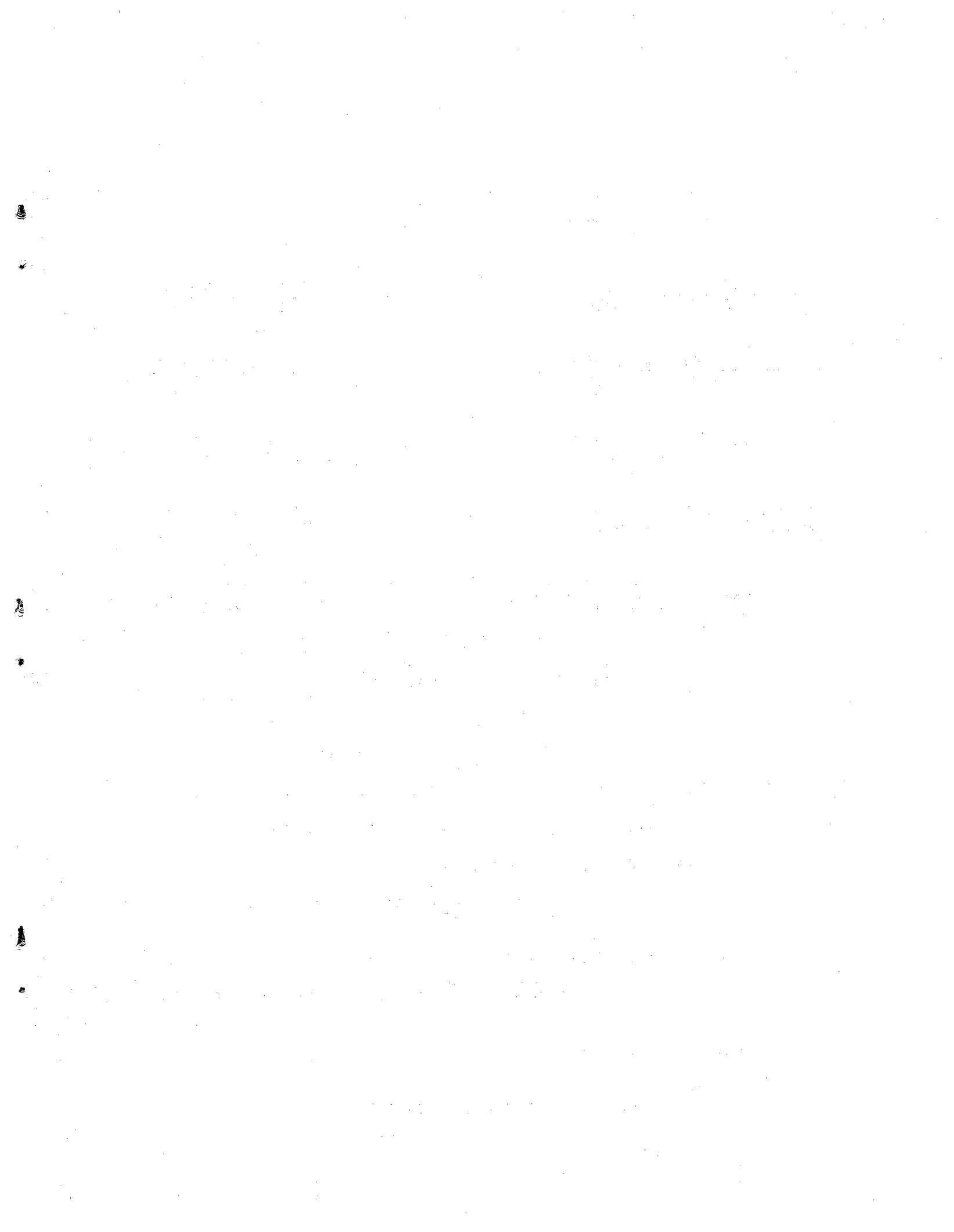


TABLE OF CONTENTS

	<u>PAGE</u>
Letter of Transmittal	II
Table of Contents	III
Membership of Commission	IV
Introduction	1
Findings	18
Conclusions and Recommendations	25
I. Need for State regulation	25
II. State supervision of franchising	30
III. Form of State regulation	43
IV. Public services to be required of CATV	58
V. Continuing study of CATV developments	60
Appendix A	
Proposed Statute	66
Appendix B	
Summary analysis of provisions in existing CATV franchises in New Jersey municipalities	110
Appendix C	
Legislation relating to the establishment and func- tions of the Commission	124
Appendix D	
Public hearings	
I. By General Assembly Committee on Transporta- tion and Public Utilities	
a. Hearing dates and witnesses	135
b. Opening remarks by chairman at first hearing	138
II. By CATV Study Commission	
a. Hearing dates and witnesses	140
b. Opening remarks by chairman at first hearing	142
c. Press release issued October 26, 1971	144



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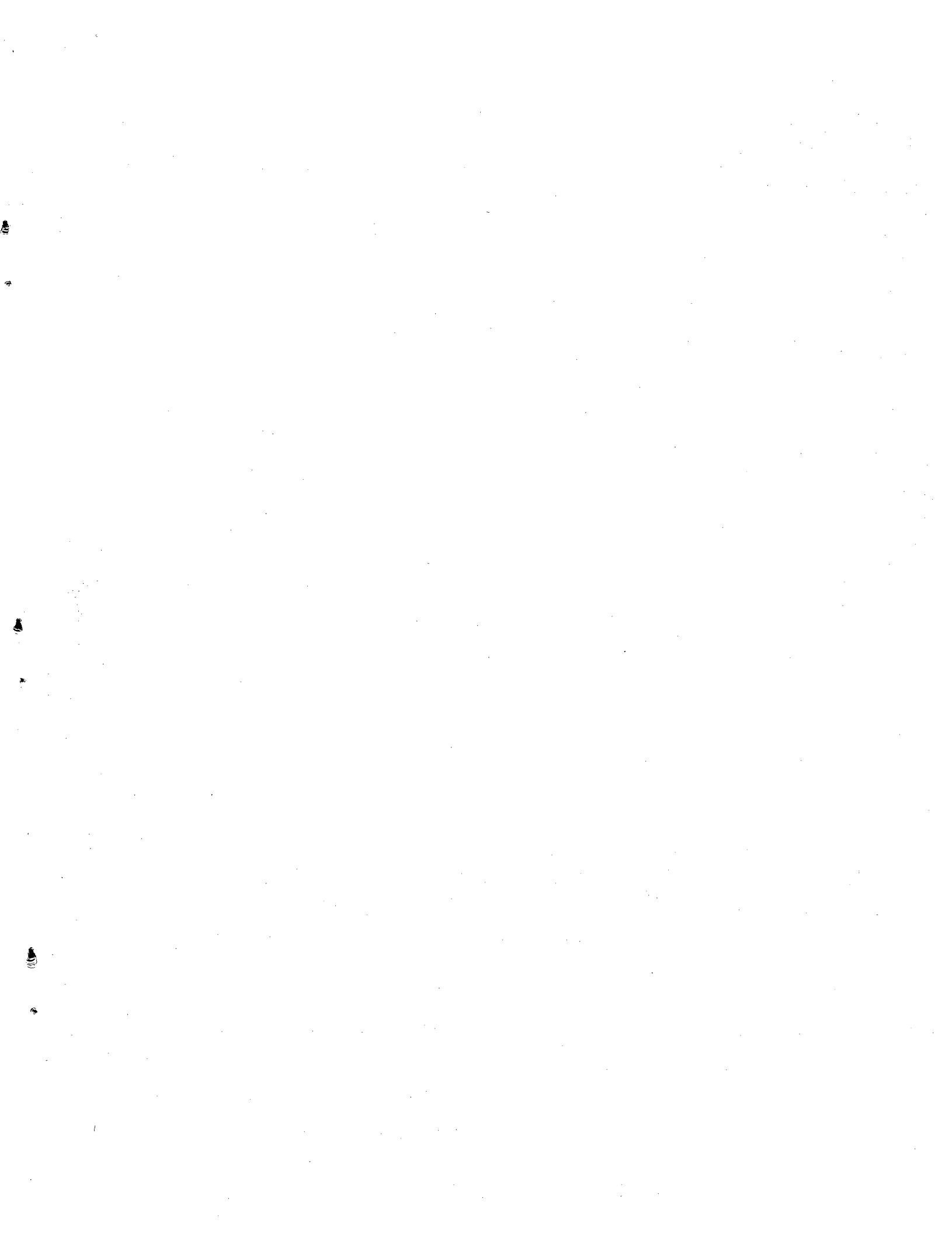
Assemblyman Karl Weidel¹
District 6A (Part of Mercer County)

Jeffrey Faue
Secretary

*Legislator-members of the Commission were appointed while serving in the 1971 Session; their titles and districts are identified in this list as they existed at that time.



1. Appointed by Assembly Speaker.
2. Appointed by Senate President.
3. Appointed as Assemblyman; since Jan. 11, 1972, Senator from District 13 (Bergen County).
4. Appointed as Senator; left office Jan. 11, 1972.
5. Of the non-legislator members, Dr. Frymire is Executive Director of the New Jersey Public Broadcasting Authority; Mr. Irwin is Director of the Division of Consumer Affairs, Department of Law and Public Safety; Mr. Street is Clerk of the Burlington County Board of Chosen Freeholders; Mr. Sanno is an advertising executive.



PREFATORY LETTER OF EXPLANATION

March 23, 1972

TO: HIS EXCELLENCY, WILLIAM T. CAHILL, GOVERNOR
THE HONORABLE, THE PRESIDENT OF THE SENATE
THE HONORABLE, THE SPEAKER OF THE GENERAL ASSEMBLY

Your Excellency and Gentlemen:

As is noted in the body of the Report, this Commission organized on September 1, 1971, and held meetings and public hearings during September, October and November. After the last of those meetings, on November 29, 1971, the conclusions and recommendations of the Commission were, except for final staff work in drawing up the text of the Report and the appended recommended legislation, ready to be reported.

Concurrently with the Commission's labors, however, the Federal Communications Commission was in the process of drawing up new CATV regulations. The FCC's new "cable program designed to allow for fulfillment of the technological promise of cable and, at the same time, to maintain the existing structure of broadcast television"¹, was described in testimony before the Senate Communications Subcommittee on June 15, 1971, and the House Communications and Power Subcommittee on July 22, 1971, and in a "Letter of Intent" addressed to the committee chairmen and adopted by the FCC on August 5, 1971.

These Federal developments occurred during the period just preceding the organization and active work of this Commission. As we proceeded, we were at all times aware that the impending FCC regulations could, and probably would, supersede and render unnecessary and invalid State regulation in several important areas. See below, Findings 8 and 9, pp. 20-21; Conclusion IV, pp. 58-59.

1. Federal Register, Vol. 37, No. 30, 12 February 72, p. 3253.

We could not be sure, however, how quickly, how thoroughly or how specifically the FCC would act to implement its announced intentions. To allow for this uncertainty, we adopted two strategies:

- a. to include in our recommendations, and in the recommended legislation certain provisions which, while expected to be covered by the FCC rules, we felt New Jersey certainly should provide on its own if the Federal agency did not act;
- b. to incorporate in the recommended bill a comprehensive proviso (see sec. 11, subs. i) to prevent any conflict from arising between the bill's provisions and the forthcoming, or any subsequent, Federal regulatory scheme.

The FCC "Letter of Intent" had promised issuance of the new regulations "by the end of the year [1971]". This Commission, created by concurrent resolution of the 1970-71 Legislature, was due to expire, with that Legislature, on January 11, 1972. There thus arose some problems in timing the submission of this Report; since to release the Report and proposed legislation prior to the FCC's acting -- if it should, indeed, meet its announced deadline -- would mean offering a Report and bill doomed to premature obsolescence.

The "end of the year" came and went without FCC action, although reports from Washington indicated that work was continuing apace. Our Commission staff held the text of the Report and bill throughout the month of January, 1972; then, on February 1 (3 weeks beyond the formal expiration of the Commission), further delay being felt undesirable, the text of the Report and bill were circulated to the Commission for their signature and any final comments.

On February 2, the FCC adopted its new CATV rules, which were issued the next day.

Accordingly, in submitting this Report on behalf of the Commission, I have felt it necessary -- while in no way altering the text already approved and signed by the other members -- to render this explanatory preface, pointing out those portions of our Report and recommendations which appear to have been superseded, or to require modification, as a result of the FCC action.

To begin with, it must be noted that the FCC regulatory scheme is comprehensive. Every CATV system will be required to obtain certification, upon affirmative showing of compliance with FCC requirements. Among the requirements for such certification will be a local "franchise", which in its terms and in the manner of its issuance, must conform to FCC standards.

The greater portion of our recommended legislation deals with regulating the issuance of local franchises and their terms. Review of the FCC standards indicates that the regulatory scheme in our bill coincides closely to what the FCC will require.

Overall, the FCC regulatory scheme is divided in 4 major areas:

1. Carriage of broadcast TV signals
2. Use of non-broadcast channels
3. Technical standards
4. Federal-State/Local Relationships

The first area is of an essentially interstate nature, and as we have said in the Report, (p. 29), "can by no stretch of the imagination be considered subject to State jurisdiction." Our Report does not deal with this area, and hence it need not be further discussed here -- although in the overall regulatory scheme the regulations dealing with this area are of the greatest immediate practical importance both to CATV operators and to broadcasters.

The second area, use of non-broadcast channels, is one which our Commission attempted to deal with, on a minimal level, for the reasons set forth in Conclusion IV (pp. 58-59). In our legislation, section 11, subsection b & c, we require (1) a minimum number of operational channels, and (2) provision in every system at least one local government, one local school district and one local public-access channel. In this area, however, the FCC has not only laid down rules, but has precluded local and state regulation:

"There remains the issue of whether also to permit State or local regulation of these channels where not inconsistent with Federal purposes. We think that in this area a dual form of regulation would be confusing and impracticable. . . . If experience and further proceeding indicate its need or desirability, we can then delineate an appropriate local role." [Federal Register, Vol. 37, No. 30, 12 February 72, pp. 3270-3271]

Accordingly, it would appear that these portions should be excised from the proposed State legislation.

In the area of technical standards, our bill includes among the powers of the Director of the Office of Cable Televisions the authority to establish "technical standards of performance for CATV systems and the equipment and facilities thereof, including standards of signal quality and of system operation, maintenance and safety."

It is clearly the intention of the FCC to set comprehensive technical standards, although the standards now issued apply only to the so-called "Class I channels" (i.e., relays of off-the-air signals). It would probably be inconsistent with the Federal scheme, and hence invalid, for the State to attempt to set any such standards, even in those areas where the FCC has yet to act; for the FCC's declaration is clearly the announcement of a comprehensive program and an assumption, therefore, of comprehensive jurisdiction.

Nevertheless, it appears that there are certain factors relating to actual installation and maintenance of CATV systems -- e.g., the location of poles and conduits, street openings, day-to-day maintenance of safe conditions and the like -- which are not within the FCC scheme and which can and should be left to local safety regulations under the supervision of the State Office of Cable Television. Therefore, instead of deleting this section of the bill entirely, it might be amended to remove the reference to "signal quality and system operation" -- leaving "maintenance and safety" within the realm of State jurisdiction -- and by adding the proviso that such State rules be "not inconsistent with applicable Federal regulations".

The FCC rules concerning "Federal-State/Local Relationships" comprise a set of standards to which local franchising arrangements must conform. This part of the Federal regulatory scheme corresponds exactly to the aim and method of our Commission's recommended legislation dealing with State supervision of the franchising system. It also appears that our bill's provisions regarding the franchising procedure, franchise terms, expeditious exercise of franchise rights, setting of subscriber rates and franchise fees and, in general, the requirement for full public proceedings on applications for franchises and rates, are consistent with the FCC scheme. What minor inconsistencies appear should be easily resolved under the general proviso as to Federal supremacy (sec. 11, subsection i) mentioned above.

A summary of the way in which the new FCC regulations regarding "Federal-State/Local Relationships" affect the matters covered in our Report may be given as follows:

1. QUALIFICATION OF APPLICANTS.

The FCC will now require that: "The franchisee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the franchising authority as part of a full public proceeding affording due process."

Our bill would require (sec. 29) that, at the municipal franchising level, there be presented "sufficient evidence" of the applicant's "financial and technical capacity", sufficient bond and other guarantees to compensate or protect the municipality in the event of non-performance or misadventure. All these matters are subject to review, and where necessary correction, at the State level (sec. 18, subsection. a.).

These provisions coincide with the new Federal program, except as to the FCC's employment of the ambiguous term "character", which our Commission avoided. Insofar as relevant to the regulatory object, "character" would seem to be logically subsumed under "ability" or "capacity" or, as our bill's section 28, dealing with State guidance for municipalities in reviewing applications, describes it, "financial responsibility, technical competency and general fitness to provide the CATV service proposed". Qualifications thus described can be best measured by objective criteria. Insofar as the term "character" may invite consideration of matters irrelevant to the regulatory object and legitimate government concern, it may encourage subjective and arbitrary judgments. The FCC, however, has laid such special stress upon this particular term in its prefatory comments to the new regulations (see Federal Register, Vol., 37, No. 30, p. 3276, paragraph 179, which states, in part: "The character of an applicant, for example, is of particular importance especially because he may be engaged in program origination."); that it is perhaps indicated that our bill incorporate in section 29, mentioned above, the FCC language.

2. TIMETABLES FOR CONSTRUCTION AND EXTENSION.

The FCC will now require that: "The franchisee shall accomplish significant construction within one (1) year after receiving Commission certification, and shall thereafter

2. All reference to and quotations of the FCC regulations in this summary relate to the pertinent parts of (new) section 76.31, Subpart C, Part 76, Title 47 (Telecommunication) of the Code of Federal Regulations.

equitably and reasonably extend energized trunk cable to a substantial percentage of its franchise area each year, such percentage to be determined by the franchising authority."

As the terms employed in the Regulation -- and those in the commentary still more plainly -- show, these requirements are very general and flexible. A similar object is served by those portions of our bill which deal with construction timetables and extensions of service: sections 11, subsection e.; 24, subsection e., and 49; which (1) require the Director of the Office of Cable Television to set "requirements for the reasonably prompt exercise of rights conferred by any certificate. . .", (2) forbid a municipality to grant any CATV consent or consents "unless it or they contain, singly or in combination, provisions for the eventual extension of CATV service, upon a reasonable time schedule, to all parts of the territory of the municipality" [emphasis added], and (3) empower the Director in any particular case, after hearing, to order a CATV company "to make any reasonable extension" of service.

3. DURATION OF FRANCHISE.

The FCC will now require that franchises be of "reasonable duration". The commentary makes this somewhat more explicit: "We believe that in most cases a franchise should not exceed 15 years and that renewal periods be of reasonable duration."

Our bill provides (section 26) that a franchise be not more than 15 years, with renewals limited to not more than 10 years.

4. APPROVAL OF RATES.

The FCC now will require that the franchising authority approve the "initial rates" of a CATV system, and that no changes in rates be made except as "authorized by the franchising authority after an appropriate public proceeding affording due process."

Our bill divides the "franchising authority" between the State and the municipalities, and also divides the rate-making process between those rates which apply to "cable television reception service" and those applying to any other services of a "cable communications system".

As regards "CATV reception service", the initial rates are to be set forth in the company's application (section 29, subsection g.), becoming thereby a binding part of the terms of the municipal consent, when issued (section 25). The consideration and issuance of such consents is governed by provisions requiring full public hearing (including invitation of competing applicants) which appear to satisfy the FCC requirements. Rates thus set may not be altered without public hearing and action by the municipality (section 29, subsection g.)

All such local determinations are subject to further review, and further public hearing, on the State level.

Rates other than those for "CATV reception service" are to be set by a procedure similar to that used in public utilities practice. Section 12 of the bill reads, in pertinent part, as follows:

"12.a. Except as provided . . . with respect to rates to subscribers to cable television reception service, the Director shall prescribe just and reasonable rates, charges and classifications for the services rendered by a CATV company, and the tariffs therefor shall be filed and published in such manner and on such notice as the Director may prescribe, and shall be subject to change on such notice and in such manner as the Director may prescribe.

.

c. Any hearing held pursuant to this section shall be open to the public, and notice thereof shall be published. . . Every municipality may intervene in any hearing held by the Director pursuant to this section affecting the municipality or the public within the municipality. . . ."

In view of the fact that the FCC will permit advertising under certain conditions, as a part of origination cablecast programming by a CATV system (section 76.217 of the new rules), and with freer "experimentation" on leased channels (see Federal Register, Vol. 37, No. 30, p. 3271, paragraph 138), it may be well to alter subsection d. of the above-quoted section to provide that advertising rates be recognized as among the "fees, charges, rates and tariffs" which are an integral part of the business. The advertising revenue structure will, of course,

necessarily have to be taken into account in determining a "just and reasonable" overall rate structure.

5. COMPLAINT PROCEDURES.

The FCC will now require that: "The franchise shall specify procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions, and similar matters, and shall require that the franchisee maintain a local business office or agent for these purposes."

Procedures of this kind are spelled out in our bill (section 27); however, there is no requirement for a "local business office or agent". The thrust of the bill is to provide an accessible enforcement agency to take prompt action on behalf of the subscriber. However, to conform to the FCC regulation, it may be well to incorporate this additional requirement into this section of the bill.

6. FRANCHISE FEES.

The FCC will now require that the franchise fee paid by the CATV operator be "reasonable (e.g., in the range of 3-5 per cent of the franchisee's gross subscriber revenues. . .)", with some leeway for exceeding that amount in light of the planned regulatory program." Fees exceeding 3% will require to be justified.

Our bill incorporates a dual fee system, reflecting the division of responsibility between the State and the municipalities:

a. Municipalities shall receive "2% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service. . ." (section 31, subsection a.). Under certain circumstances, with justification, higher fees may be allowed. Petitions to charge higher fees are subject to public hearing on the State level (section 31, subsection c.).

b. The State shall assess each CATV company its proportionate share of the actual cost of operating the Office of Cable Television; but in no case shall the assessment exceed 2% of a firm's "gross operating revenue" within the State.

These revenue provisions appear to be within the bounds of the FCC's intention.

7. "GRANDFATHERING".

In regards to "grandfathering" of existing CATV franchises, the FCC will provide that "consistency with these requirements shall not be expected of a cable television system that was in operation prior to March 31, 1972, until the end of its current franchise period, or March 31, 1977, whichever occurs first."

Our bill grants only a grace period of 2 years at the most (section 18, subsection f.), as compared to the FCC's 5 years. Since in either case the limitation will no doubt result in the premature termination of "current franchises", the question is one of determining what degree of curtailment is justified by the needs of public policy. In this realm, it is probably necessary for New Jersey to yield to the judgment of the agent of the superior government.

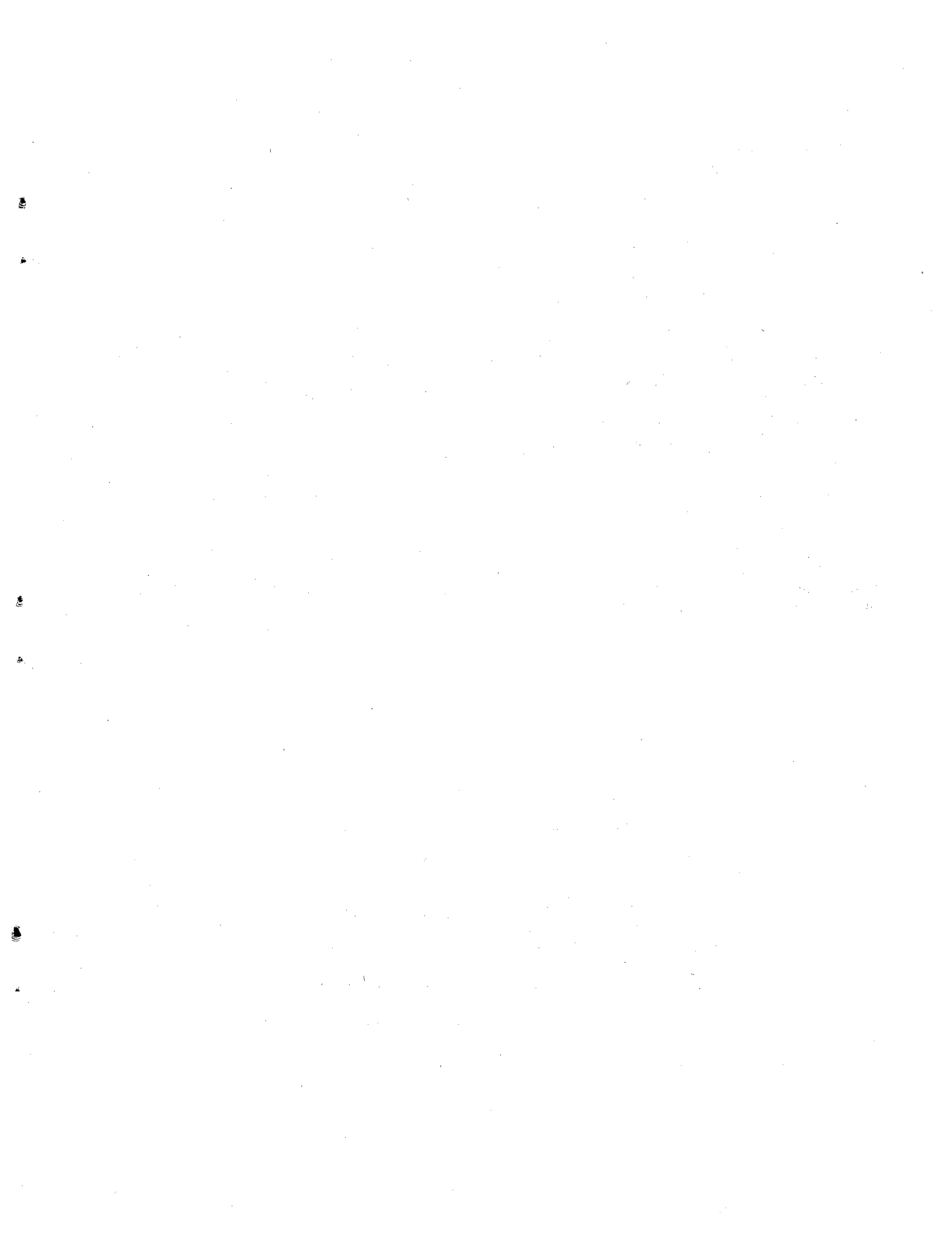
8. EFFECTIVE DATE.

The Federal regulations take effect March 31, 1972. Our bill provided an effective date of April 1, 1972. Had it been possible to introduce and pass this bill in time, the coinciding of the two dates would have been appropriate and desirable. However, it is now manifestly impossible to implement the terms of the bill, if enacted, by that time; the effective date will have to be altered.

In light of the foregoing comments, I herewith transmit to you a copy of the Report of the CATV Study Commission, under the formal date of January 4, 1972, which has been this day released for publication. The text of this prefatory letter, which is intended to place the work and recommendations of the Commission in the perspective of the important events which have occurred on the Federal regulatory level in the first two months of this year, will be published as a separate preface to the Report.

Respectfully,

HAROLD C. HOLLENBECK
Senator, District 13 (Bergen)
Chairman, CATV Study Commission



INTRODUCTION

This Commission was established under Assembly Concurrent Resolution 2041 of 1971 (passed June 14, filed June 23)¹ for the purpose of formulating recommendations as to the regulation of "community antenna television" (also known as "cable television").

The legislative mandate to the Commission was premised upon a conclusion, expressed in the preamble of ACR 2041, that "there is a need for appropriate regulation to secure and foster the orderly development of the community antenna television industry", and laid upon the Commission the task of recommending "the exact form which such regulation shall take, the degree of regulation necessary and desirable, and the level or levels of government which should undertake the regulatory function".

After the appointment of its members, the Commission organized on September 1, 1971. It held public hearings on October 6 and November 4; on those dates, and also on September 15, October 18, November 10, 22 and 29, meetings of the Commission were held.

Besides the information garnered through public hearings, the Commission also took steps to (1) assemble "model" legislation such as that published by the Council of State Governments, the

National Association of Regulatory Commissioners and the National Institute of Municipal Law Officers, as proposals for CATV regulation; (2) gather the actual legislation enacted or proposed in several other states; (3) request from the several New Jersey municipalities which, according to the Commission's information, had granted CATV franchises, copies of those franchises for purposes of comparative analysis²; (4) analyze corporate data on file in the Secretary of State's office regarding the status of CATV firms now active in New Jersey³; (5) obtain, through FCC documents and contact with Federal officials, a view of the current and probable future posture of Federal policy and regulation regarding CATV, and (6) gather together such other informative and authoritative literature on the subject as the members and staff of the Commission were able to obtain.

From these various sources of information, the Commission developed certain findings upon which the conclusions of this Report and its annexed draft of recommended legislation are based. Before proceeding to an exposition of those findings and conclusions, however, it may be well to outline the events leading up to the establishment of this Commission and the context in which it commenced and carried on its work.

While the origin of CATV has been traced⁴ to 1949--that is, only slightly behind the general availability of broadcast television--it is only in recent years that CATV has made any appreci-

able impact upon public consciousness. The initial reason for this is apparent from the significance of the term "community antenna": systems of this sort were originally conceived as a means of bringing television into areas where reception was impossible or unsatisfactory without the use of such antennae and amplifying equipment as were not practicable for the individual homeowner. From a community antenna, elaborate in construction and raised upon a tower or mountain top, the broadcast signals could be captured, amplified and "piped" through a cable to subscribers whom distance or intervening topographical obstacles would otherwise cut off from the broadcast signal. Many of the older cable TV franchises in New Jersey--as in several shore resort communities--originated for this purpose and have been operating successfully for many years.

A further development in cable TV is based upon its ability to multiply the availability of channels even in areas where broadcast TV is satisfactory by ordinary standards. The number of broadcast channels with satisfactory reception in any given area is strictly limited by the physical characteristics of the so-called "electromagnetic spectrum". Without descending to technical detail, it may be stated: (1) that the frequencies available and satisfactory for television broadcasting are limited, the so-called "very high frequency" (channels 2-13) range being superior in strength and quality to the "ultra high frequencies" (channels 14-69) and therefore more viable for commercial purposes; and, (2) in order

to avoid interference between adjacent channels, no more than half the "available" channels are, in fact, available in any given broadcast area (except in those areas where the satisfactory signal ranges of different broadcast centers overlap).

In order to avoid electronic interference, it is necessary to establish mileage separations, not only between stations on the same channel but between stations on adjacent channels (note that channels 4 and 5 and channels 6 and 7, while adjacent on the dial, are not adjacent in the radio spectrum). For this purpose, the United States has been divided into three zones. Zone I encompasses most of the heavily populated northeastern quadrant of the nation. Zone III is the Gulf area, which presents special tropospheric interference problems. The remainder of the United States is included in Zone II. Minimum separations for stations on the same channel are:

<u>Zone</u>	<u>Channels 2-13 (VHF)</u>	<u>Channels 14-69 (UHF)</u>
I	170 miles	155 miles
II	190 miles	175 miles
III	220 miles	205 miles

Minimum separations for stations on adjacent channels are the same for all zones: 60 miles for VHF and 55 miles for UHF.

What this means, in practical terms, is that no more than seven VHF channels can be assigned to a single city. Only New York

and Los Angeles have received this maximum number. And for New York City to have channels 2, 4, 5, 7, 9, 11 and 13, these channels have had to be made unavailable to every community within 170 miles of the City, and channels 3, 6, 8, 10 and 12 can be employed only by communities located at least 60 miles from New York City's antenna site in lower Manhattan. Most substantial cities have only three VHF channel assignments, although about a dozen have four or five. . . .

While there has been growth in the television industry since the fifties, including some increased activation of UHF channels following the All-Channel Receiver Law, the number of television signals available to most audiences is limited: six or more in the larger markets and three or less in the smaller markets. And it should be emphasized that the effective service areas of television stations tend to be significantly more limited than the mileage separations. . . .⁵

Signals carried through cable are not subject to these physical limitations. The only significant technical question in this respect is how many channels a single cable can be made to carry; the present practical limit is about 20, although the coaxial cable has a theoretical carrying capacity of 40 channels.⁶ Where a multiplicity of cables is admitted, the only problems in multiplying channels are mechanical and financial. Cable systems delivering 10 or 12 channels are common; those with 20 are not rare; and systems

for 40 or more channels have been proposed.

The possibilities thus raised for more varied viewing fare are obvious. Concomitant with this is the disturbing effect upon broadcast TV's "market areas" and economic structure which could result from the "importation" via cable or distant signals into areas they would not otherwise penetrate.

The economics of commercial broadcast TV are firmly based upon, and limited by, fundamental physical considerations--the limited range of the TV signal and the scarcity of satisfactory frequency channels within any given area. Cable TV extends the range of reception and multiplies the possible number of channels without theoretical limit. The consequent fragmentation of the audience (having a choice, at any given hour, among perhaps 10 or 20 instead of three or four programs) could destroy the "mass audience" concept upon which broadcast TV has relied.

Such a result could be self-defeating if cable TV were limited to the use of broadcast signals "picked off" the air and relayed to its subscribers. For cable TV to destroy or disrupt, through economic competition, the broadcast medium upon which it relies for its "product" would be as disastrous to the cable operators as to the broadcasters.

For various reasons, both economic and political--including the enlightened self-interest of both cable and broadcast TV operators--such an eventuality is not likely to be permitted. However, it

should be borne in mind that "cablecasting" is, in theory, capable of complete independence from the broadcast signal. The so-called "head end" of a cable system, which is used to translate into cable the signal captured by the "community antenna", can also funnel to subscribers programming fed directly into it. This is sometimes referred to a "cablecasting" to distinguish it from over-the-air "broadcasting". As the potentialities of cablecasting have increasingly made themselves felt, the term "cable TV" has been more frequently used in place of the earlier term "community antenna TV" (with its implied emphasis of dependency upon broadcast signals), and has come to supersede it.

It should not be supposed, however, that, in the present state of the industry, cable TV is in a position to offer any commercially salable and profitable substitute for the broadcast signal. Such "local origination" programming remains, and for some time must be expected to remain, strictly a supplementary service.

The role of CATV as alternative or competitor to broadcast TV, rather than a mere auxiliary, was not contemplated by those who originated it. It was only as the independent potentialities of CATV emerged that the need for comprehensive regulation became, gradually, established.

At its inception, CATV was generally regarded as a merely temporary phenomenon pending expiration of the FCC's "freeze"

on television allocations and the national television service which it was anticipated would follow.⁷

The "freeze" referred to was imposed from 1948 to 1952. Before that time VHF channels had been allocated, but technical problems stood in the way of using UHF. After 1952, when UHF was made available, allocations resumed, including UHF. The FCC allocations scheme was intended to promote local programming, especially through development of UHF. The expectation, however, of the development of a multiplicity of locally-oriented UHF stations has not been realized.

In addition to its role as a supplement or alternative to broadcast TV, there are other services which the CATV technology is capable of providing besides the distribution of "programs" to an "audience". Broadly speaking, all these services develop out of the cable's enormous capacity to carry, simultaneously and selectively, a large volume of information (including the capability for two-way carriage). It has been suggested that subscribers could obtain shopping services, financial record-keeping, security services, medical diagnostic and monitoring services, access to libraries and other data-preserving repositories, transmission of facsimiles of publications and other documents, and a great variety of other services--all based upon the great flexibility of cable transmission.

Many such services will depend upon technology that has yet to be developed to a commercially feasible state; some are technically feasible at present. Any discussion of "cable television" must recognize that the cable technique is adaptable to a great many uses only remotely related to "television" as we know it today. This must be taken into account in framing any regulatory scheme.

The earliest form of CATV regulation--and that still prevailing in most areas--was through conditions imposed by municipalities in granting consent for the "use of the streets" for the necessary cable installations. The consent, together with the conditions--whether embodied in an ordinance or resolution of the municipal governing body or in the form of a contract between the municipality and the CATV company--is generally characterized as a "franchise". In some jurisdictions this franchising power of the municipality has been explicitly recognized by state law⁸; more commonly, however, as in New Jersey, it has been presumed by the municipalities on the basis of more general statutory provisions allowing regulation of the "use of the streets". There may be some question whether the extensive conditions contained in some New Jersey "franchise" ordinances are actually justified and supported by the very general "use-of-streets" statutory provisions usually cited as authorizing them⁹. Much of what these franchises purport to regulate has very little direct relationship to the "use of the streets"; the franchise provisions are more concerned with the

regulation of the manner in which the business is conducted and, in many instances, with the extraction of revenue from those conducting it.

A nationwide survey submitted to the FCC in 1965¹⁰ reported that of 488 communities surveyed (and in which CATV systems were either operational or being constructed) 14% required no written authorization from the municipality, and the remaining 420 issued franchises in which the extent of regulation varied from "practically nothing to the most extensive public-utility-like control"¹¹.

This Commission's study of New Jersey "franchises" indicates that there is still considerable variation in terms and requirements; however, with the growing awareness of CATV and the closer study accorded to it in recent years, there have developed a number of more or less "standard" features in franchise agreements. "Model" ordinances have been drafted by various CATV industry groups and by the National Institute of Municipal Law Officers. Municipalities have either adopted some model entire, or assembled their own by combining and adapting standardized segments. The result has been some degree of standardization, but far from uniformity.¹²

FCC regulation, which at present looms so large in the future of CATV, was slow to develop. It was not until 1966 that the FCC asserted general jurisdiction in this area--after having first, in 1958, declined any jurisdiction and next, in 1959, asserted

jurisdiction limited to those CATV systems which used over-the-air "microwave" transmission in place of or in conjunction with cable transmission.

The general policy direction of the FCC in this regard (aside from certain technical and safety standards) has been to "integrate" CATV into the nationwide television system combining both cable and broadcast facilities, with considerable attention to protecting the latter against the possible destructive economic impact of the former.

Latterly, the FCC has developed an interest in encouraging the unique local programming and community-service potentials of the cable medium. It has proposed or suggested rules and "guidelines" that would require CATV operators to include such matters in their programming.

Detailed FCC regulations on these and other aspects of CATV are impending. While this Commission was being organized the FCC released (on August 5, 1971) a document, commonly referred to as a "Letter of Intent", informing the Congress of the FCC's proposed actions. (See Findings 6, 7 & 8 in this Report.) The actual rules embodying and implementing those intentions were scheduled (in that letter) to be issued by the end of 1971, and to take effect March 1, 1972.

As a result of the FCC "Letter of Intent" it appears certain that many of the programming and community-service potentialities

of CATV will be subjected to fairly detailed Federal regulation. Federal preemption must, therefore, be anticipated with regard to many of the most important points raised before this Commission in the course of its hearings and deliberations.

While the FCC has thus been advancing from a posture of non-involvement in the cable medium to an assertion of comprehensive jurisdiction and a promise of imminent and detailed regulation, the situation within the State has remained static until the legislative session just past. Beginning in 1965, legislation to classify CATV as a "public utility" and place it under PUC regulatory jurisdiction was introduced every year. Former Governor Richard J. Hughes strongly endorsed such legislation:

An increasing number of these [cable] television systems are coming into operation in the southern portion of New Jersey, particularly along the Atlantic Coast. CATV companies are currently operating with a minimum amount of governmental control, and because of their current expansion, conflicts will result between competing companies over franchise rights. Thus we are presented with a classic example of the birth of a public utility, with all of the attendant hazards to the consumer of unrestrained competition and service without prescribed standards. Legislation will soon be introduced to regulate this new industry by bringing such companies within the present

statutory definition of the term "public utility". [Third Annual Message, January 12, 1965; pp. 69-70]

It was not until 1971, however, that detailed legislative consideration was given to this proposal. Assembly Bill 2139 of 1971, introduced February 11, was referred to the Committee on Transportation and Public Utilities, which held hearings on the bill on April 20 and May 18. The principal results of these hearings were:

1. The introduction on April 22 of Assembly Bill 2421, imposing a one-year "moratorium" upon the further issuance of CATV franchises by municipalities. This bill was passed and became law (L. 1971, c. 221) on June 17, and the moratorium thus extends to June 17, 1972.¹³
2. The introduction and passage on June 14 of the resolution creating this Commission.¹⁴

This Commission has been forced to proceed in a context of some uncertainty as a result of the imminence of Federal regulation and a lack of precise data as to the form such regulation will take. Since the issuance of the FCC's "Letter of Intent" we have possessed a fuller awareness of the nature of the impending Federal action; but the details of the FCC regulation are not at this writing issued. The recommended legislation annexed to this Report attempts to make adequate provision for all eventualities of Federal preemption.¹⁵

Footnotes

1. See Appendix C, p. 124
2. See Appendix B, p. 110
3. Through analysis of corporate data on file with the Secretary of State, the Commission Secretary compiled a roster of all corporations engaged in CATV activities, with cross-indexed files of their principals, corporate affiliations and existing franchises. This material is in the Commission's files, but, for reasons of bulk and intricacy, no attempt has been made to reproduce it in this Report.
4. See: Ralph Lee Smith, "The Wired Nation" in The Nation, May 18, 1970, p. 582. This article is reprinted in its entirety in the Appendix to the Transcript of the Public Hearing held April 20, 1971, before the Assembly Committee on Transportation and Public Utilities.
5. State of New York Public Service Commission: Regulation of Cable Television by the State of New York. Report to the Commission by Commissioner William K. Jones, December, 1970; pp. 15-18.
6. See: Sloan Commission on Cable Communications, On the Cable: the Television of Abundance [commonly referred to as the "Sloan Report"], McGraw-Hill, 1971; pp. 12-13.
7. Harold S. Levy, "Problems Raised by Community Antenna Television"

in 1965 Annual Report, American Bar Association, Section of Public Utility Law.

8. E.g., the Illinois Municipal Code provides: "The corporate authorities of each municipality may license, franchise and tax the business of operating a community antenna television system as hereinafter defined. . ." (Illinois Annotated Statutes 24§11-42-11, in part.)
9. R.S.40:67-1. This statute provides, in pertinent part: "The governing body of every municipality may make, amend, repeal and enforce ordinances to: . . . c. Prescribe the time, manner in which and terms upon which persons shall exercise any privilege granted to them in the use of any street, highway, alley or public place, or in digging up the same for laying down rails, pipes, conduits, or for any other purpose whatever; . . ."
It may be noted that the portion of Title 40 (Chapter 52, "Licenses") which contains provisions analogous to the Illinois statute cited above (footnote 8) enumerates various activities concerning which a municipality "may . . . license and regulate", "may" issue licenses "for revenue" and "may" prohibit the activity of unlicensed persons. (See R.S.40:52-1 and 40:52-2.) CATV is not, of course, among them.
10. Martin H. Seiden, An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry.
Dr. Seiden's report, commissioned in July 1964, was submitted

to the FCC in February 1965 and released to the public in March 1965. In contributing to the FCC's subsequent decision to assert wider jurisdiction over CATV, this report was of epochal significance in the development of CATV regulation; it is commonly cited in the literature of the subject simply as "Seiden Report".

11. Op. cit., p. 44.
12. See Appendix B, p. 110 Cf. an analysis of a "representative sample" of New Jersey municipal CATV franchises in Crossed Wires, a study issued by the Center for the Analysis of Public Issues, Princeton, in 1971.
13. See Appendix C, p. 124
14. See Appendix C, p. 124
15. While the FCC "Letter of Intent" proved helpful to this Commission in suggesting the outlines of a State regulatory scheme which would supplement rather than conflict with the proposed Federal regulation, it did not give sufficiently concrete information to allow the drafting of suggested State legislation guaranteed not to overlap jurisdictional lines. After receiving a copy of the "Letter", the Chairman of this Commission requested the Chief Counsel of the Legislative Services Agency to advise whether the FCC document could be used as precise guidance in drafting State legislation that would avoid potential conflict with the forthcoming Federal regulations. In his reply the

Chief Counsel observed, "It is impossible to provide an authoritative opinion in this matter in the advance of issuance of regulations by the Federal Communications Commission. . . . It would appear advisable to include, in any proposed State legislation governing areas not to be preempted by Federal authority, a provision that the same 'shall be operative to the extent the same are not in conflict with minimum standards or requirements imposed pursuant to Federal law and regulations.'" See also below, pp. 19-21

FINDINGS

As a result of its inquiries and deliberations, the Commission has found:

1. That there has been considerable penetration of potential New Jersey markets by CATV systems, and the tempo of such penetration, as evidenced by the number of operating systems, franchised systems in various stages of development, and the reported interests of operators in securing new franchises, has increased sharply over the past few years.¹

2. That, apart from certain FCC regulations designed primarily to protect the broadcast TV industry from the destructive economic effects of unlimited competition from cable TV, the regulation of cable TV in this State has rested entirely upon the several municipalities in issuing so-called "franchises" based upon general municipal authority to regulate "use of the streets".²

3. That the scope and type of regulation embodied in the various franchises varies considerably as to rates, service requirements, term of franchise, programming requirements, community and educational service requirements, bonding, insurance, performance guarantees, restrictions upon programming, rates to subscribers and other substantive guarantees, requirements and restrictions.²

4. That the forms and procedures according to which such franchises have been granted have also varied. Some municipalities have conducted full-scale inquiries into the potentialities of cable service, have held hearings and have invited competitive proposals from different potential operators; others appear to have responded quickly and without extended deliberation to the first applicant who made a proposal.²

5. That, in some part as a result of the variety of franchise terms and procedures, the character and quality of service, as well as the compliance by operators with the terms of their agreements and the honoring of their commitments, have varied from excellent to non-existent. Some franchisees have failed to exercise their franchises with any degree of promptitude; in some cases, a suspicion may attach that such franchises were obtained without any intent to exercise them, but solely for speculative purposes.²

6. That the Federal Communications Commission has announced its intention to subject to regulation a number of phases of CATV operations which have hitherto been regulated, if at all, through municipal franchise agreements, and which have been proposed for State regulation. Among these areas (to which crucial importance was attached by many persons who testified before this Commission or whose testimony was placed upon the record) are:

a. Minimum standards as to the number and choice of channels

to be made available to the subscriber.

- b. Mandatory educational programming and carriage of educational broadcasts.
- c. Minimum requirements as to local origination (i.e., origination directly upon the cable).
- d. Access free, or at minimal costs, to governmental entities, educational authorities and various community groups.³

7. That the FCC also has expressed its intention to intervene, to some extent, in elements of the franchising process which are now exclusively local, by setting certain "minimum requirements in the local franchising process"⁴, but has not expressed with precision the "minimum standards" intended--and indeed has expressed in several different ways its intent to avoid any "inflexible" rules, at least while the development of the industry remains in its present fluid state.⁵

8. That, although the intentions of the FCC are firmly expressed in its Letter of Intent, which envisages implementation by March 1, 1972⁶, it is evident that those portions of the proposed rules which are of most interest to local and state authorities are of secondary importance, in the overall Federal regulatory scheme, to those rules which will regulate the relative positions of the cable operators and their principal rivals, the broadcasters. There is some evidence

that the intense controversy over these latter rules may result in some delay or change in the adoption of the former. Recent news reports emanating from Washington have announced a major compromise between the cable and broadcast interests, reportedly "with the strong encouragement of the White House", which would result in modification of the proposed FCC rules bearing upon the competitive status of the two media. What effect this compromise may have (if any) upon other areas of cable regulation; whether, as reported, the Antitrust Division of the Justice Department may attack the compromise, and whether any other litigation or complications may arise to delay or distort the intended FCC action as described above--these are questions to which no clear answers appear to be available at the present time.⁷

9. That, regardless of what the FCC may do in the way of regulation in the near future, it is evident, from the terms of the Letter of Intent, that a great reliance will continue to be placed upon state and local authorities with regard to determining the fitness of prospective system operators and of setting and enforcing standards of service, rates and other matters which would pose insuperable administrative problems to direct administration from Washington.⁸

Footnotes

1. Data submitted by John D. Matthews, Esq., attorney for the New Jersey CATV Association, showed 25 operating CATV systems in the State. Of these, well over half (15) had begun service since 1966. Dates on which service began were not available for two of them. The total number of subscribers to these systems was listed as 71,313, out of a potential market of 161,675. Other data submitted by Mr. Matthews showed 64 systems franchised but not in operation, and 111 "communities" in which franchise applications were pending. Other estimates made by witnesses at the public hearings put the number of franchises in the State as high as 150 or 160. Mr. Matthews' data were compiled from the trade publication Television Factbook (1970-71 edition), and may be found in the Appendix to Public Hearing before the Assembly Committee on Transportation and Public Utilities on Community Antenna Television Systems, held April 20, 1971, pp. 166 et seq. In a statement submitted at the same hearing, Mr. Richard C. Leone, Director of the Center for the Analysis of Public Issues, Princeton, N. J., said: "The process of CATV franchising is going forward rapidly. As far as we can determine, over 146 New Jersey communities already have signed contracts with cable operators and at least a hundred more are considering contract proposals. At the present rate, the pattern of communications development for the state soon will be set for the foreseeable future. . . . Records of the Public Utilities Commission indicate that cable television began serving the television needs of some New Jerseyans as early as 1952. Since then, CATV has spread to 20 of the state's 21 counties and now serves viewers in 76 cities and towns across the state. New franchises, not yet operational, have been awarded in more than 66 other communities and hundreds more are giving active consideration to cable contracts." (Op. cit., p. 9 et seq.)
2. See "Summary Analysis" of franchises, Appendix B, p.
3. These intentions of the FCC were set forth in a so-called "Letter of Intent" (hereafter cited by that title) issued by the FCC on August 5, 1971, to inform the Congress of the Commission's intent to issue certain rules in this field. With regard to utilization of cablecasting for community-service and community-expression purposes--a potential of the medium which many of the witnesses before us felt had been, and is being, grossly neglected in the regulation of CATV thus far--the Letter of Intent said, in part: "We envision a future for cable in which the principal services, channel uses and potential sources of income will be other than over-the-air signals. We note that 40, 50 and 60 channel systems are currently being installed. . . . We urge cable operators to

consider that future demand may significantly exceed current projections, and we put them on notice that it is our intention to insist on the expansion of cable systems to accommodate all reasonable demand. . . . We will also adopt a rule that for each broadcast signal carried, cable systems must provide equivalent bandwidth for non-broadcast uses. . . . [W]e will require that there be one free, dedicated, non-commercial, public access channel available at all times on a non-discriminatory basis. In addition, we will require that one channel be set aside for educational use and one channel for state and local government use on a developmental basis. . . ."

(P. 26 et seq., passim)

4. Letter of Intent, p. 45. "Accordingly, we will leave a number of areas to local regulation, but will take steps to insure efficient nationwide communications service with adequate facilities at reasonable charges. And we will expect to accomplish this by specifying minimum requirements in the local franchising process."
5. The entire fourth section, "Federal-State/Local Relationships", of the Letter of Intent is replete with expressions of the tentative and flexible nature of the FCC proposals in this area. The concluding paragraph of the section says, in part: "The provisions of this section of the document represent the bare minimum needed to get cable under way, and some matters are best left to ad hoc consideration. . . . [A]s we gain experience and data, we must be alert to take such further action as will promote the public interest." (P. 51) Moreover, the concluding pages of the Letter of Intent raise the prospect of further "proceedings" by the FCC to determine its exact role in some of these areas of regulation: "In the access area, for example, there will be a proceeding to consider the shape of the new regulations (if any) on the access and leased channels; . . . In the federal-state/local area, there will be a proceeding to consider various aspects of matters treated here only in a preliminary way." (Pp. 52-53)
6. "We are proposing to break new ground, largely unexplored. As a consequence, we must and will proceed with caution. But further delay, in our view, would disserve the public and deny the nation tangible benefits. . . . As we now project the timetable. . . . rules will be promulgated by the end of the year, with an effective date of March 1, 1972." (Pp. 2, 4)

7. See New York Times, November 12 and 18, 1971.
8. See footnote 4, above. Cf. also the following analysis by the Chairman of the New York Public Service Commission: "[T]he FCC carefully delineated [in the Letter of Intent] a broad area for non-Federal regulation--without differentiating as to the propriety of state or municipal jurisdiction--making clear its belief that complete Federal preemption would pose an impossible and unmanageable burden.

"More specifically, the FCC indicated that it will remove itself from the franchising area and will not become involved in setting criteria governing the character and financial qualifications of franchisees, in the development of procedures governing the selection process, or in the decision to select a particular franchisee. Similarly, the FCC will not extend jurisdiction to matters concerning the negotiation of the terms of each franchise (beyond the basic FCC operation and technical standard guidelines) or to the determination of proper service territories or construction and operation timetables. In the critical area of rate regulation the Commission indicated that it would require the creation of rigorous public procedures on the state or local level for the establishment of fair and reasonable rates.

"Finally, the FCC said it would not assume primary responsibility for the maintenance of the quality of service and resolution of individual service complaints beyond the establishment of basic operational and technical standards which, in the first instance, would themselves be enforced by state or local government. This position of the FCC would apply even in those instances where the FCC will set requirements, such as those for public access channels. There will remain a large implementing role for state or local regulation, and perhaps also in determining whether to impose requirements which go beyond the Federal minimums.

"In sum, the FCC has challenged the states to devise effective regulatory structures, but has also indicated that it is prepared to step in to the extent that a regulatory vacuum persists." (Statement of Joseph C. Swidler, Chairman, New York State Public Service Commission, before the [New York] Assembly-Senate CATV Panel, October 28, 1971. Submitted by William K. Jones, Commissioner, New York PSC, for inclusion in the record of the November 4, 1971, hearing of the New Jersey CATV Study Commission. The above is from the transcript of the November 4 hearing.)

CONCLUSIONS

From the foregoing Findings, combined with those findings previously declared by the Legislature consequent to the investigations of the General Assembly Transportation and Public Utilities Committee, and in light of the conditions, practices and developments described in the Introduction to this Report, the Commission has concluded:

I

That the need for a State-wide regulatory system in this area is evident and generally agreed upon.

Strictly speaking, this Commission was not called upon to make any determination as to the need or advisability of regulation of CATV. The resolution creating the Commission set forth the existence of such a need, and left open only the questions of "the exact form which such regulation shall take, the degree of regulation necessary and desirable, and the level or levels of government which should undertake the regulatory function."¹

The principal questions which have been brought at issue in the Commission hearings are how large and how direct a role the State government should, or is able to, play in the regu-

latory system, which encompasses Federal, State and local activities. CATV industry spokesmen, generally speaking, have envisaged a very limited role for the State--their argument being, in brief, that those few areas of substantive regulation which will not be preempted by the FCC are just those areas most appropriate to control on the local municipal level--but even these spokesmen have conceded that the State does have a role to play. In testimony before this Commission on October 6, 1971, John D. Matthews, Esq., counsel for the New Jersey CATV Association, (who also testified at both the earlier hearings by the General Assembly Transportation and Public Utilities Committee), while reiterating the position that CATV regulation must be primarily a matter of FCC regulation supported by local franchising arrangements, also said:

,"[W]e understand that your Commission is investigating and studying the possible adoption of guidelines for municipalities in the area of substantive provisions to be incorporated in municipal franchises for CATV systems; that you are considering the adoption of statewide criteria for the selection of franchise applicants, criteria perhaps going to their legal, technical, financial and character qualifications; guidelines as to deadlines for construction and operation of the system; criteria for procedures to be utilized in applying

for franchises, public hearings, notices of franchise hearings and things of that sort.

"The State [CATV] Association is in the process of giving serious consideration to these matters and we want to tell you today that we intend to cooperate with your Commission fully in working out some guidelines on this score. If you think our assistance would be profitable and helpful to you, we stand ready to assist and cooperate with you in any way possible. . . .

"We support the adoption of uniform franchising guidelines and franchising standards and franchising criteria."²

Similarly, Mr. A. William Martin, Executive Vice President of Coaxial Communications of Bergen County, Inc., who also advocated a limited role for the State and considerable responsibility for local municipalities, testified, in part, as follows before the General Assembly Committee on Transportation and Public Utilities:

"I believe I understand what the State is trying to achieve in its investigation of cable TV. I think it would like to be sure that the companies operating cable systems in the State will truly serve the public in general and the local community in particular. I think it wants to be assured

that every company, particularly foreign corporations, are financially sound, operated by reputable people, and capable of delivering that which they promise. I believe the State wants assurance that technical standards will be high, that operation of a cable system will continue with a minimum of breakdown and without excessive or frequent repair charges to the subscribers of that system.

"Almost more important, I believe that the State seeks maximum service to subscribers and a fair cost for the service received. . . .

"I concur in all these thoughts because I and my company believe that they are in the best interests of the people of the State of New Jersey"³

In view of the general agreement upon this point, as well as the terms of the legislative mandate to this Commission, there does not appear to be any need for further discussion regarding the basic need for some type of regulation. It should be pointed out, however, that in alluding to "regulation" we have in mind only those regulations which are, or may be, appropriate for State or local control. There are various regulations, either adopted or announced by the

FCC, which deal with the utilization by cable TV of broadcast signals and with the economic effects upon broadcast TV of the cable medium--carriage of signals of local stations, non-duplication of broadcast programs within the system's area, limitations upon "importation" of distant signals into the broadcast areas of local stations--which can by no stretch of the imagination be considered subject to State jurisdiction. Our discussion is thus limited to two areas of possible State action: (a) that in which the FCC has clearly indicated an intention to leave scope for State or local regulation, and (b) that in which there may be some question of the advisability of State action pending definitive action by the FCC, even if there is a prospect that such FCC action (whenever it comes) will totally supersede the State regulations.

II

That total reliance upon municipal franchising arrangements for the non-Federal component of CATV regulation has been unsatisfactory and is likely to become more so as the industry develops.

As we have noted above, (Finding 2, p. 18; Introduction, pp. 9-10), the legal authority for issuing such "franchises" is unclear. It appears that municipalities, confronted with CATV system proposals, have taken action under existing general statutes for lack of any more specific legal guidelines.

While any suspicion of a lack of adequate municipal authority for this purpose could be allayed by the passage of legislation similar to the Illinois statute cited above (Introduction, footnote 9, p. 15), it does not appear that total control over CATV on the local level, as a sort of business license comparable to those for taxicabs, peddlers, theatres and other trades and activities covered in chapter 52 of Title 40, is appropriate or adequate.

While some degree of uniformity in franchising standards has been attained through the activity of the CATV industry itself and other groups, such as the National Institute of Municipal Law Officers, in developing so-called "model" franchise agreements, the Summary Analysis of franchise

provisions in this Report (Appendix B) shows that there is a great variety both in form and in content. (See also Findings 3 and 4, pp. 18-19)

In some cases, certain provisions, or the absence of certain provisions, indicates that the best interests of the municipality and of the potential subscribers to the CATV system have not been adequately consulted. In many cases, this is no doubt due to the fact that municipal officials have not had available to them expert counsel and assistance in evaluating either the applicants, or the nature and capabilities of CATV, or the potentialities of the system as related to their community.

While we wish to stress that complaints of inadequate CATV service coming to the attention of this Commission during the time when it was in session have not been multitudinous, such complaints as have been received appear to be due to, first, a lack of effective provisions in franchising agreements which would provide swift and adequate correction of defects, and, second, to the inability of municipal authorities to provide effective supervision and enforcement of such provisions as existed.

Far more common than complaints of inadequate service have been complaints of non-existent service, of apparently unconscionable delays by franchisees in carrying out the

terms of their proposals and instituting the actual service which they promised. In some cases this may be due to outright speculation by franchisees in the value of their franchises. In other cases it may have been due to the fact that franchisees were inadequately financed or provided with technical capacity at the time of franchising; such franchisees may also have "speculated", in the sense that, while intending to perform their undertakings, they have gambled on the potency of the franchise itself to attract the necessary financing and enable them to hire the necessary expertise.

As we have noted, and as is detailed in the analysis of corporate data performed for this Commission (see Introduction, p. 2, and footnote 4, p. 14), there is at present a certain fluidity in the CATV industry; there exists a number of independent operators, while at the same time there is discernible a tendency for concentration and consolidation; corporate affiliations are shifting and subject to dramatic changes. Some authorities believe that there will eventually be a tendency for the industry to concentrate in a few large, heavily-financed organizations. A pattern of independent local corporations separately affiliated to a central organization which provides equipment and expertise to all is also

discernible, as in the "Coaxial Communications" group, several of whose representatives testified before the General Assembly Transportation and Public Utilities Committee:

"We [Coaxial Communications of Bergen County, Inc.] are a subsidiary of Coaxial Communications, Inc., of Sarasota, Florida, operating through an interlocking officer-directorate with two from the national company and two from New Jersey."

* * *

"ASSEMBLYMAN WEIDEL: All right, you are a subsidiary of a large cable company. You mentioned Columbus [Ohio], Hempstead [New York] and a few other cities. Why does that cable company need you?"

"MR. MARTIN: We are in the process of setting up. We have incorporated in the State of New Jersey. When this incorporation is finished and the complete organization is set up, this is going to be a strictly New Jersey company with financial backing from the Florida operation where Coaxial Communications is located. . . ."

"ASSEMBLYMAN WEIDEL: Would you tell me offhand how much capital you need to start a cable TV company? . . . A quarter of a million? A million?"

"MR. MARTIN: You need at least a quarter of a million

to do a good job. . . . As a point of comparison I can say this, that in our early discussions of Bergen County when we first began to discuss this with the people who do supply the funds to us, the estimate was \$30-million to be invested in Bergen County. . . . That is just in installation lines, cables, studios."⁴

At present, however, the industry has not settled into an established corporate pattern. Under the circumstances, it is not surprising that there are frequent changes in corporate identity, mergers, dissolutions and new formations of companies. It is not surprising either that the fluid situation may attract many speculators and "shoestring" operators who discern an opportunity to combine a municipal franchise and a minimal investment into a highly profitable operation, or to derive a lucrative profit from eventual incorporation into an emerging CATV combine, or simply to hold a franchise for "resale".

It appears to this Commission that municipalities have in some instances been the victims of this situation and of their own inability to evaluate applicants for CATV franchises or to draw up adequate terms and enforcement provisions

to guard against unfortunate possibilities of such awards. It further appears, that, as the tempo of CATV development picks up--as it has been doing and as it is likely to do even more sharply once the FCC's new regulations clear the way for more extensive "importation" of distant signals--the hazards of municipal franchising will also increase dramatically.

This conclusion is consonant with the Legislature's previous determination that the "intense competition for franchises" has led to conditions requiring stricter regulation.⁵

"Accusations of municipal corruption" in connection with the granting of franchises, also cited by the Legislature⁶, have been so dramatically highlighted by the news media as to require little further emphasis here. On the contrary, it may be appropriate to point out that municipal corruption and favoritism are only a small part of the abuses and shortcomings of the municipal franchising process as it has existed. Certain allegations of corrupt overtures were related to this Commission by two CATV operators who testified before us; these allegations have been referred to the appropriate authorities. In addition, we have heard certain vague tales of apparent openness to corruption by municipal officials; how much of this stems from actual corrupt

intentions and how much from a general aura of suspicion generated by a few prominent cases, we can not, of course, estimate.

There are, as is generally known, pending indictments of both CATV personalities and present and former Trenton City officials for alleged bribery and extortion in connection with franchise proceedings in that city; and one of the principal figures in that case has been convicted on similar charges in Pennsylvania.

Ironically, the company involved in this case is one generally regarded as having full competence and capability to deliver satisfactory CATV service. This underlines the fact that it is not corruption -- which is a separate and distinct evil in itself -- which jeopardizes the public interest in CATV, but improper selection and franchising of operators, which may be brought about by many other means.

A related abuse -- though by no means necessarily a corrupt one -- is the emphasis which many municipal franchises seem to have put upon revenue as the sole, or principal, "public benefit" to be derived from a CATV franchise.

As indicated in the earlier part of this Report, the potential benefits of CATV to its subscribers, to the

community, to the municipality and to the public at large through the inherent service capabilities of the medium are extensive, and far outweigh any incidental revenue which may come through taxation of the franchise. However, in a franchising process wherein the franchising authority is perhaps no more than dimly aware of these potentialities, the principal difference between competing applicants may well appear to be the amount of revenue they are willing to concede in return for the privilege of operating.

What may result is a form of quite legal "corruption" -- emanating, perhaps, from a very stern dedication to the "public interest", as they see it, by municipal officials -- in which the franchise goes to the "highest bidder" (in revenue terms) rather than to the most qualified operator or to the one who will provide the most comprehensive service.

Furthermore, it must be noted that franchise revenue arrangements, which are based upon a percentage of the system's revenue, have the unfortunate side-effect of making the municipality a sort of "partner" in the system's commercial profitability. Services which attract a high revenue, especially in the present state of the industry, are not necessarily those which provide the optimum public service

available through CATV.

Another shortcoming of the municipal-franchise system as currently in existence is that it can not result in logical determination of service territories. There are 567 incorporated municipalities in this State, comprising in their several jurisdictions all the territory of the State. They vary enormously in area, in number of inhabitants and in all characteristics of geography and population. Only a relative few would seem to have the size and characteristics of an adequate, self-contained CATV service territory; and only a relative few would seem to have the resources to regulate, supervise and control a CATV operation of any sophistication.

It has been estimated that some 150 of the 567 municipalities have issued a CATV franchise of some sort, which are in various stages of exercise (or neglect) at the present time. (There are, according to counsel for the New Jersey CATV Association, 26 "operating systems" in the State.⁷) Under the present system of franchising, 567 separate franchising authorities would have to act (some issuing more than one franchise, perhaps, as some already have) to achieve State-wide development of the medium.

Many of these potential franchises are, however, worthless in themselves, and require to be combined with other municipal areas in order to be effective. Various difficulties can arise from this situation, especially as development becomes more widespread. Issuance of a franchise by one or more adjacent municipalities can effectively destroy the options of another municipality not yet franchised; such a municipality may, for example, find that no other operator than the one franchised by its neighbors can effectively serve it. In such case, all the bargaining power theoretically possessed by the municipality through its control of the franchise is destroyed -- and so is any prospect of effective regulation through the franchise agreement.

Further insight into some of the problems of multiple franchising was provided at our hearing on October 6, 1971, in the testimony of a CATV operator, Mr. Samuel Kravetz of Dover, President of Telecommunications, Inc.

"In the 13 franchises of municipalities which I have," Mr. Kravetz said, "I have stated under oath under different circumstances what the value of one of my franchises was, and I stated that it was worthless. They said, 'How about this town?' I said, 'It is worthless.'

They say, 'Why did you want them?' And the response is, 'In combination, they are potentially valuable.'

"So the concept is not that Victory Gardens with 1,190 people and 290 homes is worth anything. We just put up a headend for \$85,000. You couldn't invest an \$85,000 headend operation for Victory Gardens, but we could do it because Victory Gardens is adjacent to Dover; we can run another 5 miles of plant in there and serve those residents. So it is the regional idea we have in mind. . . . I also feel that a town such as Victory Gardens or a town such as Rockaway Borough by itself will not support a CATV system."⁸

Mr. Kravetz also testified about the difficulty of securing a site for an antenna tower for a system already franchised. Sometimes, it appears, municipalities will themselves delay implementation of franchises by reluctance to approve tower sites -- which, like some other functional municipal facilities, are not considered beauty spots in the neighborhoods where they are located. It is true also that a member of this Commission (Senator Guarini) sharply questioned the wisdom of allowing a franchise unless such a site were already "locked up". To this Mr. Kravetz replied:

"If you will simultaneously enforce the granting of land for a headend site, I am in complete accord. . . ."9

It is evident that, as a concomitant of sensible regionalization of service areas, towers and "headend" facilities ought to be located in logical sites for the provision of service to the area intended. This is true whether the site is to be "locked up" before the franchise is granted or otherwise. To secure such logical siting it is necessary -- as is provided in regard to many public utility installations -- that the general "public convenience and necessity" take precedence over any local political complications.

A similar observation applies to those situations in which municipalities, in granting CATV franchises, have in fact required that the antenna tower be located outside their boundaries. In some, or perhaps all, of these cases, the requirement may have been founded upon logical geographical or other considerations; but this is not a decision which a single municipality should have in its discretion to make, affecting other municipalities without their participation or consent.

From the foregoing it is evident to the Commission that a comprehensive system of State regulation and supervision, capable of adjusting local conflicts and overriding local

considerations wherever the same may tend to vitiate efforts to secure adequate CATV service to all municipalities of the State, is necessary; and that such regulation and supervision should include controls over the franchising process; investigating the qualifications of potential CATV system operators, supervising their performance and rectifying complaints; reviewing and adjusting rates and services to subscribers based upon systems of adequate size, capability and competence; delineation of adequate and logical service areas; determination of major service installation sites upon a logical relation to the public interest in servicing such areas.

By no means does such a system preclude local franchising; but it should assure that local considerations -- and perhaps local inadequacies -- in any one municipality should not be allowed to affect other municipalities adversely or to inflict upon subscribers a service of lower quality than might reasonably be expected.

III

That the most appropriate and effective way of securing the needed regulation is through a system modeled upon public-utility regulation, but modified in accordance with those characteristics peculiar to CATV which differentiate it from a typical "public utility".

At first glance, the aspects of CATV which require to be regulated seem to place it precisely in the category of a public utility. It may thus appear logical, and even obvious, that for regulatory purposes the Board of Public Utility Commissioners be given jurisdiction, to be exercised in the same manner as with other public utilities.

In support of this conclusion it may be argued that a CATV system does have most of the characteristics that we usually associate with those government-regulated businesses known as public utilities: It operates through the installation of its equipment in public places, for which the assent of governmental authority is required; it has, in practice a monopoly or near-monopoly status; the subscriber has little or no alternative source of the service; rates, standards of service and allocation of service territories

require some sort of governmental regulation or supervision.¹⁰

Accordingly, some states have adopted regulatory systems which, in effect, simply add CATV to the list of "public utilities". In addition to apparent logical symmetry, this method has the advantage that the entire regulatory scheme is ready-made in existing public utilities law, and the legislative task is thereby immensely simplified.

In this State, legislation of the same nature has been before the Legislature for several years. In signaling its first appearance, then Governor Richard J. Hughes said that ". . . we are presented with a classic example of the birth of a public utility, with all of the attendant hazards to the consumer of unrestrained competition and service without prescribed standards. Legislation will soon be introduced to regulate this new industry by bringing such companies within the present statutory definition of the term 'public utility'."¹¹

Assembly Bill 2139 of 1971¹², upon which hearings were held in April and May of 1971 by the Assembly Transportation and Public Utilities Committee -- hearings which resulted in the introduction of the legislation which created this Commission and imposed a CATV "moratorium" to gain time for the completion of this Commission's study -- is an

exemplar of the same approach as originally announced by Governor Hughes in 1965.

This concept has naturally received careful attention from this Commission. It presents, as noted above, certain obvious attractions of symmetry and convenience. On careful examination, however, the public utility concept does not seem to fit all the facts that a CATV regulatory system must deal with.

It may be that, as former Governor Hughes said, we are witnessing, in the development of CATV, the "birth of a public utility"; at the present juncture, however, the infant is by no means so developed or so robust as to bear all the responsibilities of the "adult" industries in this category.

CATV industry spokesmen have repeatedly urged upon this Commission the proposition that CATV is "not a public utility". The key points are that it (a) is not an "essential" service, and (b) does not operate under an assured monopoly. These points deserve examination.¹³

What is a "necessity" or an "essential service" is, of course, to some degree a subjective judgment. Most of our present necessities and "essential services" were, in

the not too remote past, luxuries, and in remoter history totally non-existent. The potentialities of the telephone, for example, in expediting business and personal transactions assured that it would supersede, for many purposes, earlier communications techniques, and in short order become a practical necessity.

There has been a great volume of testimony before this Commission -- and much more available in the literature of the subject -- regarding the potentials of CATV service. There is no question that there are potentialities in the CATV technology which may, in the foreseeable future, provide educational, community-service and other opportunities that may develop into practical necessities in the community life of the future.

We do not mean to dismiss such future prospects as merely visionary. On the contrary, they are probably inevitable. No one should get the notion that the prospects of multiple-channel, multi-service systems based on CATV technology are merely the constructs of academic theorizing or journalistic hyperbole. Equally enticing projections of future services have been made by practical businessmen and technicians who are familiar with the

field. For example, at the hearing on April 20 before the Transportation and Public Utilities Committee of the General Assembly, Mr. Robert R. Pauley, President of Cablenet International Corporation (a consulting firm) and Program Director for Coaxial Communications of Bergen County, Inc., offered the following views:

"Television . . . serves as the primary educator in a world that has grown smaller but more complex, and television as we know it has not served to accommodate that complexity to the public benefit. . . . Commercial television has operated as a medium in search of the largest single audience for each program, that program being shown only once. Because of the capacity now available in CATV through advanced technology, every segment, every minority interest of the community, can find meaningful, informative material, suiting his individual tastes, on his home set. As exciting and revolutionary as this diversity seems, it is eclipsed by the opportunity for access and participation by the community. Cable TV is broadcasting offering two-way communications, the essence of understanding."¹⁴

For a more comprehensive outline of the potentialities

of the medium, we may cite the testimony of Dr. William H. Cherry, a physicist and engineer specializing in television engineering (and particularly applications to education):

"We think largely of cable television as improving the home entertainment that is received through broadcast television, but that's only the very, very smallest beginning. It will bring to your home education in a vast multitude of forms; home library access and data retrieval; the possibilities of home retail merchandising; pricing and procurement become a wholly new industry opening up in the retail business as cable television becomes a national and continental entity. It will perform for you many home tasks and functions, such as food provision and preparation, laundry and clothing maintenance, and all the control mechanisms that are needed for this kind of thing. I'm thinking twenty years from now, for the moment. And it will provide for you the control of your home in temperature and sanitation and air treatment and so on, all through the cable connection between you, as an umbilical cord, to the services of your society.

"Of course, there's home money management, accounting

and records that can be done by cable connecting you to the bank and to your computer and whatever kind of device will become apparent to you in the next decades as they are developed. The possibilities of personal physiological aids are very important possibilities. Automatic medication and monitoring diagnostic systems, including chemical tests and pulse and breathing tests done continuously, all by means of a cable connection between you and your hospital and you and your doctor or team of doctors.

"I am just touching a few of the things. . . ."15

As services of this nature become available, as public awareness of their availability increases and as widespread demand and technical improvements combine to make them commercially feasible for general use, it is entirely likely that this complex of services -- for which "CATV" or "television" of any kind will cease to be an adequate descriptive term -- will attain the full status of a public utility.

At present, however, we must deal with CATV as it is. And what it is at present is basically a technique for providing improved television reception -- a better signal and an increased variety of available channels taken from

the broadcast television. To this service may be added certain additional services through locally originated cablecasting; such services vary according to the needs and demands of the particular area to be served by the system. Services other than cable television reception service are at present limited; it is reception service which provides the main attraction to subscribers and the main revenue-producing feature of the system. The success of this service will provide the economic and technical base from which more elaborate services may evolve in line with increasing capability and increasing public demand.

The lack of assured monopoly is an aspect of CATV's present lack of indispensibility. As a form primarily of entertainment, it must compete for a share of the consumer's discretionary spending. Its principal competitor, broadcast television, comes free to the consumer -- which is very stiff competition, indeed. The CATV system must offer either substantially improved signals, or substantially greater variety of channels, in order to attract and hold subscribers. Depending upon local conditions, additional local-origination services may afford some attraction; but the main selling point is improved television reception service.

Moreover, the consumer will weigh CATV's attractions not only against those programs available free to him, but also against various other forms of entertainment which might be purchased at the price of a CATV subscription.¹⁶

Accordingly, a CATV franchise -- even if, for purposes of discussion, we assume it to be exclusive, formally or practically, for the area in which it is granted -- is by no means a guarantee to the operator that he will have subscribers in sufficient numbers to justify his investment. There is a natural competitive check upon his rates and upon his standards of service. One important reservation to this general consideration needs to be noted: in certain areas of very limited (or non-existent) broadcast reception, the CATV operator has an important advantage in that the consumer who desires any TV service is compelled to choose between him and nothing, or nearly nothing. In such situations, clearly, some regulatory mechanism ought to protect the consumer against unfair use of this advantage.

The fulfillment of all the enticing prospects of the cable medium will depend upon the continued health of the industry as it now exists, enabling it to prosper and expand beyond the improved television reception service which

now constitutes its economic base. For this to happen, capital investment in large quantities must be attracted. Not only must systems be built, at large initial expense; but also, as the industry grows and multiplies its services, there is likely to be a high rate of obsolescence, requiring the same systems to be re-built -- perhaps several times -- before they become reasonably stabilized.

We must face the fact that investment in these enterprises entails some risk, and is highly speculative as compared with investment in the classical public utility corporation with its large territory, monopoly status and assured clientele.

The full panoply of public utility-type regulation would naturally repel those investors who might otherwise be attracted to this sort of investment.

It is worth noting that in those five states where regulation of CATV has been assigned to the Public Utilities Commission (or similar agency, however named) development of the industry has been noticeably slow (industry spokesmen use the term "stifled"). In fact, New Jersey alone now has more operating CATV systems than those five states put together, according to the industry figures.¹⁷

We draw no conclusions from the mere existence of these statistics. Various interpretations have been offered -- including the hypothesis that the industry in general has conspired to "make an example" of the five PUC states so as to discourage that form of regulation in others. Moreover, all five are quite small, either in area or population, or both; all five together have a 1970 population of only 5,578,623 -- compared with New Jersey's 7,084,992 -- and three of them are among the only four states that are smaller in area than New Jersey. On the other hand, the most populous of the five is the one showing the least development of CATV.

We may note that the limited development of CATV systems in those states -- compared with the rather rapid pace of development in the nation as a whole -- is quite consistent with the assumption that PUC regulation discourages investment. That assumption, however, rests on considerations rather more solid -- as discussed above -- than any statistical coincidence.

Basically, CATV service is a locally oriented service; and there should be a good deal of flexibility allowed to the local franchising authority to determine the type of

service which the locality needs, the rates which it is willing to pay in return for such services, and other conditions of operation. As was expressed by Mr. James Krauskopf, who appeared before this Commission on behalf of the Mayor of Newark,

"There are many possible combinations of service provisions, channel capacity, rates, fees, channel uses, length of franchise, and other elements. The 'correct' combination depends on a community's size, composition, density, economic status, and its communication, educational and governmental needs. In selecting among competing cable systems, a community should not be bound by rigid state or national service and rate provisions. Governed by procedural safeguards, a community should be able to bargain for a system which meets its needs."¹⁸

This Commission recognizes the primacy of local interest in the choice and performance of the CATV system to serve a particular locality. This conclusion, however, needs to be tempered by our earlier conclusion (II, above, p. 29) that total reliance upon franchising arrangements at the municipal level is unsatisfactory, and that State supervision

of such arrangements is necessary.

It further appears to us that, while CATV differs importantly in several respects from a "public utility", many of the regulatory problems involved are parallel to those found in public utility regulation and may be handled in an analogous fashion.

Accordingly, we have concluded that the responsibility for State regulation should be lodged in an agency similar to, but independent of, the Public Utilities Department; and that such an agency should operate, in contrast to the Public Utilities Department, more as an overseer of local determinations than a promulgator of standards to be imposed uniformly upon the several localities. It should be given sufficient powers to correct the defects in the local franchising process; but a large portion of the process of determining rates and service requirements should be left in the first instance with the franchising municipality, subject to adequate State review and supervision. Such an agency should also have in reserve adequate powers to regulate effectively the various services, other than the present mainstay of cable television reception service, as they develop.

IN SUMMARY, WE RECOMMEND:

- A. That the CATV regulatory function be allocated to the Department of Public Utilities, but placed in a separate Office created for the purpose, which would have no other responsibility.
- B. That, for the present at least, CATV should not be legally classified as a "public utility" subject to each and all of the provisions of Title 48 which might thereby become applicable; but that statutory provisions should be made for the CATV Office to exercise over CATV systems many of the regulatory functions analogous to those of the PUC over public utilities generally.
- C. That the general regulatory scheme for CATV should allow for much greater regulation on the municipal level than is provided with respect to public utilities -- particularly in the matter of rates and the provision of certain community services. Local communities would remain free to a great extent to bargain and agree with CATV system operators as to those things within their respective franchise areas -- subject only to a general review by the Office

of Cable Television under certain minimum
guidelines laid down.

IV

That (a) in view of the pending FCC action, it would be inappropriate to launch any elaborate scheme for exploitation of the educational and public-service potentials of CATV, or to adopt any detailed programming requirements; but that (b) pending actual exercise by the FCC of its expressed intentions, New Jersey should adopt certain minimal standards in these areas.

Much of the testimony before the Commission dealt with these aspects of CATV. The most exciting and fruitful potentialities of the medium certainly lie in this direction, and many novel and far-reaching developments may be anticipated.

It is evident, however, that the FCC intends to exercise its jurisdiction comprehensively in these matters. Any steps which the State might wish to take at this time must be taken subject to the definite condition that State action will be superseded, in the reasonably near future, by Federal preemption of the field.

Accordingly, any State action must be consciously of an interim nature, and must be conceived so as to merge easily

and without confusion into subsequent Federal rules.

On the other hand, we believe that our earlier discussion of the status of FCC proceedings clearly indicates that we can not justify total State inaction in this area on the grounds of imminent implementation of FCC intentions. At the present time, we must allow for possible delay or modification of the FCC's proposals.

This Commission, therefore, concludes that any regulatory legislation considered at this time provide for certain minimal public-service and educational channel reservations, and public access service. This recommendation is subject to review whenever the FCC makes clearer and more definitive its rules in these matters.

V

That the Legislature should maintain surveillance over the development of the CATV industry and of State and Federal regulation thereof, in order to respond promptly and effectively to changing circumstances.

We have already noted that the exact shape of Federal regulation is not yet before us. When it is, it may signal the need for either more or less State supervision over certain aspects of the industry.

Furthermore, there are certain problems of regulation which as yet are but dimly discernible and which may call for further legislation. For example, the details of regulating public-access programming are likely to raise many questions.

Other problems not yet discernible at all may arise as this fast-growing industry develops.

It is recommended, therefore, that the 1972-73 Legislature establish a commission for the purpose of watching over the development of the industry, reviewing the implementation of such State and Federal regulation as may be adopted, and alerting the Legislature from time to time, as the need may

arise, to any emerging problems which may require legislative solutions; or to any opportunities which may require legislative enablement.

Footnotes

1. Assembly Concurrent Resolution 2041 of 1971, Preamble, lines 13-18.
2. Transcript of the Commission hearing of October 7, 1971, pp. 16-17, 20.
3. Hearing of May 18, 1971; transcript, pp. 6-7.
4. Testimony of A. William Martin, Executive Vice President of Coaxial Communications of Bergen County, Inc., before the General Assembly Committee on Transportation and Public Utilities, May 18, 1971; transcript, pp. 10-12; and in Appendix to transcript of hearing on April 20, 1971, p. 19.
A similar relationship between the applicant operating company and the Jerrold Corp., a large supplier of equipment, was indicated; see testimony of Robert Beisswenger, Jerrold Corp. President, at the April 20, 1971, hearing, transcript pp. 138-143.
5. Assembly Concurrent Resolution 2041 of 1971, Preamble, generally, with quoted phrase from line 9.
6. Op. cit., line 11.
7. Hearing before General Assembly Committee on Transportation and Public Utilities, May 18, 1971, transcript, p. 44.
8. Hearing transcript, p. 56.
9. For this discussion, see op. cit., p. 59 et seq.; the quotation is on pp. 60-61.
10. See testimony of Felix Forlenza, Esq., Chief Counsel, New Jersey Board of Public Utility Commissioners, before General Assembly Committee on Transportation and Public Utilities, April 20, 1971, Appendix, pp. 4-8 (statement) and transcript pp. 7-16, 75-76.
11. Third Annual Message, January 12, 1965, pp. 69-70.

12. Appendix C, p. 124
13. For a compendious exposition of the industry viewpoint, see the memorandum submitted by John D. Matthews, Esq., counsel for the New Jersey CATV Association, printed in Appendix to the April 20, 1971, hearing before the General Assembly Transportation and Public Utilities Committee, pp. 131-139.
14. Hearing of April 20, 1971, transcript p. 78.
15. Op. cit., p. 17-18.
16. "As the President of the nation's largest manufacturer of CATV systems and the operator of one of the largest complex of CATV systems throughout the United States, I can assure you that cable television is still very much a high-risk business. This business, in essence, is no different than selling any other form of entertainment such as a newspaper, magazine, a movie and so-called free television. People do not, as a matter of necessity, need it. People have alternative choices of entertainment. Cable television must be marketed, not just initially to get subscribers, but perpetually to hold them at all times in competition with other purveyors of entertainment. The cable system customer, once connected, is quite free to disconnect, and life goes on, perhaps with the customer choosing to use the cable television monthly charge to buy a book for reading entertainment or perhaps take in a movie or two . . ." (From statement of Robert H. Beisswenger, President, Jerrold Electronics Corp., in Appendix to April 20, 1971, hearing, at p. 192.)
17. A copy of the following letter was furnished to the Commission by Mr. A. William Martin:

November 17, 1971

Mr. A. William Martin
Coaxial Communications
354 Main Street
Ridgefield Park, New Jersey 07660

Dear Bill:

In response to your request for substantive information relating to State Regulation of CATV, I offer the following to be the most conclusive evidence that state regulation stifles the growth of CATV which in turn deprives the citizens of these states an opportunity to avail themselves of the benefit of CATV:

<u>States w/PUC Regulation</u>	<u>Operating Systems</u>
Connecticut	0
Hawaii	7
Nevada	7
Rhode Island	1
Vermont	3 (since 1968)

These figures are from the 1971-1972 Television Factbook Edition No. 41

As you can see, CATV development has been almost completely stifled in these states as compared to tremendous growth in states without state regulation.

The FCC's proposed new rules will most probably preempt State regulations in the following areas and I will give you the specific rules if you request:

- 1) Television broadcast signal carriage.
- 2) Access to and use of nonbroadcast cable channels, including minimum channel capacity.
- 3) Technical standards.
- 4) Appropriate division of regulatory jurisdiction between the federal and state-local levels of government.
 - A) Basic Qualifications of Applicants.
 - B) Construction Timetable
 - C) Franchise Duration
 - D) Subscriber Rates
 - E) Service Standards
 - F) Franchising Fees

As is evident from the above, there will be very little regulation left to state and local agencies in the very near future.

I'm enclosing and will continue to send articles concerning PUC regulation, but it is mostly opinionated and not very substantial.

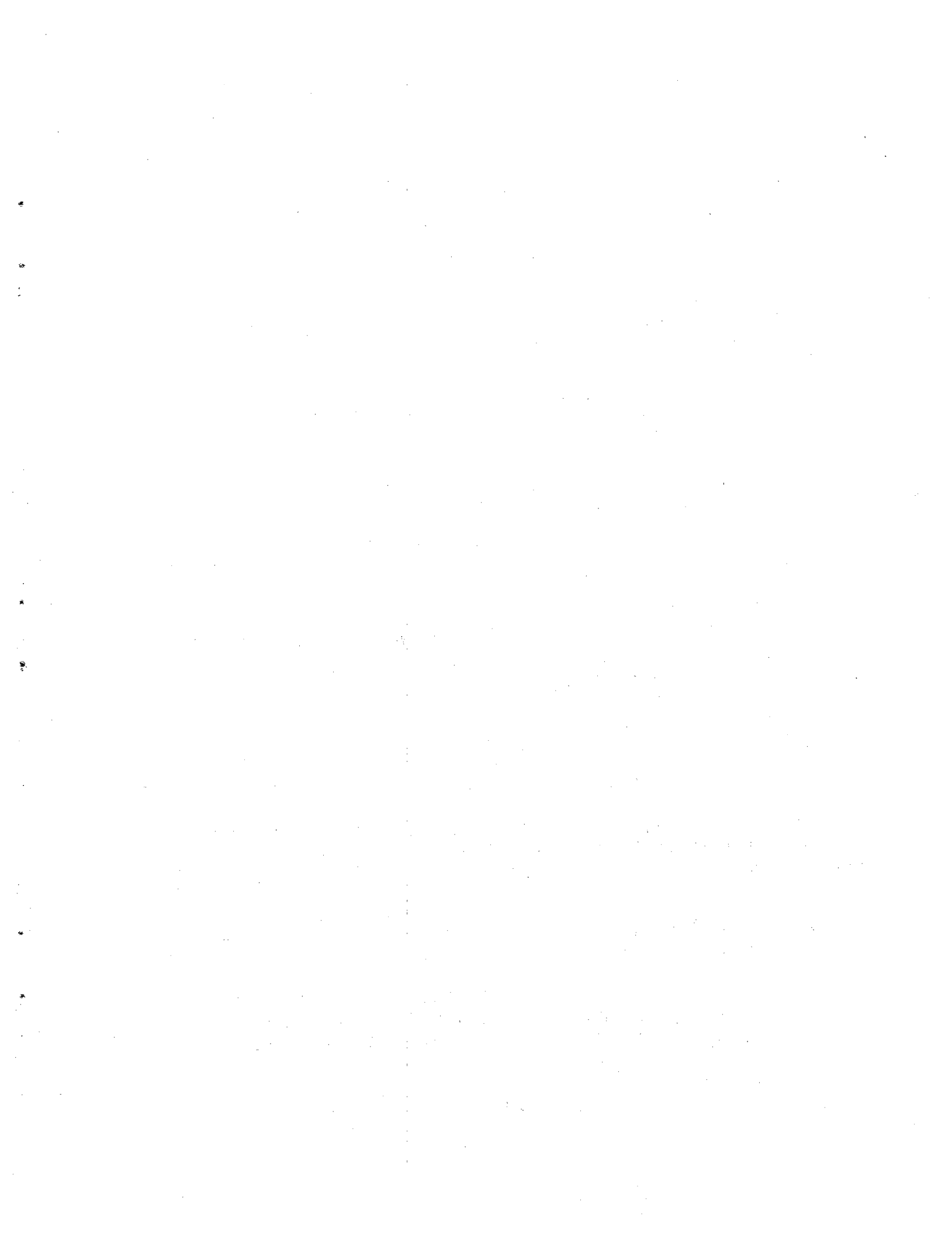
The most substantial evidence, is the fact that there has been little or no CATV development in states which have classified CATV as a public utility.

Sincerely yours,

(s) Ray

Ray H. Rollyson, Jr.
Assistant Vice President

. 18. Transcript of November 4, 1971, hearing, at p. 16.



"CABLE TELEVISION ACT"

ARTICLE I [§§1-3]

Short title; statement of policy; definitions.

ARTICLE II [§§4-12]

Office of Cable Television established; qualifications, powers, duties and functions.

ARTICLE III [§§13-15]

Advisory Council established; composition and functions.

ARTICLE IV [§§16-22]

Certificate of approval required for CATV operations; requirements and procedures in applying therefor.

ARTICLE V [§§23-31]

Municipal consents required; requirements and procedures in acquiring.

ARTICLE VI [§§32-35]

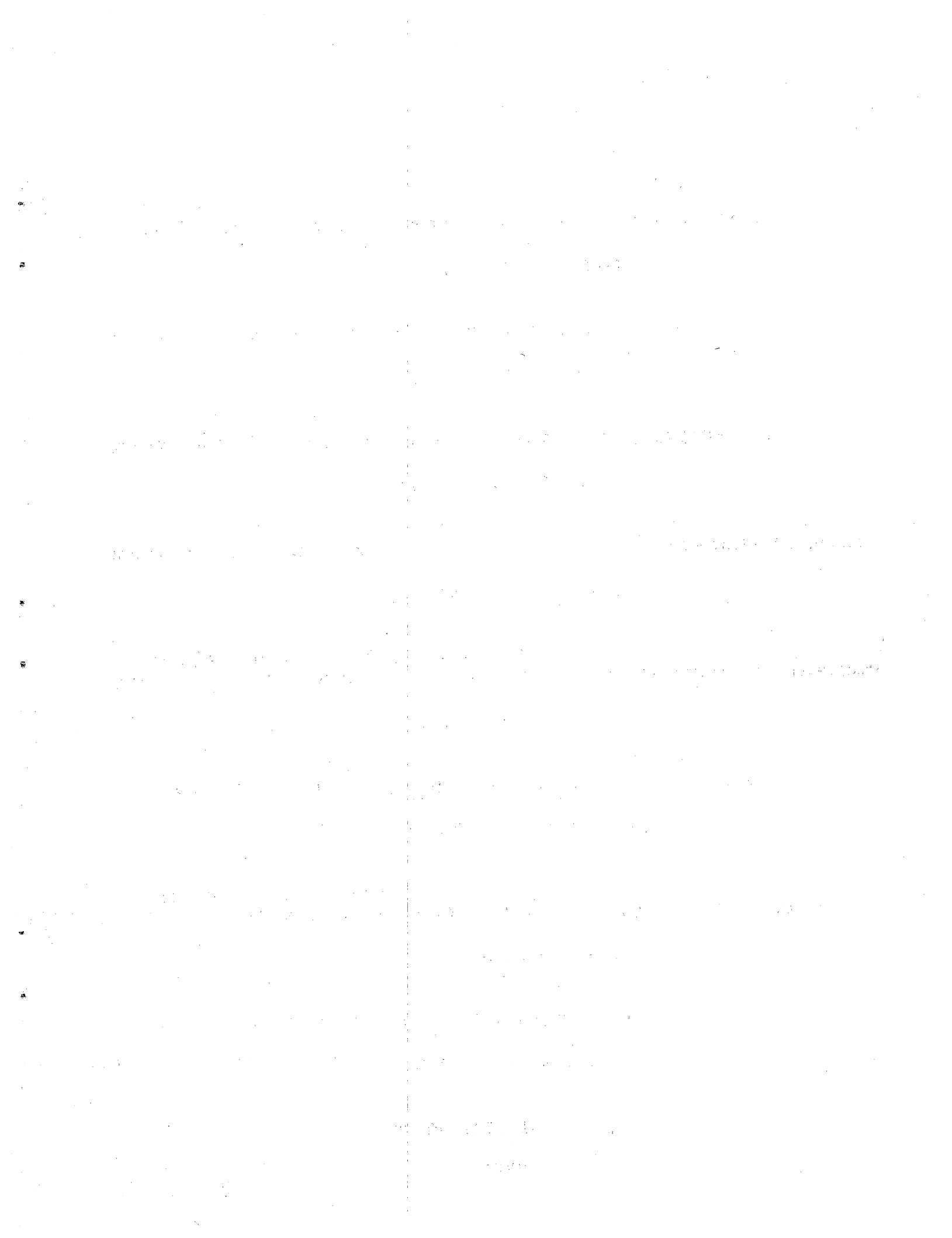
Assessment upon CATV companies for expenses of Office.

ARTICLE VII [§§36-47]

Duties, responsibilities and obligations of CATV companies.

ARTICLE VIII [§§48-53]

Penalties and enforcement measures; severability; repealer; effective date.



AN ACT concerning cable television and supplementing Title 48 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

ARTICLE I

1. This act shall be known and may be cited as the "Cable Television Act".

2. The Legislature finds, determines and declares:

a. that, after careful investigation, it appears that the rates, services and operations of cable television companies in this State are affected with a public interest;

b. that it should be, and is hereby declared, the policy of this State to provide fair regulation of cable television companies in the interest of the public;

c. that the objects of such regulation are (1) to promote adequate, economical and efficient cable television service to the citizens and residents of this State, (2) to encourage the optimum development of the educational and community-service potentials of the cable television medium, (3) to provide just and reasonable rates and charges for cable television system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, (4) to promote and encourage harmony between cable television companies and their subscribers and customers, (5) to protect the interests of the several municipalities of this State in relation to the issuance of municipal consents for the operation of cable television companies within their several jurisdictions,

and to secure a desirable degree of uniformity in the practices and operations of cable television companies in those several jurisdictions; and (6) to cooperate with other states and with the Federal government in promoting and coordinating efforts to regulate cable television companies effectively in the public interest;

d. that to secure such regulation and promote the objectives thereof, authority to regulate cable television companies generally, and their rates, services and operations, in the manner and in accordance with the policies set forth in this act, shall be vested in a separate agency within the Department of Public Utilities.

3. As used in this act, except as the context may otherwise clearly require or indicate:

a. "Office" means the Office of Cable Television established by this act.

b. "Director" means the Director of the Office of Cable Television.

c. "Cable television system" or "CATV system" means any facility within this State which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable or other device or means for accomplishing such redistribution, to members of the public who subscribe to such service, or distributing through its facility any television signals whether broadcast or not; or any part of such facility. The term "facility" as used in this subsection includes all real property, antennae, poles, wires, cables, conduits, amplifiers, instruments, appliances,

fixtures and other personal property used by a CATV company in providing service to its subscribers and customers.

d. "Cable television reception service" means the simultaneous delivery through a CATV system of the signals of television broadcast stations to members of the public subscribing to such service; which service may include additional non-broadcast signals delivered as a part of the service with no additional charge.

e. "Cable communications system" means any communications service other than cable television reception service delivered through the facilities of a CATV system and for which charges in addition to or other than those made for cable television reception service are made or proposed to be made.

f. "Cable television company" or "CATV company" means any person owning, controlling, operating or managing a cable television system, and the term "person" as used herein shall be construed, without limiting the generality thereof, to include specifically any agency or instrumentality of this State or of any of its political subdivisions; but this definition shall not include a telephone, telegraph or electric utility company regulated by the Board of Public Utility Commissioners in a case where it merely leases or rents or otherwise provides to a CATV company wires, conduits, cables or pole space used in the redistribution of television signals to or toward subscribers or customers of such CATV company.

g. "Highway" includes every street, road, alley, thoroughfare, way or place of any kind used by the public or open to the use of the public.

h. "Certificate" means a certificate of approval issued, or which may be issued, by the Director pursuant to this act.

ARTICLE II

4. There is hereby established in the Department of Public Utilities an Office of Cable Television; but nothing in this act shall be construed as declaring or defining cable television to be a public utility or subjecting it to the application of any of the provisions of Title 48 of the Revised Statutes, except as otherwise specifically provided in this act.

5. The Office shall be headed and administered by a Director, who shall be a person qualified by training and experience to perform the duties of his office, and shall receive such salary as shall be provided by law. The Director shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor and until the appointment and qualification of the Director's successor.

6. The Director shall designate any officer or employee in the Bureau to perform all of the powers, functions and duties of the Director during the absence or disability of the Director. Such designation shall be in writing and filed with the Secretary of State. If the Director shall die, resign or be removed from his office or become disqualified to execute the duties of his office or a vacancy shall occur

in the office of Director for any cause whatever, the person designated as aforesaid shall have and exercise the powers and perform the functions, powers and duties of the Director until the successor to the Director is appointed and shall qualify.

7. The Director shall organize the work of the Office and establish therein such administrative subdivisions as he may deem necessary, proper and expedient. He may formulate and adopt rules and regulations and prescribe duties for the efficient conduct of the business, work and general administration of the Office. He may delegate to subordinate officers or employees in the Office such of his powers as he may deem desirable, to be exercised under his supervision and direction.

8. Subject to the provisions of Title 11 of the Revised Statutes, and within the limits of funds appropriated or otherwise made available, the Director may appoint such officers and employees of the Office as he may deem necessary for the performance of its duties, and may fix and determine their qualifications, duties and compensation, and may retain or employ engineers and private consultants on a contract basis or otherwise for rendering professional or technical service or assistance.

9. The Director shall make an annual report to the Governor and the Legislature of the Office's operations, and render such other reports as the Governor shall from time to time request or as may be required by law.

10. The Director shall have full right, power, authority and jurisdiction to:

a. receive or initiate complaints of the alleged violation of any of the provisions of this act or of any of the rules and

regulations made pursuant to this act or of the terms and conditions of any municipal consent granted pursuant to this act; and for this purpose and all other purposes necessary to enable him to administer the duties of the Office as prescribed by law may hold hearings and shall have power to subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers relating to any matter under investigation at any such hearing;

b. supervise and regulate every CATV company operating within this State and its property, property rights, equipment, facilities, contracts, certificates and franchises so far as may be necessary to carry out the purposes of this act, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction;

c. institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce the provisions of this act, of the rules and regulations adopted thereunder, or of any municipal consents issued pursuant to this act;

d. institute, or intervene as a party in, any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of this act, of any rule, regulation or order adopted thereunder or of any municipal consent issued thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

11. The Director shall establish, for the purpose of assuring

safe, adequate and proper cable television service, after hearing in accordance with the Administrative Procedure Act (L. 1968, c. 410; C.52:14B-1 et seq.), rules and regulations governing:

a. technical standards of performance for CATV systems and the equipment and facilities thereof, including standards of signal quality and of system operation, maintenance and safety;

b. requirements for the provision of a minimum number of operational channels for subscribers to any cable television reception service;

c. requirements for the provision in each cable television reception service of an adequate number of channels, depending upon the nature and needs of the area served by such service, for (1) use of the municipal authorities of each municipality within the area served for public-service programming to be originated by the municipality, (2) use of the public schools in each school district in the area served to be used by the school authorities in such district for educational programming to be originated by such authorities, and (3) use, under rules of reasonable access which shall be adopted by the Director, by members of the general public on a common carrier basis in accordance with tariffs filed with and approved by the Director; but at least one channel for each of the above enumerated uses shall be provided by each cable television reception service;

d. the prohibition and prevention of the imposition of any unjust or unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, charge or schedule for any service supplied or rendered by a CATV company within this State, or the adoption or imposition of any unjust or unreasonable classification in the making or as the basis of any individual

or joint rate, charge or schedule for any service rendered by a CATV company within this State;

e. requirements for the reasonably prompt and complete exercise of the rights conferred by any certificate, subject to revocation thereof or other penalty provided under this act;

f. procedures and forms for the application by a CATV company for municipal consents required under this act;

g. procedures and forms for review by the Director of municipal consents issued pursuant to the provisions of this act;

h. procedures and forms for the application by CATV companies to municipalities for amendment of rates or other terms and conditions or municipal consents, for the review by the Director of the terms of such amendments, and for the arbitration by the Director of disputes between municipalities and CATV companies over such applications;

i. procedures and forms for submission to and arbitration by the Director of complaints or disputes by or between CATV companies, municipalities or citizens regarding proper compliance with and implementation of the provisions of this act or the rules and regulations made or municipal consents issued pursuant to this act; provided, however, that, notwithstanding the foregoing provisions of this section or any of the provisions of this act, it is the intent of this act that all the provisions, regulations and requirements imposed by or pursuant to this act shall be operative only to the extent that the same are not in conflict with the laws of the United States or with any rules, regulations or orders adopted, issued or promulgated pursuant thereto by any Federal regulatory body having jurisdiction. No requirement, regulation,

term, condition, limitation or provision imposed by or pursuant to this act which is contrary to or inconsistent with any such Federal law, regulation or order now or hereafter adopted shall be enforced by the Director or shall be authority for the granting, denial, amendment or limitation of any municipal consent or certificate of approval which may be applied for or issued under the terms of this act.

The Director is hereby empowered and directed to cooperate with any Federal regulatory agency in the enforcement within this State of all Federal laws, rules, regulations and orders relating to CATV systems and CATV companies, and therein to act as agent for such Federal regulatory body to the extent authorized by or pursuant to Federal law, and to enter into agreements for said purpose.

12.a. Except as provided in subsection g. of section 29 of this act with respect to rates to subscribers to cable television reception service, the Director shall prescribe just and reasonable rates, charges and classifications for the services rendered by a CATV company, and the tariffs therefor shall be filed and published in such manner and on such notice as the Director may prescribe, and shall be subject to change on such notice and in such manner as the Director may prescribe.

b. The Director shall from time to time review the established rates and rate schedules of each CATV company for cable TV reception service, and if upon such review it shall appear to him that such rates, or any of them, are or may be

excessive, unreasonable, unjustly discriminatory or unduly preferential, he shall require the CATV company to establish to his satisfaction that such rates are just, reasonable and not excessive or unjustly preferential or discriminatory. After a hearing upon notice and full opportunity to be heard afforded to the CATV company, the Director may amend the schedule of cable television subscription rates charged by such company, and such amended schedule shall supersede and replace the schedule so amended.

c. Any hearing held pursuant to this section shall be open to the public, and notice thereof shall be published by the Director at least 10 days prior thereto in a newspaper of general circulation in each municipality comprised, in whole or part, in the certificated area wherein the rate schedule which is the subject of the hearing applies. Every municipality may intervene in any hearing held by the Director pursuant to this section affecting the municipality or the public within the municipality.

d. No CATV company shall derive from the operations of its CATV system any revenues other than the fees, charges, rates and tariffs provided for in subsection a. of this section and in subsection g. of section 29 of this act; nor shall engage in any other business but the provision of cable television reception service or cable communications systems.

ARTICLE III

13. There is hereby established in the Office of Cable Television a Cable Television Advisory Council, which shall consist of the Director as chairman, five other ex-officio members as hereinafter provided, and five citizen members as hereinafter provided.

14. a. The ex-officio members of the Council shall be the President of the Board of Public Utility Commissioners, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, the Executive Director of the New Jersey Public Broadcasting Authority, the Commissioner of Education and the Chancellor of Higher Education. Ex-officio members shall remain members during their continuance in their respective offices. Each ex-officio member may designate any officer or employee of the department or other agency which he heads to serve as his alternate and^{to} exercise any and all of his functions and duties as member of the Cable Television Advisory Council.

b. The citizen members shall be appointed by the Governor, with the advice and consent of the Senate. The term of office of each member so appointed, except as hereinafter provided for the initial appointments, shall be for three years. The terms of the members initially appointed shall be designated by the Governor so that two of such terms shall expire on June 30 in each of the next two years and one on June 30 of the third year ensuing after such appointments/. Each member shall serve until his successor has been appointed and qualified, and vacancies shall be filled in the same manner as the original appointments for the remainder of the unexpired term.

c. Citizen members appointed by the Governor shall be chosen from (1) persons engaged in the management or operation of CATV systems or related industries in this State, (2) municipal officials

selected from the municipalities in which CATV systems are in operation, and (3) the general public not embraced in either of the foregoing categories. No more than one person in either of the first two categories above enumerated shall serve upon the Council at any one time. The Governor in making his appointments shall specify in which of the three categories each appointee belongs.

d. Members shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

15. a. The Council shall meet at the call of the chairman, at such times and places as he shall appoint. It shall confer with and advise the Director with respect to the implementation of this act, including the adoption of such rules and regulations as are authorized by this act, and with respect to any measures which may be proposed for the more effectual implementation of this act or of the purposes for which this act was enacted, or any other measures for the encouragement and promotion of the provision of safe, adequate and proper cable television service to the people of this State and the advancement of the public interest through the development of cable television in this State.

b. In carrying out its functions the Council shall, insofar as practicable, provide interested organizations and individuals an opportunity to present their views and recommendations to the Council for consideration.

c. The Director shall make available to the Council such technical, clerical, professional and other personnel and assistance as may be required for the exercise and discharge of its duties and functions under this act, within the limits of funds appropriated or otherwise made available

ARTICLE IV

16. No person shall hereafter begin the construction, extension or operation of a CATV system or acquire ownership or control thereof without first obtaining from the Director a certificate of approval issued in accordance with the provisions and procedures specified in this act; except that the Director may, by order, rule or regulation, exempt a CATV company from the above certificate requirement in a case where its temporary acts or operations do not require the issuance of a certificate in the public interest.

17. a. The application for such a certificate of approval from the Director shall be in writing, shall have attached thereto the municipal consents required under section 23 of this act, and shall contain such other information as the Director may from time to time prescribe by duly promulgated rule, regulation or order. Each such application shall be accompanied by a filing fee of \$100.00.

b. Upon receipt of such application, the Director shall review the same and shall, within 30 days of the receipt thereof, either issue the certificate applied for or schedule a hearing upon the application. No application shall be denied without a hearing thereon. Upon receipt of a complaint from any person claiming to be aggrieved by the issuance of a certificate applied for, the Director shall not issue such certificate without a hearing thereon, if he deems that there is reasonable grounds for such complaint.

c. If in his initial review of the application it shall appear to the Director that any of the rates in the schedule of rates provided therein pursuant to subsection g. of section 29 of this act are or may be excessive, unreasonable, unjustly discriminatory or unduly preferential, he shall not

issue a certificate without a hearing on such application, at which hearing he may require the applicant CATV company to establish to his satisfaction that such rates are just, reasonable and not excessive or unjustly preferential or discriminatory. After a hearing at which such justification of rates is required, upon notice and full opportunity to be heard afforded to the applicant CATV company, the Director may, if he issues the certificate applied for, amend the schedule of rates aforesaid and such amended schedule shall supersede and replace the schedule so amended.

d. A hearing held pursuant to this section shall be held not later than the 60th day following the date of receipt of the application; it may be adjourned from time to time, but not to a date later than the 60th day following the date on which it commenced, except with the consent of the applicant. If such hearing is held, the Director shall within 60 days after the conclusion thereof, either issue or deny the certificate for which application was made, and shall transmit to the applicant notice of such issuance or denial.

18. a. The Director shall issue a certificate of approval when, after reviewing the application, and after hearing if one is held, the applicant/ ^{establishes to his satisfaction} that the applicant has all the municipal consents necessary to support the application, that such consents and the issuance thereof are in conformity with the requirements of this act, and that the applicant has complied or is ready, willing and able to comply with all applicable rules and regulations imposed by or pursuant to State or Federal law as preconditions for engaging in his proposed CATV operations.

b. In considering any such application, the Director shall take into consideration the probable effects upon both

the area for which certification is sought and neighboring areas not covered in the municipal consents; and if he finds that the probable effects, for technical or financial reasons, would be to impede the development of adequate cable television service, or create an unreasonable duplication of services likely to be detrimental to the development of adequate cable television service in any area either within or without the area for which certification is sought, he may amend the certificate in issuing it so as to

(1) direct that areas covered in the application be excluded from the area certified, or

(2) direct that areas not covered in the application be included in the area certified.

c. No such certificate amended pursuant to subsection b. of this section shall be issued except after hearing of which each affected municipality shall be given notice and afforded opportunity to be heard. No such amended certificate shall be issued which would impair the terms of any existing certificate or of any municipal consent upon which such existing certificate is based, except with the consent of the holder of such existing certificate and of any municipality having issued such municipal consent.

d. If a municipality shall arbitrarily refuse to grant the municipal consent required under the terms of this act prerequisite to issuance of a certificate, or to act upon an application for such municipal consent within 90 days after such application is filed, then the applicant CATV company may avoid the necessity of first obtaining such municipal consent by showing to the satisfaction of the Director that the municipal consent is being arbitrarily withheld. But any CATV company certificated without municipal consent shall nevertheless pay

the franchise tax to the municipality imposed under section 31 of this act. An application for certificate filed pursuant to this subsection shall be accompanied by a filing fee of \$200.00.

e. If any municipality shall refuse to any CATV company, whether the holder of a municipal consent from that municipality or otherwise, any zoning variance or other municipal act or authorization necessary to permit such company to locate any facility of such company within such municipality, or to install transmission facilities through such municipality for the purpose of serving subscribers or customers in an area for which such company has been issued a certificate by the Director, the company may apply to the Director for an order setting aside such municipal refusal and permitting such location of facility or installation of transmission facilities as requested by the company. An application pursuant to this subsection shall be accompanied by a filing fee of \$200.00.

The Director, after hearing upon notice and full opportunity both the applicant and for/the municipality to be heard, shall issue such order when it appears to his satisfaction that such permission is necessary to enable the company to provide safe, adequate and proper CATV service to its customers or subscribers in the manner required by this act, and that such location or installation will not adversely affect the public health, safety and welfare.

f. The Director shall issue a certificate to any CATV company lawfully engaged in the construction, extension or operation of a CATV system on the effective date of this act, for the construction, extension or operation then being conducted, without further review, if application for such certificate is filed with the Director within 90 days after such effective date. The construction, extension or

pending the filing of such an application unless the Director orders otherwise. An application for such certificate which is untimely shall be determined in accordance with the procedures prescribed in subsections a. through d. of this section. A certificate issued under this subsection shall expire two years from the date of issuance; and no CATV company holding such certificate shall be authorized to continue its operations after such expiration unless prior thereto it shall have obtained a certificate under the procedures specified in subsections a. through d. of this section. An application pursuant to this subsection shall be accompanied by a filing fee of \$50.00.

19. a. Any hearing held pursuant to the provisions of section 17 or section 18 of this act shall be open to the public, and notice thereof shall be published by the Director at least 10 days prior thereto in a newspaper of general circulation, (1) if the hearing is upon application for certification, in each municipality comprised, in whole or part, in the area for which certification is sought, or (2) if the hearing is upon an application under subsection e. of section 18, in each municipality comprised in whole or part, in the certificated area or area for which certification is sought, of the CATV system of the applicant CATV company, and also each other municipality whose refusal of municipal action or authorization is involved in the application.

b. Every municipality may intervene in any hearing or investigation held by the Director which involves rates, charges, services or facilities affecting the municipality or the public within the municipality.

c. For the purpose of defraying the administrative expenses of hearings held pursuant to section 17 or 18 of this act, the applicant CATV company shall be required to pay

to the Office of Cable Television a fee not in excess of \$50.00 per day of hearing or fraction thereof, according to such fee schedule as the Director shall from time to time adopt by rule. Such fee shall be in addition to any filing fee imposed pursuant to sections 18 and 19 of this act; the amount shall be due and payable upon presentation of an invoice.

d. All fees and charges collected under the provisions of section 17, 18 or 19 of this act shall be received by the Director for the sole use of the State of New Jersey, and he shall report on and return to the State Treasurer all such fees and charges collected by him.

20. A certificate of approval issued by the Director shall be non-transferable, except by consent of the Director; shall specify the area to which it applies and the municipal consents upon which it is based, and shall be valid for 15 years from the date of issuance or until the expiration, revocation, termination or renegotiation of any municipal consent upon which it is based, whichever is sooner. But amendment of the terms of a municipal consent by mutual consent and in conformity with the procedures specified in this act during the term for which it was issued shall not require the issuance of a new certificate of approval. A CATV company holding a certificate based upon a municipal consent with a provision for automatic renewal for a term not exceeding 10 years beyond its expiration date shall be entitled to automatic reissuance of a certificate for such term, unless it shall forfeit such entitlement by violation of any terms of this act, regulations issued pursuant thereto, or of the terms of the municipal consent.

21. a. Upon obtaining the prior approval of the Director, a CATV company may construct and maintain the wires,

cables, and conduits necessary to its business upon, under or over any highway, and may erect and maintain the necessary fixtures, including poles and posts, for sustaining such wires and cables; provided, however, that such wires, cables and fixtures shall be so placed or constructed as not to unreasonably inconvenience public travel on the highway or the use thereof by public utilities or other persons or organizations having rights therein.

b. Whenever the Office, with the agreement of the Board of Public Utility Commissioners in any case involving a public utility, shall find that public convenience and necessity require the use by a CATV company or a public utility of the wires, cables, conduits, poles or other equipment, or any part thereof, on, over or under any highway and belonging to another CATV company or public utility, and that such use will not result in injury to the owner or other users of such equipment or in any substantial detriment to the service, and that such CATV companies or public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the Office may order that such use be permitted and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is ordered, the CATV company or public utility to which the use is permitted shall be liable to the owner or other users of such equipment for such damage as may result therefrom to the property of such owner or other users thereof.

22. Upon the prior approval of the Office, with the agreement of the Board of Public Utility Commissioners in any case where a public utility is involved, any person may lease or rent or otherwise make available facilities, including pole space,

to a CATV company for the redistribution of television signals to or toward the customers or subscribers of such CATV company. Any lease, rental or other method of making available such facilities, including pole space, which is in effect on the effective date of this act and which will be in effect for a period of more than 120 days after the effective date of this act shall be submitted to the Office for approval within 120 days after the effective date of this act, and if such lease or rental or other method is disapproved by the Office it shall thereupon become void. The terms and conditions, including rates and charges to the CATV company, imposed by any public utility under any such lease, rental or other method of making available such facilities, including pole space, to a CATV company shall be subject to the jurisdiction of the Board of Public Utility Commissioners in the same manner and to the same extent that rates and charges of public utilities generally are subject to the Board's jurisdiction by virtue of the appropriate provisions of Title 48 of the Revised Statutes.

ARTICLE V

23. In any case where a CATV company operates or proposes to operate in a municipality or municipalities where facilities are to be placed in, ^{along,} beneath or over highways and other public places, no certificate of approval for such operation shall be issued without a municipal consent being first granted therefor by resolution of the municipal governing body.

24. a. Application for a municipal consent required under section 23 of this act shall be made by a CATV company by filing thereof, on forms prescribed by the Director, with the clerk of the municipality, with a duplicate thereof to be filed with the Office. The application filed with the clerk of the municipality shall be accompanied by a filing fee of \$100.00.

b. Upon receipt of such application, the municipal governing body shall schedule a hearing thereon, to be held not sooner than 60 nor later than 90 days after the filing of such application. Said hearing may be adjourned from time to time, but not to any date later than 30 days from the date upon which it was first convened.

c. Notice of the receipt of such application, and of the hearing scheduled thereon, shall be published in at least one newspaper of general circulation in the municipality not later than the 45th day prior to such hearing, and again not sooner than the 14th day nor later than the 7th day prior to such hearing. Additional applications may be received by the municipality until the 15th day prior to the hearing. Said notices shall specify:

- (1) the identity of the applicant or applicants;
- (2) the time and place of the hearing;
- (3) the place at which and times within which applications filed with the municipal clerk may be examined by residents of the municipality and other interested parties.

d. The municipal governing body shall within 30 days after the conclusion of the hearing make a decision regarding the application or applications before it, and shall issue a written report of such decision, detailing the reasons therefor, one copy of which shall be filed with the municipal clerk and another copy with the Office, which shall be a public record.

e. Pursuant to such decision, the municipal governing body may reject all applications before it or may issue municipal consents to one or more applicants. But no municipal consent or consents shall be granted unless it or they contain, singly or in combination, provisions for the eventual extension of CATV service, upon a reasonable time schedule, to all parts of the territory of the municipality.

f. For the purpose of defraying the administrative expenses of hearings held pursuant to this section, the applicant shall be required to pay to the municipality a fee not exceeding \$50.00 per day of hearing or fraction thereof, according to such fee schedule as the Director shall from time to time adopt by rule. Such fee shall be in addition to the filing fee required under section 24 of this act; the amount shall be due and payable upon presentation of an invoice.

g. All fees and charges imposed under this section shall be paid by the applicant to the municipal clerk, for the sole use of the municipality, and the clerk shall report on and return to the chief fiscal officer of the municipality all such fees and charges collected by him.

25. Issuance of a municipal consent shall be by resolution of the governing body, which shall have annexed thereto and incorporated therein the application filed therefor. All engagements and representations made by the CATV company in such application shall, except as expressly modified by the terms of the resolution, be binding upon the company as terms for the holding and use of the municipal consent, if the company accepts in writing within 10 days the issuance of such consent with all the terms and conditions thereof as approved by the municipal governing body; but a consent not so accepted shall be void.

26. A municipal consent issued pursuant to this act shall conform in form and substance to all requirements of this act and of rules, regulations and orders duly promulgated by the Director. It shall specify with particularity the territory to which it applies, and the term for which it is issued. Such term shall not exceed 15 years; but provision may be included for automatic renewal at the expiration thereof for an additional term not exceeding 10 years unless either the municipality or the company shall not later than 60 days before the expiration of the initial term serve upon the other party notice of its intention not to accept such renewal. No CATV company whose municipal consent or renewal thereof has expired shall be authorized to continue its operations unless prior to such expiration it has obtained a certificate of approval from the Director authorizing such continued operation.

27. a. A resolution issuing a municipal consent pursuant to this act shall designate some officer, office, bureau or other agency of the municipal government as "complaint officer" to receive and act upon complaints by subscribers to cable television reception service of the CATV company to which such consent is issued; and shall provide for the establishment of procedures and methods by which such complaints shall be received, processed and acted upon, for the arbitration and settlement of complaints and disputes between such subscribers and the company, and for the enforcement of decisions made by such "complaint officer". All complaints by such subscribers alleging inadequate, unsafe or improper service or failure by the company to comply with the terms of the municipal consent shall be made in the first instance to such "complaint officer". The "complaint officer" shall within 30 days of the receipt of such a complaint report in writing to the subscriber the disposition or status of his complaint. Any subscriber or CATV company aggrieved by the action of a "complaint officer" in connection with such complaint or dispute, or any subscriber who shall not have received the written report required under this section within 30 days, may petition the Office for a hearing upon said complaint, under the rules promulgated by the Director for the hearing and disposition of such matters.

b. Any municipality may, in lieu of complying with the terms of subsection a. of this section, provide in the resolution issuing its municipal consent that complaints by local subscribers to cable television reception service shall be filed directly with the Office, which shall thereupon be deemed the "complaint officer" for purposes of this section.

c. Each CATV company receiving a municipal consent shall provide to each subscriber to its cable television reception service, at the time of his becoming a subscriber and at least once in each calendar year thereafter while he remains a subscriber, in writing and in a form approved by the Director, information as to the identity of the "complaint officer" and of the procedure to be followed in making and pursuing complaints to the "complaint officer" or the Office pursuant to this section.

28. Whenever a CATV company shall apply to a municipality for the municipal consent required under this act, the municipal governing body may, before acting upon such application, require the applicant to submit to the Director such information as to said applicant's financial responsibility, technical competency and general fitness to provide the CATV service proposed in such application as may enable the Director to advise the municipality, in a preliminary way and without prejudice to any future determination which the Director may be required to make pursuant to a grant of municipal consent, whether such applicant appears to be a fit subject of consideration for such a consent.

29. In addition to whatever other information may be required by the Director under duly promulgated rules and regulations to be contained in any application for a municipal consent, each such application shall contain:

a. a description of the area to be served.

b. a description of the proposed service in terms of the number of channels of cable television reception service and the types of programming thereon.

c. sufficient evidence that the applicant company has the financial and technical capacity to construct, maintain and operate the installations, lines and equipment necessary to provide the service proposed in a safe, adequate and proper manner.

d. evidence of sufficient bond, or commitment therefor, with sureties to be approved by the municipality, in the penal sum of not less than \$25,000.00 for the faithful performance of all undertakings by the company as represented in the application; the sufficiency of which shall be subject to review by the Director.

e. an undertaking to hold the municipality harmless from any liability arising out of the company's operation and construction of its CATV system.

f. evidence of sufficient insurance insuring the municipality and the company with respect to all liability for any death, personal injury, property damage or other liability arising out of the company's construction and operation of its CATV system; the sufficiency of which shall be subject to review by the Director. Such insurance shall be in the minimum amounts of (1) \$150,000.00 for bodily injury or death to any one person, within the limit, however, of \$500,000.00 for bodily injury or death resulting from any one accident, (2) \$100,000.00 for property damage resulting from any one accident, and (3) \$50,000.00 for all other types of liability.

g. a schedule of proposed rates for cable television reception service, which rates shall not be altered during the term for which the municipal consent is issued, except by mutual consent of the company and the municipality and through amendment of the resolution issuing said consent after public hearing, subject to the rules of the Office and review and approval by the Director, or amendment pursuant to the provisions of subsection c. of section 17 of this act or subsection b. of section 12 of this act.

30: All proposals and representations included in an application for municipal consent shall conform to applicable

rules and regulations of the Office; except (a) that nothing in this act shall be construed to prevent an applicant from exceeding minimum requirements set by the Office, or offering facilities and services not required or forbidden by such rules and regulations, and (b) that municipalities may in issuing such municipal consents and in regulating the exercise thereof impose such restrictions upon the use of streets, standards of construction, safety regulations and other such matters as may in their judgment be required for the public health, safety and welfare, in addition to any requirements imposed by or pursuant to this act.

31. a. In consideration of a municipal consent issued under this section, the CATV company to which it is issued shall pay to the municipality granting the same, in lieu of all other franchise taxes and municipal license fees, a sum equal to 2% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in such municipality. Each CATV company shall, on or before the 25th day of each month, file with the chief fiscal officer of each municipality in the territory in which it is certificated to operate a statement, verified by oath, showing the gross receipts from such charges, and shall at the same time pay thereon to said chief fiscal officer the 2% charge hereby imposed as a monthly franchise revenue for the use of the streets.

b. Any CATV company which, pursuant to any agreement in effect prior to the date of this act, paid or had agreed to pay to any municipality in fees or other charges in consideration of the consent of such municipality to the use of streets,

alleys and public places thereof for the installation and operation of a CATV system, or similar consideration, a sum or rate exceeding that which it would pay pursuant to this section shall, in applying for a certificate (other than the certificate granted pursuant to subsection f. of section 18 of this act) show to the satisfaction of the Director that the reduction in such payments effectuated by the application of this section shall be reflected in (1) commensurate reduction of rates to subscribers to cable television reception service or (2) commensurate improvements in such service made available to such subscribers. If the Director is not so satisfied he shall amend, as excessive, the rate schedule contained in the application so that such rates shall be reduced to a degree commensurate with the reduction in payments by the CATV company to the municipality.

c. A municipality may petition the Director for permission to charge a monthly franchise fee exceeding that prescribed in subsection a. of this section. A municipal consent setting such a fee in excess of the amount prescribed in subsection a. of this section shall be deemed to constitute such a petition when filed with the Director pursuant to section 17 of this act as part of an application for certificate of approval. A hearing pursuant to the provisions of section 17 shall be held upon any application containing such petition, or upon any such petition separately filed, and at such hearing full notice and opportunity to be heard upon the matter shall be accorded to both the municipality and any CATV company affected thereby. The Director may grant such petition and allow the imposition of a franchise revenue exceeding that prescribed in subsection a. of this section, and at a rate to be pre-

scribed by him, when he is satisfied that the same is warranted by the expenses to the municipality with respect to the regulation or supervision within its territory of cable television, or any other expenses caused by the existence and operation within its territory of cable television.

ARTICLE VI

32. To enable the Office to perform its lawful duties and responsibilities relating to the regulation of CATV companies, the Director shall annually make an assessment against each CATV company, which shall be in lieu of all other fees and charges for the regulatory and supervisory functions of the Office, except those fees imposed pursuant to sections 17, 18 and 19 of this act.

33. The assessment shall be equal to a percentage of the gross operating revenues of all CATV companies under the jurisdiction of the Office derived from intrastate operations during the preceeding calendar year at a rate to be determined annually by the Office on or before June 30 in the following manner:

The total amount appropriated to the Office by law for its general purposes for its next fiscal year, less revenue derived from fees under sections 17, 18 and 19 during the preceding calendar year, shall be divided by the total amount of the gross operating revenues of all CATV companies under the jurisdiction of the Office derived from intrastate operations during the preceding calendar year. The quotient resulting shall constitute the percentage rate of the assessment for the calendar year in which such computation is made. The total amount so assessed to any particular CATV company shall not exceed 2% of its gross operating revenue subject to assessment hereunder.

34. a. Such assessment shall be levied not later than July 1, and shall be paid within 30 days after mailing by registered mail to any CATV company of notice thereof and a statement of the amount. Each CATV company shall, on or before June 1, file with

the Office, under oath, a statement showing its gross operating revenues derived from intrastate operations during the preceding calendar year.

b. Within 15 days after the date of mailing a statement as provided in this section, the CATV company against which the statement is rendered may file with the Director its objections thereto. Not less than 30 nor more than 60 days after giving notice thereof to the objector the Director shall hold a hearing on the objections.

c. If after the hearing the Director finds any part of the charge against the objecting CATV company excessive, erroneous, unlawful or invalid, he shall transmit to the objector, by registered mail, an amended statement in accordance with the findings, which shall have the same force and effect as an original statement. If the Director finds the entire statement unlawful or invalid, he shall notify the objector, by registered mail, of such determination, and the original statement shall be null and void. If the Director finds that the statement as rendered is not excessive, erroneous, unlawful or invalid, he shall notify the objector, by registered mail, of such determination.

d. If a statement against which objections are filed is not paid within 30 days after mailing to the objector notice of a

finding that the objections have been disallowed, or if an amended statement is not paid within 30 days after a copy thereof is mailed to the objector, the Director shall give notice of the delinquency to the State Treasurer and to the objector, and the State Treasurer shall proceed to make the collection.

e. No action for recovery of an amount paid under the terms of sections 32 through 35 of this act shall be maintained in any court unless objections have been filed with the Director. In an action for recovery of any payments, plaintiff may raise any relevant issue of law, but the Director's findings of fact shall be prima facie evidence of the facts therein stated.

f. No action or proceeding shall be maintained in any court for the purpose of restraining or delaying the collection or payment of a statement of assessment rendered in accordance with the provisions of this act. A CATV company against which a statement is rendered shall pay the amount thereof, and after the payment may in the manner provided in this act at any time within two years from the date of the payment, bring against the State an action at law to recover the amount paid, with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful or invalid in whole or part.

g. The procedure provided in this section for determining the lawfulness of statements and the recovery of payments made

pursuant to statements of assessments shall be exclusive of all other remedies and procedures.

35. a. If any CATV company to which a statement for the amount assessed against it as provided in this act has been rendered fails or refuses to pay the amount within 15 days, or fails to file with the Director objections to the statement as provided in section 33 of this act, the Director shall transmit to the State Treasurer a certified copy of the statement of the assessment together with notice of the neglect or refusal of the CATV company to pay the amount thereof, and at the same time shall mail to the CATV company a copy of the notice transmitted to the State Treasurer.

b. Within 10 days after receipt of the notice and certified copy of the statement, the State Treasurer shall proceed to collect the amount stated to be due, with legal interest, by seizure and sale of any goods or chattels, including stocks, securities, bank accounts, evidences of debt and accounts receivable belonging to the CATV company anywhere within the State.

ARTICLE VII

36. a. Each CATV company shall provide safe, adequate and proper service, equipment and facilities for the operation of its CATV system.

b. No CATV company shall demand or receive a greater or less or different compensation for providing CATV service than the rates and charges specified in the tariff in effect at the time.

c. Every CATV company and other person and organization shall obey and comply with every rule and regulation and order adopted or issued by the Director.

37. No CATV company shall abandon all or any part of its system or other property necessary or useful in the performance of its duties to the public, or discontinue or temporarily suspend all or any part of the service which it is rendering to the public by the use of same, without first obtaining the approval of the Director. In granting such approval, the Director may impose such terms, conditions or requirements as in his judgment are necessary to protect the public interest.

38. No CATV company shall combine, merge or consolidate with, or acquire control of, another organization without first obtaining the approval of the Director, which shall be granted only after an investigation and finding that such proposed

combination, merger, consolidation or acquisition is in the public interest.

39. No CATV company shall:

a. adopt, maintain or enforce any regulation, practice or measurement which shall be unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or otherwise in violation of law;

b. provide or maintain any service that is unsafe, improper or inadequate, or withhold or refuse any service which reasonably can be demanded or furnished;

c. refuse to furnish or supply service to or for any building or premises by reason of a bill remaining unpaid by a previous occupant, providing the person applying for service shall not be in arrears to such company for service previously furnished to or for such building or premises or furnished to or for any other building or premises;

d. make or give, directly or indirectly, any undue preference or advantage to any person, locality or particular description of traffic, or subject any particular person, locality or particular description of traffic to any prejudice or disadvantage.

40. No CATV company shall, without the approval of the Director, sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other CATV company. Every sale, mortgage, lease, disposition, encumbrance, merger or consolidation made in

violation of this section shall be void. Nothing herein shall prevent the sale, lease or other disposition by any CATV company of any of its property in the ordinary course of business, nor require the approval of the Director to any grant, conveyance or release or any property or interest therein heretofore made or hereafter to be made by any CATV company to the United States, the State or any county or municipality or any agency, authority or subdivision thereof, for public use. The approval of the Director shall not be required to validate the title of the United States, the State or any county or municipality or any agency, authority or subdivision thereof, to any lands or interest therein heretofore condemned or hereafter to be condemned by the United States, the State or any county or municipality or any agency, authority or subdivision thereof for public use.

41. Except with the approval in writing of the Director first had and obtained, no CATV company shall loan any of its money or property to any other person owning, holding or controlling, separately or in affiliation with others, 5% or more of the capital stock of any such CATV company, or to any corporation 5% or more of the capital stock of which is owned, held or controlled by any person owning, holding or controlling, separately or in affiliation with others, 5% or more of the capital stock of such CATV company.

42. No CATV company shall:

- a. capitalize any franchise to be a corporation;
- b. capitalize any franchise in excess of the amount,

exclusive of any tax or annual charge, actually paid to the State or any political subdivision thereof as the consideration of the franchise;

c. capitalize any contract for consolidation, merger or lease; or

d. issue any bonds or other evidence of indebtedness against or as a lien upon any contract for consolidation, merger or lease.

Nothing herein shall prevent the issuance of stock, bonds, or other evidence of indebtedness, subject to approval by the Director, by any lawfully merged or consolidated CATV company not in contravention of this section.

43. No CATV company shall, unless it shall have first obtained authority from the Director to do so:

a. issue any stocks, bonds, notes or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument; or

b. permit any demand note to remain unpaid for a period of more than 12 months after the date thereof.

The Director shall approve any such proposed issue, with or without hearing at his discretion, when satisfied that such issue is to be made in accordance with law and the purpose thereof is approved by the Director.

44. No CATV company incorporated under the laws of this State shall sell, nor shall any such CATV company permit to be

made upon its books any transfer of any share or shares of its capital stock to any other CATV corporation, unless authorized to do so by the Director. Nor shall any CATV company incorporated under the laws of this State sell any share or shares of its capital stock or make or permit to be made upon its books any transfer thereof to any corporation, domestic or foreign, or any person, the result of which sale or transfer in itself or in connection with other previous sales or transfers shall be to vest in such corporation or person a majority in interest of the outstanding capital stock of such CATV company, unless authorized to do so by the Director.

45. The Director may, upon notice, by order in writing require every CATV company:

a. To keep its books, records and accounts so as to afford an intelligent understanding of the conduct of its business, and to that end require that every CATV company adopt a uniform system of accounting. Such system shall conform, in so far as in the judgment of the Director is practicable, to any system adopted or approved by any Federal regulatory agency having jurisdiction.

b. To carry, whenever in the judgment of the Director it may be reasonably necessary for the protection of the stockholders, bondholders or creditors, a proper and adequate depreciation account in accordance with such rules and regulations as the Director may prescribe. The Director shall from time to time ascertain and determine, and by order in writing after hearing, fix proper and adequate rates of depreciation of the property of each CATV company in accordance with such regulations or classifications. Such rates shall be sufficient to provide the amounts required, over and above the expense of maintenance,

to keep the property in a state of efficiency corresponding to the progress of the industry. Each CATV company shall conform its depreciation accounts to the rate so ascertained. Amounts so provided shall not be expended otherwise than for depreciation, improvements, new construction, replacements, extensions or additions to the property of the CATV company or for the retirement of debt incurred in connection therewith. No CATV company shall, without the approval of the Director in writing first had and obtained, invest any part of its depreciation fund in obligations or securities of any kind, except obligations and securities that are legal investments for savings banks under the laws of this State, and except obligations and securities of the underlying or subsidiary CATV company corporations of this State, of such CATV company. Every CATV company shall at all times keep within this State all obligations and securities in which its depreciation fund is invested and reinvested. The Director may after hearing upon notice order any CATV company to dispose of any obligations or securities in which its depreciation fund is now or may hereafter be invested, except obligations and securities that are legal investments for savings banks under the laws of this State, and except obligations and securities of underlying or subsidiary CATV company corporations of this State, of such CATV company. Every CATV company shall deposit, and at all times keep deposited in its own name and to its own credit and in a banking or trust company located in this State, the balance of its depreciation fund which is not expended or invested in accordance with this subsection.

c. To furnish periodically a detailed report of finances

and operations in such form and containing such matters as the Director may from time to time prescribe.

d. To give such notice to the Office as the Director may by rule require of any and all accidents which may occur within the State upon the property of any CATV company directly or indirectly arising from or connected with its maintenance or operations, and the Director may investigate any such accident and make such order or recommendation with respect thereto as in his judgment may be just and reasonable.

46. a. Every CATV company shall at all times keep within this State all records, books, accounts, documents and other writings relating to contracts entered into, transactions had, services rendered, business done and property within this State, and shall at no time remove any of such records, books, accounts, documents or writings from this State without the consent in writing of the Director first had and obtained. The Director may by order in writing grant consent and permission under such regulations and conditions as he may see fit to impose for the keeping of any such records, books, accounts, documents and other writings outside the State in such cases as he may determine that such consent or permission may be of financial advantage to the customers of the CATV company within this State. Such consent or permission so granted may be revoked by the Director at any time without notice. A CATV company granted such consent or permission shall on the notice in writing of the Director produce such records, books, accounts, documents and other writings at such time and place within this State as he may designate.

b. Every CATV company shall file with the Director a designation in writing of an agent, resident of this State, who shall have the custody of such records, books, accounts, documents and other writings, and upon whom process for the production of the same may be served. Such designation shall set out the name of such agent, his place of residence within the State and his place of business. A CATV company may at any time revoke such designation if simultaneously a substituted designation be filed by it with the Director.

c. Jurisdiction and power are hereby conferred upon the Superior Court, at the suit of the Director, to enforce compliance with this section through sequestration of, or the appointment of a receiver for, the property in this State of any CATV company failing to comply with the same.

d. If for any cause service of process to produce such records, books, accounts, documents or other writings cannot be effected upon a designated agent, service may be made within this State upon any officer, agent or employee of such CATV company having custody or control of the same, or access thereto.

47. The Director and any officers or employees of the Office under his direction may inspect and examine all books, records, accounts, papers and memoranda kept by any CATV company in respect of any matter within the Office's jurisdiction and which would not be privileged in any judicial proceeding.

ARTICLE VIII

48. The Director may, after affording the holder an opportunity to be heard, revoke, suspend or alter any certificate of approval for the violation of any provisions of this act or the rules, regulations or orders made under authority of this act, or for other reasonable cause, upon a finding that the revocation, suspension or alteration will not adversely affect the public interest in the provision of safe, adequate and proper cable television service in this State.

49. The Director may, after affording an opportunity for hearing, order a CATV company (1) to construct and operate any reasonable extension of its existing CATV system within the certificated territory, (2) to make any reasonable repair or improvement or addition to such system.

50. a. Any person or any officer or agent thereof who shall knowingly violate any of the provisions of this act or aid or advise in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act comprising a part of such violation, is guilty of a misdemeanor.

b. Any person who shall violate any provision of this act or any rule, regulation or order duly promulgated hereunder, shall be liable to a penalty of not more than \$500.00 for a first offense, not less than \$100.00 nor more than \$1,000.00 for a second offense, and not less than \$500.00 nor more than \$1,000.00 for a third and every subsequent offense.

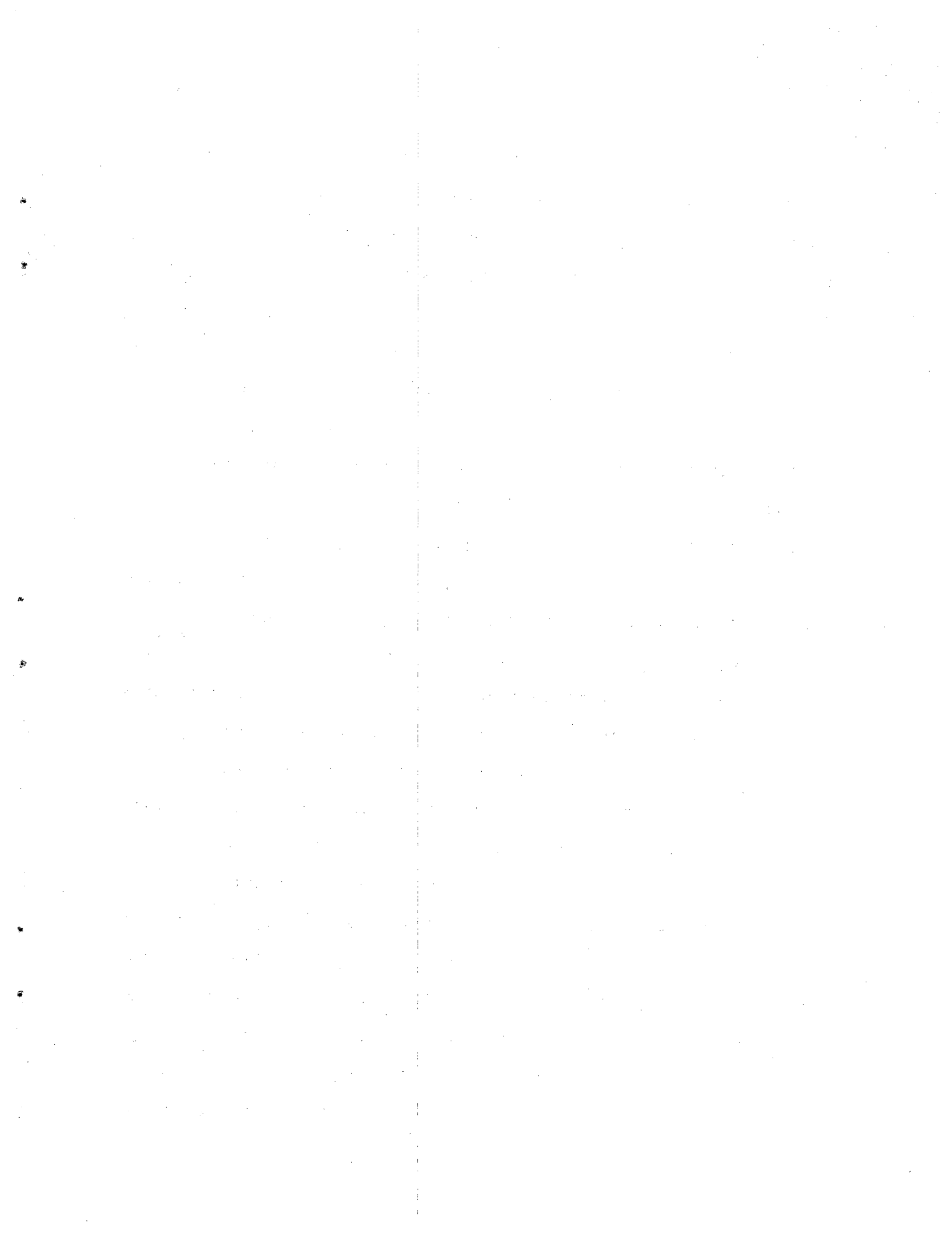
The penalties provided in this subsection shall be enforced by summary proceedings instituted by the Director in the name of the State in accordance with the "Penalty Enforcement Law" (N.J.S. 2A:58-1 et seq.). The Superior Court, County Court, County District Court and the municipal courts shall all have jurisdiction to enforce said "Penalty Enforcement Law" in connection with this act.

c. Whenever it shall appear to the Director that any person has violated, intends to violate, or will violate any provisions of this act or any rule, regulation or order duly promulgated hereunder, the Director may institute a civil action in the Superior Court for injunctive relief and for such other relief as may be appropriate ^{the} in/circumstances, and the said court may proceed in any such action in a summary manner.

51. If any provision of this act or the application of such provision is held invalid for any reason, the remainder of this act or the application of the provision to other circumstances shall not be affected thereby.

52. Chapter 221 of the Laws of 1971, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

53. This act shall take effect April 1, 1972, except that before that date any appointments authorized by this act may be made, and any administrative steps may be taken for the purposes of assuring the timely implementation of this act.



APPENDIX B

Summary Analysis of Provisions in Existing CATV
Franchises in New Jersey Municipalities

To investigate the franchise-granting procedures and franchise provisions in the State, the Commission requested each municipality which had been identified as having a CATV franchise to send copies of its CATV franchise and the procedures for granting that franchise. Most municipalities responded. They generally returned a copy of the franchise ordinance and in some cases minutes of the meeting of the local governing body at which the CATV franchise was awarded. Reading these submissions one gets the impression that most CATV franchises were awarded when the municipality was approached by a CATV operator. Their response, generally, was to grant a franchise without further investigation of CATV. It must be acknowledged that the current demand for CATV may well have precipitated this award procedure. Many citizens desire the advantages of cable television, and have pressured their local officials to award a franchise. The question which concerns the Commission is the benefits which accrue to the citizen and the municipality from CATV. For this reason, the Commission decided that some form of review ought to be established before the awarding of a CATV franchise.

In order to compare the different franchises which have been awarded, the Commission secretary developed a form for analytical purposes. SEE EXHIBIT 1 for Detail.

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is arranged in several paragraphs across the page, but no specific words or phrases can be discerned.]

EXHIBIT I

_____ location _____ date corporation _____

standard easement: yes no controls location of tower antenna yes no

Length of contract _____ years-- renewal yes no options: _____

Required of Corporation

Revenues equal to _____ % of gross revenues per year or minimum of \$ _____

Rates: Installation \$ _____ monthly charge \$ _____ Maximum set yes no
Right of review yes no

Performance Bond? no yes -- amount \$ _____

Exclusive Franchise yes no

Transfer of ownership: approval of city required? yes no

Deadlines: Begin construction _____ conditions _____
Complete construction _____ conditions _____

Minimal density _____ geographic discrimination

Insurance provisions: Personal injury or death \$ _____
Property or physical damage \$ _____
Exempts city officials yes no

Records: Accessible to municipal officials yes no
Annual report sent to city yes no

Standards: National Electrical (Safety) Code, National Board of (Fire) Underwriters
Other: _____

Minimal Channel Capacity: _____

- Prohibitions:
- a. Pay TV
 - b. Sale of TV receivers
 - c. Music to businesses
 - d. Interference with TV reception
 - e. Political or partisan purposes
 - f. Advertising
 - g. Discrimination
 - h. Interference with internal TV security systems

- Public access:
- a. Public facilities without fee e.g. schools libraries
 - b. Provision for development of public service e.g. police alarms
 - c. free public interest channel
 - d. free channel for educators
 - e. interconnection of all schools
 - f. emergency broadcast capacity--interrupt all channels
 - g. local programming required e.g. studio, cameras, mobile units
 - h.
 - i.

The following provisions were examined in each franchise received by the Study Commission:

Standard Easement: In every New Jersey ordinance granting a cable television franchise, the municipality has made the award on the basis of the "use of the streets". The franchises specify that the cable television company must erect its system without endangering or unnecessarily disturbing the citizens. Provisions are made for using the utility poles or conduits. These provisions form the bulk of any franchise.

Location of Antenna: Some municipalities have included a provision prohibiting the location of the antenna within their boundaries.

(In one case, however, the municipality required that the tower be located within the municipality.) There are relatively few instances of this, and in at least one case, this provision has been rescinded. The Study Commission finds this action totally out of order within a CATV franchise ordinance. So long as the CATV operator abides by local zoning ordinances, there should be no limitations on the location of the antenna.

Length of Franchise: Wide variations exist in the length of time for which a franchise is awarded. The minimum has been five years and the maximum as high as 50 years. The Commission realizes that the length of time for which a franchise is

awarded may determine the availability of funds to finance the development of the system. However, few provisions are made for defaults in the franchise, either on the part of the cable firm or the municipality. By granting a State agency the right to review all local franchises, the operator and the municipality will be protected by right of appeal. Criteria applicable statewide as to term of franchise and performance requirements would protect both the operator and the franchising locality, and standardizing the procedures should help the CATV operator attract funding and enable him to provide the best service.

Revenues: The Commission agrees with the Federal Communications Commission that revenues derived from CATV operators should not be used as an additional source of revenue for the municipality. The municipality should have its costs covered by the tax on gross service revenue, but this should not be a source of general revenue funds. Generally, municipalities have accepted a percentage of the gross operating revenues of a company. In some instances, however, the municipality has established minimum payments. The Commission finds that minimum payments are unfair and undesirable to both the CATV operator and the municipality. The Commission believes that a two per cent limit should be placed on the

municipality's tax, subject to two conditions: (1) that municipalities which can show that supervision of local CATV actually costs them more than that should be able to raise the charge accordingly, and (2) that companies which are already paying more, and would thus reap a "windfall" from reduction to 2% be required to apply the difference to reducing rates or improving service. This limit on municipal charges partially reflects the increased State role in the awarding of CATV franchises. The State will also attach a proportionate tax, with a ceiling of two per cent on the local operator.

Rates: Customer charges are the essence of the CATV business. Certainly, one can expect that rates will increase as additional services are provided by CATV. Most franchise agreements merely acknowledge the existing rate structure of the company and make no provision for rate increases. This concerns the Commission members, for rate increases will determine the future shape of CATV. To be fair to both customer and operator will require review of all rate increases by the Office of Cable Television.

Performance Bond: Performance bonds serve two functions for the municipality. First, they guarantee that the system will be built as outlined in the franchise and within the time

limits. Second, they insure that if the system is abandoned the municipality will have funds with which to dismantle the system. The Commission finds that generally the bonding level has been too low to provide adequate coverage for either of these points.

Exclusive Franchising: Most franchises which have been awarded have not been exclusive. Occasionally a company has requested and received an exclusive franchise. The Commission finds that franchises which are awarded as exclusive are not in the public's interest. If a cable system is developed, and provides the essentials of good service, it is, in effect, an exclusive system. However, when another cable company might provide a municipality with better service, there should be no restriction arising from exclusive rights to the "use of the streets". Review by the Office of Cable Television will insure that the other extreme -- i.e., excessive duplication of franchises -- does not occur.

Transfer of Ownership: To combat the irresponsible profit-making some adventurists apparently seek in CATV, the Commission finds that transfers of ownership should be carefully reviewed. Further, the adequate development of a system may require that a company not expand beyond its financial limitations. Most franchises require that transfers of ownership be reviewed by the municipality. The Office of Cable Television

will also review them.

Construction Deadlines: Most municipalities have attempted to avoid speculative operators by requiring the company to meet construction deadlines. These range from a few weeks to begin construction to a timetable for completion of the municipality's system. However, one major obstacle has prevented these clauses from functioning effectively: most deadlines are contingent upon the approval of the Federal Communications Commission and the necessary pole clearance rights from the utilities. The FCC's freeze on the one-hundred major markets has effectively nullified this provision. Further, until quite recently, the utilities provided only minimal cooperation with the CATV firms. These deadlines have generally been extended if the company could show good faith in attempting to fulfill this condition of the franchise.

Minimal Density: Many companies have insisted that it is unfeasible to wire the complete municipality at the inception of its service. Only in one case did the municipality acquiesce by establishing a time-table. The usual procedure has been to limit the initial area of service to that section of the area which has a density of 50 homes per mile. Even worse, some municipalities have left the judgment totally to the good will of the company by using phrases such as "economically

feasible", or the company "will be allowed to use its judgment".

Insurance: As one universal feature, municipalities have required that cable companies carry insurance. Usually they have insisted that the company carry personal injury and death benefits and a separate policy for property or physical damage. Municipalities have also required on occasion workman's compensation insurance and insurance against copyright suits. The purpose of this insurance is to hold the city harmless in the event of misfortune. Some municipalities have requested the insurance in the name of the municipality and others in the name of certain elected officials.

Accountability: Most municipalities have required some form of accountability. Generally this is only a review of the financial records of the company, or a copy of the annual report. In a venture which requires the good will of both the municipality and the company, one would think there would be greater review of the performance of the company. The Office of Cable Television should pick up some of this function.

Standards: Generally, municipalities have required cable operators to use minimal electrical standards. Few franchises make mention of any of the uniquely broadcast parameters, nor do they cite trade publications or manuals. This probably

reflects the way in which franchises are awarded. Only minimal understanding of the cable enterprise is obtained before a franchise is awarded.

System Design: Most franchises have specified a number of channels which is minimal on their system. However, some franchises even lack this information. Beyond this point, there is seldom any description of the system to be installed. On occasion a municipality may make reference to a proposal received which outlined the system, but this is also very rare. The Study Commission finds that systems must be more adequately defined.

Prohibitions: From model legislation and model ordinances a number of activities have been prohibited as outside the domain of cable television. This standard list includes the following items:

- (1) Pay Television: Cable television is a monthly service charge for all services. Pay television is payment per program. Pay television is essentially a different service from cable television.
- (2) Sale or Service of Television Receivers: Some cable operators have made special arrangements with a television repair service to handle their repair

calls. This section of a franchise attempts to separate these functions. A customer is purchasing a reception service, and not additional equipment or a service repair package.

- (3) Music to Business: Music to business has become lucrative. The cable system might be used for any number of functions, and this prohibition seeks to limit the cable to audio and visual signals to homes and some commercial establishments.
- (4) Interference with Television Reception: Radio transmission which is in the same area may cause poor reception unless it is carefully insulated. This prohibition makes deliberate or accidental interference with the responsibility of the cable television company.
- (5) Political or Partisan Purposes: This is an attempt to enforce the FCC's fairness doctrine on the local level. It would require that the cable television system not broadcast merely one political party.
- (6) Advertising: Some systems have prohibited the use of advertising from the local origination point. This provision has some handicaps at this point in time. Cable would allow local stores, which

could not afford time on the national network, to advertise locally. Further, it is apparent that some services will have to derive additional funding from other than subscription revenues.

(7) Discrimination: Rate discrimination is prohibited.

It is clear that some sections of municipalities are more profitable than others. This section, when used, prohibits the discriminatory rates which might come to apply. It is not effective in achieving an equal access to the system, however. It may be that this section and the minimal density section would appear in the same franchise.

(8) Interference with Internal Security Systems: Again, this has to do with technical considerations. If properly insulated, there is no problem.

(9) Other: One franchise forbade the development of a cable newspaper. Newark mentioned interference with air and ground traffic or navigational devices. Other municipalities may also have chosen to mention specific problems in their locale.

Not all prohibited activities are mentioned in each franchise.

Most likely, a municipality will mention those which come

closest to certain local problems, or which have been acknowledged as problems by the cable operator.

Public Access: A similar problem obtains with questions of public access. Not every municipality requires a cable company to provide the same level of service. Part of this problem is related to the date the system was built. What should be required was one of the most heatedly debated questions in all public hearings. It is clear that if too much is demanded the system can not be built. However, the standard list discussed here often merely requires that a system anticipate the development of a certain service.

Free Service to Public Facilities: Most frequently a cable company will offer to provide free service to the schools of a municipality. This offer may be extended to include the fire house and police station. Clearly this is a minimal expenditure for the cable company.

Provision for the Development of Public Service Features: It has been suggested that in the near future cable might provide the police and fire departments with additional alternatives for protecting our cities. Such systems would use the cable to capture a closed circuit picture of the city. Very few franchises require that the cable system explore the possibility of police and fire security systems when they are developed.

Free Public Interest Channel: Some municipalities have required a

public interest channel. Today more voices are demanding a chance to be heard. Cable has the potential for allowing all sides to an issue to be heard. The FCC will require that at least one channel be set aside for the public interest. In this case the cable operator may require minimal fees to cover operating costs of the channel.

Educational Channel: Free access to a channel for the local school board, teachers and students.

Interconnection of Schools: As two-way communication becomes more widespread, this will become even more important. Educators are very excited about this possibility, and yet few franchises required this capacity.

Emergency Broadcast Capacity: The capacity to interrupt all broadcasting in the event of a local disaster, or when the public officials desire to address all citizens, is important. This is similar to the national emergency broadcast interruption when the President speaks or there is a national emergency.

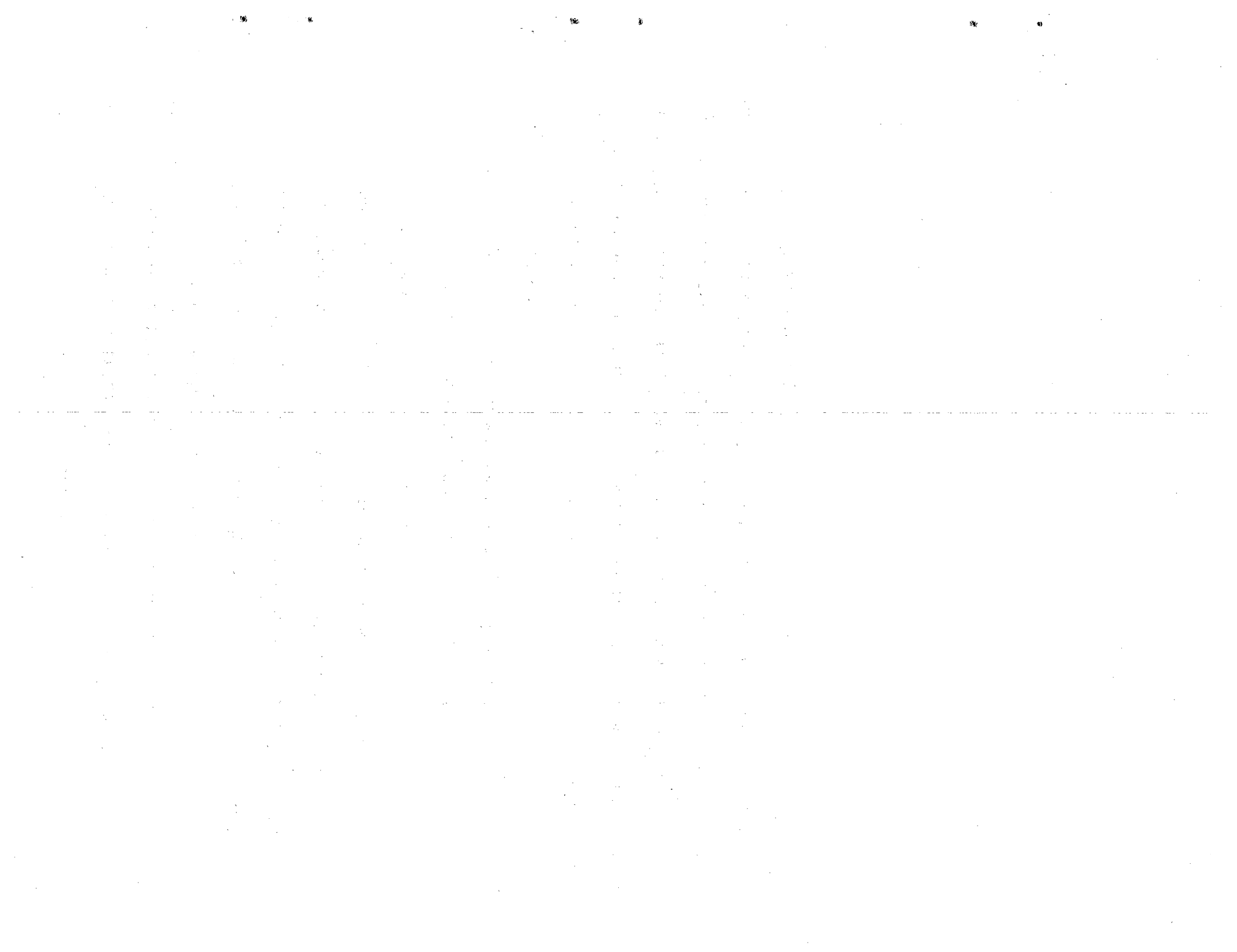
Local Programming Requirement: Few municipalities require that the CATV have some local-origination equipment. There is an FCC requirement for local origination which is usually complied with by a local time and weather channel. However, the municipalities which have insisted on this provision have increased the value of their system.

Other: Some municipalities have acquired additional television receiver or other equipment for their school system as a part of the franchise agreement.

Unique Features: Some municipalities have required unique conditions as part of their franchise. In one case the municipality declared that if the franchise was challenged, it would be revoked. In another instance termination would follow if there was a copyright suit.

Evaluation of individual municipalities and their franchise agreement is part of the corporate analysis which is included with the Commission's files.

Award procedures have not been analyzed because of the minimal amount of information which the Commission received from municipalities. Generally it can be said, that municipalities were approached at one monthly meeting and the award made at the next. Some municipalities have gone to great lengths to insure that their area was adequately served, but these are very few.



ASSEMBLY, No. 2139

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1971

By Assemblyman CRANE

Referred to Committee on Transportation and Public Utilities
Public hearings held April 20 and May 18, 1971
AN ACT concerning community antenna television systems and
amending R. S. 48:2-13.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act, the following words and terms shall have
2 the following meanings, unless the context indicates or requires
3 another or different meaning or intent:

4 (a) "Community antenna television system" means any wire
5 or cable facility which is operated to perform the service of re-
6 ceiving and amplifying the signals broadcast by one or more
7 television stations and redistributing such signals to members of
8 the public who subscribe to such service, or distributing through
9 its facilities any television signals whether broadcast or not.

10 (b) "Person" shall mean and include any individual, firm, as-
11 sociation, partnership, joint stock association, trust or corporation.

12 (c) "Board" means the New Jersey Board of Public Utility
13 Commissioners.

14 (d) "Certificate" means a certificate of public convenience and
15 necessity issued by the board as provided by this act.

1 2. No person shall construct or operate a community antenna
2 television system without first having obtained a certificate as
3 provided by this act.

1 3. Application for a certificate shall be made in writing upon
2 forms prescribed by the board. The forms shall contain sufficient
3 information to identify the person making such application, in-
4 cluding name, home and business address of its stockholders,
5 partners and owners, the territory within which the community
6 antenna television system is proposed to be operated, the financial
7 status of the applicant, and any other information the board may
8 require. Each application shall be accompanied by a nonrefundable

1 4. Upon receipt of an application for a certificate the board
2 shall schedule a hearing thereon, and shall give timely notice of
3 such hearing to the clerk of each municipality within which the
4 community antenna television system is proposed to be operated.

1 5. The board may issue a certificate if it finds from the evidence
2 submitted at the hearing that public convenience and necessity
3 require the operation of a community antenna television system
4 within the territory specified by the application that the applicant
5 has the ability and financial responsibility to perform efficiently
6 the operation of the system. In granting the certificate, the board
7 may impose such conditions as to territory, construction, equip-
8 ment, maintenance, rates, service and operation as public con-
9 venience and necessity may require. The certificate shall specify
10 the territory within which the community antenna television system
11 may be operated.

1 6. Each certificate shall specify the service to be rendered, the
2 routes of aerial and underground feeder and distribution cables,
3 the area of operation, and any plans, contracts or arrangements
4 for pole line attachments with a public utility, and other appro-
5 priate feasibility plans.

1 7. No certificate shall be issued or remain valid unless the
2 applicant has filed with the board and revised to keep current a
3 schedule of rates and charges for its services. Such rates and
4 charges shall be reasonably compensatory so as not to encourage
5 unfair or destructive competitive practices and shall be applied
6 without discrimination.

1 8. The board shall revoke a certificate issued to any person
2 pursuant to this act if said person operates a community antenna
3 television system outside the territory specified in the application;
4 provided, however, that any person may apply for and be issued
5 by the board more than one certificate specifying different terri-
6 tories within which community antenna television systems may be
7 operated.

1 9. The board may, after affording the holder of a certificate a
2 hearing, revoke, suspend or alter any such certificate for the willful
3 violation of the conditions of its certificate or the rules and regula-
4 tions of the board or upon its failure to continuously meet the
5 criteria as set forth in section 4 of this act.

1 10. The board, after affording the holder of a certificate a hear-
2 ing, may revoke a certificate if the holder does not commence
3 operation of the system within 18 months after its issuance, or
4 after commencement shall fail for a continuous period of 60 days
5 to render proper service without good reason therefor.

1 11. No certificate shall be assigned, sold or transferred, nor
2 shall there be a change of more than 25% in the ownership of the
3 holder of the certificate, without the approval of the board, after
4 hearing upon notice as provided in section 4 of this act. The
5 transferee or the holder of the certificate with its new ownership
6 shall meet all of the criteria as set forth in section 4 of this act.

1 12. No person operating a community antenna television system
2 may combine, merge or consolidate with, or acquire control of,
3 another person in this State without first obtaining the approval
4 of the board, which shall be granted only after an investigation,
5 hearing and finding that such proposed combination, merger, con-
6 solidation or acquisition is in the public interest and meets all of
7 the criteria as set forth in section 4 of this act.

1 13. The board is hereby authorized, empowered and directed to
2 adopt such rules and regulations as shall be necessary to implement
3 the provisions of this act.

1 14. Any person operating a community antenna television system
2 on the effective date of this act may continue so operating; provided
3 however, that such person applies for a certificate pursuant to this
4 act within 30 days after the effective date of this act; and provided
5 further, that such person may continue operating a community
6 antenna television system while an application for a certificate is
7 pending and until such application is denied by the board.

1 15. R. S. 48:2-13 is amended to read as follows:

2 48:2-13. The board shall have general supervision and regula-
3 tion of and jurisdiction and control over all public utilities as
4 hereinafter in this section defined and their property, property
5 rights, equipment, facilities and franchises so far as may be neces-
6 sary for the purpose of carrying out the provisions of this Title.

7 The term "public utility" shall include every individual, co-
8 partnership, association, corporation or joint stock company, their
9 lessees, trustees or receivers appointed by any court whatsoever,
10 their successors, heirs or assigns, that now or hereafter may own,
11 operate, manage or control within this State any railroad, street
12 railway, traction railway, autobus, canal, express, subway, pipeline,
13 gas, electric light, heat, power, water, oil, sewer, solid waste collec-
14 tion, solid waste disposal, *community antenna television system*,
15 telephone or telegraph system, plant or equipment for public use,
16 under privileges granted or hereafter to be granted by this State
17 or by any political subdivision thereof.

18 Nothing contained in this Title shall extend the powers of the
19 board to include any supervision and regulation of, or jurisdiction

ASSEMBLY, No. 2421

STATE OF NEW JERSEY

INTRODUCED APRIL 22, 1971

By Assemblymen WEIDEL, FORAN, VREELAND, ESPOSITO,
RAYMOND, HOLLENBECK and CRANE

(Without Reference)

AN ACT concerning municipalities, temporarily forbidding the award of any franchise or privilege by a municipality to any person for the purpose of operating or maintaining a community antenna television system, and supplementing Title 40 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act, "community antenna television system"
2 means any wire or cable facility which is operated to perform the
3 service of receiving and amplifying the signals broadcast by one or
4 more television stations and redistributing such signals to members
5 of the public who subscribe to such service, or distributing through
6 its facilities any television signals whether broadcast or not.

1 2. The Legislature finds, determines and declares:

2 a. The present profitability and the large though undefined
3 potentialities of community antenna television have attracted a
4 number of firms and combinations of capital into that industry.

5 b. In the absence of comprehensive State or Federal regulation,
6 there has been intense competition for franchises from municipal
7 governments to operate community antenna television systems in
8 the several communities of this State, and substantial numbers of
9 such franchises have been granted.

10 c. The intense competition for franchises has led to allegations
11 of speculation in such franchises to the detriment of the public
12 welfare, and to accusations of municipal corruption, some of which
13 are at present under investigation by appropriate authorities.

14 d. The need for appropriate regulation to secure and foster the
15 orderly development of the community antenna television industry
16 is generally conceded, but the exact form which such regulation
17 should take, the degree of regulation necessary and desirable, and

20 and control over any vehicles engaged in the transportation of
21 passengers for hire in the manner and form commonly called
22 taxicab service unless such service becomes or is held out to be
23 regular service between stated termini; hotel buses used exclusively
24 for the transportation of hotel patrons to or from local railroad
25 or other common carrier stations, including local airports, or bus
26 employed solely for transporting school children and teachers, to
27 and from school, or any autobus with a carrying capacity of not
28 more than 10 passengers now or hereafter operated under municipal
29 consent upon a route established wholly within the limits of a single
30 municipality, or with a carrying capacity of not more than 20
31 passengers operated under municipal consent upon a route estab-
32 lished wholly within the limits of not more than four contiguous
33 municipalites within any county of the fifth class, which route in
34 either case does not in whole or in part parallel upon the same street
35 the line of any street railway or traction railway or any other
36 autobus route.

1 16. This act shall take effect immediately.

18 the level or levels of government which should undertake the
19 regulatory function are matters of doubt and dispute among various
20 segments of well informed opinion.

21 e. The exceeding complexity of the legal, social, technological
22 and scientific issues, questions and implications involved require
23 that the Legislature not act hastily in resolving the many doubtful
24 points in this matter or in adopting any system of regulation, but
25 should proceed with thorough information, expert advice and
26 mature deliberation.

27 f. Unless there is an immediate and temporary cessation of the
28 present impetuous pace of development of the community antenna
29 television industry in this State, the necessary deliberations of the
30 Legislature will be forestalled and set at naught by the rapid march
31 of practical events, and the State will be entangled with an un-
32 regulated growth before an adequate system of regulation can be
33 devised.

34 g. The Legislature has determined that the public interest re-
35 quires that there be a temporary cessation, compelled by law, in the
36 award of any further franchises or privileges by municipalities for
37 the purpose of permitting the establishment or operation of further
38 community antenna television systems in this State, until such time
39 as an adequate regulatory system can be devised and established.

1 2. Notwithstanding any other provisions of law, for a period of 1
2 year from the effective date of this act no municipality may give,
3 grant or award to any person, upon any terms or conditions what-
4 ever, any franchise or privilege for the use of any street, alley or
5 public place for the purpose of constructing, erecting, operating or
6 maintaining any wires, poles, cables, conduits, conductors, fixtures
7 or other facilities for the purpose of operating or maintaining a
8 community antenna television system.

1 3. The provisions of this act shall not affect the continuation or
2 renewal of franchises or authorizations previously granted to
3 persons by any municipality.

1 4. This act shall take effect immediately.

April 22, 1971

HONORABLE BARRY T. PARKER
Speaker of the General Assembly

Sir:

The undersigned, members of the Committee on Transportation and Public Utilities, have under consideration Assembly Bill No. 2139 of 1971, which concerns the regulation of community antenna television systems.

It has become apparent to us:

(1) that to devise an adequate regulatory system for this new industry will require thorough, patient study, and

(2) that the growth of the industry is so rapid that, unless temporarily checked, it will outpace our studies and will grow up unregulated before adequate regulation can be devised.

Hence, the members of this Committee support the attached bill, which is being introduced today, to declare a one-year moratorium upon the issuance of further CATV franchises by municipal governments.

The mere introduction of such a bill will have an immediate impact both upon the industry and upon the municipalities. It is desirable, therefore, that there be as little delay as possible between its introduction and passage. In view of the urgency of the matter, we request that the attached bill not be referred to committee upon its introduction, and that it be accorded a second reading this day.

Respectfully,

HAROLD C. HOLLENBECK, Chairman, Committee
on Transportation and Public Utilities

EVERETT B. VREELAND

EUGENE RAYMOND, III

KARL WEIDEL

WALTER E. FORAN

ASSEMBLY CONCURRENT RESOLUTION No. 2041

STATE OF NEW JERSEY

INTRODUCED JUNE 14, 1971

By Assemblymen HOLLENBECK, WEIDEL, FORAN, VREEFLAND,
FRIEDLAND, Assemblywoman MARGETTS, Assemblymen
EWING, COBB, DORGAN, RUSSO and RAYMOND

(Without Reference).

A CONCURRENT RESOLUTION creating a commission study the regulation of community antenna television systems and related aspects.

- 1 WHEREAS, The profitability and undefined potentials of community
2 antenna television have attracted a number of firms and combi-
3 nations of capital into that industry;
- 4 WHEREAS, The absence of comprehensive State or Federal regula-
5 tion has allowed intense competition for franchises from municipi-
6 pal governments to operate community antenna television sys-
7 tems in the several communities of this State, and substantial
8 numbers of such franchises have been granted;
- 9 WHEREAS, The intense competition for franchises has led to allega-
10 tions of speculation in such franchises to the detriment of the
11 public welfare, and to accusations of corruption, some of which
12 are at present under investigation by appropriate authorities;
- 13 WHEREAS, There is a need for appropriate regulation to secure
14 and foster the orderly development of the community antenna
15 television industry and it is necessary to determine the exact
16 form which such regulation shall take, the degree of regulation
17 necessary and desirable, and the level or levels of government
18 which should undertake the regulatory function;
- 19 WHEREAS, The Legislature has passed a bill imposing a 1-year
20 moratorium on the granting or awarding of franchises for the
21 purpose of operating or maintaining a community antenna tele-
22 vision system; and
- 23 WHEREAS, The creation of a commission to study and review such
24 laws and various alternatives would be the most effective method
25 to determine their adequacy and feasibility; now, therefore

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey (the Senate concurring):*

1 1. There is hereby created a commission to consist of 12 mem-
2 bers, four to be appointed from the membership of the Senate by
3 the President thereof, no more than two of whom shall be of the
4 same political party and four to be appointed from the membership
5 of the General Assembly by the Speaker thereof, no more than two
6 of whom shall be of the same political party, and four members
7 of the public, two to be appointed by the President of the Senate
8 and two to be appointed by the Speaker of the General Assembly,
9 who shall serve without compensation. Vacancies in the member-
10 ship of the commission shall be filled in the same manner as the
11 original appointments were made.

1 2. The commission shall organize as soon as may be possible
2 after the appointment of its members and shall select a chairman
3 from among its members, and a secretary who need not be a mem-
4 ber of the commission.

1 3. It shall be the duty of said commission to study and review
2 the existing provisions of the New Jersey Statutes, Federal law
3 and the provisions of the laws of sister states, as well as bills
4 presently pending in the Legislature, concerning community an-
5 tenna television systems and to make such recommendations to
6 the Legislature and the Governor as it shall deem advisable and
7 appropriate.

1 4. The commission shall be entitled to call to its assistance and
2 avail itself of the services of such employees of any State, county
3 or municipal department, board, bureau, commission or agency
4 as it may require and as may be available to it for said purpose,
5 and to employ such stenographic and clerical assistants and incur
6 such traveling and other miscellaneous expenses as it may deem
7 necessary, in order to perform its duties, and as may be within
8 the limits of funds appropriated or otherwise made available to
9 it for said purposes.

1 5. The commission may meet and hold hearings at such place
2 or places as it shall designate during the sessions or recesses of
3 the Legislature and shall report its findings and recommendations
4 to the Legislature and the Governor on or before January 4, 1972,
5 accompanying the same with any legislative bills which it may
6 desire to recommend for adoption by the Legislature.

SENATE CONCURRENT RESOLUTION No. 22

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Senator HOLLENBECK

A CONCURRENT RESOLUTION to reconstitute and continue the commission to study community antenna television system regulation.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring):*

1 1. The commission created pursuant to 1971 Assembly Con-
2 current Resolution No. 2041 to study and review the existing
3 provisions of State and Federal law and proposals relating to
4 regulation of community antenna television systems and to make
5 recommendations in connection therewith is reconstituted and con-
6 tinued with the same powers and duties as heretofore.

1 2. Public members heretofore appointed and members of the
2 Senate and General Assembly who continue to be members of the
3 House from which appointed are continued as members of the com-
4 mission; vacancies shall be filled in the manner in which the original
5 appointments were made.

1 3. The commission shall report its findings and recommendations
2 to the Governor and the 1972 Legislature as soon as may be.

SENATE, No. 275

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Senator HOLLENBECK

A SUPPLEMENT to "An act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1972, and regulating the disbursement thereof," approved June 24, 1971 (P. L. 1971, c. 240).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. There is hereby appropriated to the commission to study com-
2 munity antenna television system regulation, created by Assembly
3 Concurrent Resolution No. 2041 and reconstituted by Senate Con-
4 current Resolution No. 22, the sum of \$5,000.00.

1 2. This act shall take effect immediately.

STATEMENT

This is a companion measure to Senate Concurrent Resolution
No. 22.

APPENDIX D

I. Public Hearings by General Assembly Committee
on Transportation and Public Utilities

WITNESSES

April 20, 1971 -- Trenton

Morning Session

William M. Crane	Assemblyman, Bergen County
Felix G. Forlenza	Chief Counsel, New Jersey Board of Public Utility Commissioners
Dr. William H. Cherry	Physicist and engineer, RCA Corp.
James A. (Jack) Krauskaupf	Director, Office of Newark Studies
Richard C. Leone	Director, Center for the Analysis of Public Issues
Ralph Lee Smith	Author, journalist
Henry A. Garton, Jr.	Mayor, City of Vineland
A. William Martin	Executive Vice President, Coaxial Communications of Bergen County, Inc.
Dennis J. McGillicuddy	Vice President, Coaxial Com- munications, Inc., of Sara- sota, Florida
Robert R. Pauley	President, Cablenet International Corp. of New York City; Program Director, Coaxial Communications of Bergen County, Inc.

Afternoon Session

Robert Coll, Esq.	American Broadcasting Company
Hamilton Stillwell	Dean, Rutgers University Extension Division

Jerome Aumento	Associate Professor, Livingston College
Linda Holmes	Student, Rutgers University
John D. Matthews, Esq.	Counsel, New Jersey CATV Association
Mrs. Gloria M. Hall	President and Executive Director, CBC-TV, Red Bank, N. J.
Robert Hanna	Cable Communications, Inc.
Robert Beisswenger	President, Jerrold Corporation
Edgar P. Smith	Vice President, Time-Life Broadcast
Gary L. Christensen	General Counsel, National Cable Television Association, Inc.
Paul Godley	Communications Consultant
Samuel Kravetz	President, TeleCommunications, Inc.

Appendix

A separate Appendix volume to the transcript of the April 20, 1971, public hearing contains, in addition to written statements extending the testimony of some of the above-listed witnesses, copies of the following:

1. Report to Governor Nelson Rockefeller concerning operations of CATV systems in the State of New York, by the New York Public Service Commission.
2. "Regulation of CATV Distribution Systems", by Reese H. Taylor, Jr., Chairman, Public Service Commission of Nevada.
3. "The Wired Nation", by Ralph Lee Smith; from The Nation, May 18, 1970.
4. Series of articles on CATV, by John McLaughlin, from the Trenton Evening Times.
5. Statement of the American Broadcasting Company
6. Legal Memoranda from John D. Matthews, Esq., Counsel for the New Jersey CATV Association.

7. Corporate data and "model ordinance" submitted by Coaxial Communications.
8. Fiscal Note to Assembly Bill 2139 of 1971.
9. Telegrams from:
 - a. George K. Francis, Mayor, Linwood, N. J.
 - b. Henry Behre, Executive Vice President, Middlesex Cablevision, East Brunswick, N. J.
 - c. George F. Roberts, Mayor, Somers Point, N. J.
 - d. Anthony J. Nanni, Mayor, Lambertville, N. J.
 - e. J. A. Nowicki.
 - f. Adam E. Sadowski, Mayor, Washington, N. J.

May 18, 1971 -- Trenton

Morning Session

Edward G. Hoch

Staff Engineer, New Jersey
Bell Telephone Company

A. William Martin

Executive Vice President,
Coaxial Communications of
Bergen County, Inc.

Robert Pauley

President, Cablenet International Corp.;
Program Director, Coaxial
Communications of Bergen
County, Inc.

Hubert Hobler

President, Nassau Broadcasting
Company

John D. Matthews, Esq.

Counsel, New Jersey CATV
Association

Mitchell Obozian

Chief Steward, Local 158,
United Electrical, Radio and
Machine Workers

Preston Sellers

President, Local 158, United
Electrical; Radio and Machine
Workers

Edward B. Lloyd

President, Essex Cable TV
Company

Opening Remarks at First Committee Hearing
April 20, 1971

By Assemblyman Harold C. Hollenbeck, Chairman

I would like to welcome you all to the Assembly Transportation and Public Utilities hearing on Cable Television, or CATV, specifically a hearing on a bill by Assemblyman Crane of Bergen County, Assembly Bill No. 2139 of 1971.

I am Assemblyman Harold C. Hollenbeck, District 13A, Bergen County. On my left is Assemblyman Karl Weidel, Mercer County; and on my right, Assemblyman Walter Foran of Hunterdon County. We expect that Senator Stout, the Chairman of our Senate counterpart, will be joining us shortly. And we will note for the record now that Assemblyman Foran will be forced to leave periodically to attend sessions of the Appropriations Committee, which is meeting at the same time downstairs.

We are holding these hearings at the request of Assemblyman Crane and because we feel that cable television or CATV, showing itself to be an exciting and beneficial form of communication, has a great potential for use, we feel, in areas of education, forms of public events broadcasting, in addition to entertainment and providing public service

channels. However, we all agree that CATV gives rise to myriad problems, such as consumer protection in the areas of rates, service; intergovernmental problems, such as federal pre-emption, are a couple of the areas.

Further, and more important, is an alleged unchecked spread of and activity by a number of different companies throughout our State. This, it has been alleged, can result in a confused mishmash of rates, contracts, possibly an unnecessary shortage of services, and possibly a failure of CATV to live up to its great potential.

The bill we are using as a vehicle for this hearing, as I said, is Assemblyman Crane's bill. The questions we're dealing with -- one of the questions is whether or not it's time to slow down, take a look at where we're going in this area, and not proceed helter-skelter in a grab for pennies, as we've done in so many sectors only to lose dollars over the long run.

Today we hope to start getting answers to several questions. We will be holding another hearing within a month or six weeks for those organizations and groups who will not have the opportunity to testify today.

We want to get into such questions as, should there be

a regulated, sensible rate pattern, related to cost and services; if so, who should be the regulatory body.

We want to look into the question of what is the potential of CATV for educational, public broadcasting. Should there be some centralization of ownership with an eye toward making wider use of the many coverage facilities of CATV toward achieving full development of potential instead of fragmented usage.

We hope that our witnesses will go into these and many other areas today and also at our second hearing.

II. Public Hearings by CATV Study Commission

WITNESSES

October 6, 1971 -- Trenton

Morning Session

Samuel Kravetz	President, TeleCommunications, Inc.
John D. Matthews, Esq.	Counsel, New Jersey CATV Association
John F. Scarpa	President, New Jersey CATV Association
Perry Schwartz	Independent Consultant to CATV industry
Herbert W. Hobler	President, Nassau Broadcasting Company

Afternoon Session

Richard Landy	President, Vision Cable Television Company
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Written Statements

Mr. Matthews	Memorandum on Federal Pre-emption of CATV regulation; drafts of proposed legislation
Mr. Scarpa	Highlights of N. J. Seminar on Cable Television, Cherry Hill, N. J., September 30, 1971.
Mr. Hobler	"Cable TV Straight Talk: A Clarifying Response to the Report 'Crossed Wires--Cable Television in New Jersey'"
American Broadcasting Company	Further Statement

November 4, 1971

Morning Session

Jerome Aumente	Associate Professor, Livingston College
L. G. McAfee	Executive Director, Community Action in Plainfield
James A. (Jack) Krauskopf	Director, Office of Newark Studies
Richard C. Leone	Director, Center for the Analysis of Public Issues
Robert Powell	Director, Consumer Protection Study, Center for the Analysis of Public Issues.

Written Statements

Dr. Ralph M. Jennings	Project Executive, Office of
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	Communication, United Church of Christ
Hon. Carl Marburger	Commissioner of Education
New Jersey Education Association	
Educational Broadcasting Corporation	
Hamilton Stillwell	Dean, University Extension Divi- sion, Rutgers University
Hon. Frank H. Blatz, Jr.	Mayor, City of Plainfield [Letter]
Thomas E. Ervin	Executive Vice President, National Broadcasting Co. [Letter to Walter R. Hinchman, Office of Telecommunications Policy, Washington, D. C.; submitted in lieu of statement by Lawrence R. Walz, Adminis- trator of CATV Development, NBC Television Stations]
Hon. Joseph C. Swidler	Chairman, New York State Public Service Commission [Statement to the New York Assembly-Senate CATV Panel, Octo. 28, 1971; submitted in lieu of statement by the Hon. William K. Jones, New York PSC Commissioner]

Opening Remarks at First Commission Hearing
October 6, 1971

By Assemblyman Harold C. Hollenbeck, Chairman

This is the first hearing of the Study Commission ap-
pointed pursuant to Assembly Concurrent Resolution Number

2041, concerning cable television.

As you all are aware, the Assembly Committee on Transportation and Public Utilities has held two prior hearings on the subject, at both of which we heard extensive testimony from both the public and private sectors on the regulation of cable television, and specifically the Crane Bill. We have two transcripts of these two hearings and an appendix which at this time I will direct Mr. Lee to incorporate into the minutes of this hearing as part of the appendix.

Today's hearing is going to be concerned with the resolution creating this commission. The purpose is to investigate and to discuss the need for appropriate regulation to secure and foster the orderly development of the community antenna television industry, to determine the exact form which such regulation shall take, the degree of regulation necessary and desirable, and the level or levels of government which should undertake the regulatory function.

I would ask that all who testify today confine their remarks to those subjects so that we can have a constructive, concise and orderly hearing.



FROM: HAROLD C. HOLLENBECK,
Chairman
CATV Study Commission

FOR IMMEDIATE RELEASE:

(For further information call: [609] 292-7676)

TRENTON -- The chairman of the State commission that has been created to look after the public interest in the fast-growing cable television (CATV) industry finds that the main danger to the public interest comes from the fact that the public isn't interested enough.

"Our Commission has been dismayed by the lack of response from the general public," says Bergen County Assemblyman Harold C. Hollenbeck, Chairman of the CATV Study Commission, who also chaired two hearings on CATV by the Assembly's Transportation and Public Utilities Committee. "Our one public hearing thus far, plus the two earlier committee hearings, attracted a large number of spokesmen for the CATV industry, some academics and independent researchers, and a few public officials -- but not members of the general public, which stands to benefit from the enormous potentials of properly developed CATV."

The Commission has scheduled a second public hearing for November 4, 1971 at the State House in Trenton. Hollenbeck made a plea for broader representation of public opinion at that hearing.

"Aside from a couple of headlined scandals about the granting of municipal CATV franchises," Hollenbeck said, "CATV seems to have had very slight impact upon the public consciousness. In most areas where it is now operating, CATV is merely a technique for making possible, or for improving, the reception of TV programs which are already available through the airwaves in areas with more adequate reception. But the cable medium, utilizing many more channels than are technically feasible in broadcasting, has

potentials for offering localized, specialized programming and many other services not possible through over-the-air TV. The full range of potential services seems to be yet unsuspected by the viewing public, which has not been made cognizant of the technical capabilities of the medium."

Hollenbeck noted that the Federal Government will probably lay down nation-wide rules to govern the development of the programming potentials of CATV. The Federal Communications Commission recently expressed its intention to make rules in this and other aspects of CATV. The State Government, however, will retain responsibility for assuring that locally franchised CATV operators are capable, reliable and fair in their dealings with the public.

"We should like to hear more from the CATV-viewing public in New Jersey about the problems they have experienced with regard to the reasonableness of subscription rates, reliability of services and adequacy of the cable-delivered signals," Hollenbeck said.

"We also need," he continued, "to hear more of the views of individuals, local civic and community groups and local public agencies regarding those benefits of CATV which they feel would be most relevant to their needs and most beneficial to their communities."

Hollenbeck said that persons wishing to present their views on CATV at the November 4 public hearing may contact the Commission through the New Jersey Legislative Services Agency, Room 30, State House, Trenton, New Jersey 08625 (Telephone [609] 292-7676). Those who cannot personally attend the hearing may send their written comments to the same address for transmittal to the Commission.



