A P P E N D I X

to

P U B L I C H E A R I N G

before

Assembly Committee on Transportation and Public Utilities

on

COMMUNITY ANTENNA TELEVISION SYSTEMS
(Assembly Bill No. 2139 of 1971)

Held:
April 20, 1971
Assembly Chamber
State House
Trenton, New Jersey

* * *

I N D E X

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STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF BUDGET AND ACCOUNTING

FISCAL NOTE WORKSHEET

FISCAL NOTE OFFICER: J. J. Coll

DEPARTMENT: [illegible]

A. A Fiscal Note Estimate and Statement are requested on attached bill:

YEAR	ASSEMBLY	SENATE	CROSS REFERENCE	NEW	UPDATE
1971	2139			☒	☐

DIVISION OF BUDGET AND ACCOUNTING (SIGNATURE): [illegible] — DATE:

LEGISLATIVE BUDGET AND FINANCE (SIGNATURE): [illegible] — DATE: 2/9/71

B. DOLLAR ESTIMATE	CURRENT FISCAL YR. 1970 to 1971		FISCAL YEAR 1971 to 1972		FISCAL YEAR 19[illegible] to 1973	
	OPERATING DEPT. (a)	DIV. BUDGET & ACCOUNTING (b)	OPERATING DEPT. (c)	DIV. BUDGET & ACCOUNTING (d)	OPERATING DEPT. (e)	DIV. BUDGET & ACCOUNTING (f)
1. Revenue						
State Funds	313,183		407,136		568,124	
Local Funds						
2. Expenditure						
a. Salaries						
State Funds	60,840		75,780		79,572	
Local Funds	NA		NA		NA	
b. All Other						
State Funds	8,550		7,850		7,800	
Local Funds	NA		NA		NA	
c. State Aid						
d. Capital Construction						
State Funds						
Local Funds						
3. Total (Items 2a, 2b, 2c and 2d)						
State Funds	69,390		83,630		87,372	
Local Funds						
4. Net Surplus (Item 1 minus 3)						
State Funds	243,793		403,506		480,752	
Local Funds						
5. Net Deficit (Item 3 minus 1)						
State Funds						
Local Funds						

C. STATEMENT	a. Operating Department	b. Division of Budget and Accounting
1. How and in what amounts will state funds be affected in the period beyond the above estimate?	State Surplus should increase 25% annually on short range projection and at a much greater rate on long-term projection.	
2. What are the sources for the above estimate?	Television fact book, 1969-70 Edition projected on historical rate of growth.	
3. If no dollar estimate can be made, give reasons.		
4. Other comments	State funds: .1% Gross Receipt PUC Assessment. 8.2% State Gross Receipts and Franchise Tax	

D. CERTIFICATION (I certify the above data to be accurate)

DEPARTMENT SIGNATURE: John J. Coll — DATE: 4/5/71

☐ Approved as submitted by Department ☐ Approved as amended by Div. of Budget & Acctg.

DIV. BUDGET AND ACCOUNTING SIGNATURE: — DATE:

DEPARTMENT

BB F-2 (REV. 1/26/70)

. SUPPORTING DETAILS TO FISCAL NOTE

DEPARTMENT OF PUBLIC UTILITIES

ASSEMBLY BILL NO. A2139

Personnel:

3. Salaries:

	Add'l. No. of Employees	Fiscal Year Current	Next	Following
Attorney	1	$15,000	$15,750	$16,540
Engineer, (CATV)	1	12,600	13,200	13,860
Rate Analyst, (CATV)	1	10,500	21,000*	22,050
Principal Clerk Steno	1	6,300	6,600	6,930
Principal Clerk	1	6,300	6,600	6,930
Employees Benefits 20% Pension, H & W etc.		10,140	12,630	13,262
TOTAL SALARIES	5	60,840	75,780	79,572

4. All Others:

Annual Rent 200 sq ft. @ $5.50 per sq. ft.	$ 1,100	$ 1,100	$ 1,100
Furniture & Fixtures	600	200	100
Telephone	600	600	600
Travel Expense	600	600	600
Postage	150	150	200
Court Reporting Expense	3,000	3,000	3,000
Printing & Stationery	500	200	200
Contingencies	2,000	2,000	2,000
TOTAL COSTS OTHER	8,500	7,850	7,800
TOTAL OPERATING COSTS	$69,390	$83,630	$87,372

*One additional CATV Rate Analyst

1971-1972 fiscal year

DEPARTMENT OF PUBLIC UTILITIES
FISCAL NOTE A2139
SUPPORT ESTIMATES REVENUE
SL, A, C, AND E

Fiscal Year	Estimated Revenues (a) No Operators	(b) Gross Operating Revenues	Estimated Revenue[1/] Certifications	1%(b)	Total
1970-71	26	$3,757,620	$1300	$3758	$5,058
1971-72	36	$5,260,680	$ 500	$5,261	$5,761
1972-73	46	$6,838,860	$ 500	$6,839	$7,339

1/ Estimated additional revenue to be collected by the Tax Division for gross receipt and franchise taxes:

1970 - '71	$308,125
1971 - '72	431,375
1972 - '73	560,785

NEW JERSEY STATISTICS

As of 2/7/69:

26 operating systems served approximately 63,000 subscribers.
50 systems franchised not operating.
70 systems pending approval of franchise.

ASSEMBLY - STATE OF NEW JERSEY

COMMITTEE ON TRANSPORTATION AND PUBLIC UTILITIES

HEARINGS ON COMMUNITY ANTENNA TELEVISION SYSTEMS
TUESDAY, APRIL 20, 1971

MEMORANDUM ON BEHALF OF THE BOARD OF PUBLIC UTILITY COMMISSIONERS, DEPARTMENT OF PUBLIC UTILITIES

The New Jersey Board of Public Utility Commissioners recommends enactment of Assembly Bill No. 2139 (1971) which would give jurisdiction to the Board of Public Utility Commissioners over community antenna television systems (CATV) operating in New Jersey.

The Board which consists of William E. Ozzard, President and Commissioners Anthony J. Grossi and George Wallhauser, Jr. supports the purposes of A 2139. It is the contention of the Board that the CATV industry should be subject to regulation on the state level for the following reasons:

1. CATV systems have characteristics of public utilities in that they (a) operate as a monopoly within their franchise areas, (b) use public streets and highways along which their cables are strung, and (c) offer their service to the public.

2. The industry is expanding in the State of New Jersey and unless territories and franchise rights are regulated on the state level, service territories will grow without realistic boundaries and reasonable limitations upon improper competitive aspects.

3. The public should be protected from those who lack the required know-how and financial means to provide safe, adequate and proper service.

4. CATV operators should be required to maintain a high quality of service at reasonable rates.

In 1965 the Board of Public Utility Commissioners submitted to the office of the counsel to the Governor a draft of a proposed bill that would have given the Board jurisdiction over CATV. As a result S 160 and S 206 were introduced in that year.* Those bills were similar to A 2139 in their basic approach to placing CATV under jurisdiction of the Board. By amendment of R.S. 48:2-13 community antenna television systems were defined as public utilities. This is the same method found in A 2139.

* S 160 was initially introduced; because of a printing error in the wording of the section amending R.S. 48:2-13 when the bill was introduced S 206 was introduced in its place.

Because problems with respect to regulation of any industry are often "built-in" prior to regulation, A 2139 should be enacted as soon as possible in order to avoid such problems and thus facilitate regulation in the public interest. However in the event the bill can be amended without unreasonably delaying passage the following comments are submitted for your consideration:

1. Amend Section 1(a) to exempt antennas on apartment houses,motels and hotels for the sole use of tennants from the definition of community antenna television systems.
2. Specify that the $50.00 application fee required by Section 3 is in addition to assessments made under R.S. 48:2-59 et seq. which provide for annual assessments of public utilities under the jurisdiction of the Board.
3. Section 7, which deals with rates and charges, seems to be aimed at maintaining minimum rates rather than "just and reasonable" rates which is the phrase generally applied to public utility rates. See R.S. 48:2-21, 48:2-21.1 and 48:2-21.2. It appears advisable to delete this section. The Board could then apply the various sections applicable to rates found in Title 48.

4. Section 8 requires the Board to revoke a certificate where service is rendered outside the territory specified in the application. This mandatory action imposed on the Board appears to be too severe and could result in customers within the operator's certificated area being deprived of service. It is recommended that this provision be deleted. Title 48 contains various penalty provisions and permits the Board to order public utilities to refrain from improper activities.

5. Section 9 seems to incorrectly refer to Section 4 in its reference to criteria. The proper Section appears to be Section 5.

6. Section 11 is inconsistent with R.S. 48:3-10 which requires the Board's approval of sales of public utility stock to another public utility or any sale of public utility stock which would vest a majority of interest in the transferee. The sale of less than 25% could result in a change in majority of interest. It would seem advisable to specify that this section is in addition to R.S. 48:3-10.

In the event amendments would delay passage of A 2139 it would be more in the public interest to enact the bill in its present form and seek amendments at a later date.

F. G. Forlenza

FELIX G. FORLENZA, CHIEF COUNSEL
BOARD OF PUBLIC UTILITY COMMISSIONERS

Statement by Richard C. Leone

before

The Committee on Transportation and Public Utilities,

Assembly of New Jersey

April 20, 1970

My name is Richard Leone and I am Director of the Center for Analysis of Public Issues. Thank you for your invitation to appear before this committee.

The Center is a non-profit research corporation established in the spring of 1970 with foundation support. Our purpose is to examine the effectiveness of public policies and public agencies at the state and local level in New Jersey and nearby states. The Center's student interns, working fulltime during the summer and part-time during the school year, assemble the data and analysis for its public reports. The Center has a small year-round staff. We have published reports on automobile insurance, consumer protection, and attorneys' fees in local bond issues.

For more than five months, staff members, assisted by students from Rutgers and Princeton University, have been studying cable television. We determined early in our analysis that this new medium raised complex and far-reaching questions of the public interest. We also discovered that there had been surprisingly little public scrutiny, particularly at the state and local level, of the questions raised by current developments in the cable industry. In recent weeks, of course, there has been considerable publicity about CATV, particularly concerning impropriety in the granting of local franchises. But even had this not occurred, we believe that cable television merits immediate attention by public bodies and quick action to protect the public's interest.

Our report is still in the draft stage. Many important questions remain unresolved. We believe, however, that these hearings are important. We are ready to put forward some tentative conclusions based on our analysis. The judgments put forward today, however, are subject to reevaluation.

These hearings can be an alert to the state and local governments. 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. We believe that many towns and cities already have given away much -- perhaps more out of ignorance than design -- of the public's interest in this area.

The potential of cable television has been underestimated at almost every stage of its development. As you know, the medium began as a master antenna system for communities which could not receive strong signals over-the-air. Bu the coaxial cable offers much more than simply a mechanism for providing such communities with television signals. It radically changes the future of the whole broadband communications industry by providing an almost unlimited potential channel capacity.

Let me take a moment to talk about the scarcity of over-the-air broadcasting. Given competing uses, the number of television channels is limited to roughly 66. Given the requirements of distance and separation on the channel spectrum for over-the-air broadcasting, individual channel assignments are limited for any community. New York, for example, has the largest number of channels available. But for New York to use channels 2, 4, 5, 7, 9, 11, and 13 on the VHF spectrum, every community within 170 miles of the city is prohibited from using these channels and, indeed, within 60 miles, most of the adjacent channels are prohibited. Three-quarters of all viewers see four or fewer channels.

Our report will deal in some detail with questions raised by this scarcity and also on the implications of cable television for this situation. In general, one of the significant consequences of the wiring of communities is that television broadcasting no longer need be a scarce resource, limited simply to the wealthy and large corporations. Since local groups, education organizations, politicians, businesses and governments will suddenly find it easy to reach people through television, we ought to expect a revolution in information and communications. We will be able to attack directly to the most pernicious development in American politics: the increasing cost of television advertising. I might add here that for the first time, state legislators, for example, will be able to consider reaching, through television at a reasonable cost, the specific constituency which they represent.

I don't wish to belabor this discussion of cable potential. They will be covered rather fully in our report. I would like to focus the balance of my remarks today on the question of state regulation and the role of the state in the development of cable television.

Early cable development proceeded with scant public regulation. The Federal Communications Commission ruled in 1958 that it did not have jurisdiction over CATV. But the growth of cable television brought pressure from the Congress and, more importantly, the FCC's major constituency, the over-the-air broadcasters. By 1966, the agency issued a "second report and order" which asserted its authority over all cable systems in the nation.

The first orders by the FCC set only minimum requirements for cable television. The Commission's general purpose was the protection of over-the-air broadcasting, rather than the creation of a framework of public regulation for a new medium.

Without going into a detailed chronology of FCC action, let me select a few highlights of the Commission's role in CATV. Under the first order, systems were required to carry all local stations, an eminently reasonable regulation since most television sets are unable to receive over-the-air broadcasting once connected to cable. A non-duplication provision was introduced which prevented showing programs imported from distant stations on the same day that they were available locally.

In 1966, the FCC focused especially on the nation's hundred largest markets. In these markets, a cable system can import signals only if it proves that such importation would not harm local stations. The growth of cable TV has been retarded in the hundred largest markets comprising nearly 90 per cent of the nation's population.

The FCC, in 1968, further extended its limits on the importation of signals by ruling that the limitation of importation of distant signals would be imposed within a 35-mile radius from major market communities. The prohibition is absolute in the sense that it is not subject to a hearing or waiver as under the earlier "second report and order." More importantly, the FCC ruled that, until this 1968 proposal was acted upon finally, cable companies had to operate as though it were, in fact, a regulation. This amounted to a total ban on the importation of distant signals within a 35-mile radius of the hundred largest TV markets.

As you know, the Commission has recently concluded an extensive set of hearings on its proposals for cable television. Many of these are far-reaching but I'll only mention them briefly here.

1. Franchise fees should not exceed two per cent of the system's gross revenues.
2. Technical standards to be imposed by the federal Commission.
3. Minimum channel capacity regulated at the federal level.
4. A requirement that two-way transmissions be built into every system.
5. Further restrictions on cable ownership, perhaps to limit the size of any single cable company.
6. The requirement that there be a local channel available for community use.
7. Some detailed proposals concerning the allocation of channels to various uses.
8. Various proposals, including substitution of advertising, to protect the financial position of over-the-air broadcasting.
9. The proposals relating to educational and public broadcasting channels, including one which would allocate five per cent of the gross revenues of cable television companies to the Corporation for Public Broadcasting.
10. A proposal to establish some basis for copyright payments by cable television operators to copyrighted program material.

FCC action will change the industry, but, thus far, cable development has been largely a product of relations between local government and cable operators. The pattern has been to establish a franchise, in effect a monopoly, for a particular cable operator. This general right to wire a community often extends for 25 to 30 years. We have looked in detail at the franchises and contracts around New Jersey. I would like to discuss them for a few moments here before turning to the specific proposals for state regulation and Assembly Bill 2139. Our detailed analysis of these franchises will be presented in a full report by the Center, soon to be released to the public.

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.

Cable service predictably first appeared in areas farthest removed from New York and Philadelphia, and even today, more than half of the operating systems in the state are located in the counties of Atlantic, Cape May, Ocean, and Sussex.

During the 1960s, CATV expanded into areas of the state which still enjoy substantial over-the-air reception. Burlington County, for example, which receives clear signals from three network affiliates in Philadelphia, now has 18 CATV franchises, the largest number of any New Jersey county. Most of the growth, however, has been in areas removed, if not from Philadelphia, at least from the large number of stations in New York. The incentive for installing cable systems in these parts of the state was the possibility of bringing in the independent signals from New York City. As indicated above, this hope for increase in entertainment viewing has been stymied by the FCC actions over the past several years.

Most New Jersey systems remain small, with the exception of the 20,000 subscribers in Atlantic City; the bulk of cable systems have fewer than 2500. And most of the contracts under which cable companies operate are primitive. In this area, the public interest has been largely ignored.

In the absence of comprehensive state or federal regulation, municipalities have played a predominant role in regulation and shaping the growth of cable television. This is the one level of government which, as a rule, has taken public action. For CATV firms must secure local permission, usually in the form of a franchising ordinance or resolution, before installing a CATV system.

In our study, we tried to determine how well informed local officials were about the technology and potential of cable television, what proceedings and criteria were employed to award franchises, how was the public interest both in terms of viewers and possible users of CATV represented in franchise proceedings, and who benefits most from the terms of existing franchises?

We found little knowledge by local officials of what was involved in cable franchising and what areas of the public interest were at stake. We found the franchising procedures themselves deficient in several respects. In a great many communities, there was no competition for a franchise. Franchises simply were awarded on a "first come, first served basis" with no public bidding -- none of the things which have become familiar, for example, in a local school or sewer construction project.

Another characteristic of the franchise proceedings was the great haste with which local governing bodies acted. Typically, a franchise was presented and passed in two or three weeks time. In short, the public not only missed the potential benefits of competition but was also left without the expertise of those who do have some knowledge about cable television, since local officials almost never sought outside aid.

We also found that political influence may have been a factor in the granting of franchises. Many prominent New Jersey political figures are active in the management or on behalf of cable television companies.

Nearly all cable firms pay local governments for the privilege of operating. Some franchise ordinances go into detail about the way these rates will be set and administered. Others say little or nothing about them.

These fees raise several questions. First of all, the legal right of the municipality to levy what amounts to a tax on interstate commerce may be doubtful. In addition, the state legislature has not approved this levy in any form. Second, most payments contain no performance incentives. Most are flat percentage of the gross and do not encourage expansion of the system. Finally, the payment places local government in the dual role of regulator and business partner in the cable firm.

Subscriber rates likewise vary, both in amount and degree of government oversight. Installation fees vary from $9 to $75, with apparently no direct relationship to the cost of establishing the system. Subscriber rates average about $5 a month.

We indicated earlier that the present cable technology makes 40 and 50 channel systems feasible and, in many parts of the country, systems with more than 20 channels are being built with no great fanfare. Yet, in New Jersey, systems of this size are rare.

Most franchises also award very long contracts. We examined a sample of 24 franchises on this question. Even at this early stage of cable development with the many uncertainties attendant in new technology, 20-year and 25-year contracts are very common with a few as long

as 30 years. Only two towns had ten-year agreements; four others were for 15 years. Many students of cable find little justification in contracts which extend beyond ten years.

Most franchises require that the firm complete its CATV system by a certain date and that a performance bond be posted. But a large number of communities have granted franchises which leave them and their subscribers powerless to deal with a "no-show" franchise.

Franchises also are uneven in their requirements for technical performance by the operator. Many are vague; only a few have detailed technical standards. Nine of the agreements do not even mention these. This is a strange omission in a business which is based on providing clear reception.

While most franchises do not confer the exclusive right to install a cable system, there are many reasons why cable television is likely to be a monopoly in a community. And, since some franchises are awarded to one firm after other bids have been rejected, it is clear that the intent of local government is to establish a single cable system. In this sense, regulation of a monopoly is the task before local governments. And, yet, they have little experience, data or technical knowledge on which to base public oversight.

Finally, the access of educational groups, community groups, and governments is not insured in most franchises. In New York City, new franchise provisions require substantial numbers of channels to be made available for such uses. But we found only three communities which included any effective public access provision.

The overall picture, then, is a sad one. And it appears obvious that in present circumstances, the state must act and act quickly. No one can foresee exactly what role the federal government will play in future cable regulation. While it might potentially preempt all regulation, it is not likely to be the case in the near term future. In this situation, it seems obvious that an immediate regulatory framework must be developed and applied to cable television in New Jersey.

A Role for the State:

The FCC recognized this need in its 1968 notice of proposed rule-making. It said, "We do not now urge the application of our jurisdiction to the licensing of CATV systems by the FCC. We do, however, believe that local, state, and federal governmental agencies must face up to providing some means of consumer protection in this area." Subsequently, the Commission made clear that the state and local roles will be defined by those areas that it (the FCC) does not choose to preempt.

Five states, Connecticut, Nevada, Rhode Island, Vermont, and Hawaii, now have statutes on CATV. In each case, they have referred CATV to state utility commissions. Beyond this consistency, there are wide variations in

the approaches taken. Some states subject cable television to the usual utility provisions, while others have additional and sometimes ambiguous enabling statutes. In Nevada, for example, the commission is charged to "encourage and promote harmony between CATV companies and their subscribers." The states vary the size a system must be before it comes under jurisdiction. But, by and large, the provisions of the states' statutes are derivative from the fact that they define community antenna systems for the first time as public utilities.

Recently, the New York State Public Service Commission recommended that CATV operations be subjected to state regulation. In the New York State plan, the PSC would approve local franchises; those applying for such franchises would file simultaneously with the municipality and the state commission. The New York State report on this subject is detailed and, while the Center does not agree with all aspects of it, we commend it to the committee's study.

The report mentions two services which should be provided in our state. The first is preparation of a model franchise for use by municipalities of differing sizes and the second is consultative services for municipalities seeking guidance. As it now stands, municipalities usually have to rely on the cable TV operator to provide them with a "model" ordinance.

I am sure this committee also is aware of the model state Community Antenna Television System Act which was developed after the resolution by the 1965 annual convention of the National Association of Regulatory Utilities Commissions. A somewhat weaker act, the Model State CATV Regulatory Surveillance Act, was developed in 1970 after industry pressures. Both provide much useful material.

Perhaps a word about the industry's position is in order at this stage. Given the present atmosphere of local scandals, some industry spokesmen have called for total regulation by the FCC. On the basis of the Center's research, it seems unlikely that this proposal will solve many problems of the industry. The FCC has neither the personnel, the special knowledge of local conditions nor the contact with local needs required to regulate all aspects of CATV.

We all are seeking a way out of the present mess -- a way to improve on the present franchise arrangements. But throwing the problem to the FCC will not solve it. Indeed, if there has been any agency which has failed continually in its responsibility it has been the Commission.

Nor can we rely entirely on Assembly Bill 2139. The bill, as everyone should realize, is a starting point for discussion, not a solution to the problem. There is much work for the state in this area. Its task is to try to set matters right. Existing franchises should be required to come into compliance with any regulations promulgated at the state level. This is one of the most powerful arguments for state action, for it offers the opportunity to reassert the public interest in many existing local franchises. Where franchises are unexercised -- in the sense that no actual construction has begun -- a

state agency might consider each applicant on a case-by-case basis.

We do not, however, favor total regulation by the state. Franchises approved by municipalities simply would not become effective until approved by the state. Given the recent history of cable TV, it might be argued that many municipalities are corrupt, inefficient, or show favoritism in the awarding of franchises. Yet, there is no reason to believe that the state will always be free from these flaws. And, of course, were a central agency to follow such practices, the costs to the public would be more devastating than those incurred when an occasional municipality errs.

In New Jersey, there is a desperate need for the state to set up guidelines for franchise awards -- guidelines which include non-exclusivity, notice and hearing, advertising for bids, and 10-year limits.

We also believe that the state should establish general guidelines for rate regulation. Because circumstances differ, a sliding scale might be the best approach. The rate regulation question is complex. The ACLU and several foundations, for example, have submitted briefs to the FCC arguing that cable TV should be treated as a common carrier. New Jersey, on certain questions (e. g. concerning local origination or programs) might wish to treat cable as a common carrier.

The state also could act to insure the quality of existing and proposed service. As mentioned above, most cable contracts are deficient in technical standards. It would be desirable for the state to anticipate the technological developments of cable by requiring that certain capacities be built into systems. Two-way transmission, a large number of channels, and facilities for interconnection with other communities are examples for such requirements.

We believe that the state should set up guidelines for franchise abandonment and termination. Such actions, including cancellation by a municipality, could create difficult situations for television viewers and for the community. In other areas of public utility regulation, there are precedents for confusion and breaks in service because franchises included no clear guidelines in the area. Existing cable television franchises likewise are deficient in providing for these contingencies.

We have argued consistently that more consideration should be given to non-profit and public ownership of cable television operations. We argue now that a provision be made for easy conversion of existing and potential franchises to such ownership. No one can foresee clearly the future of this medium; we would do well to preserve the possibility of changes in ownership of this type for the future. The possibility of conversion also should include specifically the case of a municipality which decides it wishes to acquire a CATV system.

Finally, the state obviously should seek general franchise provisions to compensate for existing deficiencies, including control over transfers and renewals, better reporting procedures, more frequent inspections, and perhaps higher level performance bonds and insurance.

Our analysis suggests that there are many aspects of cable television regulation and many areas of potential CATV development which are not directly analogous to any of the activities now regulated by the PUC. In New York City, for example, a special Office of Telecommunications has been established to oversee the franchises awarded for various portions of that municipality. One might imagine a similar locus of expertise established within the state government -- though perhaps under the PUC -- to oversee cable television development.

The state's needs are such that mere regulation is not enough. Let me pose this analogy: the PUC does important regulatory work in the areas of railroads and buses. Yet, since both these services are important to the state, we have relied heavily on the Transportation Department to develop a continuing state policy and to implement it. Likewise, in cable television, there is a need for basic regulation to insure the public interest, to insure equal access, and etc. But there is equally, and this is especially true in New Jersey, a need for intelligent planning to develop a broadband communications network for the state. The Legislature, thus, should recognize that if jurisdiction is granted without providing the resources for creating new competence in the PUC, the state may be worse off that it is today. For it will have the appearance of tough and efficient regulation, but not the substance. The Legislature has a responsibility to insure that the Commission is provided with the necessary assistance to discover and implement the public interest in this area.

The PUC, in turn, must sort out the issues which cut across levels of government; recognizing that certain questions, such as carriage of television signals, importation of distant signals, and the like, are clearly the federal government's concern, while others, such as technical standards, ownership, common carrier status, etc. are joint concerns of the state and the federal governments. The PUC, we think, should be aggressive in asserting state and local primacy in a number of key areas, including franchising, rate regulation and, to some extent, access to programming.

The state's most creative role, in short, is less as a regulator than as a promoter of the communications needs of its citizens. The state might wish to require that all local franchises include provision of a state channel, so that over time, there would be, in effect, a state network. This plan would have direct consequences for the Public Broadcasting Authority and, indeed, for the costs associated with developing further facilities for the Authority. The Higher Education Department might act to develop a statewide higher education channel. And the Education Commissioner should work together with local superintendents to insure that channels are reserved for local educational uses. All of these matters would be facilitated if a state agency had real power in the cable television field. It might even be worthwhile to discuss the possibility of tapping a small fraction of cable operators' revenues to support the statewide educational and public broadcasting. This proposal, of course, would be dependent upon final resolution of such questions at the

federal level.

A state agency, too, should help to encourage the development of non-profit corporations as operators of cable television.

It should seek coordinated arrangements where more than one community is required to create a viable CATV system. Along this line, the state also should insure compatibility between systems, especially where political constituencies overlap several communities.

We have a special interest in shaping cable development which is quite different from that of most other states. Cable TV offers New Jersey its first opportunity to have a communications network which, given enough time, could give the state a new sense of community. One of the consequences of this free flow of information might be an improvement in the quality of public decisions.

There are numerous public bodies which have an interest in the future development of cable in the state.

We need a state policy in this area.

New Jersey already has invested in a Public Broadcast Authority and that agency already is in deep financial trouble. If we must look elsewhere for our future communications system, cable development may offer an answer.

In summary, the Center's research indicates that Assembly Bill 2139 has a merit as a starting point. But it is in no measure a solution to the problems posed by cable TV. Nor does it offer, in any sense, a mechanism for achieving the kind of balanced development and statewide policy needed in this area.

I urge that the Legislature consider the need for an in-depth analysis of the problems and promise of cable TV. The state may wish to create a study group to develop an imaginative and far-reaching program for full utilization and realization of cable television's potential.

I hope these comments will be helpful and thank you once again for the invitation to attend this hearing.

COAXIAL COMMUNICATIONS OF BERGEN COUNTY, INC.

My name is A. William Martin, 354 Main Street, Ridgefield Park. I've been in the public relations business there for the past 20 years. On March 1st, 1971, Coaxial Communications of Bergen County, Inc. was organized. As one of the organizers of the company, I was named executive vice president to conduct its operations in New Jersey. We 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.

In addition to myself, Connie Mack, Jr. is president; Dennis J. McGillicuddy is vice president and treasurer, and Dale M. Race, of Woodcliff Lake, New Jersey is vice president and secretary. Both Mr. Mack and Mr. McGillicuddy are officers and directors of Coaxial Communications, Inc.

The national company was organized and began operating in 1967. A copy of the company's franchises, applications and their status is available for those wishing to examine it. In addition to those shown on this list, a franchise was granted last January in Hempstead, Long Island, and construction of that system is underway. On May 1st, the first phase of the system being installed in Columbus, Ohio will be placed in operation.

Another feature of the company is that it is privately financed and privately owned. Accepted is the philosophy that it will be four or five years before a return may be expected on the investment. There are no pressures to pay dividends to stockholders.

Coaxial of New Jersey's program includes a non-exclusive franchise, the payment to the community granting the franchise of a licensing fee equivalent to 25 cents per home, a tax on net operating revenues each month payable to the municipality, acceptance of control of its rate structure by the municipality granting the franchise, and the posting of a performance bond

guaranteeing to begin construction and operation within specific periods of time, usually six to eight months for construction and 20 to 24 months for operation.

I do not plan to discuss these factors in detail, because Mr. McGillicuddy is here and he is much more qualified than I am, at this point, to present this information.

Our present plans and existing installations are up to 20 channels. By the time we can begin operations anywhere in New Jersey, we hopefully, ancitipate 40 channels. In this connection, I would point out that our planning includes a free channel for municipal use, another for a local Board of Education, and one for police and fire use; all with a two-way conversation capability. There will be channels for programming for ethnic groups, for local school sports and civic events, plus, of course, all regular UHF and VHF commercial channels. There is more, too, but Robert Pawley, in charge of programming, is here to speak more specifically on this subject.

Mr. McGillicuddy also will present our views on state legislation covering cable TV operations. An attorney, as well as operating officer, he has appeared before other state and local governing bodies to discuss this subject.

We believe in free competition to service the people of a given community. Not assigned territories or municipalities on an exclusive or monopolistic basis. We ask a non-exclusive franchise because we feel that if we should not provide desired service, the municipality should have the right to grant a franchise to some other company if it so desires.

Behind our small, as yet, New Jersey corporation are all the facilities and services of the national company. These include our own

engineering and design, our own equipment production for both the service and the actual construction of the system, and the national company's financial strength, experience and programming capabilities.

Available for any who wish one, a brochure on the company, and biographical material on the national officers and staff. However, with all this you may be assured that as we move ahead we will retain local management of the operation, in conjunction with each municipality, and we will be employing New Jersey people, where possible, as jobs become available.

Cable television has received some bad publicity in some areas over the past three months. We believe we can overcome this stigma by proving that people living and working within the state to which they belong can demonstrate that they can serve the people of a community best by becoming part of that community.

Referring once again to state control, but not Public Utility Commission control, we believe that any out-of-state cable TV operator should be required to register with the State of New Jersey in much the same manner as insurance companies must do. We believe full financial disclosure should be required insofar as intra-state operations are concerned. We believe, further, that municipalities should have protection against those who seek a municipal franchise with a view to holding it and eventually profit because they have neither the necessary financing, knowledge or capability of living up to the terms of the franchise.

As I said, gentlemen, Coaxial Communications of Bergen County is almost two months old. There are many companies much older. But, we feel that we have something new to offer in the arena of public service. I can only add that, at the moment, we do not have all the answers, but I guarantee that

if anyone; legislator, municipality, or individual citizen wants information, we'll give it to him. If we don't know the answer to a question, we'll get it. If necessary, we'll make any department head of Coaxial Communications, Inc.; be he planner, designer, engineer or programmer, available for consultation, explanation or advice anytime the members of this Committee, the Legislature or any State agency would like to have them.

Much of what I've said was announced Sunday in a press release. Copies of this also are available should you want them.

Thank you for hearing me. I hope I've laid sufficient groundwork for Mr. McGillicuddy and Mr. Pawley to discuss these matters in more detail because they are as much a part of Coaxial Communications of Bergen County as those of us who are privileged to reside in this state.

Thank you!

OFFICERS COAXIAL COMMUNICATIONS, INC.

Barry Silverstein	Chairman of the Board
Lorenzo B. St. Jacques	President
Dennis McGillicuddy	Vice President - Secretary
S. L. Highleyman	Executive Vice President
Connie Mack, Jr.	Franchising Executive
Frank Merklein	Programming Executive
Steve McVoy	Vice President - Research & Development
Abram E. Patlove	Vice President - Operations
Mikel M. Rollyson	Assistant to the Chairman
William M. Kaiser, Jr.	Treasurer & Controler
Michael McGillicuddy	General Counsel (In House)
Fred R. Rutledge	Small Systems General Manager

BARRY SILVERSTEIN - CHAIRMAN OF THE BOARD

The founder and prime mover behind the growth of the Company, Mr. Silverstein has had an active career as a business executive and investor since graduating from the University of Florida and the Yale University Law School.

After engaging in a number of successful entrepreneurial ventures, he decided to semi-retire from business at the age of 33 and returned to the University of Florida to accept an appointment as a Professor of Law.

While at the University of Florida he became an investor in real estate and various small companies in the area. One of these investments was in Micanopy Cable TV, a predecessor of the Company. After studying the potential opportunities involved in the CATV industry, he decided to devote all of his time and financial resources to the development of Micanopy into one of the leading companies in the field.

LORENZO B. ST. JACQUES - PRESIDENT

Mr. Lorenzo B. St. Jacques came to Coaxial from Olin Mathieson Chemical Corporation in 1968. At Olin Mathieson, Mr. St. Jacques was General Projects Manager and was responsible for the supervision of approximately 500 outside construction projects. He designed and supervised construction of the English Squibb Buildings, the Irish Pharmaceutical Cracking Plants, the Shot Shell and primer plants in Rome, Italy. In Mr. St. Jacques' last year with Olin he was named Director of Construction in which position he was responsible for over $80 million of construction projects per year. When Mr. St. Jacques came to Coaxial, he was made Vice President of Construction. In this capacity, he was responsible for the entire construction operation including justification of construction, production, procurement, fabrication of components, and engineering. Mr. St. Jacques was made President of Coaxial in April of 1970.

DENNIS J. McGILLICUDDY - VICE PRESIDENT

Mr. Dennis J. McGillicuddy is the Vice President of Coaxial Communications, Inc. Before coming to Coaxial, Mr. McGillicuddy was an instructor at the University of Florida College of Law in Gainesville, Florida. He later served as a law clerk for U. S. District Judge William A. McRae of Jacksonville, Florida; and also was associated with the law firm of Holland and Knight of Lakeland, Florida. While he was enrolled in law school, Mr. McGillicuddy was editor-in-chief of the University of Florida Law Review, was a member of the ORDER of the COIF,and was tapped as a brother in Florida Blue Key. Mr. McGillicuddy came to Coaxial in 1968.

S. L. HIGHLEYMEN - EXECUTIVE VICE PRESIDENT

Mr. Highleyman joined the Company direct from his position as chief financial officer of The Walter Reade Organization, a diversified entertainment and communications enterprise with a motion picture production and distribution division; and education films division; a division publishing books and magazines; a division doing specialty printing for the record industry; and a national chain of 80 first run theatres. Prior to that he served in various senior executive and administrative capacities for the group of public companies then controlled by Patrick J. Frawley, Jr., including Eversharp, Inc.; Schick Safety Razor Co.; Technicolor, Inc.; Creative Merchandising, Inc.; Schick Electric, Inc.; and Schick Investment Co., which in turn controlled the Houston-General group of fire and casualty insurance companies. His earlier experience was as a lawyer specializing in corporate finanee matters with O'Melveny & Myers, the dominant law firm in Los Angeles (where Mr. Frawley was one of his clients), and as a partner of the international law firm of Coudert Brothers, resident in London. He is a graduate of the University of Miami (Bachelor of Business Administration, and a Master of Arts degreee in economics and statistics), The Yale University Law School, and Columbia University's Parker School of International and Comparative Law. He was a staff officer (Captain) in the U. S. Air Force during the Korean War.

Connie Mack, Jr. - Franchising Executive

For the first eighteen years of his professional career, Mr. Mack was associated with his father, Cornelius McGillicuddy (Connie Mack) in the operation of the Philadelphia Athletics American League Baseball Club. While with the A's he served as Treasurer and Director devoting a major portion of his time to concessions and public services. In 1951, Mr. Mack moved to Fort Myers, Florida, where he owned and operated a small fleet of shrimp boats. In 1956, he obtained a Real Estate Brokers License and subsequently became associated with Gulf American Corporation in 1958. For a period of eleven years, Mr. Mack was Senior Vice President of this company. During this time Gulf American undertook and succeeded in the development of numerous Florida projects, including Cape Coral, Golden Gate Estates, Remuda Ranch Estates, and River Ranch Acres. Mr. Mack resigned from his position with Gulf American in early 1969 and became associated with Coaxial early in 1970.

Frank N. Merklein - Programming Executive

Frank Merklein came to the Company from a long and distinguished career in television, video tape development, and CATV. He has served in creative and management capacities with NBC; the Television Bureau of Advertising; Time, Inc. and CBS. He also was a successful consultant in the CATV industry, and has performed special assignments for the U. S. State Department and other governmental agencies.

David S. McVoy - Vice President of Research and Development

Mr. David S. McVoy is Coaxial's Vice President of Research and Development. At age ten, Mr. McVoy was the youngest amateur radio operator in the country. During his high school years, he worked with Yonsie University where he aided in the development of closed circuit television equipment for the University's non-commercial educational FM radio station and the teaching closed circuit system. Before coming to Coaxial, Mr. McVoy was associated with Precision Industrial Design, Newark, New Jersey; he also owned and operated his own television and radio repair shop and his own master antenna installation company in Gainesville, Florida. Mr. McVoy has been with Coaxial since 1968

Abram E. Patlove - Vice President, Operations

Mr. Patlove joined the Company from his position as Executive Vice President of Goodson Todman Cablevision, Inc. Formerly President of Athena Communications Corp., a Gulf & Western CATV subsidiary, Mr. Patlove's 10 years in CATV has included executive positions with some of the nation's major CATV construction and system operation companies. A member of the Board of Directors of the National Cable TV Association, and a writer on CATV topics, Mr. Patlove las been responsible for the development of more than 60 CATV systems throughout the country.

Michael McGillicuddy - General Counsel (In House)

Michael McGillicuddy generally assists the head of the Company's Franchise Department, and provides legal counsel to the Company in its construction activities. A graduate of the University of Florida and of the University of Florida Law School with high honors, before coming to Coaxial he was a law clerk to Warren L. Jones of the United States Court of Appeals for the Fifth Circuit, and an associate with the law firm of Shackleford, Farrior, Stallings & Evans of Tampa, Florida, where he specialized in corporate and tax law.

Fred R. Rutledge - Small Systems Operations Manager

Fred R. Rutledge has been employed in the CATV industry for the past ten years. During this period he has been active in all phases of CATV and Group Management. This experience includes acquisition, franchising, financing, construction, training of personnel, and operation of systems. He served as Vice President and Operational Manager or General Manager of 22 CATV systems.

OPERATIONAL FRANCHISES

A. Coaxial Communications, Inc.

City	Year Issued	Beginning Date	Year 1	Year 2	Year 3	Year 4	Year 5	December 31 1970
Alachua, Fla.	1968	1969	270	--	--	--	--	334
High Springs, Fla.	1968	1969	370	--	--	--	--	425
Branford, Fla.	1968	1969	175	--	--	--	--	200
Chiefland, Fla.	1968	1969	250	--	--	--	--	275
Chipley, Fla.	1970	1970	--	--	--	--	--	400
Cross City, Fla.	1968	1969	405	--	--	--	--	500
DeFuniak Springs, Fla.	1968	1969	360	--	--	--	--	425
Florala, Ala.	1969	1970	--	--	--	--	--	300
Frostproof, Fla.	1969	1970	--	--	--	--	--	225
Jasper, Fla.	1968	1969	250	--	--	--	--	450
Lake Placid, Fla.	1968	1970	--	--	--	--	--	320
Lockhart, Ala.	1970	1970	--	--	--	--	--	80
Madison, Fla.	1970	1970	--	--	--	--	--	360
Micanopy, Fla.	1968	1968	100	110	--	--	--	120
Quitman, Ga.	1970	1970	--	--	--	--	--	400
Samson, Ala.	1969	1970	--	--	--	--	--	220
Wauchula, Fla.	1969	1970	--	--	--	--	--	375

B. Walsh Group of CATV systems

City	Year Issued	Beginning Date	Year 1	Year 2	Year 3	Year 4	Year 5	December 31 1970
Montreal	1965	1966	20,000	40,000	61,000	80,000	--	85,000
Port Coquitlam	1964	1965	2,000	4,200	5,400	8,800	11,000	15,600
Quebec City	1964	1965	1,000	3,000	4,500	8,000	13,000	18,600
Toronto	1967	1968	500	11,000	--	--	--	34,000
Vancouver	1958	1958	1,000	3,000	8,000	11,000	13,000	124,000
Victoria	1960	1961	1,000	5,000	5,000	11,000	22,500	43,500

FRANCHISES UNDER CONSTRUCTION

City	Date Issued	Potential Subscribers
Blountstown, Florida	December, 1967	900
Chattahoochee, Florida	October, 1970	1,800
Columbus, Ohio	April, 1970	200,000
Franklin County, Ohio	June, 1970	50,000
Hartford, Alabama	December, 1970	1,000
Hillsborough County, Florida	April, 1970	30,000
Slocomb, Alabama	September, 1969	900

UNDEVELOPED FRANCHISES - MAJOR MARKETS

City	Date Issued	Population
Grove City, Ohio	December, 1970	13,000
Miami Springs, Florida	November, 1970	13,000
Upper Arlington, Ohio	November, 1970	38,000
Whitehall, Ohio	December, 1970	25,000

STATE REGULATION of CATV

in

NEW JERSEY

Prepared by:
Dennis J. McGillicuddy
April 20, 1971

Good morning, gentlemen.

My name is Dennis McGillicuddy, Vice President of Coaxial Communications, Inc., P. O. Drawer K, Sarasota, Florida. I appreciate this opportunity to appear before you to set forth my views on the subject matter of this hearing, namely, State Regulation of CATV. The issues involved in the question of whether the State of New Jersey should adopt a regulatory scheme covering CATV are complex; the implications arising from the resolution of this question are enormous. And yet, for the most part, the importance of the matter is ignored, as evidenced by the reluctance of those who might be regulated to come before this committee.

So that there is no ambiguity in my position, let me say that I do not think that state regulation of CATV, <u>at this time</u>, is either necessary or desirable. I trust that my remarks will convince you that this opinion is sound. In preparing my remarks, I have attempted not only to be persuasive, but also to be informative so that you may get as fair a presentation of the issues as is possible from one who has already made up his mind about the matter.

At the present time, CATV operators are regulated by local governing bodies, through franchise ordinances or contracts, and by the Federal Communications Commission, through duly adapted rules and regulations. With the exception of five states: Connecticutt, Nevada, Rhode Island, Vermont, and Hawaii, no specific state regulation has been imposed on the CATV industry, although the question is occupying the time of more and more legislative

committees each year. Because of the foregoing fact, a general understanding of the nature of existing regulation, both local and federal, is desirable.

Let us first consider local regulation which generally is contained in franchise ordinances. As I am sure you can realize, local regulation has almost as many variations as there are local governing bodies to enact such regulation; on the other hand, after twenty years of franchising history, local CATV ordinances now being considered throughout the country have some common threads that are relevant to our discussions.

Originally, the basic purpose of a municipal ordinance on CATV was to authorize an operator to occupy public rights-of-way for the purpose of constructing, operating and maintaining a CATV system. From this basic purpose, a number of areas of regulatory concern flowed, leading to provisions relating to the physical occupance of the right-of-way, requirements for approval of construction plans, the right to trim trees, the obligation to relocate an installation if a street grade is changed, insurance and bonding requirements and the like.

Gradually, ordinances were being adopted that went beyond this basic purpose; regulation of rates, or at least some control over rates, was retained by the governing body; also, some broad technical standards for the operation of the CATV system began to be included in the CATV ordinance. These two areas of concern were the first indications of the "awareness" that CATV might be more than just a private business enterprise but in fact was also a matter of public interest. This awareness has blossomed to the point that the implications

of the capacity of a CATV system to disseminate information are being accounted for in requirements for the dedication of channel space for public use.

As part of the material I wish to submit along with my oral testimony, I have a "model ordinance" that my company uses in its applications for the right to operate in given locale. It is much too long to read in its entirety today, but I would, in light of my previous remarks, point out some of the provisions.

Section 3 of our ordinance contains the authorization for us to occupy the public rights-of-way. You will note that our franchise calls for a nonexclusive grant. While as a businessman, I would certainly prefer an exclusive franchise, I cannot in good conscience justify exclusivity. There has been some unfortunate history in our business involving the acquisition of a franchise with no intention of building the system, or less than satisfactory compliance with installation requirements. When this occurs, an exclusive franchise can tie the hands of the municipality because only through court action is a franchise going to be lifted. Naturally, substantial time periods generally elapse before the issue is resolved. The award of a "non-exclusive" franchise avoids such a situation. The municipality is free to issue such additional franchises as circumstances might warrant without fear of protracted litigation.

I can assure you that exclusive rights to a particular area are not necessary for a stable operation. Proof of this is evidenced by the number of non-exclusive franchises as opposed to exclusive franchises now being issued and accepted by CATV companies. I generally recommend, however, that a municipality, depending upon its size, limit its franchises to one, and in some instances, two or three companies, initially. If satisfactory progress in the installation of the system is not being made, then additional franchises can be issued to stir competition.

Section 5 and 6 contain provisions for liability insurance, bonding and specific conditions for street occupancy. These provisions are fairly standard in all CATV ordinances. Section 8 deals with service standards, that is, technical requirements for system performance. As I will discuss later, these provisions will most likely be superseded by federally imposed technical standards.

Section 10 deals with rate regulation. This is an area where I personally believe that minimum regulation should be exercised. CATV service, at least for the present and immediate future, is not a necessity, but an optional service not required for what one might call an acceptable level of creature comfort or intellectual enjoyment. The delivery of commercial television signals as a source of entertainment has been the traditional service of CATV. But its exciting future lies in playing a much broader role in communications. In the commercial aspects of this broader role, all of which are just in developmental stage (I'm referring to fire and buglar alarm protection, shopping and banking by television, pay TV and computer to home hookups, to name a few), premature rate regulation will inhibit the very development of these exciting uses of the coaxial distribu-

tion system. The market place must initially decide the price of a particular service. Then, after experience provides some basis for exercising judgment, the question of extensive rate regulation can be considered.

Section 11 of our franchise calls for an annual payment to the municipality based upon a percentage of gross revenues. In my view, this payment should be viewed as consideration for the grant to occupy the rights-of-way controlled by the municipalities and not as a tax, and should therefore, be set at a level consistent with this concept. But cities do not very often look at it in this light; they see CATV primarily as a revenue source and consequently, the amount to be paid by the operator is the prime concern in the award. When this occurs, the capability to build and operate a quality system becomes secondary, with disappointing results when the time comes for performance under the terms of the award.

Section 12 deals with the "public"uses of the CATV system. It provides for one channel for use by the municipality, one channel for the schools, free service to all city office buildings and school buildings, interconnection of the schools for educational programming, public emergency broadcast capabilities, the reservation of six megacycles of bandwidth on the system for two-way voice and data transmissions for city use, and the requirement that a local studio be maintained for community programming. As I mentioned earlier, the public uses to which a CATV system can be put are now being recognized in CATV ordinances. As long as there is a proper balance, I am very much in favor of this.

I will now turn to a brief discussion of the areas of regulatory concern to the Federal Communications Commission. Until very recently, the FCC looked

at CATV with its regulatory eye from only one perspective, the impact on off-the-air television broadcaster. Thus, the prime area of regulatory concern has been been what television signals can be carried by a CATV system. Regulations presently in effect limit a CATV system operating in the nation's top 100 television markets, where the bulk of the population now resides, to the carriage of broadcast stations operating only in that market, even though it is technically feasible to carry television signals from stations in other cities. The importation of distant signals is still a burning issue before the FCC, with the latest proposal being to allow the importation of up to four independent, non-network affiliated stations into the top 100 markets. The reason that the question of importation is still in the forefront is that the passive relaying of commercial television broadcast stations is still the primary fare offered by CATV operators. This is gradually changing, as evidenced by what my company and Cablenet International and Mr. Pauley are doing in the area of closed-circuit programming. As the broader role of CATV has become apparent, the FCC has started to take notice. A recent ruling requires all cable operators with over 3500 subscribers to do "local origination", that is produce programs at the local level. More recently, the FCC initiated proceedings and held hearings on, among other things, proposed technical standards and Federal-State-Local relations in CATV regulation. In its Notice of Proposed Rule Making on this latter subject, the FCC said:

"There appear to be three main approaches to the Federal-local relationship:

(i) Federal licensing of all CATV systems. Obviously, for this approach to be effective, considerable resources would have to be made available to this agency.

(ii) Federal regulations, enforced by Section 312(b) proceedings (see also Sections 401(b), 502). This is in effect the approach which we have been following. It is effective in many areas, but clearly has limitations.

(iii) Federal regulations of some aspects, with local regulation of others, under federal prescription of standards for local regulators. This approach recognizes that although practical considerations argue in favor of leaving important aspects of cable regulation to State and local government, cable is nonetheless an integral part of the inter-State movement of electronic communications. United States v. Southwestern Cable Co., 392 U.S. 157 (1968). In these circumstances, it is appropriate for this agency to establish uniform or minimum standards to which local actions must conform. For example, the Commission is promoting cable origination. Clearly, the cable operator should be one of good character, who is serving equitably the areas in his community, or the origination requirement of this agency will be undermined to a great degree. It follows, as we stated in para. 22 of the December 13th notice, that the local entity should focus on these matters (e.g., the legal, technical,

financial and character qualifications of the franchise applicant; the area to be served; the showing as to plans or arrangements for pole line attachments with a public utility or arrangements with a common carrier or other appropriate feasibility plans; the reasonableness of the rates to be charged; the quality of service and repair in specific areas, etc.). Under this approach, these matters would remain with the local entity, but it would certify to this agency, prior to our authorizing the use of broadcast signals as the base of CATV operation, that it had considered them. Further, there could be specifications by this agency of a program of continuing regulation by the local entity of such matters as rates, repair services, expansion timetables.

It appears to us that this third approach has considerable merit, and we therefore request comment on what regulation or standards should be adopted as applicable to local regulation. We recognize the need to consider the more comprehensive (but less frequently encountered) State regulatory efforts in this field and shall cooperate fully with State agencies."

The issue of who should assume control at the local level, the State or the Municipality, was not discussed. This is what I would like to now turn my

attention, inasmuch as most of what I have said to this point has been more in the nature of providing a background for the discussion of state regulation.

I think that any aspect of CATV regulation, regardless from what source the regulation arises, can be classified under one of the following areas of regulatory concern:

1. Licensing of the operator;
2. Rates to be charged for the service;
3. Technical quality of the system;
4. Physical installation of the system;
5. Public use and benefit of the system;
6. Content and source of information distributed on the system.

Each of the above listed "areas of regulatory concern" are, in my opinion, legitimate subjects of regulation. The question is the extent of such regulation in each area and who is best suited to carry out the regulatory scheme.

I think it is clear that with respect to the technical quality of a CATV system and the content and source of information distributed on the system, the Federal Communications Commission has or will shortly pre-empt regulation in these areas. This, I think, is appropriate because both involve matters of national communications policy to the extent that pre-emption should occur. This is not to say that the other areas of regulatory concern do not involve national communications policy; they do, but not to the extent that pre-emption should occur now.

I have already expressed some of my views about rate regulation. Rate control is generally retained by the local governing body, although this control is not exercised in the same manner that a Public Service Commission exercises rate control. There is no consideration of rate base or return on invested capital. Local governments just don't have the expertise to do this. And, because CATV, in its present state of development, cannot be logically considered in the nature of a public utility, extensive rate regulation is not appropriate. The minimum regulation now being exercised at the local level is sufficient for the present. When and if the time comes for utility-type rate regulation, I believe that regulation at the state level would be best because municipalities cannot possibly build up and maintain the expertise necessary for fair and effective regulation.

Area of concern number 4, physical installation of the CATV system, clearly falls within the competence of the local governing body, and it should because the system itself occupies property managed by that body.

This leaves two areas: the licensing of the CATV operator and the public use and benefit of the system.

At the present time, the FCC does not license CATV operators. The only licensing has come through local ordinances, with the exception, of course, in those five states now regulating CATV. In my view, licensing, that is, the basic decision of who is or who is not going to operate a CATV system, should remain at the local level. The operation of a CATV system is a "local" one. Although in the future CATV systems are going to be interconnected, such inter-

connection will be limited to certain channels and certain kinds of information. One of the most promising features arising out of the full utilization of a CATV system is the capability to provide an outlet for local expression on an economical basis. The FCC originally thought that the development of UHF television would provide this, but it clearly has not. CATV can. Therefore, because the impact of this feature is "local" in nature, the governing body most closely effected by it should make the decision of who is going to own and operate a CATV system. Consequently, I do not think licensing at the state level is appropriate.

The final area of regulatory concern is public use and benefit of the CATV system. This is an area that I think all potential regulators, the cities, the state, and the FCC should closely study. I think, however, that the impact of developing the use of CATV to get the maximum public benefit will occur the local level, with the state and nation affected indirectly by cumulative effect of what occurs at the local level. Therefore, definitive regulation in this area should be left to the local governing body. The FCC's role in this area should be only one of setting broad guidelines that are in line with national communications policies. The involvement of the FCC in this area will serve the important function of educating the local governing body. If the State of New Jersey is going to get involved, this is where I think the involvement should occur. If you establish a means whereby a continuing study and evaluation of the potential public uses and benefits is undertaken, local governing bodies would have a very significant source of information and advice. Obviously,

such a study would require a full understanding of all the aspects of cable television, with the corollary benefit of keeping the legislature informed, so that the adoption of some form of state regulation could be continually evaluated in light of changing circumstances. This is the course of action I recommend to you. You would set an example for the rest of the country and perform a very valuable service to all the cities of your state.

For your further information, I am submitting the following materials:

1. Coaxial Communications, Inc. Model Franchise
2. Text of FCC Notices of Proposed Rule Making with respect to:
   a.) Distant Signal Importation
   b.) Technical Standards
   c.) Federal-State-Local Relationship
3. NCTA Staff Memo concerning FCC Regulation
4. Report to Governor Rockefeller on Proposed CATV Legislation
5. Statement of Chairmain of Nevada Public Service Commission on CATV Regulation at State Level
6. NCTA Pamphlet on CATV Regulation
7. "The Wired Nation" - magazine article.

I appreciate the opportunity to appear before you. I hope I have been of some help in your considerations.

ORDINANCE NO.

AN ORDINANCE RELATING TO AND GRANTING A NON-EXCLUSIVE FRANCHISE TO COAXIAL COMMUNICATIONS OF INC., TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF

BE IT ORDAINED by the City Council of

Section 1. Short Title. This Ordinance shall be known and may be cited as the Coaxial Communications of Antenna Television Franchise Ordinance.

Section 2. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

a. "State" is the State of

b. "City" is the City of

c. "Company" is Coaxial Communications of Inc., a corporation, the grantee of the rights under this franchise ordinance.

d. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

e. "Television" shall mean a system for communication of visual images or audio signals or both visual images and audio signals by means of electrical impulses.

f. "Radio" shall mean a system for communications of audio signals by means of electrical impulses.

g. "Community Antenna Television System", hereinafter referred to as "CATV System" and "System", means a system of lines, fixtures, equipment, attachments, converters, terminal equipment and all appurtenances thereto which are used in the construction, operation, and/or maintenance of a system for the reception, amplification and distribution of audio, television, electrical, electronic or radio signals.

h. "Publicly Broadcast Television and Radio Signals" means those signals transmitted over the air by FCC licensed commercial and educational stations which signals are generally available to the public.

Section 3. Grant of Authority. There is hereby granted by the City to the Company the non-exclusive right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over and under, the streets, alleys, public ways and public places, now laid out or dedicated and all extensions thereof and additions thereto in the City, wires, poles, cables, underground conduits, conductors and fixtures necessary for the maintenance and operation in the City of a community antenna television system for the reception and distribution of television signals and energy, frequency modulated radio signals, and commercial and non-commercial visual and aural signals which are not otherwise herein prohibited. The Company shall have the right in the operation of the system to make attachments to City-owned property at such rates and upon such terms and conditions as shall from time to time be determined by the governing body. The rights herein granted shall extend to any area annexed to the City and the Company shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

The Company shall have the right to enter into agreements for the attachment onto and use of facilities owned and operated by public utilities operating within the City; the Company shall strictly comply with the terms, provisions and restrictions of said agreements, and copies of all agreements made with other public utilities operating within the City shall be placed on file with the City Clerk's office upon their execution.

Section 4. Compliance with Laws, Regulations, Ordinances, and Practices. The Company shall, at all times during the life of this Franchise Ordinance, be subject to the lawful exercise of the police power by the City and to such reasonable regulation not inconsistent herewith as the City shall hereafter by Resolution or Ordinance provide. The construction, operation and maintenance of the system by the Company shall be in accord with good engineering practices and shall be in full compliance with the National Electrical Code and applicable laws, regulations and ordinances and as from time to time as such are amended and revised.

Section 5. Company Liability and Indemnification.

a. Liability Coverage. The Company shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever arising out of the negligence of the Company in the construction, operation and maintenance of the system. The Company agrees to maintain and keep in full force and effect at all times during the term of this Franchise Ordinance sufficient property damage and public liability insurance coverage to protect the City and the Company against any such claims, suits, judgment, executions, or demands in a sum not less than $100,000.00 per person in any one claim, $300,000.00 as to any one accident

or occurrence, and not less than $100,000.00 for property damage as to any one accident or occurrence.

b. Workmen's Compensation Coverage. The Company shall also maintain in full force and effect throughout the duration of this Franchise Ordinance sufficient workmen's compensation insurance coverage to adequately and fully protect its agents and employees as required by law.

c. Permanent Payment and Performance Guarantee. The Company shall furnish a bond to the City in the sum of $ which shall remain in full force and effect throughout the term of this Franchise Ordinance to guarantee the payment of all sums which may become due to the City for rentals, inspections, or work performed for the benefit of the Company under this Franchise Ordinance by any of its provisions, and such bond shall guarantee to the City the performance by the Company of all the provisions of this Franchise Ordinance and all laws, rules and regulations herein premitted to be adopted and enforced.

d. Qualified Insurance and Bonding Companies. All insurance policies and bonds as are required of the Company in this Franchise Ordinance shall be written by a company or companies authorized and qualified to do business in the State. Certificates of all coverage required shall be promptly filed by the Company with the City.

Section 6. Conditions on Street Occupancy and System Construction.

a. Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys, or other public ways and places.

b. Restoration. In case of any disturbance of pavement, sidewalks, driveways, or other surfacing, the Company shall, at its own expense and in a manner approved by the City, replace and restore such places so disturbed in as good condition as before said work was commenced.

c. Relocation. In the event that at any time during the period of this Franchise Ordinance the City shall lawfully elect to alter or change the grade of any street, alley, or other public way, the Company, upon reasonable notice by the City shall remove, relay, and relocate its equipment at its own expense.

d. Placement of Fixtures. The Company shall not place any fixtures or equipment where the same will interfere with gas, electric, telephone or water lines, fixtures, and equipment, and the location by the Company of its lines and equipment shall be in such manner as to not interfere with the usual travel on said streets, alleys, and public ways and the use of the same by gas, electric, telephone, and water lines and equipment.

e. Temporary Removal of Wires for Building Moving. The Company shall on the request of the City, temporarily raise or lower its wires to permit the moving of buildings.

f. No Property Right. Nothing in this Franchise Ordinance shall grant to the Company any right to property in City-owned property, nor shall the City be compelled to maintain any of its property any longer than, or in any fashion other than in the City's judgment its own business or needs may require.

g. Permits, Easements, and Agreements. The City shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the City be responsible for securing any permits or agreements with other persons or utilities.

Section 7. Submission of Construction Plans - Correction of Defects. Except for individual service drops, the Company shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced without prior submission of plans to the City, and the City shall have and maintain the right to inspect the construction, operation, and maintenance of the system by the Company to insure the proper performance of the terms of this Franchise Ordinance. In the event the Company should violate any of the terms of this Franchise Ordinance or any of the rules and regulations as may be from time to time lawfully adopted, the City shall immediately give the Company ninety (90) days written notice to correct such violation, and in the event the Company does not make such correction within ninety (90) days from the receipt of such written notice, the City may make such correction itself and charge the cost of same to the Company.

Section 8. Service Standards.

a. The Company shall maintain and operate the system so that there will be absolutely no interference with television reception, radio reception, telephone communications or other installations which are now or may hereafter be installed and in use by the City or any persons in the City, and in such a manner as to prevent radiation from its facilities in excess of the limits specified in applicable rules and regulations of the Federal Communications Commission.

b. The Company shall take all necessary steps so that the system shall maintain at all times:

1) Use of all band equipment capable of passing the entire VHF television and FM radio spectrum.

2) Equipment that passes standard color television signals without degradation and with no appreciable effect on color fidelity and intelligence.

3) A minimum level of 1,000 micro-volts at the input terminals of each TV receiver on the line.

4) A system and all equipment designed and rated for 24-hour per day continuous operation.

5) A signal-to-noise ratio of not less than forty-three decibels.

6) A television signal with a hum modulation less than three percent.

7) Components having voltage standing wave ratio of 1.4 or less.

8) An inter-modulation distortion not to exceed minus forty-six decibels.

9) A plot of gain versus frequency across any six megacycle channel of a flat plus or minus one decibel.

c. The Company shall provide and keep accurately calibrated test equipment on hand in the service area at all times for the testing of all service and operational standards outlined in this ordinance and shall conduct these tests as reasonably requested by the City under the supervision of a City representative, in order to establish the level of performance of the system.

Section 9. Company Rules. The Company shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and to perform its obligations under this Franchise Ordinance and to assure an uninterrupted service to each and all its customers; provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof.

Section 10. Charges of the Company for Service. The Company is authorized to charge and collect installation and service and equipment fees from or on behalf of the persons to whom it provides its services. Charges in respect

of service to any property may be collected by the company either from the owner or from any occupant of such property. The fees charged by the company shall not, in respect of the transmission of publicly broadcast television and radio signals, exceed the following:

a. An installation fee of $10.00 for one outlet and $5.00 for each additional outlet simultaneously installed in the same unit, subject to increases as herein provided below;

b. A monthly service fee of $5.00 for one outlet and $1.00 for each additional outlet installed in the same unit, subject to increases as herein below provided;

c. Commencing after the third year from the effective date hereof the Company may increase the rates provided for in paragraphs "a" and "b" above by an amount equal to the percentage increase in the cost of living as reflected by the Consumer Price Index for Services Excluding Rent as published by the United States Department of Labor, Bureau of Labor Statistics, in the Monthly Labor Review. In determining such increases, if any, the most current index issued as of the effective date of this Ordinance shall be used as a base; in the event that such index is not so prepared or published in the future, a comparable index shall be utilized in determining said increase; and, said percentage increase determination shall take into account any and all changes in the base year or in the manner in which such index is prepared. The Company shall not charge higher rates for this service than allowed by paragraph "a", "b" and "c" unless specifically authorized to do so by the City.

Section 11. Payment to the City.

a. Gross Revenue Tax. During the term of this Franchise Ordinance the Company shall pay to the City a tax on its gross service revenues in an

amount which, when added to the amount of all other taxes, licenses, fees, or impositions levied or imposed by the City upon the Company or upon its property, income, or operations, equals % of such revenues. For purposes of this Section, gross service revenues shall mean the gross amount of regular recurring service charges actually paid to the Company by its customers in the City.

b. Manner of Payment - Records. All payments required under this Section shall be made annually on a calendar year basis and shall be due within sixty (60) days of the close of the preceding annual period. The Company shall keep an annual record, available for audit by the City for three (3) years after the close of the period covering the annual record, which annual record shall set forth the date of receipt and the amount of gross revenues derived from customer service fees.

Section 12. Service to City.

a. The Company, at its own expense, shall provide and maintain one connection to each City office building, police station, fire station, hospital, library, and school within the corporate limits of the City; provided that the Company shall not be responsible for providing the distribution system within any of such places. Further, no monthly customer service fee shall be charged for service to such places. Such connections shall be provided at such time as the Company's system is actually serving the area where such places are located.

b. (i) The Company shall provide without charge one separate channel for use by the City for such purposes as the City may desire for distribution of programming in the public interest to subscribers of the system;

(ii) The Company shall provide without charge one separate channel for use by the schools in the City, subject to such rules and regulations as the

City may adopt; and

(iii) The Company shall interconnect all public and private schools within the City making possible two-way communication between schools and a central programming location.

It is provided, however, that the Company may utilize for its own programming any time not used on these channels by the aforementioned bodies. The City at its discretion may appoint a Television Coordinator or Committee to act as liaison with the Company for the purposes of utilizing the channel hours made available to the aforementioned bodies and for the purposes of local programming.

c. The Company shall provide, without charge and subject to the Rules and Regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the City can interrupt service on all channels in order to make such public emergency broadcast.

d. The Company, without charge, shall reserve six megacycles of bandwidth on the system for use by the City for two-way voice and data transmissions, and other narrow band services as the City deems appropriate.

e. For local programming the Company, at its own expense, shall establish and maintain a television studio with telecasting camera equipment, with video tape recording facilities and with vehicles and equipment for remote telecasting.

Section 13. Commencement of Service. The Company shall commence service to customers within twenty-four (24) months after the effective date of this Franchise Ordinance.

Section 14. Transfer Prohibited. The Company shall not sell or transfer its plant or system or any portion thereof, nor any right, title, or interest in

the same, nor shall the Company transfer any rights under this Franchise Ordinance to any other person without prior approval of the City; provided, however, that approval shall not be required if such sale, assignment or transfer be made to any party which is owned or controlled by the Company, or any party which owns or controls the Company.

Section 15. Penalties. Should the Company, its successors or assigns, violate any of the provisions of this Franchise Ordinance or any reasonable rules and regulations or other laws, or should the Company fail to promptly perform any of the provisions hereof, all rights herein granted to the Company shall, at the option of the City, be forfeited and terminated after written notice to the Company and continuation of such violation, failure or default for a period of more than ninety (90) days. In the event the Company is adjudged bankrupt, all rights herein granted to the Company shall, at the option of the City, be forfeited and terminated.

Section 16. New Developments. It shall be the policy of the City liberally to amend this Franchise Ordinance upon application of the Company when necessary to enable the grantee to take advantage of any development in the field of transmission of television, radio signals and cable television, which will afford it an opportunity more effectively, efficiently, comprehensively or economically to serve its customers; provided, however, that this Section shall not be construed to require the City to make any amendment.

Section 17. Separability. In the event any section or part of this Franchise Ordinance shall be held invalid, such invalidity shall not affect the remaining sections or portions of this Franchise Ordinance. If the terms of this Franchise Ordinance should conflict with any laws or regulations now in effect or hereinafter adopted by the Federal Communications Commission (or any other

governmental agency now existing or to be formed issuing rules and regulations affecting telecommunications) the State or the United States Government, compliance by the Company with such rules shall not cause a forfeiture of this Franchise Ordinance.

Section 18. Duration of Franchise Ordinance. This Franchise Ordinance shall remain in full force and effect for a period of thirty (30) years from its effective date and shall be automatically renewed for successive periods of ten (10) years, unless either the City or the Company serves notice in writing to the other not less than six (6) months prior to the conclusion of the thirty (30) year period or prior to the conclusion of any successive ten (10) year period of its desire to terminate or modify this Franchise Ordinance.

Section 19. Repeal Conflicting Ordinances. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

Section 20. Acceptance by Company. Upon the adoption and approval of this Ordinance, the Company shall file with the City Clerk its written acceptance of the terms, provisions and conditions of this Franchise Ordinance within thirty (30) days after said adoption. Otherwise, this Franchise Ordinance shall be void and of no effect, and the franchise rights, privileges and authorities given the Company hereunder shall cease.

Section 21. Effective Date. This Ordinance shall take effect and be in full force and effect from and after its passage and approval according to law.

PASSED THIS _____ day of _____, 1971.

APPROVED THIS _____ day of _____, 1971.

_____
Mayor of the City of

ATTEST:

_____
City Clerk

NEWS
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
Public Notice

50892

Report No. 6107 ACTION IN DOCKET CASE June 25, 1970 - G

COMMENTS INVITED ON PROPOSED CATV TECHNICAL STANDARDS AND DESIRABILITY OF MINIMUM CHANNEL REQUIREMENTS FOR ALL FUTURE CATV SYSTEMS

Comments on 20 and 40 channel CATV systems, two-way communications and individual community channels were solicited by the FCC in a rulemaking notice on CATV technical standards. Issued in response to a petition by the engineering firm of Hammett and Edison, the Commission's notice proposed amendments to Subpart K of Part 74 of the rules and ordered that those aspects of Docket 18397 dealing specifically with CATV technical standards be transferred to the new proceeding (RM-1530).

The Commission said, when it issued its Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397 (15 FCC 2d 417, December 13, 1968), the inquiry was intended to present in one proceeding the major CATV policy issues confronting the Commission, and interested parties were advised that the docket would be managed flexibly so that "further notices expanding or altering the scope of this Rule Making and Inquiry may subsequently be issued as necessary or appropriate." Pointing out that recent developments suggest that it is now time to utilize "this retained flexibility," the Commission said it was separating the technical standards material from Docket 18397 in order to be able to give it early consideration.

Stating that the full development of cable television will greatly ease the problem of the scarcity of available air time on standard television stations, and that the economic and technical potential of cable television is so great that the public interest requires it to encourage the growth of CATV, the Commission declared it was putting cable television operators on notice that it intends to continue to require minimum system capacities adequate to serve foreseeable demand and cautioned operators to avoid the economic burden of installing inadequate systems that would soon need to be expanded at extra cost.

(over)

The Commission said that in the future it intends that new systems be designed to accommodate two-way communications for those subscribers who want it. Stating that it did not want to prescribe how return communications should be facilitated or that it would require all subscribers to use the service, the Commission said that, with a minimum of equipment, the return communication capability should provide at least the capacity of a 4 kHz message channel that might be shared by a limited number of subscribers so that cueing problems are avoided.

With various governmental programs now directed toward increasing citizen involvement in community affairs, and with the cable potential as a vehicle of community expression, the Commission said that a cable system should supply a separate channel for each distinct community within its franchised area and that each community should have the local capacity to produce material to be cablecast over its available channel.

The Commission said this could be done by limiting cable systems to franchised areas of limited size or by merely requiring all systems to have the technical facilities available in each community to facilitate local access and service. Stating that it proposed to require each community within the franchise area of a system to be equipped with production capability for the programing of its channel, the Commission invited suggestions as to how this might be best accomplished.

The Commission also invited comments upon the proper means of determining a "community" within each market. Stating that it proposed to leave the details of such determination to franchising authorities and cable system operators, it solicits comments on whether the selected "community" might appropriately consist of 25-50,000 households.

Pointing out that when technical standards are finally adopted, it is possible that all CATV systems would be required to file certificates of compliance within three years after the standards are published in the Federal Register and annually thereafter, the Commission said, since it is customary to grant variances of FCC requirements in unusual or hardship cases, it was soliciting comment with regard to any anticipated problems which might be expected to justify delay.

Stressing that in developing the proposed new rules it had chosen to write the technical standards in terms of system performance as measured at subscriber terminals rather than placing performance requirements on individual units in the system, and that it is concerned that each subscriber get signals of at least a certain standard without trying to prescribe the methods or the equipment the cable system must use, the Commission said it intended to adopt technical standards which may require of most existing CATV systems "a renewed attention to quality" and that it would revise the standards or add new requirements as the state of technology and regulatory experience may indicate.

Although it was not proposing standards for the carriage of FM signals, for the allowable degree of "ghosting," or for performance characteristics involving phase relationships in the system--all of which affect the quality of color television transmission--the Commission said future experience "may impel us" to adopt such standards and asked for comment on these points.

In response to a suggestion by Hammett and Edison that CATV systems should be required to install a number of monitoring terminals readily available to check the performance of the cable network without inconvenience to subscribers, the Commission pointed out that while a broad rule would generate no problems, a specific rule to cover every possible situation would be hard to justify, and said that at this time it would leave it up to the individual operators to choose the optimum locations and numbers for their monitoring points.

Agreeing with the principle that the technical standards should be flexible enough to permit operation of multi-pair cable or switched techniques, the Commission said that while the proposed standards are based on engineering considerations applicable primarily to the single coaxial cable, which makes up the majority of cable systems now installed in this country, it has also proposed wording or measurement methods which may be applicable to other distribution techniques. For example, since it is not possible to devise a complete set of standards which are universally acceptable, the Commission said, it was proposing a rule covering situations in which an adequate engineering showing is made as to the quality of service a system using multiple cable techniques would render.

Action by the Commission June 25, 1970, by Notice of Proposed Rule Making. Commissioners Burch (Chairman), Bartley, Robert E. Lee, H. Rex Lee and Wells, with Commissioner Cox concurring, and Commissioner Johnson concurring and issuing a statement.

- FCC -

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 70-679
49433

In the Matter of	)	
	)	
Amendment of Subpart K of Part 74	)	DOCKET NO. 18894
of the Commission's Rules and	)	(RM-1530)
Regulations with Respect to Technical	)	
Standards for Community Antenna Tele-	)	
vision Systems	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 24, 1970; Released: July 1, 1970

By the Commission: Commissioner Cox concurring in the result; Commissioner Johnson concurring and issuing a statement.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. On November 19, 1969, Hammett and Edison, a firm of consulting engineers, filed a petition (RM-1530) asking that rule making be instituted to establish standards to govern the technical performance of CATV systems. Comments with respect to this petition were filed by: Association of Maximum Service Telecasting, Inc.; Frontier Broadcasting Company; National Cable Television Association, Inc.; Educational Television Stations Division of the National Association of Educational Broadcasters; The Montana Network; Garryowen Butte T.V., Inc.; and Garryowen Cascade T.V., Inc. Reply comments were filed by the National Cable Television Association, Inc., and the Association of Maximum Service Telecasters, Inc. In formulating our present proposal, particular attention has been paid to the above-mentioned documents.

3. All pleadings filed in Docket No. 18397 which touch upon technical standards have been reviewed, and particular attention has been paid to the more detailed recommendations contained in comments filed by Abraham L. Cohen, an engineering consultant; American Telephone and Telegraph Company; Archer S. Taylor, Vice President of the engineering consulting firm Malarkey, Taylor and Associates, Inc.; Association of Maximum Service Telecasters, Inc.; National Cable Television Association, Inc.; and Storer Broadcasting Company. Particular attention has also been paid to reply comments in Docket No. 18397 filed by Archer S. Taylor, and by the National Cable Television Association, Inc.

I. Technical Standards Transferred from Docket 18397

4. On December 13, 1968, the Commission issued its Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397, 15 FCC 2d 417, inaugurating a general inquiry into its appropriate regulatory posture with respect to the CATV industry. By design, this inquiry was intended to present in one proceeding the major CATV policy issues then confronting the Commission. Inter alia, we solicited comments on the question, "8. What technical standards would be necessary or desirable to achieve national and local compatibility and good quality service to the public?" At the same time, interested parties were advised that the Commission would manage the docket flexibly so that "further notices expanding or altering the scope of this Rule Making and Inquiry may subsequently be issued as necessary or appropriate" supra, para. 3. Recent developments suggest that it is now appropriate to utilize this retained flexibility to give appropriate consideration to establishment of the necessary technical standards for the CATV industry. Consequently, we will now separate the technical standards material from Docket No. 18397 in order to be able to give it early consideration.

II. Possible Requirement of Minimum Channel Capacity

5. The Commission recognizes that CATV is rapidly evolving from its original role as a small, five-channel, reception service.1/ In the First and Second CATV Reports,2/ the Commission discussed the trend of CATV toward 12-channel or larger systems, as well as cable's likely entry into large metropolitan centers.3/ And it appears that interest in these directions is high.4/ In these circumstances, the Commission must consider the future possibility of a nationally as well as internationally interconnected cable grid which will cater to a variety of sophisticated communications needs.5/ In this regard, the Commission has instructed its Cable Television Bureau to begin liaison with the appropriate Canadian and Mexican authorities to assure early cooperation in establishing compatible requirements for neighboring areas. Hopefully, this step should assist in prolonging national options in the CATV area.

1/ Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397, para. 4.

2/ First Report and Order in Docket Nos. 14895 and 15233, 38 FCC 683 (1965); Second Report and Order in Docket Nos. 14895, 15233 and 15971, 2 FCC 2d 725 (1966).

3/ Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397, para. 4.

4/ See the attached study of CATV development in the top 50 television markets. (Appendix B)

5/ Compare Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397, Part V.

6. Our present over-the-air television system operates as an economy of scarcity. There is more potential demand for access to television stations than there is available air time on the stations in even the most populous areas. Cable television offers the technological and economic potential of an economy of abundance. It is anticipated that cable television, once it attains this stature, will greatly alleviate the problem of availability of air time. We believe that the economic and social advantages of such a system are such that the public interest requires the Commission to encourage its development.

7. The Commission has been advised that there will be an ever increasing demand for cable channel capacities (some estimates ranging above 100). The Commission, therefore, wishes to place cable television operators on notice that the Commission intends to continue to require minimum system capacities adequate to serve foreseeable demand, and thus cautions operators to avoid the economic burden of installing systems of inadequate capacity that will soon need to be expanded at extra cost. In short, two considerations emerge: (1) cable has great potential for new communications services of great benefit to the public; and (2) our present planning should promote achievement of that potential. In this latter respect, a major consideration is thus the specification of minimum channel capacity. It is easy to state our objective on this facet: to specify in the major markets the largest possible channel capacity, as a required minimum, which is compatible with the technology and with the rapid development of cable systems. We request comment on what that number should be, with a detailed showing as to the bases for any recommended number. Thus, we note that 20-channel systems are now proposed by many cable operators for these large city markets. We have been informally told that 40-channel systems can be installed without too great an incremental cost over the 20-channel systems. Clearly, this is an area where comments and our own further efforts should concentrate. We would stress the need for detailed comments, since we intend to adopt final rules in this respect on the basis of the comments. Also we request comment on whether some lesser figure should be applicable to systems operating in the smaller markets, and if so, the channel number and how such markets should be delineated. Finally, we request comments on the most appropriate time to make any regulation adopted in this area (and those discussed in pars. 8-11) applicable to CATV systems (e.g., the time period within which existing systems might be required to convert; applicability to systems not in operation on the date of publication of any rule in the Federal Register or to systems which have been extensively constructed prior to that date). In this connection, we would seek the adoption of an applicability or conversion requirement which is equitable and secures, to the maximum degree practicable, the public interest benefits sought here and in pars. 8-11.

III. Possible Requirement of 2-Way Capability

8. We intend that future cable systems should be installed in such a manner that, with the additional provision of no more than appropriate sending devices for individual subscribers and minimal equipment (such as jumpers, additional switch contacts, or plug-in connectors, for

example), each subscriber may be afforded a means for directly communicating with a local program origination point. This return communication capability should provide at least the capacity equivalent to a single 4 kHz message channel and may be shared with a limited number of other subscribers so that cuing problems are avoided. It is not our purpose at this time to prescribe how return communications should be facilitated nor to require that all subscribers avail themselves of this capability, but that future systems be designed to accommodate 2-way communication for those subscribers desiring it.

IV. Possible Requirement of Separate Origination Centers

9. The structure and operation of our system of radio and television broadcasting affects, among many other things, the sense of "community" of those within the signal area of the stations involved. Recently, governmental programs have been directed toward increasing citizen involvement in community affairs. Cable television has the potential to be a vehicle to much needed community expression. To strengthen the sense of community and allow greater communication, cable systems should supply a separate channel, available on a when-desired basis, for each distinct community within its franchised area. It will also be necessary that each community possess the local capability for production of material to be cablecast over its channel.

10. These purposes could be achieved by limiting cable systems to franchised areas of limited size. But they might also be achieved by merely requiring all systems to have the technical facilities in each community--the studios, equipment and distribution facilities--designed to facilitate local access and service. However, we are willing to consider other arrangements which produce a community production capability comparable to the physical existence of a studio and a channel clearly identified as limited to local service. We propose to require that each community within the franchise area of the system be equipped with production capability for the programming of its community channel, and we invite suggestions as to the alternative means of providing such a system.

11. We also invite comments upon the proper means of determining a "community" within each market. It would be possible to define "communities" along ethnic, governmental, or historical lines, as well as the more conventional geographic boundaries. We propose to leave the details of such determinations to franchising authorities and cable system owners, but we do request comments on what should be appropriate general Commission guidelines in this area (e.g., 25,000 to 50,000 households generally as a "community").

V. Conversion Period

12. When technical standards are finally adopted, it is contemplated that all CATV systems would comply and file a certificate of compliance within 3 years from the date the standards are published in the Federal Register. Thereafter, the filing of an annual certificate of compliance would be required. As is customary in our procedures, variances of these requirements could be granted in unusual or hardship cases. Consequently, comment is solicited with regard to any anticipated problems which might be expected to justify delay.

VI. Performance Tests and Certification

13. In line with our Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397, the standards we are proposing here are aimed primarily at furthering the quality of service rendered the public. Secondarily, we hope that the standards will help secure a degree of compatibility among systems which in the future may be useful for accomplishing system interconnection such as that alluded to in paragraph 5 above. In developing the proposed new rules, we have chosen to write the technical standards in terms of system performance as measured at subscriber terminals, preferring to avoid, at least at this time, problems involved in placing performance requirements on individual units in the system. We are concerned that each subscriber receive cabled signals of at least a certain standard of quality; we are not undertaking to prescribe the methods or the kinds of equipment the cable system must use.

14. Accordingly, we are proposing to require that each CATV system perform and report certain performance measurements at least once a year. The measurements should reflect the degree to which the system conforms to the prescribed technical standards. If the tests show that the system meets the standards, there is reasonable basis for considering that the system provides its subscribers with an acceptable service. We recognize, however, that conformity with these minimum standards is not absolute assurance that the service to an individual subscriber is satisfactory. Therefore, regardless of the performance tests, we shall expect that picture impairments attributable to the system which result in substantial subscriber complaints will be rectified by CATV operators. As special circumstances may dictate, we may require that additional tests be performed on certain systems, or that special measures be taken to ensure an acceptably good quality of service.

15. We intend to adopt technical standards which, without imposing unreasonable cost burdens, may require of most existing CATV systems a renewed attention to quality, some readjustment, and possibly some redesign. We intend to revise the standards or add new requirements as the state of technology and our regulatory experience may indicate. For example, we are not at this time proposing standards applicable to the carriage of FM broadcast signals on CATV systems. We may find it necessary to do so in the future. We are not at this time proposing a standard for the allowable degree of "ghosting" or interference caused by reflections, or for performance characteristics involving phase relationships in the system, all of which intimately affect the quality of color television transmission. Future experience may impel us to adopt such standards. We welcome comment on these points.

16. In their petition, Hammett and Edison suggest that, in order to avoid inconvenience to subscribers in whose homes the system terminals are located, CATV systems should be required to install a number of monitoring terminals readily available for checking the performance of the cable network. We consider that numerous readily available monitoring points should be installed throughout the system; their value to the system operator in maintaining system performance is so evident that a broad rule requiring them seemingly would generate no problems. However, a specific rule which covers the infinite range of circumstances under which cable systems are installed may involve cumbersome burdens which we find hard to justify. We think it preferable simply to indicate our strong belief that every good CATV system should be well endowed with monitoring check points and that an in-house program of monitoring them is necessary. At this time we will leave it up to the individual system operators to choose the optimum locations for such points and their number.

17. We take note of suggestions that technical standards which may be promulgated for CATV systems should be sufficiently flexible to permit operation of multi-pair cable techniques or switched techniques. We agree to this principle. The standards we are proposing herein are formulated from engineering considerations applicable primarily to the vast majority of cable systems now installed in this country--the single coaxial cable which carries a plurality of standard television broadcast signals occupying individual frequency bands in the cable. Where feasible, we have proposed wording or measurement methods which may also be applicable to other distribution techniques. However, we are unable to devise a complete set of standards which are universally applicable. We intend no discouragement of other-than-standard systems. We consider, for example, that the use of multiple cable techniques would be permissible provided an adequate engineering showing is made as to the quality of service such a system would render. A rule covering these situations is proposed.

VII. Miscellaneous

18. All interested persons are invited to file written comments on or before October 7, 1970, and reply comments on or before October 28, 1970, on the question of amendment of Subpart K of Part 74 of the Commission's Rules proposing to establish technical standards for the CATV industry. Parties may, of course, not only comment on this proposal, but suggest revisions or alternatives. In reaching its decision on these matters, the Commission may also take into account any other relevant information before it, in addition to the comments filed by this Notice.

19. Authority for the amendments proposed herein is contained in Sections 2, 3, 4, and 303 of the Communications Act of 1934, as amended. In accordance with the provisions of Section 1.419 of the Rules, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents shall be furnished the Commission.

Accordingly, IT IS ORDERED, That the peition for institution of a rule making to establish technical standards for the CATV industry, by Hammett and Edison, on November 19, 1969, IS GRANTED to the extent reflected herein and is otherwise DENIED.

IT IS FURTHER ORDERED, That those aspects of Docket No. 18397 relating specifically to technical standards ARE TRANSFERRED to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION*

Ben F. Waple
Secretary

Attachments

*See attached statement of Commissioner Johnson.

APPENDIX A

A. Part 15 [Amended]

1. In §15.4, paragraph (e) is deleted.

2. Subpart D (§§15.161-15.165) of Part 15 is deleted.

B. Subpart K of Part 74 is amended as follows:

1. In §74.1101, paragraphs (l) - (r) are added to read:

§74.1101 Definitions.

* * * * *

(l) Cable television channel. A frequency band 6 MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal.

(m) Channel frequency response. Within a cable television channel, the relationship as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal.

(n) System noise. That combination of undesired and fluctuating disturbances within a cable television channel, exclusive of undesired signals of discrete frequency which degrade the reproduction of the desired signal and which are due to thermal effects, modulation products, and other noise effects. System noise is specified in terms of its rms level or its mean power as measured in a 4 MHz bandwidth centered within a 6 MHz cable television channel.

(o) Subscriber terminal. The community antenna television system cable terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of cable television signals, FM broadcast, or other signals of differing classification.

(p) Terminal isolation. At any subscriber terminal, the attenuation between that terminal and any other subscriber terminal in that system.

(q) Visual signal level. The rms voltage produced by the visual signal during the transmission of synchronizing pulses.

(r) CATV system channel capacity. The highest total number of cable television channels on which television signals from separate sources can be delivered simultaneously to every subscriber in the system.

2. A new §74.1151 is added to read:

§74.1151 Performance tests and certification.

(c) The operator of each Community Antenna Television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner which fully complies with the provisions of this subpart. Each system operator shall be prepared to show, upon reasonable request by an authorized representative of the Commission, that the system does, in fact, comply with the rules.

(b) The operator of each CATV system shall file with the Commission a statement of the CATV system channel capacity, listing the cable television channels which that system delivers to its subscribers, and the station or stations whose signals are delivered on each channel, specifying the minimum visual signal level it maintains on each channel under normal operating conditions. When cable television channels are deleted or the specified visual signal levels are changed, the Commission shall be notified within 30 days following the date of such change.

(c) The operator of each CATV system shall conduct complete performance tests of that system at least once each calendar year (at intervals not to exceed 14 months) and shall file with the Commission a certificate detailing the results of such tests. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in §74.1153. The tests shall be made on each cable television channel in the system, and shall include measurements made at at least three widely separated subscriber terminals, one of which is representative of terminals most distant from the system input in terms of cable distance. A statement of the qualifications of the person performing the tests shall be included.

(d) After reviewing the certificates of compliance required in paragraph (c), the Commission may require that certain measurements be repeated, that additional measurements be made, or that clarifying explanation be supplied, as necessary to correct defective certificates.

3. A new §74.1153 is added to read:

§74.1153 Technical standards.

(a) The following requirements apply to community antenna television system performance as measured at any subscriber terminal with a matched termination, and to each of the cable television channels in which signals picked up off-air are delivered to such terminals.

(1) The frequency boundaries of cable television channels delivered to subscriber terminals shall conform to those

set forth in §73.603(a) of this chapter; Provided That, upon special application including an adequate showing of public interest, other channel arrangements may be approved.

(2) The frequency of the visual carrier shall be maintained 1.25 MHz ± 25 kHz above the lower boundary of the cable television channel.

(3) The frequency of the aural carrier shall be 4.5 MHz ± 1 kHz above the frequency of the visual carrier.

(4) The visual signal level shall be not less than 1 millivolt (0 dBmV) across a 75-ohm terminating impedance. (At other impedance values the minimum visual signal level shall be $\sqrt{.0133\ Z}$ millivolts, where Z is the impedance value which properly matches the subscriber terminal impedance.)

(5) The visual signal level on each channel shall be maintained within:

(i) 6 decibels of its minimum value; and

(ii) 6 decibels of the visual signal level on either adjacent cable television channel; and

(iii) 10 decibels of the visual signal level on any other cable television channel.

(6) The rms voltage of the aural signal shall be maintained between 13 and 17 decibels below the associated visual signal level.

(7) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 5 percent of the visual signal level.

(8) The channel frequency response shall be within a range of ± 2 decibels for all frequencies within -1 MHz and +4 MHz of the visual carrier frequency.

(9) The ratio of visual signal level to system noise shall not be less than 36 decibels. This requirement is applicable only to

(i) each signal which is carried by a cable television system serving subscribers within the Grade B contour for that signal, or

(ii) each signal which is first picked up within its Grade B contour.

(10) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, co-channel television signals, or discrete-frequency interfering signals shall not be less than 46 decibels.

(11) The terminal isolation provided each subscriber shall not be less than 30 decibels, except that the isolation between separate television and FM broadcast terminals for the same subscriber shall not be less than 15 decibels.

(12) Radiation from a community antenna television system shall be limited as follows:

Frequencies	Radiation Limit (uV/m)	Distance (feet)
Up to and including 54 MHz	15	100
Over 54 up to and including 216 MHz	20	10
Over 216 MHz	15	100

(b) Community antenna television systems distributing signals by using multiple cable techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraph (a) of this section, may be permitted to operate provided that an adequate showing is made which establishes that the public interest is benefited. In such instances the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with a good quality of service.

3. A new §74.1155 is added to read:

§74.1155 Measurements.

(a) Measurements made to demonstrate conformity with the performance requirements set forth in § 74.1121 shall be made under conditions which reflect system performance during normal operations, including the effect of any microwave relay operated in the Community Antenna Relay Service (CARS) intervening between pickup antenna and the cable distribution network. Special signals inserted in a cable television channel for measurement purposes should be operated at

levels approximating those used for normal operation. Pilot tones, auxiliary signals, and non-television signals normally carried on the cable television system should be operated at normal levels.

(b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute therefore a matching resistance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.

(c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.

(d) The frequency response to a cable television channel may be determined by one of the following methods, as appropriate:

(1) by using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or

(2) by using a multi-burst generator and modulator at the sending end and a demodulator and oscilloscope display at the subscriber terminal.

(e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate rms noise or average power level and which has a known bandwidth. With the system operating at normal levels and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If an amplifier is inserted between the frequency-selective voltmeter and the subscriber terminal in order to facilitate this measurement, it should have a bandwidth of at least 4 MHz and appropriate corrections must be made to account for its gain.

(f) The amplitude of discrete frequency interfering signals within a cable television channel may be determined with either

a spectrum analyzer or with a frequency-selective voltmeter (field strength meter), which instruments have been calibrated for adequate accuracy. If calibration accuracy is in doubt, measurements may be referenced to a calibrated signal generator, or a calibrated variable attenuator, substituted at the point of measurement. If an amplifier is used between the subscriber terminal and the measuring instrument, appropriate corrections must be made to account for its gain.

(g) The terminal isolation between any two terminals in the system may be measured by applying a signal of known amplitude to one and measuring the amplitude of that signal at the other terminal. The frequency of the signal should be close to the mid-frequency of the channel being tested.

(h) Measurements to determine the field strength of radio frequency energy radiated by community antenna television systems shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:

(1) A field strength meter of adequate accuracy using a horizontal dipole antenna shall be employed.

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which radiation can be measured.

(3) The dipole antenna shall be placed 10 feet above the ground and positioned directly below the system components. Where such placement results in a separation of less than 10 feet between the center of the dipole antenna and the system components, the dipole shall be repositioned to provide a separation of 10 feet.

(4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.

(5). Measurements shall be made where other conductors are 10 or more feet away from the measuring antenna.

4. A new §74.1157 is added to read:

§74.1157 Interference from a community antenna television system.

In the event that the operation of a community antenna television system causes harmful interference to reception of authorized radio

stations the operator of the system shall immediately take whatever steps are necessary to remedy the interference.

5. A new §74.1159 is added to read:

§74.1159 Responsibility for receiver generated interference.

Interference generated by a radio or television receiver shall be the responsibility of the receiver operator in accordance with the provisions of Part 15, Subpart C of this chapter; Provided, however, That the operator of the community antenna television system to which the receiver is connected shall be responsible for the suppression of receiver generated interference that is distributed by the system when the interfering signals are introduced into the system at the receiver.

APPENDIX B

In compiling the attached information each community having a CATV system is listed as a separate system even though the same head-end serves several communities, and even though some communities may have more than one system. Where systems are located in areas in which two or more major television markets overlap, these systems have been counted once and assigned arbitrarily to one of the markets. The information regarding pending proposals in these markets is based on requests filed pursuant to Section 74.1107 of the Commission's Rules, and is current as of May 1, 1970.

Approximate Number of CATV Systems Located in Top 50 Television Markets
(as of June 1, 1969)

	Market	Number of Systems	Proposals Pending	Remarks
1.	New York, New York	11	3	--
2.	Los Angeles, California	53	1	Includes 3 systems located also in the San Diego, California market.
3.	Chicago, Illinois	1	1	--
4.	Philadelphia, Pennsylvania	57	4	Includes 14 systems located also in the Harrisburg-Lancaster-Lebanon-York, Pennsylvania market.
5.	Boston, Massachusetts	4	3	--
6.	Detroit, Michigan	0	0	--
7.	San Francisco, California	35	0	Includes 16 systems located also in the Sacramento-Stockton, California market.
8.	Cleveland, Ohio	11	1	--
9.	Washington, D. C.	2	0	--
10.	Pittsburgh, Pennsylvania	108	16	Includes 70 systems located also in the Wheeling, West Virginia-Steubenville, Ohio market and 11 other systems located also in the Johnstown-Altoona, Pennsylvania market.

	Market	Number of Systems	Proposals Pending	Remarks
11.	Baltimore, Maryland	0	2	See remark on the Harrisburg-Lancaster-Lebanon-York, Pennsylvania market.
12.	St. Louis, Missouri	0	2	--
13.	Hartford-New Haven-New Britain, Connecticut	13	5	--
14.	Providence, Rhode Island-New Bedford, Massachusetts	1	6	--
15.	Dallas-Fort Worth, Texas	0	1	--
16.	Cincinnati, Ohio	0	0	--
17.	Minneapolis-St. Paul, Minnesota	0	0	--
18.	Indianapolis, Indiana	8	15	--
19.	Atlanta, Georgia	3	1	--
20.	Miami, Florida	0	5	--
21.	Buffalo, New York	12	1	--
22.	Seattle-Tacoma, Washington	25	1	--
23.	Kansas City, Missouri	3	1	--
24.	Milwaukee, Wisconsin	0	0	--

	Market	Number of Systems	Proposals Pending	Remarks
25.	Sacramento-Stockton, California	5	4	See remark on the San Francisco, California market.
26.	Houston-Galveston, Texas	3	1	--
27.	Dayton, Ohio	5	5	Includes 1 system located also in the Columbus, Ohio market.
28.	Columbus, Ohio	3	1	See remark on the Dayton, Ohio market.
29.	Johnstown-Altoona, Pennsylvania	54	11	Includes 1 system located also in the Harrisburg-Lancaster-Lebanon-York, Pennsylvania market. See remark on the Philadelphia, Pennsylvania market.
30.	Harrisburg-Lancaster-Lebanon-York, Pennsylvania	44	25	Includes 1 system located also in the Baltimore, Maryland market. See remark on the Philadelphia, Pennsylvania market and on the Johnstown-Altoona, Pennsylvania market.
31.	Tampa-St. Petersburg, Florida	19	2	--
32.	Memphis, Tennessee	0	0	--
33.	Charlotte, North Carolina	6	2	Includes 1 system located also in the Greensboro-Winston Salem-High Point, North Carolina market; 2 other systems located also in the Greenville-Spartanburg, South Carolina-Asheville, North Carolina market.

Market	Number of Systems	Proposals Pending	Remarks
34. Syracuse, New York	21	13	--
35. Toledo, Ohio	9	5	--
36. Portland, Oregon	13	0	--
37. Wheeling, West Virginia-Steubenville, Ohio	15	13	See remark on the Pittsburgh, Pennsylvania market.
38. Grand Rapids-Kalamazoo, Michigan	10	2	Includes 3 systems located also in the Lansing, Michigan market.
39. Denver, Colorado	4	8	--
40. Birmingham, Alabama	4	1	--
41. Nashville, Tennessee	1	1	--
42. Albany-Schenectady, New York	19	11	--
43. New Orleans, Louisiana	0	0	--
44. Greenville-Spartanburg, South Carolina-Asheville, North Carolina	7	2	See remark in the Charlotte, North Carolina market.
45. Greensboro-Winston Salem-High Point, North Carolina	11	3	See remark in the Charlotte, North Carolina market.
46. Flint-Saginaw-Bay City, Michigan	1	7	Flint system located in Flint, Michigan which is also in the Detroit, Michigan market. See remark on the Lansing, Michigan market.

	Market	Number of Systems	Proposals Pending	Remarks
47.	Louisville, Kentucky	3	2	--
48.	Charleston-Huntington, West Virginia	19	2	--
49.	Lansing-Onondaga-Jackson, Michigan	7	2	Includes 1 system located also in the Flint-Saginaw-Bay City, Michigan market. See remark on the Grand Rapids-Kalamazoo, Michigan market.
50.	San Diego, California	7	1	See remark on the Los Angeles, California market.

[In the Matter of . . . Technical Standards for Community Antenna Television Systems]

Concurring Statement of Commissioner Nicholas Johnson

The Federal Communications Commission must be responsible for the human and sociological implications of its decisions, as well as the economic, technological, and political consequences. The structure and operation of our country's communications system--especially the mass media--affect, among many other things, the sense of "community" of those who both benefit from and are used by the system.

Those who study and write about the trends in our society report a growing sense of alienation, loneliness, emptiness, despair, and hostility among the central city residents in the larger urban areas. Many believe that these trends are, at least in part, exacerbated by the existence of television and radio stations which have been authorized by the FCC to serve audiences of millions, rather than neighborhoods and small urban areas. The programming these stations produce is not "relevant," not a part of the daily lives of the viewers, not something in which they and their friends (or even those with whom they can identify) personally participate. Ironically, the primary motive behind our present allocation structure, with its 7500 broadcast outlets, was the desire for local service. As most impartial observers would concede,

CONSIDERATION OF CABLE TV BY THE COMMISSION

This is intended as nothing more than a brief review of the highlights of the Commission's regulatory treatment of CATV. A review of the legislative history of CATV can be found in the testimony of Frederick W. Ford in Hearings before the Subcommittee on Communications and Power on H. R. 7715, U. S. House of Representatives, 89th Congress, 1st Session, May 28, June 2, 3 and 4, 1965 (hereafter Hearings on H. R. 7715), p. 121 et seq., and in Hearings before the Committee on Interstate and Foreign Commerce on H. R. 12914, H. R. 13286, and H. R. 14201, U. S. House of Representatives, 89th Congress, 2nd Session, March 22, 23, 24, April 5, 6, and 7, 1966 (hereafter Hearings on H. R. 12914), p. 115 et seq. Also of interest is "Licensing of Community Antenna Television Systems," Senate Commerce Committee Report No. 923, 86th Congress, 1st Session, the so-called "Cox Report". The principal regulatory activity has taken place since that time.

In the late 1950's, the Commission first considered CATV and found that it had no jurisdiction to regulate, CATV and TV Repeater Services, 26 F.C.C. 403 (1959). However, this attitude soon began to change, first on case-by-case consideration of microwave served CATV systems, Carter Mountain Transmission Corporation v. F.C.C., 321 F. 2d 359 (D. C. Cir., 1963) and later by rulemaking proceedings affecting microwave served CATV systems, First Report and Order on CATV, 38 F.C.C. 683 (1965). By 1966, the Commission had exerted regulation over all CATV systems, whether microwave served or not, Second Report and Order, 2 F.C.C. 2d 725 (1966), enunciating their present CATV rules, 47 C.F.R. §74.1101, et seq.

THE BASIC RULES

The basic rules, still in effect, can be divided into three parts. First, all CATV systems must notify local broadcasters and the Commission before they begin operating--a timely filed broadcaster opposition will delay commencement of operation. Second, all CATV systems must carry local television stations and protect

their programs from duplicating programs broadcast by non-local stations and carried by the CATV system that same day. Third, a CATV system must prove in a Commission hearing that carrying non-local television signals into the predicted Grade A contour of a television station in one of the 100 largest television markets will not harm existing or future television stations (all these hearings were subsequently suspended, or frozen, by Commission proposals announced on December 13, 1968).

From the adoption of the Second Report and Order on CATV, supra, until December 13, 1968, the date of the "freeze", there were filed with the Commission, 413 applications for waiver of the evidentiary hearings requirements or requests for hearing under the major market rules, of which the Commission wholly granted 75 waivers, partially granted another 39, and set wholly for hearing only 56.

A decision of the Commission to halt CATV expansion in the San Diego, California, area, ultimately resulted in the U. S. Supreme Court holding that the Commission had such authority as "is restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting," U. S. v. Southwestern Cable Co., Inc., 390 U. S. 157 (1968). The Commission's Rules were sustained in Black Hills Video Corp. v. U. S., 399 F. 2d 65 (8 Cir., 1968). During the same time, the Commission chose not to regulate CATV as a common carrier, Philadelphia Broadcasting Co. v. FCC, 359 F. 2d 282 (D. C. Cir., 1966).

The Commission's rules were adopted because the Commission concluded that CATV competed "unfairly" with broadcasters, although judicial decision held that they did not, Cable Vision, Inc. v. KUTV, Inc., 211 F. Supp. 47, 335 F. 2d 348 (9 Cir., 1964), and the Commission had hopes for some relief from the burden of its rules if the Courts held that CATV systems were required to pay copyright royalties. But the U. S. Supreme Court held that CATV systems need not pay copyright royalties, Fortnightly Corp. v. United Artists Television, Inc., 392 U. S. 390 (1968).

After the Fortnightly and Southwestern cases, the Commission began to move into other areas of CATV regulation, such as closed-circuit origination of programming, compare, Midwest Television, Inc., 13 F.C.C. 2d 478 (1968), and, Jefferson-Carolina Corp., 14 F.C.C. 2d 601 (1968). The Commission had already rejected empirical tests of CATV operations which were proposed to show whether the Commission's fears were baseless, Suburban Cable TV Co., Inc., 9 F.C.C. 2d 1013, reh. den., 11 F.C.C. 2d 604 (1968) and, Valley Cablevision Corp., 11 F.C.C. 2d 611 (1968). The Commission also moved to control CATV's relationships with some telephone companies, General Telephone Co. of California, et al., 13 F.C.C. 2d 448 (1968), aff'd sub nom. General Telephone Company of California et al. v. F.C.C., 413 F. 2d 390 (D. C. Cir. 1969), cert. den., 396 U. S. 888 (1969), and prohibition of telco-CATV cross ownership where the CATV system is in the telco's market area, Section 214 Certificates, 21 F.C.C. 2d 307 (1970).

The Commission also unleashed an almost overwhelming array of CATV-connected proceedings. As examples, there were inquiries into cross-ownership of TV and CATV (Docket 17371); changes in the distant signal rules (Docket 17438); proposals to eliminate filing of repititious CATV requests (Docket 18373); prohibition of microwave transmissions of CATV originated programming in the Business Radio Service (Docket 17824); inquiry into CATV's which are affiliated with telephone companies (Docket 18509) See, also, 21 F.C.C. 2d 307 (1970); changes in CATV notice requirements (Docket 18416); the effects of the Commission's then present CATV policy (Docket 17505) the results of which were never made public; limiting multiple ownership of CATV systems (Docket 18891); transmission of CATV originations in the Community Antenna Relay Service (CARS) (Docket 17999); CATV distribution in local distribution service (LDS) (Dockets 18452 and 18383); CATV annual fees and filing fees (Docket 18802); extension of time within which to convert from the business radio service (BRS) to CARS; proposals for detailed technical standards (Docket 18894); proposals for federal preemption of CATV regulation (Docket 18892); the Public Dividend Plan (Docket 18397-A), and others. Also of interest to the CATV industry are proceedings involving automatic program cueing (Docket 18877); television signal field strength

measuring (Docket 18052); UHF channel sharing (Docket 18261); television translators operating in the instructional television fixed service (ITFS) (Docket 18940); radiation rules (Docket 18426); changes in UHF tuners (Docket 18433); allowing specialized carriers in the microwave radio service (Docket 18920); and non-network program exclusivity (Docket 18179) among others.

Having an aversion to the "freeze" which had been suggested to it by its staff, the Commission accomplished the same result when it issued a Notice of Inquiry and Notice of Proposed Rulemaking in Docket 18397, 15 F.C.C. 2d 417 (1968), on December 13, 1968 .

THE "INTERIM" PROCEDURES

In addition to proposing detailed rules on CATV originated programming (since adopted) cross-ownership, (since adopted) and general rules on regulation by other governmental levels, (now under consideration in Docket 18892) CATV operation as a common carrier, reporting requirements, (proposed forms for which have been announced) and technical standards, (now under consideration in Docket 18894) as well as a broad inquiry into almost every aspect of CATV, the Commission proposed detailed rules for CATV in major and minor markets and outside of any market, as well as interim procedures which effectively implemented the proposed rules immediately. The Commission's proposed market policies created three classes of television viewers: Those within thirty-five miles of a major television market, those within thirty-five miles of a minor television market, and those who are outside of any thirty-five mile limited reception zone, 15 F.C.C. 2d at 428, et seq.

Briefly, the Commission announced that all CATV systems within a thirty-five mile radius from the main post office of listed cities located within the 100 largest television markets, are allowed to carry only local television signals, unless the CATV system can obtain "retransmission consent" from distant television stations, on a program-by-program basis, 15 F.C.C. 2d at 436. Where predicted Grade B signals of stations in two major markets overlap, a circumstance prevailing in 91 of the Top 100 markets, the CATV system can only carry the local signals of the closer community unless it receives "retransmission

consent" or is within thirty-five miles of both communities, 15 F.C.C. 2d at 436, even though all signals are considered "local". CATV systems within a thirty-five mile radius of small television markets, i.e., communities having a television broadcast station but not in the list of major market cities, could carry only the local signals, or enough to provide three full network stations, one independent station, and educational stations, unless the CATV system receives "retransmission consent" from distant stations, again on a program-by-program basis. CATV systems located outside any of these radii, could carry any number of distant signals provided the CATV system first carried those most proximate within each of four classes of stations: Full network stations; partial network stations; independent stations; and, ETV stations. In evolving the new doctrine, the Commission eschewed its protection of UHF stations, 15 F.C.C. 2d at 431 (but see, Second Further Notice of Proposed Rulemaking, 24 FCC 2d 580 at 581) and proceeded to cure what the Commission still considered "unfair competition" based on the authority granted to the Commission under 47 U.S.C. §303(g) to: "Study new uses for radio, provide for experimental uses of frequencies and generally encourage the larger and more effective use of radio in the public interest." The "retransmission consent", although initially claimed by the Commission not to be so, is, in effect, a copyright clearance designed by the Commission to place CATV in a marketplace which, prior to Commission regulation, had no such requirement, and which has been recognized by the Commission as unworkable, First Report and Order on CATV, 38 F.C.C. at 704 (1965), and, Second Report and Order on CATV, 2 F.C.C. 2d at 768 (1966).

Of significance is the Commission's move away from its basis of protecting UHF from hypothecated CATV competition, to a new position of protecting commercial television broadcasters from competition from any source if that competition might, in any way, affect the allocations scheme, Sixth Report and Order on TV Allocations, 17 Fed. Reg. 3905 (May 2, 1952).

SUGGESTIONS BY OTHER GOVERNMENT AGENCIES

Other suggestions for regulation of CATV by governmental bodies are uncomplicated appraisals of national goals in communications. President Johnson's Telecommunications Task Force stated: A national communications system should provide for multi-channel capability and availability; that it should provide for low cost to both user and viewer; and, that it should have the ability to pin point audiences. That Task Force favored cable television as the best means to achieve the national goals. The Office of Economic Opportunity recommended "that most restrictions on distant signal importation by cable systems...be forthwith abandoned." OEO also said:

> "As FCC recognizes and as it has stated in a number of its recent rulings and proposals, the coming of broadband communications is an event of substantial importance. Cable can bring a far greater quantity and diversity of audio-visual information into the home than can be transmitted over-the-air. It is capable of precise geographical coverage and precise interest-group coverage. It lowers the cost of transmission and makes extensive community-based programming possible. Through leased channels it can open up television to public access, which has not hitherto been feasible. Its educational potential, hardly explored at this time, is great; and, through two-way communications, it offers both intercommunication and the receipt of visual and other materials on demand."

> "It should additionally be pointed out that the present benefits of cable, although limited in comparison to the medium's potential, are of immediate use and value to the poor and to neglected and impacted areas of the Nation's cities."

> "OEO therefore believes that the public interest in general and the interest of OEO's clientele in particular require a Federal

policy that permits and encourages the growth of cable systems at this time."

The Department of Justice in Comments submitted to the FCC recently, said:

"Two premises pervade the Commission's analysis....The first is that television broadcasters are being subjected to 'unfair competition' from CATV operators; and the second is that there is a public interest in preserving marginal television broadcasters from failure by various cross-subsidy devices and restrictions aimed at CATV. We submit that both of these are incorrect as a matter of policy." (Emphasis added)

"The Commission states that the regulatory plan of distant signal importation must 'dovetail' with Congressional action on copyright. We disagree with this assumption."

"[W]e strongly believe, except where basic minimum television service is at stake, competitive restrictions should not be placed on CATV to protect over-the-air broadcasting. So far as subsidy to public television is concerned, we believe that this goal (even if laudable) should be left to the Congress and supported out of general revenues, rather than being levied by the Commission against the CATV industry."

"The Department of Justice has emphasized in earlier filings that broadband cable technology holds the key to a new world of beneficial communications services for all the people of the United States. And we have consistently urged that the new technology be permitted to reach its full potential as a communications medium. But for CATV to reach its full potential, it is necessary that it be permitted to compete effectively, on its merits, with the broadcast and other mass media."

THE BEGINNING OF CHANGE

In July of 1970, the Commission caused a flurry of activity which seemed to indicate a new resolve to accept the responsibility which accompanied its assertion of regulatory authority over cable television.

PROGRAM ORIGINATIONS

By rule, effective August 14, 1970, the time for commencement of mandatory origination (See, First Report and Order in Docket 18397, 20 FCC2d 201 (1969) for systems of 3,500 subscribers or more was extended to April 1, 1971. A rule precluding the cablecasting of lotteries (lotteries have three elements: prize, chance and consideration) was also adopted.

A system may not make arrangements which inhibit the use of its cablecasting channel for public affairs programming during prime time. For example, entertainment-type CATV originations must not bar public affairs programming.

In addition, generally, if a CATV system makes a per-program or per-channel charge, it may not carry commercials, or present series programs, or present sports events which have appeared on commercial TV within the past two years, or present movies which were released in theatres more than two years ago, on those channels. Not more than 90% of the programming on those channels can be movies or sports.

Ominously, the warning is given that, if cablecasting threatens commercial television, "remedial action" may be taken. Memorandum Opinion and Order in Docket 18397, 23 FCC 2d 825 (1970) The two-year rule on sports may be increased to five years upon completion of a rulemaking proceeding in which comments have been submitted.

FEE SCHEDULE

On July 2 the FCC adopted a fee schedule for all CATV systems of 30 cents a subscriber annually, effective August 1, 1970, with the first payment due April 1, 1971. Filing fees for notices of commencement of service and

petitions for special relief are $10 and $25, respectively. Fees Schedule, 23 F.C.C. 2d 880 (1970)

CROSS OWNERSHIP RULES

By rule, effective August 10, 1970, the three national television broadcast networks are precluded from owning, operating, controlling or having an interest in CATV systems; TV stations may not have CATVs wholly or partly within the TV's predicted Grade B contour; and, translators may not have CATVs serving the same community. Of course, the reverse is also true for CATV. Systems cannot own the three broadcast networks, TV stations, or translators under the same circumstances. Second Report and Order in Docket 18397, 23 FCC 2d 816 (1970)

A new section added to the FCC's rules (74.1131) notes that "control" means actual working control, and "interest" is interpreted as common officers, directors and partial as well as whole ownership. Special consideration is given to public corporations with over 50 investors (1% common ownership prohibited) investment companies (3% common ownership prohibited), and stock held in street names, etc. Three years is allowed for divestiture, with opportunity for extensions.

CARRIAGE AND NONDUPLICATION

The present carriage and nonduplication rules are continued, and the documents seem to anticipate the filing of informational reports already proposed by the FCC. It would also appear that the Commission will continue the freeze on CATV expansion in television markets until new rules are adopted.

THE PRESENT PROPOSALS

The Commission's present proposals generally provide for new rules in several areas.

PROPOSALS ON CROSS AND MULTIPLE OWNERSHIP

In a companion rulemaking proceeding, Docket 18891, Notice of Proposed Rule Making and of Inquiry, 23 FCC 2d 833 (1970), the FCC proposes rules which would preclude

CATV and AM radio cross-ownership if the cable system is located within the AM radio station's primary service area, and which would preclude CATV and FM radio cross-ownership if the CATV system were located within the FM radio station's 1 mv/m contour.

Limitations on multiple ownership of CATV systems of over 1,000 subscribers are also proposed. For purposes of multiple ownership, all systems within the same Standard Metropolitan Statistical Area (SMSA) under common ownership are treated as a single system. Where there is no media cross-ownership, ownership of 50 systems would be allowed; of the 50, only 1 could be located in the three largest SMSA's; 2 in the top 10; 3 in the top 25; 4 in the top 50; 7 in the top 100; no more than 10 in adjoining states; no more than 5 in the same state with only one in a top 100 SMSA.

If the CATV has cross-ownership with more than 1 TV or 2 AM's or 2 FM's or 2 newspapers, ownership of only 25 systems would be allowed, of which only 1 could be located in the 10 largest SMSA's; 2 in the top 50; 4 in the top 100; 5 in the same or adjoining states, with only one in a top 100 SMSA.

As an alternative, or perhaps an addition, a total limit of 2,000,000 subscribers with a 10% growth factor, would be imposed. "Ownership", "control", and "interest" would be defined the same as in the cross-ownership rules. An inquiry was started into cross-ownership between CATV and ETV's, newspapers, microwave carriers, equipment manufacturers, national news magazines, advertising agencies, and unnamed others.

TECHNICAL STANDARDS

The FCC also proposed rules setting technical standards for CATV systems in Docket 18894, Notice of Proposed Rulemaking, 25 F.C.C. 2d 38 (1970). The technical proposals include a suggested 20 to 40 minimum channel capacity, two-way capability with a 4 K Hz return from subscribers, and capability for separate program origination centers in "communities" within the franchised areas. The proposed performance standards do not prescribe methods or kinds of equipment the CATV system must use, but do require annual compliance reports.

The proposals list seven new definitions: cable television channel; channel frequency response; system noise; subscriber terminal; terminal isolation; visual signal level; CATV system channel capacity. Complete performance tests will be required once a year and certified to the FCC. The tests must be performed at three widely separated subscriber terminals, one of which is representative of terminals most distant from system input.

The proposed standards will require a minimum signal level to subscribers of 0 dBmV (1 millivolt in 75 ohms). The level is to be maintained within 6 dB of the value reported to the commission. Adjacent channels must be within 6 dB and visual signal level on any other channel must be within 10 dB. Aural signal levels are to be within -13 to -17 dB of the associated visual signal. Visual carrier frequency must be held at 1.25 MHz ± 25 kHz above the lower boundary of the cable channel. The aural carrier frequency must be 4.5 MHz ± 1 KHz above the visual carrier frequency. Low frequency disturbances, such as hum, may not exceed 5% of the peak-to-peak visual signal level. Amplitude response must be within ± 2 dB for frequencies within -1 MHz and +4 MHz of the visual carrier. Signal to Noise ratio at subscriber terminals for Grade B signals is proposed at 35 dB. Discrete frequency interference, cross-modulation, intermodulation, co-channel, etc., signals must be suppressed 46 dB below desired visual level. The proposed standards include a terminal isolation of not less than 30 dB, except between separate TV and FM terminals at the same subscriber where it must be not less than 15 dB. Systems would have three years to be brought into compliance.

THE PUBLIC DIVIDEND PLAN

Of major importance to the growth of the CATV industry was the FCC's proposed rulemaking in Docket 18397-A, Second Further Notice of Proposed Rulemaking, 24 F.C.C. 2d 580 (1970). The FCC said it is searching for alternative distant signal policies which will:

(a) assist independent UHFs and ETVs;
(b) not undermine healthy operation of other TVs;
(c) be "fair" to copyright owners; and,
(d) allow sufficient distant signals to permit successful CATV operation in major markets.

The Commission stressed that its proposals were merely "proposals" and are dependent on legislation making CATV liable for copyright payments.

CORPORATION FOR PUBLIC BROADCASTING FEE

In addition to a copyright royalty payment, which presumably would be made by all CATV systems, the FCC proposed to impose a fee (5% of gross revenues from subscriptions)---on CATV systems in the top 100 markets only--- to be paid to the Corporation for Public Broadcasting (ETV). Even systems of 2-3,000 in top-100 markets may be exempted from such payments. It was proposed that a television market would be defined by 35-mile circles computed from present market reference points.

CARRIAGE OF LOCAL AND DISTANT SIGNALS

In top-100 markets, if the proposals are adopted, CATV systems could carry local signals, perhaps "missing" network stations, four distant independent commercial signals, and unlimited distant ETV signals (provided they were not objected to by the "local" ETV licensee or permittee at the time notice was given.). Independent programming on distant network stations could be counted as an "independent" signal.

In the smaller markets, CATV systems could carry local signals, plus four distant commercial signals (includes "missing" network signals in the total of four), and unlimited distant ETV signals (again, provided the local ETV licensee or permittee did not object). Local signals would be predicted for local signals in overlapping major markets. CATV systems outside of any markets could carry unlimited distant signals.

On imported distant signals, commercials would be deleted and replaced with commercials provided by local commercial stations (primarily independent UHFs). Fund appeals on imported ETVs would be similarly replaced with fund appeals provided by the local ETV. The switching cost for commercial substitution was proposed to be imposed on the beneficiary stations. It was proposed, however, that CATV systems bear the cost for ETV fund appeal substitution. However, the FCC desired comment on whether CATV systems should help bear the cost in any event.

Where there are overlapping major markets, commercials would be substituted by TV stations putting a higher grade contour over the CATV system after commercials were deleted on local, but lower grade contour, signals. The expense and income from commercial substitution generally would be shared first by local independent UHFs, then by local VHFs (after waiting two years for UHFs to develop); and, by any station which was able to prove special hardship.

LEAPFROGGING

If distant signals were to be imported, the FCC proposed partially to relax the present leapfrogging restrictions. In top-100 markets, two of the four independent signals would have to come from in-state, if available. In smaller markets, the "missing" network signal, if any, and two independent signals would have to come from in-state, if available. There would be no other restrictions on leapfrogging. The FCC did not discuss the availability of microwave facilities for distant signals.

CABLECASTING CHANNELS

The FCC proposed, at least in the "core city" of major markets, to require capacity for diverse program origination. For example, the cablecasting requirement is continued (perhaps 10,000-subscriber systems will be required to originate 21 hours a week in prime time with an undisclosed percentage to be of "local nature") and new systems of 20 or more channels might have been required to provide 50% of their channels for origination on demand.

A "sports blackout" on origination channels corresponding to that of broadcasters would be imposed.

In addition to the cablecasting channel, the new CATV systems would have to have the capacity to carry all local television signals, and to provide for at least one free local government channel, free local public access channels, leased channels and channels devoted to instructional uses. The Commission stated it will take appropriate action to insure availability of leased channels, including rate surveillance, if necessary.

GRANDFATHERING

Most existing CATV systems would be "grandfathered". In top-100 markets, if a CATV system extended its trunkline into new areas it would lose its grandfather status in the new area (as a practical matter, that would probably mean the entire system). In smaller markets, CATV systems could expand within their franchised areas. But, if the system added a new signal or expanded into a new community, it would, perhaps, not be allowed the full complement of distant signals proposed for small markets.

The foregoing were the major proposals relating to CATV system operation under the Public Dividend Plan. There were other proposals, alternatives, and hedges.

FEDERAL/LOCAL REGULATION OF CATV

The FCC also proposed rules which would preempt regulation of CATV based on a federal-local government dual regulatory approach, Notice of Proposed Rulemaking in Docket 18892, 25 FCC 2d 50 (1970). Under the Commission's preferred approach, the FCC would retain regulation of carriage and distribution of television signals and of program originations.

The local government would determine the successful applicant for use of the public ways by measuring all applicants against standards set by the FCC. The successful applicant would be certified to the FCC which would then, presumably, license the CATV operation. CATV

system "overbuilding" might be considered in the standards set for local entities.

The FCC hedged on whether it intended to preempt services ancillary to TV signal distribution, by disclaiming that its proposals "do not go to the possible future use of CATV cable for other communications services..."

A maximum 2% of gross revenues is suggested for future local franchise fees; existing franchises would be generally grandfathered.

From the cable television industry's point of view, the Commission's regulation of cable television as a free competitor is complicated by State regulation as a non-competing utility. See, Connecticut General Statutes, CH. 289, §§16-330 to 333; Nevada Revised Statutes, Sections 704 and 711; Vermont Statutes Annotated, Volume 30, Chapter 13, §§501 to 507; Rhode Island General Laws, Section 39-19-1 et seq.; Hawaii House Bill 1922-70. State public utility commissions, through the National Association of Regulatory Utility Commissioners (NARUC), are agitating for additional state regulation of cable television systems with little regard for national communications policies. States may regulate cable television until the Commission specifically preempts the field, TV Pix Inc. v. Taylor, 304 F. Supp. 459 (D. Nev., 1968) aff'd. 396 U. S. 556. In the estimation of the cable television industry, the additional burdens, conflicts and the lack of a settled regulatory atmosphere create an almost chaotic condition, making long-term planning impossible and restricting the availability of long-term risk capital. Difficult to reconcile is the Commission's performance in this area with the Commission's statement that it has "asserted full regulatory jurisdiction over cable..." Notice of Proposed Rulemaking in Docket 18892, 25 F.C.C. 2d 50 (1970).

It seemed as clear to the CATV industry as it did to the Court when the Court said:

> "...[I]t seems clear that as the outlines of the CATV problem emerged the Commission acted within the scope of the Act and consistently with the broad purposes of the Act by treating its responsibilities as comprehensive and pervasive. Any other determination would tend to fragment the regulation of a communications

> activity which cannot be regulated on any realistic basis except by a central authority; fifty states and myriad local authorities cannot effectively deal with bits and pieces of what is really a unified system of communication. The Supreme Court aptly characterized the functional aspect of the CATV systems as an 'essentially uninterrupted and properly indivisible' stream of communication!"

General Telephone Company of California et al v. F.C.C., 413 F. 2d 390, at 401 (D. C. Cir., 1969), cert. den., 396 U. S. 888 (1969).

LEGISLATIVE COPYRIGHT REVISION

The penultimate major area where the Commission regulatory policies have played a significant and troublesome role is in the efforts to achieve omnibus revision of the national copyright statutes. The Commission had expressed concern that cable television systems were not bidding against broadcasters for exhibition rights, and for time and territorial exclusivity. First Report and Order on CATV, 38 F.C.C. at 704 (1965); and, Second Report and Order on CATV, 2 F.C.C. 2d at 778 (1966).

At first, during consideration of H. R. 2512 in the 90th Congress, the Commission stated the copyright legislation should be a meld of copyright, communications and antitrust policies:

> "Such a revision may well reflect not just copyright but also communications and antitrust policies (see Fortnightly case, 392 U. S. at p. 401). Indeed, section 111 of H. R. 2512, dealing extensively with CATV copyright matters, was not passed by the House largely because it had not been considered by the committee charged with communications policy. (See 113 Congressional Record H3624-3626,3636-3637,3644-3647, 3857-3859; cf. Fortnightly Corp. v. United Artists, 392 U. S. at 401, footnote 33.) In short, any revision, dealing

> as it must with concepts such as adequately and inadequately serviced areas, originations, etc., might well be a meld of copyright, communications and antitrust policies. It would thus constitute, to a significant degree, the legislative guideline which the Commission has long sought and would welcome in an important new field such as CATV. The Commission would, of course, cooperate fully in this most important congressional endeavor." 15 F.C.C. 2d at 433.

By letter of March 31, 1967, to Chairman Harley O. Staggers, the Commission supported Section 111 of H. R. 2512. That section dealt with prospective copyright liability for cable television systems, and generally provided that a system was exempt from royalty payments if it was a relay to hotel and public establishments where no extra charge is made; or an instructional or educational TV; a common carrier; a non-profit or government organization; or a distributor of only local signals. However, the exemption could be lost if any of the programs were altered, or if the CATV system originated on more than two channels. The origination would not have been commercially sponsored, and could have consisted only of weather, time, news (without editorials), form reports, religious services, and the proceedings of local governmental bodies. The exemption would also have been lost if a per-channel or per-program charge was made, or if programs carried were broadcast for reception only by "particular members of the public." The exemption would also have been lost if "distant" signals were distributed in areas where there were three local network broadcast signals available, or where the local stations had exclusive copyright licenses for local exhibition of programs which would have appeared on the imported distant signals and notice of such rights had been given. Where the exemption was lost, CATV systems in areas with less than three local networks were required to pay a "reasonable license fee;" in areas where there were no local signals available, CATV systems would have no liability; in all other cases, there would be full liability for damages.

That section was stripped from the bill when the bill passed the House and was sent to the Senate.

In an effort to find a compromise which could form the basis for a new Section 111, the NAB and the NCTA staffs agreed on several principles but the agreement was rejected by the NAB Board of Directors. The principles provided generally that except for small or remote CATV systems, all systems would be liable for copyright royalties. CATV systems would have had a compulsory license for local signals and for as many distant signals as would bring the complement up to three networks and three independents. Leapfrogging (importation of more distant signals as opposed to more proximate available signals) would have been prohibited. CATV systems could have originated programs (cablecast) and advertised, but the FCC could have prohibited interconnection. Within their franchised areas, existing CATV systems would have been grandfathered as to service. The present FCC rules on nonduplication would have been retained, and within the Top 50 TV markets, CATV systems would have had to protect Grade A signals against distant signals for the run of the copyright exclusive contract and Grade A signals against Grade B signals for the copyrighted program's first run on syndication. In the other TV markets CATV systems would have had to protect Grade A signals against distant signals for the first run on syndication.

The last version of Section 111, appeared in S. 543. It provided generally that master antenna systems, non-profit or government owned CATVs, common carriers, and instructional nonprofit CATVs were exempt from copyright liability. Other CATVs were granted a statutory license for aural signals, "local" TV signals, signals imported into areas outside of any TV market, and imported signals needed to bring basic TV service up to: All networks plus three independents and ETVs in the top-50 markets, and all networks plus two independents and ETVs in the other TV markets. If a CATV system was located in a tv market, it would have had to protect "local" signals against "distant" signals' duplication on the same day. In addition, in the top 50 TV markets, CATVs would have had to give additional "run of the contract" exclusivity

protection, and in smaller markets--"first run on syndication" exclusivity protection. A sports "blackout" similar to that observed by broadcasters would have been required by CATV systems. All existing CATV systems would have been grandfathered as to signals carried on the date of enactment of the bill. Because a statutory license was granted, the section also created a schedule of royalty payments ranging from 1 to 5 per cent in $40,000 quarterly gross revenue increments, of which 15% would be distributed to music owners. On payment of an additional 1% per signal, the FCC could authorize the importation of additional signals.

At that point, by a March 11, 1970, letter to Senator John O. Pastore, the Commission switched its legislative position with respect to the copyright bill. Its new recommendation was that communications policy should not be melded into the copyright statutes. Many observers felt that this switch in position, coupled with the FCC-imposed freeze on CATV, killed S.543. However, it appears that new omnibus copyright legislation which includes CATV will be again considered in 1971.

TELEPHONE COMPANY RELATIONS

Because CATV systems use utility poles for attaching their cables, relations sometimes became strained between CATV systems and telephone companies. The strain was greater in instances where telephone companies were the owners of competing CATV systems, and culminated in cases like Telecable Corporation, 19 FCC 2d 574 (1969) and Manatee Cablevision, Inc., 22 FCC 2d 841 (1970). The Bell System can not own CATV systems by reason of a 1956 antitrust consent decree, U. S. v. Western Electric Co., Inc., and AT&T Co., Civil Action 17-49 (N.J., 1956), 13 R.R. 2143. Not being able to own CATV systems, the Bell system offered a channel service which the industry called a "leaseback." The other major telephone companies soon followed suit.

In 1966, the strained relations were put into focus by the Commission's investigation in The Associated Bell System Cos., 5 FCC 2d 357 (1966), modified 6 FCC 2d 433 (1967); California Water and Telephone Co., 6 FCC 2d 175 (1966), 6 FCC 2d 441 (1967); The General Telephone System,

6 FCC 2d 434 (1967); Common Carrier Tariffs for CATV Systems, 4 FCC 2d 257 (1966). Ultimately, the Commission designated some general issues for hearing, including whether the leaseback tariffs were fair, or whether the telephone companies were unreasonably discriminating or showing unreasonable preference or prejudice, whether the leaseback tariffs conformed to the statutes and rules, and what are the telephone companies' pole attachment rates, practices, and policies.

Later some issues with respect to leasebacks were spun off and expedited, which resulted in affirmance of the Commission's authority to act in this area, General Telephone Company of California, et al v. FCC, 413 F.2d 390 (D.C. Cir., 1969). The pole attachment issues are presently pending hearing, which has been expanded to include electric utilities, Memorandum Opinion and Order, 22 F.C.C. 2d 10 (1970) and, see, Memorandum Opinion and Order, 23 F.C.C. 2d 840 (1970).

Interim procedures for requesting certificates of public convenience and necessity for leaseback service were announced on August 9, 1968, 20 F.C.C. 2d 752 (1968), and the Commission announced a rulemaking proceeding to inquire into the relationship between CATV systems and telephone companies. A Final Report and Order in Docket 18509 was adopted in January, 1970, 21 F.C.C. 2d 307 (1970) promulgating rules found in §§63.54 to 63.57 and 64.601 and 64.602, see also 22 F.C.C. 2d 746 (1970) which precluded telephone company -- CATV system cross-ownership in the telephone companies' market area. Telephone companies were given four years to divest of property which violated the rules.

CONCLUSION

While the mass of CATV-connected policy issues looms large, the CATV industry feels that immediate resolution of three basic issues will solve most of the pressing problems. Those basic issues are: Distant signal

importation in major markets; federal preemption of regulation; and, control of telephone company pole attachment agreements.

January 25, 1971
National Cable Television
Association, Inc.

STATE OF NEW YORK
EXECUTIVE CHAMBER
NELSON A. ROCKEFELLER, GOVERNOR

Ronald Maiorana, Press Secretary
518-474-8418 (Albany) 212-JU-2-7030 (N.Y.C.)

FOR RELEASE:
SUNDAY
JANUARY 10, 1971

Governor Rockefeller today released the contents of a wide-ranging Public Service Commission report on community antenna television systems, in which the Commission recommends state regulation of CATV.

The report was prepared at the Governor's request after a six-month study. It was ordered last July 1, by the Governor in a letter to PSC Chairman Joseph C. Swidler.

Upon receipt of the 300-page report, the Governor said:

"I am tremendously interested in the development of CATV systems within the state and am deeply aware of their enormous potential as communications media. In that spirit, I asked for this report in the belief that the people of New York State should know that the rates, services and operations of CATV companies are designed to serve the public interest.

"CATV was the focal point of many legislative measures in the 1970 Session and, although none was adopted, the interest they inspired figured in my request for a comprehensive study and report.

"Chairman Swidler and his staff, especially Commissioner William K. Jones, tackled this enormously complex subject with admirable energy and skill. The report and the recommendations afford us much needed material for consideration as we enter the new legislative session."

(A copy of the letter of transmittal from Chairman Swidler to the Governor and a summary of the Public Service Commission report and recommendations are attached.)

Attachment

State of New York
Public Service Commission
Albany

Joseph C. Swidler
Chairman

44 Holland Avenue

December 31, 1970

Dear Governor Rockefeller:

In response to your request of July 1, 1970 the Public Service Commission has investigated the operations of CATV systems in the State of New York and submits herewith its report thereon.

Among the questions posed in your letter is whether regulation by the State is in the public interest and if so the form such regulation should take. We have concluded that State regulation is necessary to protect present and prospective users of CATV services and to insure that this new communications medium will make its full contribution to the public welfare through the whole range of services which it is now or may hereafter become qualified to perform, including improvement of standard TV reception, program origination, broadening of scope of television coverage available to subscribers, the development of public service, educational and cultural programs, the transmission of business and technical data and, ultimately, two-way communication which would provide a new versatility for this communication medium. Technological development in this new industry is very rapid, and one of the key reasons for State presence is to assure that its potential is fully exploited for the public good.

Cable television, or CATV, serves approximately 300,000 households in New York State. Concerned primarily in its present stage of development with the transmission and delivery of television signals to communities lacking any or an adequate number of local television signals, the CATV industry is still in its infancy. The industry has very large potential for growth, both in terms of the magnitude of the market served and in terms of the nature of services rendered. In the latter connection, CATV systems already have demonstrated a capacity to originate -- as well as relay -- television programming, and a variety of educational, governmental and business opportunities are envisaged for this new industry.

CATV systems have tended to develop on a monopolistic basis, with only a single system operating in any given geographical area. Because of the substantial investment required for cable facilities, it is desirable that the most technologically advanced facilities which are economically justified be installed at the outset, so that the full potential of the medium may be realized. As only one of the instrumentalities of communications, however, CATV should be reviewed in the context of other communications services -- over-the-air television broadcasting on the one hand, and telephone communications on the other.

Cable television is now regulated in some respects by the federal government, acting through the Federal Communications Commission, and in other respects by the municipalities in which the systems function, pursuant to terms of franchises granted by the municipalities. This report recommends that, notwithstanding existing federal and municipal regulation, there is a necessary role which the State of New York should undertake in connection with CATV, and that appropriate regulatory authority should be granted the Public Service Commission to enable it to fulfill the State's responsibilities in this important area.

Federal regulation of CATV has focused primarily on the programming practices of CATV systems. The FCC has been concerned mainly about protection of television broadcasting stations, both commercial and educational, from fragmentation and diversion of their audiences. The FCC also has sought to encourage, and even compel, the origination of additional television programming by CATV systems. In addition, it has sought to prevent the CATV industry from being dominated either by the telephone industry or by the television broadcasting industry. More recently, the FCC has proposed regulations which would limit CATV relations with radio stations and newspapers; establish technical standards for CATV systems; specify certain categories of programming that such systems would be obligated to carry; require CATV systems to contribute 5% of their gross revenues to educational broadcasting; and would limit municipal franchise fees to 2% of CATV gross revenues. The FCC specifically has inquired as to the relation of federal regulation to state and local regulation and has suggested the desirability of a State role. In its absence, the FCC is likely to fill the gap with its own regulatory programs.

Municipal franchises frequently regulate such matters as rates to subscribers; discrimination among subscribers; provision of free services to educational and governmental bodies; observance of various standards in the construction, maintenance and operation of the CATV system; maintenance of insurance and performance bonds; and limitations on transfer of the franchise. The terms of CATV franchises vary widely, however, and with respect to some matters they are particularly unsatisfactory, because they are inflexible or unenforceable or both. In other respects, existing franchise terms reflect an appropriate balancing of public and private interests in securing for the community both revenues and services from CATV operations.

The recommendations for State regulation included in this report are not intended to supplant local regulation by the municipality concerned. The role of the State, acting through the Public Service Commission, would be to supplement local regulation, in limited areas, and to insure that certain interests of a Statewide nature are adequately protected.

Each municipality would remain free to select the applicant it considered best qualified to operate its local CATV system, and to obtain for its citizens the maximum benefits to be derived through negotiations with various applicants. However, the applicants would be required to meet minimum standards of technical, financial and character fitness established by the Public Service Commission; the construction and operation of the proposed CATV system also would be required to conform to PSC minimum standards; and PSC approval of the franchise would be required in order to assure conformity with these standards. Existing CATV systems, and those under construction, would be "grandfathered", that is, normally they would not require PSC approval in order to continue operations.

Rates for CATV service would be determined by negotiation between the municipality and CATV operator at specified intervals. The Public Service Commission would be called upon to act only where the franchise failed to stipulate rates; where the franchise failed to protect subscribers against discrimination; or where the parties were unable to agree upon new rates in the course of renegotiating a franchise. Rate regulation by the PSC also may be required in the event the CATV system undertook common carrier operations, or a rate adjustment was required in special circumstances--downward to reflect poor service or upward to facilitate system improvement.

(more)

Supervision of CATV service would be exercised both by the municipality and the PSC, with the expectation that the former would have the primary responsibility for day-to-day surveillance of CATV operations. However, the PSC could act where provision of service was unreasonably delayed or extension of service was unreasonably withheld; or where the municipality was unable to prevent a deterioration of service. The PSC also would have authority to prescribe standards of service more definite than those contained in most franchises, and would be in a position to adjust the standards to reflect changes in the state of the art, in the community's needs, and in the economics of the industry. This is an area in which flexibility to meet future developments is particularly important and where the powers of the State should supplement the franchise contract for the protection of the public.

State standards would not restrict municipalities in such areas as franchise fees, provision of free services by the CATV operator, and requirement of access to CATV channels for educational, governmental or other purposes. In the absence of common carrier operations, the PSC would require channel access at variance with the terms of the franchise only if a need arose for Statewide networking, of a public nature, over interconnected CATV systems.

The PSC would have power to control renewal, amendment and transfer of applications, to the same extent that it would set standards for initial franchising. Abandonments would not require PSC approval except in limited circumstances. The PSC also would have authority to limit undue concentrations of mass media control (subject to FCC limitations), and to require appropriate insurance, inspections and reports relating to CATV operations. To assure fair reporting, it would prescribe a uniform system of accounts.

Looking toward the future development of CATV, the PSC would have authority, when a system reached a particular size or a particular level of economic development, to require that the system convert its operations to that of a common carrier. At such point, the CATV system would be required to limit its functions to those of a communications carrier (although it could retain programming and other affiliates) and would be fully subject to PSC regulation as a common carrier. Access by others to CATV channels would be assured on a non-discriminatory basis, and, in addition to the requirement that the CATV systems observe any franchise requirements respecting public service obligations, the PSC could establish parity among various systems in the State by prescribing Statewide public service obligations.

Whether or not common carrier status is achieved, the PSC would have authority to require the interconnection of systems, and to resolve any difference among municipalities where a CATV system required multiple franchises in order to conduct a viable operation.

CATV systems would require local franchises even if the transmission function was performed for them by telephone companies (contrary to existing law). Landlords would be prohibited from interfering with the access of tenants to CATV. And provision would be made to permit municipalities, or non-profit organizations designated by municipalities, to acquire CATV systems at a future date on equitable terms.

The PSC would occupy a middle position between the municipalities and the federal government. On the one hand, it would set general standards for, and provide advisory services and technical resources to, municipalities engaged in granting or seeking to enforce a CATV franchise. On the other hand, it would represent the State's interest in proceedings before the FCC, in order to assure that federal regulation would be designed to permit the CATV industry of the State to develop and expand along lines consistent with the long-run public interest.

As thus limited and defined, the role of the PSC would not be incompatible with a substantial measure of "home rule" for municipalities in those instances where CATV systems serve as truly local institutions. Many of the recommendations are intended to make municipal regulation more effective. Under these recommendations PSC regulation would not hamper CATV growth and development -- indeed, by seeking to influence FCC policy in a positive manner, the PSC should facilitate the growth of New York's CATV industry to a substantial degree. Finally, the measures proposed will assure that CATV subscribers are adequately protected; that the development of New York's CATV industry will produce a Statewide system capable of interconnection and compatible with the developing state of the art; that the public interest will be protected against undue concentration of control of mass media in New York State; and that access to this new medium will be provided to all users on equitable terms -- in particular, those seeking to employ CATV channels for public and educational purposes.

The preparation of the report was assigned to Commissioner William K. Jones, who has the benefit of familiarity with the procedures and jurisdiction of the Federal Communications Commission through studies he made as research director for a committee of the Administrative Conference of the United States, and as consultant to the FCC and the Ford Foundation. He also had the benefit of public hearings on CATV recently held before the Assembly's Committee on Corporations, Authorities and Commissions under the chairmanship of Assemblyman Robert Kelly. His report is directed to the Public Service Commission. The report has been the subject of Commission study and discussions, and we submit it to you with our endorsement as the report of the Commission.

Sincerely,

(Signed) Joseph C. Swidler

Hon. Nelson A. Rockefeller
Governor of New York State
Executive Chamber
State Capitol
Albany, New York

(more)

Summary of the Public Service
Commission Report on CATV

A. Franchising

Existing CATV companies actually engaged in operations should have their franchises confirmed.

Outstanding unexercised franchises should also be confirmed if either the franchise and the franchise holder meet minimum PSC requirements or the franchise holder has engaged in substantial construction of its system.

The choice of the issuance of new franchises should be left to the municipality to be served, subject to the following:

(a) Applicants shall meet minimum state qualifications as to technical, financial and character fitness.

(b) Proposed system shall meet minimum state requirements as to construction and operation.

(c) Applicant shall file with the municipality and the PSC such information as the municipality and the PSC require. The PSC shall require information relating to (i) the proposed system (ii) the applicant's technical financial and character qualifications to construct and operate the system proposed. The PSC may require supplemental information.

(d) New Municipal franchises shall become effective only after approved by the PSC. The PSC may only disapprove if

-- the applicant does not conform to minimum state qualifications;

-- the system proposed does not meet minimum state requirements, or

-- the grant of the application would violate state law or regulation or policy of the PSC.

The PSC should certificate systems directly only where a viable system requires a franchise from more than one community, and the communities involved are unable to agree upon a franchise for a single operator. Such certification would specify the terms and conditions of the franchise.

The PSC should prepare model franchises for municipalities of different sizes and aid municipalities seeking guidance.

The PSC should not be able to preclude multiple operations in the same community.

Prior PSC approval should be required in the case of a transfer, renewal or amendment of an existing franchise.

Restrictions pertaining to franchise term, franchise exclusivity, or the procedures for obtaining franchises could be included in state standards.

B. Rates

The PSC should not regulate rates generally at the present time but should limit its rate actions to the following areas:

(1) To assist municipalities in assuring that rates fixed in the franchise are enforced.

(more)

(2) To fix rates where a franchise does not fix rates either generally or in a particular context.

(3) Whether or not required or permitted by the franchise, discrimination among subscribers similarly situated shall be prohibited. However, free or reduced rates to governmental, educational or charitable institutions shall not be considered to be unjustly discriminatory.

(4) No franchise provision relating to rates shall bind a municipality for an initial period longer than ten years or a subsequent period longer than five years. If a system declines to renegotiate rates (on an unrestricted basis) ten years after the date of initial issue of the franchise, or five years after the date of any renewal, or if the municipality and operator are unable to agree on rates prior to the expiration of the initial ten-year period or subsequent period, the PSC should fix the rates.

(5) If an operator is converted to a communications common carrier the PSC shall regulate rates in the same manner as any other common carrier.

(6) If the system fails to meet any statutory or franchise obligation, the PSC may reduce rates. In the event service improvements are directed, the PSC may raise rates. Additional areas for PSC intervention may become apparent in the future if municipalities do not adequately protect their residents.

C. Service Quality

The PSC should have the following powers, regardless of the terms of the franchise:

(1) Where construction or operation of a system is unreasonably delayed or extension of service to all areas within the franchised territory is unreasonably withheld, the PSC may either (a) vacate the franchise for non-use, or (b) order the construction and operation needed to correct the delay or withholding of service. In determining whether delay or withholding of service is unreasonable, economic feasibility shall be the principal criterion.

(2) All systems shall be constructed and operated in accordance with technical standards established by the FCC and the PSC. The PSC should urge the FCC that, whatever stance it ultimately takes on technical standards, it should not preempt supplemental State standards (at least in the absence of a determination that the supplemental standards conflict with Federal standards.)

(3) Systems shall maintain local offices or telephone connections in the communities they serve.

(4) Deficiencies in service shall be promptly remedied.

(5) The municipality and the PSC shall be regularly notified of the complaints of subscribers and the manner in which they have been met.

(6) The PSC and the municipality should have joint service. Either may act, but the municipality should have the prime responsibility. The PSC would act only if (i) it receives complaints directly from subscribers; (ii) the municipality requests assistance; or (iii) it is apparent, after consultation with municipal officials, that PSC action is required in order to assure adequate service.

Service standards more definite than those included in most franchises should be established by the municipalities and revised as necessary in light of the state of the art. They should police them with experienced personnel where called upon to do so; and enforce them with rate deductions or other appropriate measures.

Municipalities should not be excluded from the service area to the extent their service requirements are not inconsistent with federal or state requirements. If dissatisfied with an existing operator, the municipality should be free to franchise a competitor under the same conditions as any new entrant might be franchised (and to cancel the outstanding franchise if grounds exist).

D. Service: Major Changes in Existing Service

As the state of the art advances or community needs expand, the PSC could require: (a) a larger number of channels, (b) two-way capability, (c) community origination centers or filtration arrangements, (d) additional facilities for interconnection, or (e) other major changes in the system.

It is recommended:

The PSC should be authorized to require changes in CATV operations--such as additional channels, two-way capability, additional origin points, filtration devices, and interconnection facilities--where necessary either to conform to FCC requirements or to implement a Statewide objective of overriding concern. That if such changes are ordered, the PSC should consider the costs and, if substantial, permit the systems to increase rates. If the change enables new service offerings, the cost may be recouped by charges for the new service. In the case of changes not required by the FCC, and in matters primarily of local rather than Statewide concern, the PSC may order an operator to canvass its subscribers indicating the changes proposed and any additional rates required to implement the changes. If a majority responding approve the proposed changes, the PSC shall order their implementation and authorize any rate increases needed to implement them.

E. Interconnection and System Coordination

The PSC should determine, from time to time, whether a minimum system size is necessary to afford satisfactory service. If such minimum is found, the PSC should issue regulations to be applicable to initial franchises, renewals, amendments and transfers of franchises.

F. Common Carrier Operations

When any single system reaches 50,000 subscribers, the PSC could convert the system into a "communications common carrier as to rates and services." The effect would be:

(1) The system could no longer originate programs. Program production operations would have to be placed in a separate corporation which could continue to be affiliated with the communiciations common carrier and use one or more of its channels, although it would be treated as just another customer for tariff purposes.

(2) As to all channels other than channels furnished free or at reduced rates pursuant to the franchise, and those used for retransmitting over-the-air broadcast signals, rates would be required to be just and reasonable, and in accordance with a filed tariff.

Leased channels could be classified in accordance with use, and some leased for lower rates than others; for some channels, employed for community purposes where the franchise does not so require, the elimination of tariff charges might be the most appropriate means of achieving parity among different systems. The PSC should direct such changes.

Systems should also be subject to common carrier regulation whenever they engage in common carrier operations outside the video field--as, for example, data transmission or other point-to-point communications subject to separate charge. When such common carrier operations become a substantial part of the operator's business, a conversion to common carrier status should follow.

G. Franchise Fees, Free Channels and Support for Education

The PSC should not regulate franchise fees, free channels for public purposes or various methods of supporting educational efforts. These matters should be left to the "package" of benefits in bargaining with applicants. The PSC should urge municipalities to seek channel access for municipal and educational purposes, rather than overly high franchise fees in bargaining for the best "package" of benefits from franchise applicants.

Systems should not pay any portion of their revenues to or share their profits with State or local educational institutions. The FCC's proposal to require CATV systems to pay 5% of gross revenues to the Corporation for Public Broadcasting should be opposed, as should the FCC proposal to limit municipal franchise fees to 2% of gross revenues.

The PSC should only intervene in this area: (1) when systems are converted to common carrier status, or (2) when significant interconnection of systems becomes feasible on conversion of a system to common carrier status franchise requirements for free or reduced rates for municipal and educational purposes should be continued where required by the franchise for its duration. Where no such requirements are included in the franchise, or upon expiration of the franchise, the PSC could impose some such requirements to achieve some parity among the systems in meeting public needs, and to make feasible, if the occasion arises, Statewide access for educational networking. If significant interconnection occurs in the absence of conversion to common carrier status, the PSC could require such channel access to permit educational or other public CATV transmissions designed for Statewide use.

H. The Role of the Telephone Company

Municipal permission should be required for local CATV operations whether the operator is going to use its own lines or those of the telephone company.

The FCC should be urged to disclaim jurisdiction over telephone services designed to accommodate unaffiliated operators having municipal consent. (The appropriateness of the telephone company's tariff to the CATV operator can be evaluated by the PSC in the same way that any other tariff provision is evaluated.)

The prohibition against telephone operations in the CATV area should not be expanded to allow such companies to provide channel service to CATV systems and to engage directly in those communications services which do not involve the retransmission of television broadcast signals. Municipalities should not be foreclosed from franchising new entrants into CATV and related fields (whether the telephone company or some other CATV applicant) by a requirement of state certification.

I. Landlord-Tenant Programs

Landlords should be prohibited from:

(1) Interfering with CATV installations desired by a tenant, as long as the above conditions of cost, landlord specifications, and indemnification are met.

(2) Accepting payment either from operators or from tenants to permit service in his building.

(3) Discriminating in rental charges between tenants receiving CATV service and those not receiving service.

Operators should also be prohibited from making payments to landlords and from discriminating in charges between tenants and homeowners similarly situated.

J. Concentration of Control

Whatever stance the FCC ultimately takes on the issue of concentration of control, its position should not preempt additional requirements imposed by state and local authorities, at least in the absence of an affirmative finding that the local or state requirement conflicts with federal policy.

The PSC should prescribe minimum standards on concentration of control of mass media and communications facilities, including:

(1) Affiliations between operators and those who sell, repair or install television sets.

(2) A ceiling on the portion of State population that may be served by one or several affiliated systems.

(3) Affiliations between systems and other local media of mass communications, such as daily newspapers and radio stations (assuming the FCC does not take preemptive action on these affiliations, as it has on certain other affiliations).

(4) Affiliations between systems and those who use, or supply, the systems, including program producers, computer and data processing firms, electronics equipment manufacturers, and the like.

K. Other Measures

The PSC should also regulate in the following areas:

1. The PSC should prescribe minimum levels of liability insurance to be carried by operators.

2. The PSC should be empowered to require (a) access to facilities and records of the CATV operator by both state and local officials, (b) submission of reports by the CATV operator to state and local officials, and (c) maintenance of uniform systems of accounts by CATV operators.

3. The PSC should regulate transfers of control, amendments and renewals of franchises as they would an initial franchising. These transactions also would afford occasions to update obsolete minimum criteria pertaining to system construction and operation into line with developments since the issuance of the initial franchise.

4. There should be no absolute prohibition against unapproved abandonments. However:

(a) In the absence of franchise provisions to the contrary, no operator may abandon service, without municipal and PSC approval, prior to the expiration of the franchise or in contravention of its terms.

(b) Where not precluded by the franchise service may not be abandoned without six months notice to the municipality and the PSC.

L. Representation Before the Federal Communications Commission

The PSC should assert State interests before the FCC. Such participation should extend, not only to matters under active State and local control, but also to matters exclusively subject to FCC control and matters which should not be regulated.

(more)

M. Federal-State Relations

1. There are areas where action by both federal and state agencies is appropriate:

(1) The FCC should adopt technical standards pertaining to signal quality after consultation with state and local officials, but afford latitude to state authorities to modify and adapt to local conditions where appropriate, and to insist on higher standards where not inconsistent with federal policy.

(2) Both State and Federal agencies should be empowered to require interconnection of CATV systems when in the public interest (the State being limited to systems within its borders).

(3) States should be permitted to insist on conversion as long as no Federal policy is contravened (the FCC could act in the same area if it chose to do so, and, to the extent that it did act, its actions would be preemptive).

(4) The FCC should defer to state and local judgments in cases of television salesmen and repairmen. Data transmission users are difficult to classify. Here perhaps joint consideration by Federal and State authorities is appropriate (although the problem is not an immediate one for CATV systems). The FCC should continue to act in those areas where the federal interest appears to require action, but additional State measures should be permitted in the absence of compelling contrary Federal interest.

2. The following areas should be left to State and local control:

(1) CATV service generally.

(2) Franchising of CATV operators.

(3) Rates for CATV service.

(4) Franchise fees and public service offerings.

(5) Landlord-tenant relations.

(6) Telephone company operations.

(7) Program regulation.

The FCC should defer to State and local regulation on the above and not undertake regulation at the Federal level. If an assurance of minimum standards is required, the FCC should not attempt to formulate its own minimum standards but should announce that Federal control will be forthcoming unless a State agency certifies that it has general authority to regulate essential aspects of CATV operations, or has authority effectively to supervise municipal regulation of such operations, or has some combination of such authorities. The FCC could then proceed to establish Federal standards for states lacking any standards whatever, while declining to exercise jurisdiction over systems in states with an effective system of state control or combined state and local control.

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REGULATION OF CATV DISTRIBUTION SYSTEMS

Presented By

REESE H. TAYLOR, JR., Chairman

Public Service Commission of Nevada

Panel Member

at

Convention of the National Cable Television Association

San Francisco, California

8 - 9 A.M.
Wednesday
June 25, 1969

REGULATION OF CATV DISTRIBUTION SYSTEMS

Good morning ladies and gentlemen. It is indeed an honor and a pleasure to appear with this panel at your National Convention. Although I feel somewhat akin to Daniel in the lion's den, perhaps a number of you may be persuaded to accept my views regarding state regulation of CATV distribution systems, particularly since my position, in light of the possible alternatives, is predicated upon a firm belief that state regulation is not only best for the customer, but best for the industry as well!

We in Nevada are probably the nation's strongest boosters of CATV. A look at the map and the distribution of our population will tell you why. With a large geographic area and only two urban centers, most of our sparsely-settled state is comprised of small and highly remote communities which cannot support their own television stations. In these circumstances, CATV provides an important link between Nevada's small communities and the rest of our state and country.

At the present time, we have a total of eight CATV systems in operation. Furthermore, we have just selected two of seven applicants to provide CATV service in Clark County, where Las Vegas is located. As a result, we are hopeful the importation of distant signals into Nevada will not be frustrated by the F.C.C.'s proposed rules regarding retransmission consent agreements. In fact, our concern is such that the Governor and the Mayor of Las Vegas have drafted official statements for presentation to a committee of the House of Representatives, so that Nevada's protest against the F.C.C.'s proposed rules can be made a matter of record. This

may give you some idea of the importance of CATV to Nevada, the extent to which we are dependent upon it, and the firmness with which we will oppose any effort to obstruct its future development.

Along with our dedication to CATV, we recognize its advent has produced a great deal of controversy as to whether or not distribution systems should be regulated, and if so, by what regulatory agency and pursuant to what regulatory approach. In searching for answers to these questions, it must be noted a definite trend is now emerging whereby more and more of the small independent systems are being integrated into large, well-financed combines, and insofar as the future is concerned, it appears safe to forecast an even greater acceleration in the race for additional acquisitions and consolidations. This reading of the crystal ball is consistent with the predictions of those who visualize CATV as one of the best new prospects to become a billion dollar industry - provided, of course, future development is not hamstrung by ill-conceived federal regulations!

It cannot be ignored, however, that while the CATV industry has been experiencing rapid growth and expansion, the public interest has become increasingly involved, and this involvement has led to a widening demand that CATV distribution systems be subjected to regulation. At this point, it might be well to define the specific area sought to be regulated as that portion of a CATV system which extends from the point of delivery at the head-end to the place of customer reception. This definition stems from the fact the F. C. C. has already asserted undeniably exclusive jurisdiction over the importation of distant signals to the head-end, in accordance with the authority vested in that agency to regulate broadcasting. Therefore, my remarks today are directed

towards the matter of regulating, within the confines of the foregoing definition, the franchising and the service, facilities and rates of CATV distribution systems - a field which the F. C. C. has not yet preempted.

As to the necessity of such regulation, one doesn't have to read many CATV periodicals to realize you in the industry are squarely opposed to any regulation of your distribution systems. This is to be expected. Businessmen don't often invite regulators to share in the exercise of management prerogatives. In being wholly realistic, however, and regardless of whether or not it is justified, you are going to have to accept the fact that regulation of your CATV distribution systems is inescapable. Consequently, despite my own sympathy with some of your arguments, no useful purpose can be served by debating here the pros and cons of regulation as such. The far more important questions for you to consider are:

First, who will do the regulating; and

Second, what regulatory approach will be followed.

Before examining these questions, it should be emphasized that regulation of your distribution systems cannot be limited to service and facilities. Rate regulation will have to be included. Service and rates go hand in hand, and there simply isn't any fair or effective way to regulate one without regulating the other. Therefore, you should resign yourselves not only to the inevitability of regulation, but also to the fact that such regulation must necessarily incorporate the setting of rates.

In considering the question of who will do the regulating, there are actually only three alternatives - the federal government, state governments, or local county and city officials. Taking the last alternative first, it is a

matter of record that most of the regulation currently affecting CATV distribution systems has been implemented by the officialdom of local governments. Moreover, history has shown that left to their own devices, local officials, trying to act as CATV regulators, have been largely ineffectual, because in most cases, county and city council chambers have simply become competitive auction blocks where the prime consideration has been potential revenue to the county or municipality from franchise fees, and not protection of the subscriber in terms of insuring adequate service at a reasonable rate. In addition, without a technical staff to supply the necessary expertise, local officials have been largely unequipped to cope with the rapid-fire developments of CATV technology, and as already indicated, what authority they have been given to supervise service and rates has been largely unexercised or haphazardly applied.

With regard to the alternative of federal regulation, much could be said, by someone far more knowledgeable than myself, concerning the various regulatory pronouncements of the F.C.C. in a number of areas associated with the operation and maintenance of CATV facilities. However, the best general statement I can make is that the F.C.C. has so far confined itself to an exercise of the Commission's licensing authority in the broadcast area, and until very recently, a strictly hands-off attitude has been taken with respect to the regulatory considerations affecting local distribution systems. However, as witness the certification requirement recently imposed upon telephone companies providing CATV service, it cannot be presumed the F.C.C. will remain inactive forever. Nevertheless, preemption is not yet upon us, as demonstrated by the recent and well-reasoned opinion of a three-judge Federal Court in our Nevada TV-Pix case. Let me give you a

couple of quotes:

> "The dynamic rapidly changing technology of radio and television broadcasting is ill-suited to specific Congressional guidelines to regulatory authority. The need for the greatest flexibility commands the desirability of vesting in the Commission (F. C. C.) the power of Congress to preempt or not to preempt areas of control which might otherwise be invaded by the states. Thus, whether preemption has in fact occurred, invalidating the Nevada Community Antenna Television System Law under the Supremacy Clause of the Constitution, depends on whether the Federal Communications Commission has, in fact, regulated in this area and not upon whether it has the power to do so. The state statute "at least so long as any power the (Commission) may have remains 'dormant and unexercised' ", is valid and constitutional".

A little further on, the opinion states:

> "Not only has the F. C. C. failed to promulgate regulations concerning rates, quality of service and franchises of community antenna companies, it has, through the years, sought to eschew legislative authority in this area".

The court then referred to a 1965 pronouncement by the F. C. C. and made the following comment with respect thereto:

> "In view of the fluid authority intended and required to be vested in the Commission (F. C. C.) to cope with changing conditions in the industry as they present themselves, we prefer to view these pronouncements of the F. C. C. only as irrefutable evidence of the

absence of present intent to regulate and preempt state authority in the field of CATV franchises, rates and service".

It should be crystal clear from the language quoted that unless and until the F.C.C. moves into the area, state regulation of CATV distribution systems will continue to be valid. Accordingly, if the states will accept the foregoing invitation, the F.C.C. may well be dissuaded from occupying the field, and I have to believe this would be highly desirable for several reasons, the three most important of which are as follows:

1. The F.C.C. is barely able to keep up with its present work load, without becoming hopelessly bogged down in the matter of regulating CATV distribution systems.
2. One of the basic reasons behind the current demand for effective regulation is that modern-day CATV combines have largely removed top system management personnel from the degree of close contact with subscribers that once prevailed. Accordingly, to vest all regulatory responsibility in a Washington agency of the federal government would only remove the regulators as well from any degree of close contact with those that are expected to benefit from their regulation.
3. Too much power has already been granted to the centralized government in Washington, particularly with respect to regulatory considerations involving essentially local problems that are best handled at the state level.

In my opinion, the third alternative, i. e. state regulation of CATV distribution systems, is by far the most attractive for all concerned. So far, only Nevada and Connecticut have seen fit to adopt CATV regulatory legislation, and both of these states have assigned full responsibility to their utility commissions. However, regulatory legislation has been proposed in the following eleven states: Arkansas, Florida, Maryland, Massachusetts, New Jersey, New York, Oklahoma, Pennsylvania, Vermont, Washington and West Virginia. In addition, the utility commission in Puerto Rico is now asserting jurisdiction over CATV distribution systems.

Our regulatory experience with CATV in Nevada dates back to early 1965. In that year, our Commission, acting upon complaints of poor service and excessive charges to subscribers, initiated an investigation to determine whether or not the public interest required an exercise of regulatory authority. Faced with inadequate statutes, the legislature, in 1967, adopted our present CATV law giving the Nevada Public Service Commission power to act in the following areas:

1. The authority to issue certificates of public convenience and necessity in accordance with prescribed legislative guidelines.
2. The power to direct the construction and operation of reasonable extensions and the authority to order the making of reasonable repairs and improvements.
3. The power to revoke, suspend or alter a certificate upon certain specified grounds.
4. The authority to regulate rates, including the responsibility to see that all rates and charges are reasonable and not

unjustly discriminatory as to any person, class of persons, or locality.

5. The responsibility to approve mergers and consolidations.

6. The right to find that the public interest requires an exercise of the power of eminent domain in behalf of a certificated CATV company seeking to use the wires, conduits, cables or poles of any other public utility, provided such exercise will not create substantial detriment to the service rendered by the other utility nor cause irreparable injury to said utility.

As for our experience under the foregoing statutory provisions, we are really just getting our feet wet. Quite recently, as indicated earlier, we conditionally granted two of seven applicants the right to provide CATV service in Clark County. Of interest to you should be the fact that one of the unsuccessful applicants was the largest independent telephone company in Nevada. As a regulated utility accustomed to dealing with our Commission, you might think the telephone company would have put on the best case. However, in objectively applying our determinative criteria, we found the telephone company's presentation lacking, and I feel certain any other group of state regulators would have reached the same conclusion. Accordingly, those of you who fear state commissions may show undue preference to telephone utilities should abandon your fear!

The second area of major concern, i.e. the regulatory approach to be followed for CATV distribution systems, does not lend itself to easy analysis. Even in Nevada, we have had our doubts regarding the propriety of public utility regulation, particularly from the standpoint of accounting practices,

rate base determinations, and setting a fair rate of return. We definitely recognize a degree of flexibility will be required, and perhaps even some legislative modification of the method we now use to determine rate base. I suppose it can be argued also that the distribution of television signals doesn't constitute an essential service like water, electricity, telephones and gas. On the other hand, the provision of a fair return on investment and the exclusive right to serve within a designated area are positive advantages of public utility regulation. In any event, despite Nevada's commitment to the public utility approach, let me suggest two other alternatives by which state regulation can be implemented:

1. In those states with sufficient financial resources, it is certainly conceivable the regulation of CATV distribution systems can be handled by an independent state agency - one not wedded to traditional public utility concepts.

2. In those states without the financial resources to support a new independent agency, the state legislature can devise a complete regulatory package for application and administration at the county or city level, and this package can include funding for at least a small technical staff.

In closing, it is my position that regardless of any question about the public utility regulation of CATV distribution systems, the franchising and the service, facilities and rates of such systems will inevitably be regulated, and relying upon this premise, I am convinced the states constitute the level of government best suited to provide such regulation, from both industry's standpoint and that of its customers. However, if you are not convinced, further opposition to state regulation will ultimately lead to intervention by

the F. C. C., which I view as a most unfortunate prospect. Consequently, I urge you to stand with us in fostering state regulation of your CATV distribution systems, because time is running out, and if you fail to join us, I am sure you and your subscribers will long rue the day the F. C. C. moves in to fill the vacuum.

Thank you very much.

Before the
General Assembly of New Jersey
Committee on Transportation and Public Utilities

STATEMENT OF AMERICAN BROADCASTING COMPANY

American Broadcasting Company owns and operates WABC (AM, FM and TV), New York City, AM, FM and TV stations in Chicago, Detroit, San Francisco and Los Angeles and AM and FM stations in Pittsburgh and Houston. ABC also operates national television and radio networks. It has no cable interests.

As a major national communications company, ABC has long interested itself in the emergence of cable services and has participated, consistently in federal proceedings, and frequently in state proceedings, concerned with development of this industry.

I. Preliminary

It is difficult, at this point in the development of CATV regulations at the federal level, to define, confidently, a proper regulatory role for the states. It seems apparent that the federal government has complete authority, if it chooses to exercise it, to regulate all aspects of cable service. United States v. Southwestern Cable Co., 392 U. S. 157 (1968). The question as to the extent to which the federal government

will choose to exercise this authority is, as you know, now under active consideration as a result of the Commission's July, 1970 Notice of Proposed Rule Making in Docket No. 18892.

A state cannot now be certain of, or decide upon, particular areas where it may properly assert its regulatory power. At the same time, Docket No. 18892 (and earlier Commission pronouncements) indicates a desire upon the part of federal authorities, that there be significant state or other local regulation of cable services.

With these considerations in mind, it is the purpose of ABC's statement to suggest a proper emphasis which may be placed upon developing state regulation. That emphasis, in ABC's view, should, in broad terms, exist (1) in the development of local, public service and educational programming by cable systems and (2) in the development of regulations relevant to consumer protection. A fair and adequate compensation to local authorities for assumption and efficient administration of these regulatory responsibilities, by way of francise fees, is also, in ABC's view, essential.

II. Promoting the Development of Local, Public Service and Educational Programming by Cable Systems

A fundamental objection voiced by many persons (public and private) to widespread development of cable services is that, with substantial economic power on a national scale, the industry could develop resources sufficient to siphon from over-the-air television some or all of the best programming, particularly entertainment and sports, now provided by that means. The public interest problems arising from such an eventuality are fairly obvious: It would mean that the public would have to pay a fee for programming which it now receives over-the-air; members of the public who could not afford, or chose not to make the necessary payment, would be deprived of the programming; those members of the public to whom cable services were not available would be wholly deprived of the opportunity of viewing it, even for a fee; and the effect upon network and local television operations arising from the loss of such programming would be to reduce or eliminate their abilities to provide public service, news and other special events programming and coverage, now usually

produced from profits made through other programming.

The Federal Communications Commission has indicated that it will not permit such an eventuality. See First Report and Order, 20 FCC 2d 201, 204 (1969). The cable industry, or some members of it, have indicated that they have no intent to produce such a result.

The Federal Communications Commission has, rather, indicated that it envisions for cable a role which would ultimately produce innovative, diverse and truly different programming, with an emphasis upon locally-oriented services. ABC has never quarreled with the public interest value for such a role in cable service; in fact, it has consistently encouraged the development of cable along such lines.

The problem, however, remains as to how to effectuate the development of cable in such a manner. The Federal Communications Commission has adopted a rule which requires systems of certain size (and by a certain date) to operate "to a significant extent as a local outlet by cablecasting." (Rule 74.1111). The Commission has thus far declined to go further and provide more specific guidelines which would be effective to produce the result which its rule, in general terms, contemplates. To accomplish this stated goal is, in ABC's view, a proper function for local regulation.

We believe it appropriate for state authorities affirmatively and specifically to require originations truly innovative;

truly different; and responsive to local needs. These originations would fall, principally, in areas of local, public service and educational programming.

As cable originations develop and as requirements for origination are increasingly imposed (perhaps even expanded), it should be recognized that the easy and relatively inexpensive route for cable operators to follow will be origination devoted to other kinds of programming. The purchase of syndicated product, feature films and the like and their production over minimal origination facilities will prove less burdensome than will the efforts necessarily associated with the production and carriage of programming related to local events, educational or public service programming.

Therefore, unless state authorities act affirmatively and effectively to implement the announced federal goal, the promise of cable for truly innovative programming may well not come into being.

Specifically, ABC believes that a state should act: (1) to require the dedication of particular numbers of channels for local, public service and educational programming and to require their exclusive use for these purposes whether by the cable system owner or by others; (2) to insist upon specific commitments from those seeking franchises and those seeking renewal of franchises for programming efforts of a truly

innovative nature; and (3) to scrutinize the performance of cable operators, in light of their promises, to insure that they are, in fact, accomplishing, in a meaningful sense, the goal of operating "to a significant extent as a local outlet by cablecasting."

In the present context of federal regulation, at least, this would appear to be a necessary function for local authorities to perform if the public is to realize the benefits of cable which its entrepreneurs have conceived and promised for it.

III. Regulations Relevant to Consumer Protection

It is equally necessary for states to contemplate regulation adequate to protect consumer interests in relation to cable services. In these areas, the federal government has thus far either declined to act at all or has acted in limited manner.

Cable operations are tinged with characteristics similar to common carriers: They utilize public rights-of-way; as a practical matter, they operate as monopolies (although it is recognized that, theoretically, monopoly status is usually denied); they obtain their right to operate based upon specific promises for public service at particular charges; and they are generally required to provide service to all members of the public who desire it. In the context of such a business operation, it is traditional that local authorities interest themselves, in regulatory actions, and that those actions should comprehend, at least, the following areas.

Rates. The federal government has not thus far indicated any interest in regulating the rates charged to the public for CATV services. The analogy to regulation of intrastate telephone rates indicates the appropriateness for the state to do so. Nothing could be more fundamental to the interests of the public than assurance that rates are non-discriminatory, uniform for comparable services and are reasonable.

Technical Performance. While the Commission (in Docket No. 18894) has tentatively proposed technical standards, these standards have been "formulated from engineering considerations applicable primarily to the vast majority of cable systems now installed in this country. . . ." The standards do not take into account problems of "ghosting", interference caused by reflections or performance characteristics involving phase relationships in the system. (Notice, p. 5).

In other words, the technical standards proposed by the federal government do not purport, even if complied with, to solve substantial problems which may exist in particular areas and which may be of very real concern to the public in those areas. It would, therefore, seem appropriate for local authorities to address themselves to more specific and detailed standards and requirements to insure that the service for which the public is asked to pay is not needlessly or unnecessarily degraded through less than state-of-art, or cost-cutting construction and maintenance.

Along the same lines, it would seem desirable for the state to require, to the extent possible, uniformity in construction of systems and adequate capabilities to permit interconnection so that the systems would have regional or even state-wide capacity for the public service and educational programming they would produce.

Adequacy of Repair, Maintenance and Servicing. As in the case of telephone, electric and similar utility services, it is appropriate for the states to insist that the cable operator maintain adequate facilities and personnel for service and prompt repairs. Adequate procedures should also be required for the handling and disposition of complaints relative to the service.

Areas of Construction. Finally, there may well be a tendency on the part of cable entrepreneurs to construct systems in areas which are conceived to be the most promising, economically, for rapid and maximum subscriber saturation. Such an approach to the construction of systems is not dissimilar to so-called "cream skimming" in the common carrier field which local and federal authorities have been alert to resist. The result, if permitted, is to deprive members of the public, particularly in underprivileged and disadvantaged areas (as well as in sparsely populated areas) of cable services and opportunities for the local services which they promise. Obviously, that is not a result which either federal

or state authorities desire to achieve.

Absent local insistence, however, that construction be undertaken and completed in maximum areas, there is no federal requirement, nor the promise of one, that cable systems might not limit construction to upper income and otherwise economically advantageous areas and neighborhoods.

IV. Fees to be Charged by Local Authorities

The above areas are those in which ABC believes local regulatory authority should be emphasized if announced federal and other public policy goals are to be realized. It is recognized that the assumption by state or local authorities of such responsibilities would impose a very considerable and substantial burden upon local administrative functions.

As this Committee is no doubt aware, the Federal Communications Commission has proposed to limit the fee which state or local authorities may charge to 2% of a cable system's gross income. While some federal action in this area may well be required, in light of the Wonderland Ventures decision, ABC seriously doubts that the specific 2% limitation suggested by the federal government is either fair or reasonable in light of the substantial regulatory responsibilities which the federal government itself seemingly expects local authorities to assume.

ABC is not sufficiently expert in the expenses and burden associated with such state regulation as may be undertaken to suggest, specifically, an appropriate percentage. But it does

believe that the fees which state authorities may permissibly charge should be adequate: (1) to meet all costs associated with initial regulation and continued, effective regulatory scrutiny and (2) to cover reasonable payment for the use of public rights-of-way.

It seems obvious that if the local authorities are not permitted an adequate fee, the result will simply be inadequate regulation, in critical areas, to the detriment of the public. Particularly, since at this juncture in developing CATV regulation, the role of state and local authorities is a substantial one, ABC has opposed, at the federal level, the suggested 2% limitation on franchise fees which may be charged by state authorities.

ABC thanks the Committee for this opportunity to make its views known.

ASSEMBLY BILL NO. 2139 IMPROPERLY TREATS CATV AS A PUBLIC UTILITY

A. What Is a Public Utility

There have been numerous attempts made to definitively establish the point at which a company becomes a public utility. Essentially, a public utility is a company which provides an essential service to all of the people in a specified area, under government protection from competitors who would provide the same service, and under governmental regulation of rates and services. The most well-known utilities include telephone and telegraph companies, electric companies, gas and water companies, and companies engaged in urban mass transportation.

The primary purpose of public utility regulation is to establish a regulatory determined price, which was intended to be a substitute for a market determined price. Regulation of prices was deemed necessary for products or services which satisfied basic social needs and/or were indispensable to modern living. The grant to companies of exclusive rights to sell a product in a territory for which there was no substitute or alternative product was often found desirable for the provision of certain products operated most efficiently under a monopoly. For example, the capital investment for plant and facilities is large when compared with annual revenue and competition discourages potential entrants. Second, in the absence of competition, production and distribution facilities can be employed more intensely, and large scale output makes possible economies which reduce the average cost of service.

The existence of government regulation over public utilities also recognizes that in certain areas competition in the provision of products or services could be destructive and in the end could result in the rate-paying public bearing the burden of such destructive competition. One notable example is Section 1(18) of the Interstate Commerce Act which requires prior Commission approval before a railroad carrier may undertake to construct or operate new or additional facilities. The evils which the enactment of Section 1(18) was designed to cure were described in Transit Commission v. United States, 289 U.S. 121, 127 (1933) as follows:

> ". . . [E]normous sums had been expended by interstate railroad carriers for the construction and operation of lines that were not needed or likely to be needed. Such investments had brought financial ruin to some and had made doubtful the power of many to continue operation in other than flush times."

The Supreme Court in Texas & Pacific Ry. v. Gulf C. & S. F. Ry., 270 U.S. 266 (1926) stated that the enactment of Section 1(18) was a recognition by Congress:

> ". . . that preservation of the earning capacity, and conservation of the financial resources of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources, and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; and that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss."

B. CATV Systems in New Jersey Do Not Possess the Essentials of Public Utilities and Should Not Be Regulated As Such

CATV systems lack the most essential feature characteristic of public utilities--they do not provide an essential service. The CATV industry

provides a convenience rather than a necessity. It is an extension of the broadcasting industry, an electronic informational service, which has not been regulated as a public utility. That CATV is a convenience rather than a necessity is confirmed by the extent to which CATV has developed in New Jersey. There are approximately 26 operating CATV systems in New Jersey which serve less than 200,000 subscribers. This total represents but a small fraction of the total households in the State and of the total television households in the State.

In comparison, as of December 31, 1968, there are many, many millions of telephones in the State of New Jersey, with well over 90% of the households in New Jersey having telephone service. A further comparison between the telephone industry and CATV industry, which are both members of the communications industry, demonstrates why state regulation is justified for the former but not the latter. With the possible exception of the mail, telephone service is the most important private communications vehicle. CATV cannot claim a comparative degree of importance. Rather, CATV plays a minor role in the scheme of public communications. Second, telephone service is considered indispensable, especially for business organizations. CATV cannot be said to be indispensable. Third, adequate telephone service requires that users in one part of the state have the capability to call users in other parts of the state which may be served by a different telephone company. State regulation is necessary to insure that telephone companies interconnect their facilities and that the price for such service is just and reasonable. As CATV presently exists, there is no such requirement for interconnection.*/

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*/ In the event that the CATV systems are required to interconnect on a national basis as contemplated by the FCC, they would be engaged in interstate communications and subject to the jurisdiction of the Federal Communications Commission.

Fourth, state regulation is required to assure reasonable rates and quality service for telephone service--a service for which there is no acceptable substitute. CATV, however, is a voluntary service for which acceptable substitutes do exist and its rates are more properly regulated by competition in the marketplace.*/

A second essential of public utility status is that such companies have government protection from competitors who would seek to provide the same service. However, CATV systems are subject to competition from any of several sources. CATV systems face direct competition from free television through the use of conventional antennas owned by residents. This is especially true of New Jersey, which receives service from several of the nation's top 100 television markets located in New York, Philadelphia, and Baltimore, and where almost the entire state receives the signals of the three national networks. CATV systems also face direct competition from translator stations which serve to amplify television signals into areas which would not otherwise receive high quality television service. Moreover, since cable television is an entertainment luxury, it faces additional competition from other forms of entertainment such as newspapers, magazines, sporting events and/or movies.

Where--as in New Jersey--municipalities may not grant exclusive CATV franchises, the CATV operator may also face competition from another CATV system. Indeed, there have been cases where a municipality has granted

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*/ It is worthwhile to note that a Federal Court in Greater Freemont, Inc. v. City of Freemont, held that CATV was not a necessity requiring regulation of the type devoted to natural monopolies and stated: "The public has about as much real need for the services of a CATV system as it does for handcarved ivory back-scratchers. Even if in fact the CATV system is the only one in the market, it is not a monopoly in the economic sense . . . . Thus, CATV is not a public utility within the meaning of the definition that has been accepted."

franchises to several CATV systems to serve the entire community.

No protection is available to CATV systems from any of these alternate methods of providing local television coverage. With current developments in space communications technology, it is to be expected that the future will produce television broadcast systems utilizing satellite broadcasting techniques which would provide for substantially greater rural television coverage than is available today. Public utilities must be reasonably protected from unlimited competition. Brady Transfer & Storage Company v. United States, 80 F. Supp. 110, aff'd 335 U.S. 875. However, no state legislature can give to CATV systems the traditional protection to which a public utility must of necessity be entitled, if for no other reason than that a state legislature is completely without authority over the competing methods of extending television reception to rural areas for the Federal Government has completely occupied the field of radio and television.

If CATV systems are to be regulated, such regulation should reflect the nature of the industry. CATV has been recognized by the Federal Communications Commission as being capable of performing two services both related to broadcasting. First, by providing good quality reception by improving the signals of stations where off-the-air reception is inferior because of terrain, man-made structures or other factors, CATV acts as an auxiliary television service. Recognizing this role of CATV, the Federal Communications Commission has sought to "integrate the CATV service into the national television structure in such a way as to promote maximum television service to all people of the United States." CATV, 2 FCC 2d 725 (1966). Second, the Commission recognized that CATV, through program origination, could itself act as a broadcaster thereby increasing the number of local

outlets for community expression, as well as augmenting the public's choice of programs and types of service without use of the spectrum. Midwest Television, 13 FCC 2d 478. Accordingly, the Commission adopted rules requiring CATV systems with more than 3,500 subscribers to originate if they so desired. CATV, 20 FCC 2d 191 (1969). Moreover, the Commission adopted rules requiring that cablecasting by CATV systems be conducted in accordance with equal time, fairness and sponsorship identification requirement patterned after those applicable to broadcasters stating:

> "It is clearly necessary to the effective performance of our responsibilities for the regulation of television broadcasting that we require CATV systems engaged in program origination to abide by the same equal time and fairness requirement applicable to broadcasters." CATV, 20 FCC 2d 201, 220 (1969).

Given CATV's broadcasting characteristics, public utility regulation of CATV would be inappropriate. Television stations are not public utilities. Sanders Brothers Radio Station v. Federal Communications Commission, 106 F.2d 231, reversed on other grounds, 309 U.S. 470 (1939). The Supreme Court clearly established that Congress in adopting the Communications Act intended that broadcasters should be regulated as free enterprises and not public utilities when it stated:

> "In contradistinction to communications by telephone and telegraph, which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulation of railroad and other carriers by the Interstate Commerce Commission, the Act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus, the Act recognizes that the field is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition as it has done in the case of railroads in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted." 309 U.S. 470, 474.

C. There Is No Need for Regulation of CATV As A Public Utility

The adoption of public utility regulation would necessarily be dependent on a finding that CATV possessed the following characteristics:

1) CATV service is an essential service.

2) CATV tends towards monopoly because only one CATV system operates in each community and because there is no effective competition.

3) There has been a trend toward concentration of ownership of CATV systems.

4) Charges to subscribers may be exorbitant and returns on invested capital excessive.

5) There is no control over the quality of service which is offered. The subscriber is captive to the system owner.

Yet, none of these points apply to CATV in New Jersey.

1. CATV Is Not An Essential Service

CATV is a convenience and not a necessity. The relatively low penetration of CATV service in the State confirms the statement of the U.S. Supreme Court that:

> "Essentially, a CATV system no more than enhances the viewer's capacity to receive the broadcaster's signals; it provides a well-located antenna with an efficient connection to the viewer's television set. It is true that a CATV system plays an 'active' role in making reception possible in a given area, but so do ordinary television sets and antennas." Fortnightly Corp. v. United Artists Television, Inc., 392 U.S. 390 (1968).

2. CATV Is Not A Monopoly

As heretofore shown, CATV systems are subject to competition from several sources. As the Supreme Court recognized in Fortnightly, CATV systems must compete with conventional antennas owned by residents, and they must compete with the very television signals they carry which can be obtained off-the-air. Newspapers, magazines, sports events, movies, books, translator stations all provide alternate competitive sources of entertainment, and

there is always the possibility that a municipality may grant a competitive franchise.

3. There is no Danger of Undue Concentration of Ownership

In New Jersey, there is no one company which dominates the ownership of CATV. Of the 26 systems operating with the State, the vast majority are owned by different companies. As such, any threat of concentration of ownership is not existent. Assuming, however, that the threat of concentration was real, the Federal Communications Commission has either promulgated rules or is proposing rules to meet this possibility. The Commission has adopted rules precluding cross-ownership of CATV systems and local television broadcast stations, local translator stations and the three national networks. In a Notice of Proposed Rule Making, the Commission has sought comment on such areas as limiting the number of CATV systems any one entity may own on a local, regional, or national basis; ownership of CATV systems by AM-FM broadcast stations and ownership of CATV systems by newspapers. It should be recognized, however, that the adoption of these rules does not establish that the Commission views CATV as a public utility, but rather that the Commission views CATV as a broadcaster and its rules are designed to further the Commission's policy favoring diversity of control over local mass communications media.

4. Charges by CATV Systems to Subscribers are not Exorbitant

There has been no evidence to suggest that the current charges and profits of CATV systems are exorbitant or excessive. The service charge of operating CATV systems in New Jersey averages $4.77 per month, and the installation charge is $13.94. Only fourteen states have lower monthly charges than New Jersey. Additionally, monthly fees have only increased 8.57% in ten years, far less than the general cost of

living itself. Installation fees, on the other hand, have decreased 20.71% in New Jersey in the last 10 years. The price of CATV services is market determined as a result of competitive choices of entertainment, and the price for CATV must be such that the potential subscriber will forego those other alternatives. If the price becomes too high, the subscriber is free to disconnect, obtain his television signal through the use of a conventional antenna and use the money saved to purchase a book or go to a movie.

On the basis of available information, it appears that CATV charges have increased little, if any, during the past ten to fifteen years. On the other hand, the number of channels offered by CATV systems has often doubled, and the quality of service has improved dramatically as a result of the rapid technological changes which have taken place in the industry.

5. Quality of Service Is Assured

There is little if any evidence to suggest that there have been any abuses by the overwhelming majority of CATV systems. Where such abuses might occur, the franchises issued to CATV systems in New Jersey contain provisions to insure satisfactory service. These franchises often provide for termination if the system fails to provide adequate service.

EXHIBIT NO. 2

THE STATE REGULATORY BOARD RECOMMENDATIONS OF ASSEMBLY BILL NO. 2139 HAVE BEEN OR WILL BE PRE-EMPTED BY THE FEDERAL COMMUNICATIONS COMMISSION

A. Introduction.

In the area of Federal-State relations, Bill No. 2139's recommendations, particularly Sections 4-14, involve matters which may be or have been pre-empted by the Federal government.

B. Federal Authority over CATV is Plenary.

The Supreme Court in United States v. Southwestern Cable Co., 392 U.S. 157 (1968), held that the Communications Act of 1934 confers upon the Federal Communications Commission jurisdiction to regulate all forms of CATV. In reaching its decision, the court pointed out that the provisions of the Communications Act apply to all "interstate and foreign communication by wire or radio. . ."*/ The court further noted that "such communications are defined by the Act so as to encompass the transmission of . . . signals, pictures and sounds of all kinds, whether by radio or cable, including all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding and delivery of communications) incidental to such transmission".**/ These provisions, the court ruled, encompassed CATV activities.

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*/ 47 U.S.C. 152(a).

**/ 392 U.S. at 168.

The court also held that CATV systems are engaged in interstate commerce "even where, as here, the intercepted signals emanate from stations located within the same state in which the CATV system operates". */

The Supreme Court's decision in Southwestern Cable establishes the Federal Communications Commission's jurisdiction over CATV. Accordingly, the regulation by the FCC of CATV systems and CATV operations is the supreme law of the land superseding the powers of the state.

The supremacy of the Federal government is recognized in the United States Constitution, Article IV, Section 2, which provides:

> "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding."

In adopting the United States Constitution, the people of each of the several states surrendered certain rights and powers to the central government and, commensurately, diminished the sovereign powers of the state to the extent that such powers were vested in the Federal government. R.C. Tway Co. et al. v. Glenn, 12 F. Supp. 570 (1935). As a result, when the Federal government acts within the

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*/ 392 U.S. at 168.

limits conferred in it by the United States Constitution, its action supersedes the powers of the states, Pacific Coast Dairy, Inc. v. Department of Agriculture of California, 318 U.S. 285 (1943); Head v. New Mexico Board, 374 U.S. 424; and a state statute, a local enactment, regulation or city ordinance, even if based upon valid police powers of the state, must yield where it is in direct conflict with powers exercised by the Federal government under the Constitution. United States v. City of Chester, et al., 144 F. 2d 415 (1944); Pritchard v. Downie, 201 F. Supp. 893; aff'd. 309 F. 2d 634 (1962).

Conversely, a state law is valid if, in its terms or in its practical administration, it does not conflict with a Federal law or infringe on its policy in an area in which Congress has authority to regulate. Quaker Oats Company v. City of New York, 68 N.E. 2d 593 (1946); aff'd. 331 U.S. 787 (1947), sub nom., Hill Packing Co. v. City of New York; TV Pix, Inc. v. Taylor, 304 F. Supp. 459 (D.C. Nev.), affirmed without opinion by the Supreme Court on February 2, 1969, Case No. 214 . Whether a state law is valid depends on whether it stands as an obstruction to the accomplishment and execution of the purposes and objectives of Congress. Cloverleaf Butter Company v. Patterson, Commissioner of Agriculture and Industries of Alabama, 315 U.S. 148 (1942).

Pursuant to Article I, Section VIII(3) of the Constitution, Congress has enacted the Communications Act of 1934, and it has been judicially determined that the regulatory provisions of this statute

are a reasonable exercise of Congressional power. Pulitzer Publishing Co. v. Federal Communications Commission, 94 F.2d 249 (1937).

C. The Doctrine of Federal Pre-Emption.

The court in TV Pix, Inc. v. Taylor, 304 F. Supp. 459 (D.C. Nev.) aff'd. _____ U.S. _____ (1969), held that Congress, in adopting the Communications Act, delegated to the Federal Communications Commission not only the power to regulate in certain broad areas of national interest but the power of supercession as well. As the court pointed out "the dynamic rapidly changing technology of radio and television broadcasting is ill-suited to specific Congressional guidelines to regulatory authority. The need for the greatest flexibility commands the desirability of vesting in the Commission the power of Congress to pre-empt or not to pre-empt areas of control which might otherwise be invaded by the States".

Clearly, therefore, in those areas where the Commission has exerted its regulatory responsibilities, the states are not free to act. Head v. New Mexico Board, supra. It is equally clear that as the Federal Communications Commission continues to expand its regulatory efforts in the CATV field, state and local regulation will ultimately fall under the Supremacy Clause. TV Pix, Inc. v. Taylor, supra. See also Greater Fremont, Inc. v. City of Fremont, _____ F. Supp. _____ (1968). (15 RR 2d 2013 (N.D. Ohio).)

The absence of specific Commission regulations over CATV is not to be generally interpreted as authorizing the states to act. Federal pre-emption is such that where Congress, through the Commission,

has clearly occupied the field the states are not free to act. State of Maine v. University of Maine, 19 RR 2d 2086 (1969). A state law is valid only if it does not conflict with a Federal law or infringe on its policy in an area in which Congress has authority to regulate. To illustrate: the Commission has determined that the public interest would be served by requiring CATV systems with more than 3,500 subscribers to originate programming and in Section 74.1111 of its Rules has provided that:

> "(a) Effective on and after April 1, 1971, no CATV system having more than 3,500 subscribers shall carry the signal of any television broadcast station unless the system also operates to a significant extent as a local outlet by cablecasting and has available facilities for production and presentation of programs other than automated services. . . "

Concluding that the Commission's statutory responsibility to "encourage the larger and more effective use of radio in the public interest"*/ would be promoted through origination by CATV systems, the Commission encouraged CATV systems with less than 3,500 subscribers to originate but did not adopt a rule requiring them to do so. The Commission has stated that the doctrine of pre-emption would render invalid any local franchise provision which prohibited the voluntary origination by CATV systems with fewer than 3,500 subscribers. Clarification of CATV First Report as to Scope of Federal Pre-Emption, 20 FCC 2d 741 (1969).

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*/ 47 U.S.C. §303(a).

D. The History of CATV is One of Expanding Federal Regulation and National Uniformity.

The Supreme Court in Southwestern Cable held that the Federal Communications Commission has authority under the Communications Act of 1934 to regulate CATV. It is also clear that the primary purpose behind the enactment of the Communications Act was to vest in a single governmental agency that power and means to regulate the broadcasting industry in such a manner as to assure uniformity and growth. FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 137 (1940); Sablowsky v. United States, 101 F.2d 183, 189 (3rd Cir. 1938). The court in the Pottsville case, supra, stated:

> "In its essentials the Communications Act of 1934 derives from the Federal Radio Act of 1927. By this Act, Congress, in order to protect the national interest involved in the new and far-reaching science of broadcasting, formulated a unified and comprehensive regulatory scheme for the industry."

The Commission's CATV rules, as both adopted and proposed, establish that it is prepared to exert its regulatory efforts over all aspects of CATV in order to achieve a uniform national policy. Since 1960, the Commission has asserted jurisdiction over CATV, beginning with the issuance of microwave radio licenses to serve CATV, broadening in 1966 to include all CATV systems, and now encompassing a vast range of CATV activity. The Commission has adopted extensive rules regulating the television signals which may be carried by CATV systems and the protection of local television stations' programming. It has adopted rules which require or permit

CATV systems to originate programming and regulate the commercial content thereof. And the Commission has adopted rules which bar the ownership of CATV systems by certain other mass communications media.

Moreover, the Commission is proposing further regulations to be applicable to CATV systems. First and foremost is the possibility that the Commission will license all CATV systems. Currently before the Commission are proposals which would establish uniform national technical standards, to be followed by CATV systems; preclude the cross-ownership of CATV systems and newspapers, FM and AM radio stations; delineate the number of CATV systems any one operator may run; re-evaluate the nature and extent of the signals to be carried by CATV systems; assess CATV systems 5% of revenues for educational television; establish a 2% ceiling on the franchise fee payable by a CATV system to local governments; and establish comprehensive reporting provisions to be followed by CATV systems. Moreover, Congress has before it comprehensive revisions to the copyright law which deals with CATV and which impose copyright liability on CATV systems, and which would remove restrictions on the carriage of distant signals by CATV systems.

E. Areas Already Pre-Empted by Federal Communications Commission Regulation.

1. The Carriage of Television Signals and the Commencement of CATV Service are Regulated by the Commission and Therefore Pre-Empted.

The Commission regulates the "lifeblood" of the CATV industry through rules governing the signals which may be carried on CATV systems.

In first asserting jurisdiction over CATV systems which provided service by carrying signals obtained off-the-air, the Commission noted that regulation of CATV was necessary if the Commission was to fulfill its statutory objective of furthering the "public interest in the larger and more effective use of radio", 47 U.S.C. §303(g). Of primary concern to Commission was the risk of adverse effects on broadcasting service by the unregulated burgeoning development of CATV. Addressing itself to the Commission's statutory obligation to make television service available, so far as possible, to all people of the United States on a fair, efficient and equitable basis, the Commission stated:

> "47. CATV systems, as we all recognized in the first report (§§43, 48) and here again emphasize, have arisen in response to public need and demand for improved television service and perform valuable public services in this respect. CATV (like other auxiliary television services) makes possible the provision of a variety of program choices particularly the three full network services to many persons in areas with no local station and in one and two-station markets. CATV systems also afford means of providing non-network commercial and educational services to many persons in areas with insufficient population to support local broadcast outlets of this nature. CATV systems make important contributions by providing good quality reception of color signals and improving stations where off-the-air reception is inferior or precluded because of terrain, man-made structures or other factors. We do not intend to deprive the public of these important benefits or to restrict the enriched programming selection which CATV makes available. Rather, our goal here is to integrate the CATV service into the national television structure in such a way as to promote maximum television service to all people of the United States (Secs. 1 and 303(g) of the Act), both those who are cable viewers and those dependent on off-the-air service. The new rules . . . are the minimum measures we believe to be essential to insure that CATV continues to perform its valuable supplementary role without unduly damaging or impeding the growth

of television broadcast service."

[Emphasis added.] CATV 2 FCC 2d 725, 745-746 (1966).

The Rules adopted by the Commission were comprehensive:

(a) A CATV system could not commence operations until it first notified local television stations and the Commission concerning the proposed operation. This notice was intended to afford the local television stations an opportunity to request carriage and non-duplication under the Rules. If a television station objected to the carriage of a television signal within thirty (30) days after notice, the CATV system could not commence carriage of the contested signal pending a Commission ruling on the objections.

(b) CATV systems were required, upon request, to carry without material degradation the signals of all local television stations within whose Grade B contours the CATV system was located, in order of priority of signal grade.

(c) CATV systems were required, upon request, to avoid duplication of the programs of local television stations carried on the system during the same day that such programs are broadcast by the local stations.

(d) A CATV system located in a top-100 market could not carry a distant signal until it first obtained prior Commission approval.

So restrictive is the Commission's distant signal rule that a CATV system which serves certain areas within a city cannot serve additional areas within the same city without first obtaining Commission authorization. See e.g., Telerama, Inc., 7 RR 2d 275 (1966).

2. All Aspects of Origination by CATV Systems are Regulated by the Commission and Therefore Pre-Empted.

Given the state of the CATV art in 1966, the Commission concluded that CATV's primary role was to be an adjunct to television broadcasting and adopted rules addressed to ensuring that CATV functioned in that manner. Over the next several years, however, it became apparent to the Commission that CATV could itself further the Commission's national statutory responsibility of assuring the public the most efficient and effective nationwide communications service possible. Thus, in Midwest Television, Inc., the Commission stated (13 FCC 2d 478, 505-506) that:

> "CATV program origination offers promise as a means for increasing the number of local outlets for community self-expression and for augmenting the public's choice of programs and types of service without use of the spectrum. Whereas television broadcast stations are usually located in or near a central community and are intended to serve a much broader area encompassing other communities, almost every community of any appreciable size could have its own CATV system and therefore its own local outlet. The CATV system is not handicapped by limited channel capacity having 12 channels in comparison to the one channel of the individual broadcaster, and thus has the technical flexibility to provide different types of programs or services on some channels without affecting the service simultaneously provided on other channels. . . ."

This potential led the Commission to propose:

> "15. . . .first, to condition the carriage of television broadcast signals (local and distant) upon a requirement that the CATV system also operate to a significant extent as a local outlet by originating. In allocating frequencies and granting broadcast licenses, the Commission has long sought to effectuate the goal of Section 307(b) of the Communications Act by having as large a number of local outlets in as many

> communities as possible. We have noted above the potential contribution of CATV in this respect, both as a means of providing a local outlet to communities which have no broadcast outlet of their own and as a means of enhancing diversity in communities which do have broadcast outlets. We have also previously determined that the Commission's concern with CATV carriage of broadcast signals is not just a matter of avoidance of adverse effects, but extends also to requiring CATV affirmatively to further statutory policies. Shen-Heights TV Association, 11 FCC 2d 814; Midwest Television, Inc., 13 FCC 2d at 502-503, 510.
>
> "16. We think it generally appropriate to condition CATV's use of broadcast signals upon a requirement that it further the allocations policy of achieving a multiplicity of local outlets. . . ." */

The Commission in its decision in CATV, 20 FCC 2d 191 (1969), adopted rules requiring CATV systems with more than 3,500 subscribers to originate programs and permitted those systems with less than 3,500 subscribers to originate if they so desired. The Commission affirmed its intention that the cablecasting requirement was so related to the Commission's overall regulatory scheme so as to require a uniform national policy, thereby pre-empting inconsistent state legislation. Clarification of CATV First Report as to Scope of Federal Pre-Emption, 20 FCC 2d 741 (1969).

By requiring CATV systems to "operate to a significant extent as a local outlet by originating" the Commission has stated that it means something more than the origination of automated services (such as time, weather, news ticker, stock ticker) and aural services (music and announcements) but, with the exception of certain rules, has

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*/ CATV, 15 FCC 2d 417, 422 (1968).

refrained from any initial regulation relating to the hours or origination, categories of programming, type of cablecasting equipment, and technical standards, finding it preferable to afford a period of free experimentation and innovation by cable operators, CATV, 20 FCC 2d 201, 214 (1969).

Moreover, the Commission has stated that upon the effective date of the cablecasting rules, state or local regulations or conditions inconsistent with its regulatory policy are pre-empted. Moreover, the Commission has stated that the doctrine of pre-emption would render invalid any local franchise provision which prohibited origination by CATV systems with fewer than 3,500 subscribers if such systems were desirous of originating. Clarification of CATV First Report as to Scope of Federal Pre-Emption, 20 FCC 2d 741 (1969).

The Commission has further stated that there would be no restrictions on cable origination of sports events or feature films if the cable system imposed no additional charge for these programs. However, CATV systems are permitted to engage in cablecasting for which a per-program or channel charge is made subject only to the following rules:

(a) Feature films, which have had general release more than two years prior to their cablecast, will not be permitted to be cablecast by CATV systems. However, a CATV system may, during one week of each month, cablecast a feature film which had its general release more than ten years before the proposed cablecast if the CATV operator can demonstrate to the Commission that conventional television has refused to purchase the films, or that the owner of the broadcast

rights to the films will not permit them to be televised on conventional television.

(b) A CATV system may not cablecast a sports event which has been televised live on a regular basis in the community on commercial television for two years preceding the proposed cablecast. Moreover, the CATV system may not cablecast a specific event (Olympic Games) if such event occurred more than two years before the proposed cablecast and was televised at that time in the community on regular television.

(c) A CATV system may not cablecast a series program with an interconnected plot or with substantially the same cast of principal characters.

(d) A CATV system may not devote more than 90% of its annual cablecasting time to feature films and sports events. A CATV system may not devote more than 95% of its monthly cablecast programming to such programs.

The Commission also adopted rules which would permit a CATV system engaged in cablecasting to carry advertising provided that such advertising is carried at the beginning and conclusion of each program cablecast and at natural intermissions or breaks within a cablecast.

Moreover, the Commission adopted rules which provide that no CATV system shall carry any broadcast signal if the system engages in cablecasting unless such cablecasting is conducted in accordance with equal time, fairness and sponsorship identification requirements patterned after those applicable to broadcasters stating:

> "It is clearly necessary to the effective performance of our responsibilities for the regulation of television broadcasting that we require CATV systems engaged in program origination to abide by the same equal time and fairness requirement applicable to broadcasters."
> CATV, 20 FCC 2d 201, 220 (1969).

3. Cross-Ownership of CATV Systems is Regulated by the Commission and Therefore Pre-Empted.

The Commission, in its Second Report and Order in Docket No. 18397, prohibited local cross-ownership of CATV systems and television broadcast stations in order to further the Commission's policy favoring diversity of control over local mass communications media. */ The Commission also adopted rules which preclude cross-ownership of a translator station and a CATV system serving the same community. Finally, the Commission adopted rules effectuating its conclusion that the three national networks should not be permitted to hold an ownership interest in any CATV system, including those located beyond the service areas of network owned and operated stations. The Commission required that those entities divest themselves of barred CATV interests within three years.

The Rules adopted by the Commission precluding the ownership of CATV systems and the national networks, local broadcast stations and local translator stations were intended to further the Commission's long established policy of favoring diversity of control over local mass communications media. The Commission's intent to establish a

*/ It should be noted that these CATV ownership rules are the subject of several petitions for reconsideration, and may also be challenged in Court.

uniform national policy, to the exclusion of the inconsistent state legislation, was apparent when it stated:

> "In receiving, forwarding and delivering interstate broadcast signals, CATV systems are engaged in an activity which is incidental to 'communications by radio' and 'radio transmission of energy' within the definitions contained in Sec. 3(b) and 3(d) of the Communications Act. The Commission has authority to license such incidental 'communications by radio' to the extent necessary, under Sec. 2(a), 4(i), 301 and 303 of the Communications Act. It appears necessary and appropriate to exercise limited licensing jurisdiction by rule in the area of diversification of ownership of cable facilities, and to prescribe a licensing standard which takes into account other communications media." CATV, 23 FCC 2d 816, 822 (1970).

Sections 11 and 12 of Bill No. 2139 may well be inconsistent with these Federal Regulations.

4. Construction by Telephone Companies of Distribution Facilities for Use by CATV Systems is Regulated by the Commission and Therefore Pre-Empted.

On April 6, 1966, the Federal Communications Commission sent letters to the American Telephone and Telegraph Company and General Telephone & Electronics Service Corporation, directing the operating companies of the Bell System and General Telephone System to file tariffs for local distribution facilities furnished for the use of CATV systems. Upon petition of the telephone companies, reconsideration was denied, Common Carrier Tariffs for CATV Systems, 4 FCC 2d 257 (1966). Therein, the Commission held that the service offered constituted an interstate communications service, that the furnishing of channels of communications to CATV operators is "clearly a common carrier undertaking", and that the Commission had properly required the tariffs to be filed. The Communications Act provides

that it shall be the duty of every common carrier engaged in interstate communications to furnish such communications service upon reasonable request therefor (47 U.S.C.A. §201(a)) under tariffs filed with the Commission (47 U.S.C.A. §203). The states may not impose any regulations on this "interstate" offering.

Moreover, in General Telephone Company of California, et al., 13 FCC 2d 488 (1968), affirmed General Telephone Company of California, et al. v. Federal Communications Commission, 413 F.2d 390 (1969), cert. den. 396 U.S. 888 (1969), the Federal Communications Commission held that telephone companies are required to obtain certificates of public convenience and necessity pursuant to Section 214 of the Communications Act (47 U.S.C.A. §214(d)) before undertaking the construction of distribution facilities to provide channel service to CATV systems. Significantly, in a memorandum submitted by the United States to the Supreme Court in TV Pix, Inc. v. Taylor, the United States argued that the Court of Appeals in General Telephone, supra, in concluding that telephone carriers must obtain a certificate of public convenience and necessity from the Commission for the construction of new lines rejected the carriers' arguments that this was a matter exclusively for state or local regulation. The government submitted that General Telephone represents Commission regulation of interstate service by communications common carriers in an area in which the pre-eminence of Federal regulations is well established. */

*/ The Supreme Court has held that the establishment of the broad scheme for the regulation of interstate service by communications carriers indicates an intent on the part of Congress to occupy the field to the exclusion of state regulation, Ivy Broadcasting Company, Inc. v. American Telephone Co. and New York Telephone Co., 391 F.2d 486 (2d Cir.1968).

5. The Use of Microwave Radio by CATV is Regulated by Commission and Therefore Pre-Empted.

Microwave radio may be used by CATV systems as a means to originate programming, to obtain television signals not available off the air and for local distribution services. As radio signals are, per se, interstate in nature the Commission's plenary jurisdiction over microwave is well established.

The Commission first placed restrictions upon the activities of common carriers who provided television signals to CATV operators via microwave in 1960. Carter Mountain Transmission Corp., 32 FCC 459 aff'd. 321 F.2d 359. The Commission's carriage, distant signal and duplication rules, are applicable to microwave or off-the-air CATV systems. However, any common carrier seeking to provide a television signal to a CATV system must itself obtain Commission approval for the construction of any microwave facilities needed to be constructed as well as the frequency to be employed. The Commission has also established comprehensive licensing and operating procedures governing the use of microwave by CATV systems themselves (Community Antenna Relay Service). Moreover, the Commission has authorized the use of the local distribution service which is intended to permit CATV operators to use microwave radio links to span short distances where the use of cable was unfeasible or uneconomical.

6. Fees.

The Commission has also adopted rules which require CATV systems to pay an annual fee equal to the number of its subscribers times 30 cents. Fees Schedule, 23 FCC 2d 878 (1970).

F. More Extensive CATV Regulation is Pending Before the Commission.

In addition to present Federal regulations, even more comprehensive CATV regulations are pending before the Commission, as follows:

1. Technical Standards.

The Commission in a number of actions has indicated that uniform national standards are desirable and necessary over other aspects of CATV activities. One such area is the proposed adoption of rules and regulations with respect to technical standards for community antenna television systems. With the trend of CATV toward 12-channel or larger systems, the Commission has concluded that there should be a prescription of uniform technical standards to further high quality service to the public, both broadcast signals and CATV originated material. Uniform standards were considered necessary in view of the possibility that there may a national network of interconnected cable systems. In Docket No. 18894, the Commission stated its intention that future cable systems should be installed in such a manner that each subscriber may be afforded a means for directly communicating with a local program origination point. It was also proposed that when technical standards were adopted, all CATV systems would comply and file a certificate of compliance within three years from the date the standards are published. Thereafter, the filing of an annual certificate of compliance would be required. Moreover, after adoption of the standards, the Commission intends to require that each CATV system perform and report certain performance requirements at

least once a year. These measurements would reflect the degree to which the CATV system is conforming to the prescribed technical standards. Upon adoption of these uniform standards, the Commission will have occupied yet another field of CATV and any inconsistent local regulation, or any local regulation which would seek to impose additional standards which would interfere with the policy sought to be achieved by the Commission would be superseded.

2. Television Signals.

The critical question of which television signals may be carried on CATV is the subject of a far-reaching proposal. The Commission, in what has been called the "public dividend plan", has proposed a rule-making proposal dealing with the entire area of distant signal operation. The proposal seeks to balance the interests of CATV systems, UHF stations, VHF stations, ETV and the copyright owner. The essence of the proposal is that CATV systems in the top-100 markets, in addition to local signals, may carry four distant independent signals on the condition that they delete commercials from the independent distant signals carried and replace them with commercials provided by the local stations. As a further consideration for the right to operate in such top-100 markets, CATV systems would be required to pay 5% of their subscription fees into a fund for the Corporation for Public Broadcasting. CATV systems would, upon adoption by Congress of supportive legislation, make copyright payments into a general fund, suggested as 0.7% per distant signal being carried.

The ability of the Commission to satisfactorily resolve the question of distant signals in major markets is interwoven with its plans to have CATV develop in these major markets in such a manner so as to promote the public interest. The Commission has now accepted the principle that it must make an effort to insure the development of sufficient channel availability on all new CATV systems to serve specific recognized functions. It proposes to require that cable systems devote capacity to:

(a) Local government channel. At least one channel for use without charge by local governments and for free political broadcasts during primary and general elections.

(b) Local public access channels. In order to facilitate further presentation of views, cable systems will be required to make channel time available on one or more channels at no cost to local citizens and groups which are not engaged in programming for advertising revenue, but which desire to present views on matters of concern to them.

(c) Leased channels. Cable operators would make available to third parties, either permanently or on a one-shot basis, channels for commercial operation by the third parties.

(d) Channels devoted to instructional uses, *e.g.*, courses conducted for students either by or in coordination with public or private institutions; instruction by professional groups for their members -- doctors, engineers, etc. -- and lectures.

The Commission seeks to insure that channels can be made available for these functions and for other functions likely to develop in the future by requiring that new systems be constructed with specified minimum channel capacity. However, the Commission recognizes that it must, through modification of its distant signal rules, establish an economic base through which it can attract CATV operators to this market.

The Commission has expressed the view (FCC 70-675, July 1, 1970) that its entire regulatory plan may be frustrated through excessive franchise fees exacted by local governments. The Commission stated:

> "Further, the purpose of the plan is to expand the use of CATV in order to obtain marked benefits to the public interest. These aims could be frustrated, or not fully achieved by local franchise fees. In line with this analysis. . . it seems to us that the operation of settin a maximum percentage for local franchise fees is an area where we should set standards. Such a proposed maximum fee is no more than 2% of a CATV system's gross revenues."

The adoption of a two percent ceiling on franchise fees payable to local government would have the effect of superseding any inconsistent state or local legislation. The overwhelming number of local municipalities in New Jersey require franchise payments from CATV systems operating in their communities. Indeed, the franchise fees imposed often exceed 2% and to that extent would be required to be modified upon Commission adoption of a franchise ceiling.

3. Reporting Requirements.

The Commission, concluding that it must have full information pertaining to CATV operations, has proposed to require by rule that CATV

operators file annual reports which will provide current information on such matters as the location of the system, number of subscribers, channel capacity, broadcast signals carried, extent and nature of program origination, any other operations conducted on the system, financial data, ownership and interests in other CATV systems, broadcast media and other business interests. CATV, 15 FCC 2d 417, 428 (1968).

4. Further Ownership Regulation.

In a Notice of Proposed Rule Making and of Inquiry, in Docket No. 18891, released July 1, 1970, the Commission proposed further rules regarding ownership of CATV systems. Comments are being solicited by the Commission in such areas as limiting the number of CATV systems any one entity may own on a local, regional and national basis; ownership of CATV systems by AM-FM broadcast stations and ownership of CATV systems by newspapers. To the extent that the Commission does adopt rules which preclude the type of cross-ownership and multiple ownership mentioned above, such rules would supersede state provisions. The question arises, however, as to whether the state can promulgate such regulations in the event that the Commission does not. The analysis of the relevant cases would demonstrate that where the Congress has clearly occupied the field, the states are not free to act. See State of Maine v. University of Maine, 19 RR 2d 2086 (1970). Thus, where the Commission has determined that the public interest requires certain prohibitions against cross-ownership and multiple ownership but not others, it has fully occupied the field and any inconsistent state regulation is invalid as a state law is invalid if it infringes on a

policy in an area in which Congress has authority to regulate.

5. Federal/Local Relationships.

The Commission has concluded that it possesses all necessary authority to pre-empt the entire field of CATV. The question presently before it is how much pre-emption is necessary to ensure the adequate development of its national communications policy. One such alternative suggested by the Commission is Federal licensing of all cable systems, thus pre-empting the field entirely from local supervision. Another approach under Commission consideration is the Federal prescription of standards. Under such an approach, the FCC would establish the policies to be followed over all aspects of CATV to which all cities and/or states must thereafter adhere in the local regulation of CATV. In short, the cities would have the burden of applying Federal standards to franchise applicants and thereafter certifying their recommendations to the FCC for eventual approval or rejection.

Adoption by New Jersey of legislation establishing standards in the Board's jurisdiction pursuant to which CATV systems would be granted authority to provide CATV service would be subject to Federal pre-emption in the event the FCC adopts either of the above alternatives.

G. Service Quality.

Bill No. 2139 would allow the Board to take action where construction or operation of a system is unreasonably delayed or extension of service to all areas within the franchised territory is unreasonably withheld. In such cases, the Board may either (a) vacate the franchise for non-use, or (b) order the construction and operation needed to

correct the delay or withholding of service. In determining whether delay or withholding of service is unreasonable, economic feasibility shall be the principal criteria. Depending upon the interpretation to be subsequently given this section, it appears to be invalid as unduly interfering with the orderly administration of the practices and procedures of the FCC and, as such, with the Commission's overall regulatory framework for CATV. The provision penalizes a CATV operator for delay occasioned not through his reluctance to operate, but through administrative delays over which he has no control. As such, the forfeiture provision as constituted is subject to Federal pre-emption as it penalizes a CATV system operator for delay occasioned through his compliance with the Rules of the FCC. The provision is pre-empted as it interferes in an area in which Congress has authority to regulate and in which it has occupied the field.

H. The Effect of Existing FCC Rule Making.

If the Commission adopts a policy of licensing all CATV systems or prescribing Federal standards, including the adoption of uniform technical standards and rules regarding criteria to be applied by state or local governments, Board regulation would be subject to either complete Federal pre-emption or pre-emption which would leave the recommendation as an unworkable fragment. Such a possible result dictates that state consideration of CATV await the delineation of the Federal regulatory framework.

As set forth above, CATV in New Jersey is already subject to comprehensive regulation at the Federal level. Moreover, there is the very real prospect of new and expanded regulation which would result from pending proposals before Congress and the Federal Communications Commission.

It has been demonstrated that with respect to broadcasting and CATV, the Congress and the Commission are preeminent, superseding inconsistent state or local regulation. Any state regulation of CATV is therefore subject to continuing Federal pre-emption as the Congress and Commission enact CATV regulations relating to quantity and quality of service, copyright, CATV ownership, and most important of all - Federal licensing of CATV, all of which are presently under active consideration. The continuous expansion of Federal regulation emphasizes the likelihood that such proposals will be adopted.

Moreover, the Commission, in adopting rules governing the additional services to be provided by CATV has consistently given its view that CATV systems have the ability to act as local broadcasters. Indeed, it has imposed on CATV systems which cablecast the equal time, fairness and sponsorship identification provisions long applicable to broadcasters.

As CATV continued to develop under the guidance of the Federal Communications Commission as a source of local broadcast material, it is most likely to be regulated more and more as broadcast service over which the Commission's jurisdiction is paramount.

Under these circumstances, it is respectfully submitted that until the scope of Federal regulation has been fully delineated, any additional regulation would be inappropriate, and should be deferred pending the finalization of a Federal regulatory scheme.

CATV RATE ANALYSIS*

Percentage Increase in Average Monthly Fee
Systems in Operation in 1960 and 1966

Period:	1960-1969	1964-1969	1966-1969
National Increase (1960)	9.49	5.34	1.93
New Jersey Increase (1960)	8.57	8.57	-0-
National Increase (1966)	--	--	1.44
New Jersey Increase (1966)	--	--	1.95

Percentage Increase in Average Installation Fee
Systems in Operation in 1960 and 1966

Period:	1960-1969	1964-1969	1966-1969
National Increase (1960)	(-)44.56	(-)24.87	(-)13.58
New Jersey Increase (1960)	(-)20.71	(-)20.71	14.49
National Increase	--	--	(-)11.71
New Jersey Increase (1966)	--	--	10.81

1969 Rates	National Average	New Jersey Average
Monthly Fee:	$5.01	$4.77
Installation Fee:	$20.54	$13.94

* The figures for systems in operation in 1960 were found by taking the systems in operation in 1960 and finding the averages for those systems in 1960, 1964, and 1969. A similar process was used for systems in operation in 1966. Averages for 1969 include all systems for which information was available.

Exhibit No. 4

CATV IN THE STATE OF NEW JERSEY*

Total Number of Subscribers in New Jersey	71,313
Potential Subscribers in Areas Presently Served	161,675
Average Installation Charge	$12.61
Average Monthly Service Charge	$ 4.85
Average Number of Channels	12

CATV in New Jersy serves less than:

3.5% of the total television homes in the state

4% of the total telephone homes in the state

4% of the total homes in the state

2% of the net weekly circulation of one New York City TV station

* Source: Television Factbook, volume II, 1970-1971 edition.

Exhibit No. 5

NEW JERSEY CATV SYSTEMS*

- OPERATING SYSTEMS -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Service Began
Atlantic Coast TV Cable Corp.	Atlantic City	16,500	20,000	$24.95	$3.85	100 (10 additional planned)	12	1952
Island Cable Company	Beach Haven	2,600	N.A.**	$15.00	$4.00	N. A.	12	1965
Crosswicks Industries	Brick Twp, (plans to serve Bay Head, Island Heights, Lavallette, Mantoloking, Point Pleasant & Point Pleasant Beach)	2,000	35,000	N. A.	N. A.	120 (90 additional under construction; 200 add'l planned)	12	1968
Garden State TV Cable Corp.	Bridgeton	2,075	3,150	$15.00	$5.00	55	12	1965
Cable TV of Burlington County	Burlington	3,100	12,000	$10.00	$5.00	160	12	1967
South Jersey	Cape May	5,300	12,000	$10.00	$5.00	165	12	1967
Middlesex Cablevision, Inc.	East Brunswick	57	N.A.	$20.00	$5.00	5 (85 additional planned)	20	1968
CATV Service,Co.	Hackettstown	150	1,100	$15.00	$4.85	N.A.	12	1968

* Source. Television Factbook, Volume II, 1970-1971 edition.

** N.A. not available

NEW JERSEY CATV SYSTEMS*

- OPERATING SYSTEMS -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Service Began
Garden State TV Cable Corp.	Hammonton	400	1,100	$10.00	$5.00	22	12	1966
CATV Service Co.	Lambertville	500	1,200	$15.00	$4.85	10	15	1968
Holly City Cable TV	Millville	3,000	4,500	$5.00	$5.00	60(10 add'l planned)	12	1967
Garden State TV Cable Corp.	Northfield	1,600	1,800	Free	$5.00	31 (3 add'l planned)	12	1966
Tele-Mark Communications	Oakland	N.A.	N.A.	$15.00	$5.00	N.A.	12	N.A.
South Jersey TV Cable Co.	Ocean City	3,033(winter) 6,000(summer)	N.A.	$15.00	$5.00	63(5 add'l planned)	12	1964
Warren Cable TV, Inc.	Phillipsburg	N.A.	N.A.	N.A.	N.A.	N.A.	12	N.A.
Alpine Cable TV, Inc.	Pleasantville	6,600	7,500	Free	$5.00	125(5 add'l planned)	12	1966
Tele-Mark Communications, Inc.	Pompton Lakes	N.A.	24.000	$15.00	$5.00	70(210 add'l planned	12	1966
Ringwood TV Cable Corp.	Ringwood	500	N.A.	$15 (deposit)	$5.00	21.5	12	1966
Tri-County	Salem	2,000	7,250	$15.00	$4.95	78	24	1968
National Cable TV Systems	Stone Harbor	N.A.	N.A.	N.A.	N.A.	N.A.	12	1968

* Source. Television Factbook, Volume II, 1970-1971 edition.

NEW JERSEY CATV SYSTEMS*

- OPERATING SYSTEMS -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Servi Began
Continental Transmission Corp.	Sussex	255	575	$15.00	$5.00	21(8 add'l planned)	12	1969
South Jersey TV Cable Co.	Ventnor	7,677	8,500	$15.00	$450.00	64(12 add'l planned)	12	1952
Garden State TV Cable Corp.	Vineland	2,100	3,500	$10.00	$5.00	80(6 add'l planned)	12	1966
Washington Cable Co., Inc.	Washington	1,736	2,000	$10.00	$5.00	31	12	1965
South Jersey TV Cable Co.	Wildwood	5,850	8,500	$15.00	$5.00	62	12	1964
		CATV SYSTEMS HOLDING FRANCHISES NOT YET IN OPERATION						
Panther Valley Service, Inc.	Allamuchy	N.A.	N.A.	N.A.	N.A.	N.A.	12	N.A.
Washington Cable Co., Inc.	Belvidere	N.A.	400	N.A.	N.A.	12	N.A.	
Ringwood TV Cable Corp.	Bloomingdale	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Unicom, Inc.	Bloomsburg	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Telecommunications, Inc.	Boonton	"	"	"	"	"	"	
General CATV, Inc.	Bordentown	"	"	"	"	"	"	

* Source. Television Factbook, Volume II, 1970-1971 edition.

NEW JERSEY CATV SYSTEMS*

- CATV SYSTEMS HOLDING FRANCHISES NOT YET IN OPERATION -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Service Began
Telesystems Services, Corp.	Cherry Hill Twp	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Jerrold-South Jersey Cable	Collingswood	"	"	"	"	"	"	"
Jerrold-South Jersey Cable	Clementon	"	"	"	"	"	"	"
General CATV, Inc.	Delanco	"	"	"	"	"	"	"
Telstar State Enterprises, Inc	Denville	"	"	"	"	"	"	"
Telecommunications, Inc.	Dover	"	"	"	"	"	"	"
CATV of Elizabeth	Elizabeth	"	20,000	$15.00	$4.95	100	21	"
Jerrold Corp.	Fieldsboro	"	N.A.	N.A.	N.A.	N.A.	N.A.	"
Continental CATV, Inc.	Freehold	"	"	"	"	"	"	"
Philadelphia CATV, Co.	Gibbstown	"	"	"	"	"	"	"
Philadelphia CATV, Co.	Greenwich Twp.	"	"	"	"	"	"	"

* Source. Television Factbook, Volume II, 1970-1971 edition.

NEW JERSEY CATV SYSTEMS*

- CATV SYSTEMS HOLDING FRANCHISES NOT YET IN OPERATION -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Service Began
Warren Cable Co.	Greenwich Twp.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Jerrold Corp.	Haddon Twp.	"	"	"	"	"	"	"
TelePromTer Corp.	Hamilton Twp.	"	"	"	"	"	"	"
Cable Vision of New Jersey	Hoboken	"	"	"	"	"	"	"
Telecommunications, Inc.	Hopatcong Borough	"	"	"	"	"	"	"
Smoke Rise Club	Kinnelon	"	"	"	"	"	"	"
Continental CATV Inc.	Lakehurst	"	"	"	"	"	"	"
Jerrold Corp.	Lawnside	"	"	"	"	"	"	"
Jerrold Electronics, Corp.	Lindenwold	"	"	"	"	"	"	"
TeleSystems Services, Corp.	Lower Penns Neck Twp	"	"	"	"	"	"	"
CATV Service Co.	Mansfield Twp.	"	"	$10.00	$4.85	N.A.	12	
Philadelphia CATV Co.	Mantua Twp.	"	"	N.A.	N.A.	"	12	

* Source. Television Factbook, Volume II, 1970-1971 edition.

NEW JERSEY CATV SYSTEMS*

- CATV SYSTEMS HOLDING FRANCHISES NOT YET IN OPERATION -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Servi Began
Essex Cable TV Co.	Maplewood	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Cable Telesystems of N.J.	Merchantville	"	"	"	"	"	"	"
D.J. Cable Co.	Milford Borough	"	4,000	$9.00	$3.50	45	12	"
Telecommunications, Inc.	Mine Hill Twp.	"	N.A.	N.A.	N.A.	N.A.	N.A.	"
Jerrold Electronics Corp.	Monroe Twp.	"	"	"	"	"	"	"
Jerrold Electronics Corp.	Mt. Holly	"	2,070	"	"	"	"	"
CATV Service Co.	Mt. Olive Twp.	"	N.A.	"	"	"	"	"
Jerrold Corp.	National Park	"	"	"	"	"	"	"
Telecommunications, Inc.	Netcong Borough	"	"	$20.00	$5.00	"	"	"
Community Cablevision Corp.	Newark	"	"	N.A.	N.A.	"	"	"
TelePrompTer Corp.	Newark	"	"	"	"	"	"	"
Plainfield Cablevision, Inc.	North Plainfield	"	"	"	"	"	"	"

* Source. Television Factbook, Volume II, 1970-1971 edition.

NEW JERSEY CATV SYSTEMS*

- CATV SYSTEMS HOLDING FRANCHISES NOT YET IN OPERATION -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Servi Began
Washington Cable Co., Inc.	Oxford	N.A.	400	N.A.	N.A.	8	N.A.	
Sterling Communications	Parsippany	"	N.A.	$20.00	$5.00	N.A.	24	
Telecommunications, Inc.	Parsippany Twp	"	"	$20.00	$5.00	"	N.A.	
Philadelphia CATV Co.	Paulsboro	"	"	N.A.	N.A.	"	"	
Jerrold-South Jersey Cable	Pennsauken Twp.	"	"	"	"	"	"	
Jerrold Corp.	Pine Hill	"	"	"	"	"	"	
Philadelphia CATV Co.	Pitman	"	"	"	"	"	"	
Plainfield Cablevision, Inc.	Plainfield	"	"	"	"	"	"	
Telecommunications, Inc.	Roxbury Twp.	"	"	"	"	"	"	
VideoLink, Inc.	Runnemede	"	"	"	"	"	"	
Ocean County TV Cable Co.	Seaside Park	"	"	"	"	"	"	
Essex Cable TV, Inc.	South Orange	"	"	$5.00	$6.00	"	22	

* Source. Television Factbook, Volume II, 1970-1971 edition.

NEW JERSEY CATV SYSTEMS*

- CATV SYSTEMS HOLDING FRANCHISES NOT YET IN OPERATION -

Name of System Operator	Major Community Served	Number of Subscribers	Potential Subscribers	Installation Charge	Monthly service charge	Miles of System	Number of Channels	Year Servi Began
Vikoa, Inc.	Stafford Twp.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Telecommunications, Inc.	Stanhope Boro	"	"	$20.00	$5.00	"	"	
Jerrold Corp.	Stratford	"	"	N.A.	N.A.	"	"	
TelePrompTer Corp.	Trenton	"	"	"	"	"	"	
Ringwood TV Cable Corp.	Wanaque	"	"	"	"	"	"	
Video Link, Inc.	Washington Twp	"	"	"	"	"	"	
Telecommunications, Inc.	Wharton Borough	"	"	"	"	"	"	
Jerrold Corp.	Winslow Twp.	"	"	"	"	"	"	
Woodbridge CATV	Woodbridge	"	"	"	"	"	"	
Philadelphia CATV Co.	Woodbury	"	2,400	"	"	"	"	
Philadelphia CATV Co.	Woodbury Hts.	"	N.A.	"	"	"	"	

* Source. Television Factbook, Volume II, 1970-1971 edition.

CATV SYSTEMS -- APPLICATIONS FOR FRANCHISES PENDING

Community	Applicant(s)
Allendale	Tele-Mark Communications
Audubon	Metro Video Inc. International Equity Corp.
Audubon Park	Jerrold Corp.
Barrington	Jerrold Corp. Telesystems Corp. Metro Video Inc. International Equity Corp.
Bass River Twp.	General CATV Inc.
Bellmawr	N.J. Cable TV Corp. International Equity Corp. Metro-Video Inc. Jerrold Corp.
Beverly	Tri-County Cable TV Co. General CATV Inc.
Blairstown Twp.	Tele-Mark Communications
Bordentown	American Telecable Services Inc. Jerrold Corp. General CATV Inc.
Bordentown Twp.	General CATV Inc.
Butler	Ringwood TV Cable Corp.
Caldwell	Essex County Cable Corp.
Camden County	Jerrold Corp. Metro-Video General Electronics International Equity TeleSystems Corp.
Cliffside Park	Cable TV Corp. of Massachusetts
Clifton	Tele-Mark Communications Sterling Communications

Community	Applicant(s)
Deptford Twp.	Philadelphia CATV Co.
Dover Twp.	Crosswicks Industries Ocean County TV Cable Co.
Easthampton Twp.	General CATV Inc.
East Paterson	Tele-Mark Communications
Egg Harbor Twp.	Ruhlman's TV
Elizabeth	Realty Equities Inc.
Essex Falls	Essex County Cable Corp.
Ewing	Community Service Antenna Systems Inc. Crosswicks Industries
Ewing Twp.	TelePrompTer Corp.
Fieldsboro	General CATV Inc.
Flemington	Continental CATV Corp. All-State Community TV Systems of Union
Frankfort Twp.	Farmers Union Telephone Co.
Franklin Lakes	Tele-Mark Communications
Garwood	CATV of Garwood
Glen Ridge	Essex Cable TV Co., Inc. Sterling Communications Inc.
Gloucester City	Jerrold Corp.
Haddon Heights	Jerrold Corp. Telesystems Corp. Metro Video Inc. International Equity Corp. New Jersey Cable TV
Haddonfield	Broadway Maintenance Corp. International Equity Corp. Jerrold Corp. Metro-Video Inc. N.J. Cable TV Corp. Philadelphia CATV TeleSystems Corp.

Community	Applicant(s)
Hainesport Twp.	General CATV Inc.
Haledon	Sterling Communications
Harrington Park	Tele-Mark Communications
Hawthorne	Sterling Communications
Kenilworth	CATV of Kenilworth
Kinnelon	Tele-Mark Communications
Lawrence Twp.	Crosswicks Industries TelePrompTer Corp.
Lebanon Twp.	Washington Cable Co.
Lincoln Park	Tele-Mark Communications
Linden	Realty Equities Corp. CATV of Linden
Little Silver	American Telecable Services Inc.
Livingston	Essex County Cable Corp.
Livingston Twp.	Tele-Mark Communications
Long Branch	CATV of Monmouth Inc. Jersey Shore Cable Co. Shore Counties Construction Co.
Lumberton Twp.	General CATV Inc.
Mahwah Twp.	Sterling Communications
Matawan	American Telecable Services Inc.
Mercer County	Community Service Antenna Systems, Inc.
Merchantville	Jerrold Electronics Philadelphia CATV Co.
Middlesex	American Telecable Services Inc.
Millburn	Essex County Cable Corp.
Montclair	Essex County Cable Corp.

Community	Applicant(s)
Montvale	Sterling Communications Inc.
Moorestown Twp.	General CATV Inc.
Morris Plains	Tele-Mark Communications
Morristown	Tele-Mark Communications Continental CATV Corp. All-State Community TV Systems of Union Morristown Daily Record
Mt. Ephraim	TeleSystems Corp. Jerrold Corp.
Mt. Holly	General CATV Inc.
New Brunswick	Continental CATV Corp.
New Hampton	Washington Cable Co.
New Hanover Twp.	General CATV Inc.
North Haledon	Clear Vision Electronics Corp.
North Hanover Twp.	General CATV Inc.
Nutley	Tele-Mark Communications American Telecable Services Inc.
Oaklyn	New Jersey Cable TV Jerrold Corp. Telecast Corp.
Ocean County	Crosswicks Industries Ocean County TV Cable Co.
Oradell	Tele-Mark Communications
Orange	Essex Cable TV Inc.
Palisades Park	Tele-Mark Communications Inc.
Palmyra	General CATV Inc.
Passaic	Tele-Mark Communications Sterling Communications

Community	Applicant(s)
Paterson	Tele-Mark Communications Sterling Communications
Pemberton	General CATV Inc.
Pemberton Twp.	General CATV Inc.
Pequannock	Tele-Mark Communications
Princeton	Nassau Broadcasting Community Service Antenna Systems Inc. Crosswicks Industries
Princeton Twp.	Philadelphia CATV Co.
Prospect Park	Tele-Mark Communications
Ramsey	Tele-Mark Communications
Riverdale	Tele-Mark Communications WKER Pompton Lakes Ringwood TV Cable Corp.
Riverton	General CATV Inc.
Roseland	Lloyd TV Service
Roselle Park	CATV of Elizabeth Inc.
Rutherford	Tele-Mark Communications
Saddle Brook	Tele-Mark Communications
Sea Girt	American Telecable Services
Seaside Heights	Continental CATV Inc.
Shamong Twp.	General CATV Inc.
Short Hills	Essex County Cable Corp.
Southampton Twp.	General CATV Inc.
South Plainfield	Plainfield Cablevision Inc.

I submit that local community officials are better able to determine what is good for their communities.

The State would also impose any conditions of territory, construction, equipment, maintenance, rates, service, and operation they want -

Again, I believe local communities should have this right.

SECTION VI. Must specify service to be rendered, routes of cables, area of operation, etc. -

Service to be rendered should, within limits, be flexible, as times change, public interests change, and technology changes. Any changes should be between the operator and the individual municipality, as each area in the State will not require or want the same kinds of service or operation.

It would be impractical to invest in Strand surveys and cable route layouts with its engineering work before a certificate ("Franchise") is obtained.

What does "area of operation" mean? - - Does it mean extent of cable reception, or does it mean area from which programming is drawn?

SECTION VII. "Rates and charges shall be reasonable compensatory so as not to encourage unfair or destructive competitive practices."

Does this mean local broadcasting cannot be viewed free of charge if the operator can offer this service? Does it mean we cannot negotiate with individual communities as

to a share of income arrangement? We, as operators, have different degrees of desire for personal gain, and different ideas as to what public service is in a community. This section would give the State the right to set minimum as well as maximum rates and charges - contrary to the free competition we should have in making agreements with the communities we deal with.

SECTION VIII. This simply forces an operator to go through the same red tape and lengthy procedure, with separate $50.00 fees, for each and every new municipality wanted.

SECTION IX. Local communities are in better position to make these decisions.

SECTION X. Eighteen months could be too long a period to get in operation or it may be an impossible goal. Each municipality differs in size, density, means of cabling, and geographical makeup. Noone knows better than the municipal officials what these special considerations might be - and they should decide how little or how much time should be given - and what is "operation" anyway? - one subscriber, half the town, or 100% of the town? I don't see how the State could possibly make an arbitrary time limit meaningful.

SECTION XI. Franchises or "Certificates" should not be assigned, sold, or transferred - without the permission of the local municipality - Not the State.

The provision regarding change of more than 25% in ownership is unreasonable - restricting the operator in method of capitalizing and financing - Better the boroughs be notified of <u>any</u> changes in ownership.

SECTION XII. The right to combine, merge, or consolidate with other operators, or to gain control of others should, again, be an issue between the parties involved and the municipalities involved.

SECTION XIII. New rules and regulations could be a constant source of hindrance and harassment to operators.

SECTION XIV. If in operation now an operator must apply within thirty days, even though they have already gone through time and expense of getting the approval from the area in operation. All the cost to that time could be flushed down the drain at the whim of the State Board - even though the operator and the entire viewing public be happy with existing service.

SECTION XV. We don't want the State or any political body to control our property, property rights, equipment and facilities.

Let the State, if it wishes, set down basic rules, regulations, and guide lines - But let us have the right to compete freely with others within that framework while operating our systems. Let us decide what municipalities we want to operate in, and let the municipalities decide which applicant would best serve their needs.

This Bill, while well meaning, would stymie smaller cable systems by cutting off growth potential from one borough to the next. Only the very large operators could apply for vast sections at a time, and lock out further expansion of smaller operators. It would

discourage the very thing the FCC has tried to encourage - the return of the whole TV communications industry from the control of a few back to the local communities.

The Bill groups all types of cable systems into one, when there are vast differences between them. Some offer a town CATV subscription or nothing, and some towns are interested only in that feature of the many that can be offered.

Other systems offer a community CATV and local programming; others will add local educational channels, special communications between law enforcement departments, doctors and hospitals, etc.

Not every area will desire or need every service possible - but the decisions concerning their community should be made by themselves and the applicants - Not a State group

In summation, since we already have Federal, namely, FCC regulations to adhere to, why should we have any more, especially State red tape and politics limiting our right to free enterprise, which is one of the bases this country was founded upon.

Gentlemen, we are not against reasonable regulations for the protection of the public, but we feel strongly that a far better way to reach this goal is to establish fair minimum standards for the State and let the local municipal officials keep their self-determination by being the ones to determine who, if anyone, shall have a Franchise.

Gentlemen, I believe this puts the whole situation in the hands of the political powers in control at any given time. Therefore, I am against State control. Gentlemen, I thank you.

STATEMENT OF ROBERT H. BEISSWENGER,
PRESIDENT OF THE JERROLD CORPORATION
AND CHAIRMAN OF THE BOARD,
ALPINE CABLE TV, INC.

Before the
COMMITTEE ON TRANSPORTATION AND PUBLIC UTILITIES

NEW JERSEY STATE ASSEMBLY

Assembly Bill No. 2139

Chairman Hollenbeck, members of the Committee, my name is Robert Beisswenger. I am President of The Jerrold Corporation and Chairman of the Board of Alpine Cable TV, Inc., a CATV system operated by my company which serves Pleasantville, New Jersey, and the surrounding areas of Egg Harbor Township, Absecon, Linwood and Somers Point.

My company, The Jerrold Corporation, is the largest manufacturer and installer of CATV systems in the United States and has occupied this position for some twenty years. In addition, we own and operate a number of CATV systems throughout the United States serving well over 200,000 subscribers. I have been intimately involved in the CATV business for the last several years and have served as Chairman of the Board of the National Cable Television Association, Inc., the National Trade Association of the cable television industry and am presently a member of its Copyright Committee. I have appeared on numerous occasions before the Federal Communications Commission and before Committees of the United States Senate and House of Representatives.

I am also a long-time resident of New Jersey, my wife and I having resided in Ocean City for several years, though I must say I do not particularly relish the long daily commuting ride to

Philadelphia. But if it is a choice between living at the New Jersey seashore and in the Philadelphia area, I will take the former everytime.

Obviously, I am here today to give you my thoughts on the CATV Regulatory Bill presently pending before your Committee. I want to express to you my very strong feelings and those of the New Jersey CATV Association to the extremely deleterious effect on the present operation of CATV systems and perhaps more importantly the growth of CATV in New Jersey of passage of Assembly Bill No. 2139. We strongly feel that passage of the legislation will lead to substantial delay and retardation in the prompt rendition of additional CATV services for the citizens of the State. I do not say this lightly, but from a deep conviction based on experience of my company and the CATV industry in the very few other states in which public utility type regulation of CATV has been adopted. As you may be aware, five states have enacted statewide CATV regulation, i.e., Connecticut, Nevada, Rhode Island, Vermont and Hawaii.

Inasmuch as Connecticut was the first state to adopt such legislation, it is appropriate to consider in detail the background in that state, one in which my company had, quite frankly, rather bitter and frustrating experiences. In 1963, the Connecticut General Assembly delegated to the State Public Utilities Commission the authority to grant CATV franchise certificates upon finding that the public convenience and necessity required the same. As a matter of fact, the Connecticut Bill was not unlike Assembly Bill 2139. In determining whether such a certificate would be granted, the PUC, like Assembly

Bill 2139 was to consider the need for the proposed service, the suitability, financial responsibility and technical competence of the applicants. The 1965 Connecticut General Assembly enlarged the PUC's responsibility by declaring CATV systems to be public utilities. Now it might appear that at first blush the former considerations were appropriate for such a state regulatory agency. Experience, however, has demonstrated conclusively that the exactly opposite result was achieved, i.e., provision of CATV service to the public was totally thwarted. Beginning in 1964, the PUC in Connecticut initiated the process of franchise selection, having some twenty-five applications to serve seventy different communities in the states before it. Many of the applicants, of course, filed multiple applications for several separate towns. My company was intimately involved in the proceedings, both in terms of an equipment supplier to the various applicants and, in one case, as an applicant itself with local citizens for the City of Waterbury.

This initial franchise proceeding consumed a total of ninety-three sessions of hearings at which the applicants, most of whom were represented by counsel, engineers and other consultants, were required to present comprehensive financial, technical and other data. In all, the record of this initial proceeding consisted of some 9,481 pages of testimony together with literally thousands of pages of written exhibits.

In 1967, the Connecticut PUC announced its decision, granting franchises to some seventeen applicants. Certain of the applicants

whose applications were not granted appealed the PUC decision in the state courts of Connecticut. The appeal acted to stay the effectiveness of the franchise awards. Three years later in May of 1970, the Supreme Court of Connecticut affirmed the PUC, upholding the grants of the winning applicants.

The Connecticut PUC has subsequently requested the winning applicants to file construction plans and other data, which will then be reviewed by the PUC. To date, therefore, some six years after regulation was adopted there is still no, I repeat no, operating CATV system in the entire state, although many of the areas of the state critically need CATV service as evidenced by consumer surveys and demand.

In Rhode Island, delay in the awarding of franchises by the state has also occurred. Thus, the provisions for state grant of CATV franchises were enacted in June of 1969 and several applications were forthcoming shortly thereafter. No hearing or procedural dates have yet been scheduled by the Connecticut Commission and thus the award of the actual CATV franchises is quite far distant in the future. Similarly, the few (six) existing CATV systems in Nevada began operation well before enactment of legislation requiring a certificate from the Nevada Public Service Commission. Some two years after the conclusion of the hearings for a CATV system in Clark County (Las Vegas) for the Nevada Public Service Commission, there is still no operating additional CATV system in the state.

The legislation in Hawaii and Vermont was enacted this year and its recent origination, of course, precludes any realistic appraisal

of its impact on CATV.

From what I have indicated, it would appear obvious, in my opinion, that state regulation has not furthered the advance of CATV, but on the contrary, has resulted in substantially hindering its growth and development in those states in which such regulation has been adopted. As I indicated, Connecticut, which has the longest history of such regulation, is the most vivid example of what can occur, that is, some six years of time-consuming and expensive administrative hearings and litigation; and the total absence of CATV all during this period.

Now you might say that New Jersey is not Connecticut and the New Jersey Board is not the Connecticut Public Service Commission, and these events could not occur here. I do not believe, however, that this is necessarily an accurate conclusion. There is no reason to believe that the Connecticut experience was or will be unique. The same circumstances could well occur in New Jersey. Thus, if a New Jersey state agency were to be the governmental branch to determine CATV authorizations, the Connecticut pattern of multiple applicants, each applying for several cities or areas, prolonged evidentiary proceedings and hearings, followed by lengthy court appeals by the losing applicants, could well be expected to develop here. Whenever a franchise proceeding is formalized into an adjudicatory or quasi-adjudicatory state proceeding, all the delays and expense inherent in such proceedings inevitably attach.

If there were no other reasonable manner of procedure, then it might be stated that such delays might be necessarily tolerated. For example, in Connecticut, there is no strong tradition of home rule by local government entities. Fortunately, however, that is not the case in New Jersey, where home rule is significant and where the local communities have amply demonstrated their complete capacity of franchising and regulating CATV in the public interest.

In summary, the history of state CATV regulation in other states has not demonstrated in the affirmative public interest aspects, but on the contrary, has shown several severe and distinct disadvantages.

At present, franchise procedures in New Jersey are relatively non-complex and governed by statutory procedures. Interested applicants apply to the community and submit their bids. The community after due consideration of the respective proposal or proposals, determines which, if any, applicants should receive a franchise and such franchise is duly prepared and published. It is obvious, in our opinion, that public service commission regulation will add a number of complexities, many of which I have mentioned. In any event, particularly during the periods of legal maneuvering and other delays, the residents of the specific municipality, which might have a distinct and critical need for CATV service are deprived of same.

The second major point I wish to make today is that public utility regulation of CATV would stifle its growth contrary to the public interest. The development of cable television, which is

obviously wanted by the public, since it has found public acceptance almost anywhere it has been permitted to operate to date, would be impeded, sharply curtailed, or halted with the advent of price regulation in the traditional utility manner as is contemplated by Assembly Bill No. 2139. 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, although the prices for movies, as you are all well aware, have risen dramatically in the last few years. The other witnesses here today I believe will advise you, venture capital exposed to such very high risk, initially and continually, will just not be attracted to the state in which the opportunity for reward or return is limited while the return available elsewhere in other comparable endeavors with a similar degree of risk is not limited. You should seriously consider that if no venture capital can be attracted, no cable television, and

the public has one less choice for entertainment or educational news. This is obviously not in the public interest because cable television in many areas of the country has proven to be the man of modest income's way to bring entertainment to his family he otherwise could not afford.

In order for the cable television industry to effectively compete for risk or venture capital with other entertainment endeavors, newspapers, magazines, movies, books and all other forms of similar risk entertainment would have to be regulated with a similar limit on opportunity for profit. If television is a necessity, television repairmen and shops should be regulated and so should stores selling television sets. Of course, no one would even contemplate such regulation. You should also consider that if earnings of existing cable television systems in New Jersey were to be inadequate, there could be serious doubt as to their financial ability to continually update and improve facilities or even replace in kind facilities used in rendition of cable television service to the public. My company has seen cable television systems go from four channels to six to eight to ten and now twelve - in the very immediate future twenty and even forty channel-systems, not only because of a physical wearing out of the facilities, but due to technical obsolescence and the need to stay competitive in the entertainment marketplace for customers. Add to this burden inflation and possible lower earnings due to regulation or even the threat of regulation, particularly of the type contemplated in Assembly Bill No. 2139, you will find that very soon high risk venture capital will go elsewhere.

Cable television service is regulated today in New Jersey by local governmental bodies in an entirely adequate manner, and absolutely no showing has been made by anyone with hard facts that such regulation is not in the public interest, whereas costly state regulation would not be in the public interest. The burden of proof as to the need for state regulation of cable television as a public utility should be met by those who advocate such action. We are not aware that this Assembly or your Committee, Mr. Chairman, have received any complaints from the consumers of New Jersey as to the inadequacy of cable television service or the inability of the local municipalities to properly and carefully regulate the same in the public interest. It would seem to us that in the complete absence of any evidence of need for such regulation, this additional administrative burden should not be added to the Board of Public Utility Commissioners, the New Jersey CATV industry or, more importantly, the consuming members of the public. We most strongly urge the rejection of Assembly Bill No. 2139.

Thank you very much.

STATEMENT OF

GARY L. CHRISTENSEN

Before the

COMMITTEE ON TRANSPORTATION AND PUBLIC UTILITIES

ASSEMBLY OF THE STATE OF NEW JERSEY

TRENTON, NEW JERSEY

April 20, 1971

My name is Gary L. Christensen. I am the General Counsel of the National Cable Television Association, Inc. (NCTA) with offices at 918-16th Street, N. W., Washington, D. C. 20006. NCTA, through its counsel, has appeared before Committees of the federal and state legislatures, administrative agencies, and in the Courts on matters of interest to the cable telecommunications industry. Thank you for the opportunity to appear before this Committee and to present some observations which I hope will be of some help to you in your deliberations.

I understand that this Committee has undertaken to study the necessity and desirability of the regulation of cable television systems as public utilities. I submit that any State Legislature should have grave reservations about attempting to enact any comprehensive CATV regulation in the face of uncertainties as to the proper roles of federal, state and local governmental authorities, national communications policy, and economic factors involving CATV.

While the CATV regulatory scheme has been, and is, in a state of flux, some significant legal decisions have been made which have a direct bearing on your deliberations. These judgments, coupled with the march of social and economic forces, governmental agencies, and quasi-public bodies, cast long shadows on proposals to add another layer to the fabric of CATV regulation.

Perhaps, for the record, it would be well to explain just what a cable television, or community antenna television, or CATV system is. The Federal Communications Commission (FCC), at 47 C.F.R. §74.1101(a) defines a CATV system:

> The term 'community antenna television system' ('CATV system') means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility which serves fewer than 50 subscribers, or (2) any such facility which serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house.

Generally, the CATV system is composed of "hardware" which includes a tower on which are placed receiving antennas strategically placed to receive broadcast television signals where their strength is greatest. Usually, at the base of the tower, a technical facility is constructed to feed the television signals into amplification

equipment and the cable network; this facility is known as the "head-end". The cable network is composed of trunk lines, distribution or feeder lines, and the customer taps. These lines, constructed of coaxial cable, may be buried underground to telephone and utility poles in accordance with pole-line or pole-attachment contracts. In order to maintain the strength of the signal at uniform levels throughout the cable network, repeater amplifiers are placed at intervals along the trunk and distribution line. Thus the subscriber at the end of the line of the CATV system is able to receive as good a picture as the subscriber nearest to the head-end. The trunk line is the torso, the distribution lines the arms, and the customer taps are the fingers of the systems. It is at the viewer's television receiver that the CATV system has both its beginning and its ending, for the service provided by the CATV system comes into the home only when the viewer activates his receiver.

Over this hardware is distributed the "software" which is composed of broadcast television signals in all systems, of non-broadcast television signals in some systems, and of non-entertainment signals in a very few systems. The diversity of the software shows both the extent of the evolution of the CATV industry in New Jersey and its promise for the future if the evolution is not retarded.

At this early stage of the Committee's deliberations, it is also important that the Committee know that CATV and Pay-TV (or STV as the FCC calls it) are not the same. A nominal fee is paid for the reception and distribution system comprising the CATV system, but the subscriber is not paying for specific programs as he would under a Pay-TV basis. The distribution is made clearer when you consider that pay television is a system whereby the signal is broadcast in scrambled form to be decoded by some device at the receiver so that the signal becomes unscrambled and clear. But CATV does not use the broadcast spectrum but uses cable for the purpose of distributing the signal to the receivers. Pay-TV has separate encoded programs for which they make individual charges; CATV picks up free programs and redistributes those. However, the FCC is proposing detailed rules which, among other things, would require CATV systems to carry Pay-TV signals in scrambled form -- to which the CATV industry has objected. The FCC, and representatives of the broadcasting and CATV industries have recognized the fundamental differences between Pay-TV and CATV.

In United States v. Southwestern Cable Co., 392 U. S. 157 (1968), the United States Supreme Court established that CATV systems were interstate operations, properly to be regulated by the Federal Communications Commission (FCC). The Court stated, at pages 168-169:

> Nor can we doubt that CATV systems are engaged in interstate communication, even where, as here, the intercepted signals emanate from stations located within the same State in which the CATV system operates. We may take notice that television broadcasting consists in very large part of programming devised for, and distributed to, national audiences; respondents thus are ordinarily employed in the simultaneous retransmission of communications that have very often originated in other States. The stream of communication is essentially uninterrupted and properly indivisible. To categorize respondents' activities as intrastate would disregard the character of the television industry, and serve merely to prevent the national regulation that "is not only appropriate but essential to the efficient use of radio facilities." (Citation and footnote omitted.)

Subsequently, the detailed regulations of the FCC were upheld in Black Hills Video Corp. v. United States, 399 F. 2d 65 (8 Cir., 1968). Those regulations contain the following rule, found at 47 C.F.R. §74.1109(a):

> Upon petition by a CATV system, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the Commission may waive any provision of the rules relating to the distribution of television broadcast signals by CATV systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question. (Emphasis added.)

Thus, the extent of the FCC's regulatory power over CATV system operations is virtually unlimited except by Constitutional protections.

The FCC has already determined that CATV is not a common carrier like the telephone companies, Philadelphia Broadcasting Co. v. Federal Communications Commission, 359 F. 2d 282 (D. C. Cir., 1966), which determination was approved by the Supreme Court in

Southwestern, and moved to regulate CATV's relationship with telephone companies in General Telephone Company of California, et al., 13 F.C.C. 2d 448 (1968), aff'd sub nom. General Telephone Company of California et al. v. F.C.C., 413 F. 2d 390 (D. C. Cir., 1969) cert. den., 396 U. S. 888 (1969). In affirming the FCC, the United States Court of Appeals concluded:

> Any other determination would tend to fragment the regulation of a communications activity which cannot be regulated on any realistic basis except by a central authority; fifty states and myriad local authorities cannot effectively deal with bits and pieces of what is really a unified system of communication.

I am not unmindful of the case which upholds the Nevada statutory scheme for regulation of CATV systems as public utilities: TV Pix, Inc. et al. v. Taylor et al. 304 F. Supp. 459 (D. Nev., 1968) aff'd 396 U. S. 556, but I wish to emphasize that regardless of the legal authority which states may or may not have, it is the clear judgment of the courts that national regulation must first be settled before the role of the states and cities can be realistically assessed. Further debate on the merits or authority of TV Pix serves no useful purpose at this time. Suffice it to say that the clear teaching of the cases relating to FCC authority over cable television points to approval of the ever expanding exercise of federal, as opposed to state, regulation of the cable industry.

Inevitably, there will be a broad band cable communications service (BCN) in this state. It will, in many ways, resemble CATV today. However, this resemblance will be like a chrysalis to a butterfly. The BCN will serve many more purposes and provide many more services to a greater number of people than is now provided over CATV systems. We sometimes speculate as to the types of services which will ultimately be carried on a cable system. It is likely that some of our wildest speculations will ultimately become reality. However, they are still speculations. Because the industry's history is relatively short; because the regulatory questions are many and unsettled; because the technological changes are rapid but unpredictable; because the economic and market information is limited, we cannot yet be certain as to how this industry will develop. CATV has not yet achieved a degree of maturity usually associated with an industry which is regulated as a public utility. The imposition of utility-type regulation at this time could inhibit development unnecessarily.

This is not to say that the states do not have a place in the total regulatory scheme. It may well be that some areas will be appropriate, even desirable, for state regulation at some future time. It is important that these areas be examined at the appropriate time; important to our federal system, important

to the regulatory bodies affected, important to the cable television industry, and most important to the public whom we all serve. The development of state, even multi-state, telecommunications policy within the framework of our national goals and regulatory parameters, is certainly a desirable objective. But, as the courts have said, television and cable television are subject to the provision of the Communications Act of 1934, as amended, which has occupied the field to the extent that regulation is exerted by the FCC. And, so long as the national telecommunications policy is ill-defined or fluid, it would seem to me to be the better policy to express your interest in developing a regulatory mix of such quality as to foster the development of cable television within your state.

In that regard your task will not be an easy one for, if you propose to regulate cable telecommunications systems in New Jersey you must consider not only the needs of each locality, requirements and limitations of your state agencies, but also the overriding national policies attendant on communications, copyright and anti-trust. The FCC, in almost constant deliberation for over five years, has only recently been able to begin to resolve the divergencies. The FCC's television policy alone goes back to before 1952 when it adopted an allocation plan which was to ensure that virtually all communities, irrespective of size or location,

would be adequately served both with respect to quantity and quality of television service.

It was believed that all allocations would ultimately become viable operating television stations. As such, those CATV systems which were installed in rural or relatively sparsely populated areas were considered to be filling a temporary need until such time as broadcast stations became available in these areas.

However, it has become apparent that the FCC's allocation plan has failed to consider the inability of smaller markets to attract sufficient advertising revenues to support the stations which had been allocated to them. Furthermore, despite the slow development of television stations in the smaller markets, the public's demand in these areas, for greater programming variety and improved quality, has continued to grow at a rapid pace.

During the 17 years which have elapsed since the FCC's allocation plan was introduced, a number of efforts have been made to fulfill the objectives of that plan through a complete system of over-the-air broadcast facilities. While these efforts have met with varying degrees of success, none have shown any signs of coming close to fulfilling the objectives. The growth of CATV has closely paralleled the growth of the television industry. It

is apparent that the growth of CATV is based not on the demand for cable television per se but on the demand for television. Cable television has reached its present level only because the FCC's plan for television has failed to achieve its original objectives and has failed to anticipate the demand for service which the medium has generated. Therefore, any reference to cable television's growth and public acceptance must be made within the context of the television industry and its public acceptance. The FCC has informed the CATV industry and the Congress of the United States that in order to deal with the CATV regulatory problem, one must consider competitive, copyright, and communications policies. If the latter proposition is true, and this Committee has no reason to believe that it is not, further action by this Committee must at least await developments in the national competitive, copyright, and communications arenas, if its conclusions are to comport with national and over-riding policies affecting CATV.

Through "interim processing procedures," the FCC has imposed detailed rules for CATV in major and minor television markets, as well as outside any market. The FCC has created three castes of viewers: Those within 35 miles of a major television market, those within 35 miles of a minor television market, and those who are outside of any 35-mile limited reception zone, CATV, 15 F.C.C. 2d 417, 428 (1968).

In summary, the FCC has proposed that all CATV systems within a 35-mile radius from the main post office of 153 cities located within the 100 largest television markets will be allowed to carry only local television signals unless the CATV system can obtain "retransmission consent" from distant television stations on a program-by-program basis. Where predicted Grade B signals of television stations in two major markets overlap, a circumstance prevailing in 91 of the Top 100 markets, the CATV system can carry only the local signals of the closer community unless it receives "retransmission consent" or is within 35 miles of both communities even though all signals would ordinarily be considered "local". CATV systems within a 35-mile radius of small television markets (i.e., not designated in the Top 100 markets) could carry only the local signals or enough to provide three full network television stations, one independent station, and educational stations, unless the CATV system receives "retransmission consent" from distant stations, again on a program-by-program basis. CATV systems located outside these radii could carry any number of distant signals provided the CATV system first carried those most proximate within each of four classes of stations: Full network stations; partial network stations; independent stations; and, ETV stations. The retransmission consent, although initially claimed by the Commission not to be so, is, in effect, a copyright clearance

designed by the Commission to place CATV in a marketplace which, prior to Commission regulation, had no such requirement and which has been recognized by the FCC as unworkable, First Report and Order on CATV, 38 F.C.C. at 704; and, Second Report and Order on CATV, 2 F.C.C. 2d at 768. While presently operating under these procedures, the FCC proposed a whole new complex of rules and proposals which are summarized in Attachment A hereto.

The difficulties of fitting CATV into existing copyright concepts is, by itself, enormous. Although the United States Supreme Court has determined that CATV systems are not liable for copyright royalties for the distribution of television broadcast signals which can be readily received on conventional antennas, Fortnightly Corp. v. United Artists Television, Inc., 392 U. S. 390 (1968), a national television network claims that there are certain areas not covered by that suit, and has initiated a lawsuit which has potential effects that could decimate the existing CATV industry and destroy its future. In Columbia Broadcasting System, Inc. et al v. TelePrompTer Corporation et al., 64 Civ. 3814, (S.D. New York), the alleged copyright liability of CATV systems which use television broadcast signals transmitted by point-to-point microwave or which originate their own programming is being tested. Because of the FCC's opinion that copyright policy must be considered in regulating CATV, and because of the complexity of applying

copyright concepts to CATV, the Congress of the United States in connection with its omnibus revision of the copyright laws of the nation, is now considering legislation with respect to CATV involvement with copyright. S.644 is now pending before the U. S. Senate Subcommittee on Patents, Trademarks, and Copyrights. The legislation is extremely complex, and deals with more than just the payment of money -- it also involves the right to control, even to totally withhold television signals from CATV systems because such signals transport copyrighted material. The results of this litigation and legislation could significantly alter the CATV industry in ways which are presently impossible to forecast. The CATV industry which you intend to regulate today may be something entirely different tomorrow. Good legislative timing requires that you have patience, that you avoid the pitfalls of hasty action, that you avoid legislation that will lead to bitter litigation.

Under no circumstances should CATV be regulated as a utility. On the federal level it is regulated as a freely competitive enterprise. It is recognized as a medium for the provision of entertainment and information and not as a necessity. The total service is still primarily one for entertainment. It is a high risk business, dependent upon venture capital, which competes with translators, booster, satellites, television stations, and even roof-top antennas. Observation of those states which do regulate CATV

as a utility show that such regulation is a step backward. Even such leaders as the Hon. Reese Taylor, former Chairman of the Nevada Public Service Commission which regulates CATV in Nevada, have expressed doubts about the appropriateness of utility type CATV regulation. Casual observation of Connecticut reveals that after six years of utility type regulation of CATV, not one CATV system has been energized! If CATV systems are ever constructed in these states, the type of regulation will lead to concentration of control in only large enterprises forcing the small businessmen, who started this industry, out of the cable television business. No legislature should permit that to happen, much less encourage it.

Finally, the present system of municipal regulation based upon the inherent right to regulate use of the public ways, and insuring the opportunity for participation by local citizens, has worked exceptionally well. Municipal regulation, and competition, have kept rates low - the national average is about $5.00 - and increases have lagged behind inflationary trends. At the same time our technology has advanced spectacularly. From the older 3-channel systems, we have become capable of providing 12 channels and 40 channel systems are under construction in California, and as our capacity has increased so has our technical reliability. We believe this record should be compared with that

of the regulated utilities in the State of New Jersey to give some indication of the desirability of state regulation of CATV.

In conclusion, thank you for allowing me to appear here today. Let me assure you that NCTA will cooperate with this Committee and the New Jersey Legislature. If NCTA can provide you with further information about our industry, or assist you in any way, please call on us and we will do all we can to help you.

ATTACHMENT A

THE BEGINNING OF CHANGE

In July of 1970, the Commission caused a flurry of activity which seemed to indicate a new resolve to accept the responsibility which accompanied its assertion of regulatory authority over cable television.

PROGRAM ORIGINATIONS

By rule, effective August 14, 1970, the time for commencement of mandatory origination (See, First Report and Order in Docket 18397, 20 FCC2d 201 (1969) for systems of 3,500 subscribers or more was extended to April 1, 1971. A rule precluding the cablecasting of lotteries (lotteries have three elements: prize, chance and consideration) was also adopted.

A system may not make arrangements which inhibit the use of its cablecasting channel for public affairs programming during prime time. For example, entertainment-type CATV originations must not bar public affairs programming.

In addition, generally, if a CATV system makes a per-program or per-channel charge, it may not carry commercials, or present series programs, or present sports events which have appeared on commercial TV within the past two years, or present movies which were released in theatres more than two years ago, on those channels. Not more than 90% of the programming on those channels can be movies or sports.

Ominously, the warning is given that, if cablecasting threatens commercial television, "remedial action" may be taken. Memorandum Opinion and Order in Docket 18397, 23 FCC 2d 825 (1970) The two-year rule on sports may be increased to five years upon completion of a rulemaking proceeding in which comments have been submitted.

FEE SCHEDULE

On July 2 the FCC adopted a fee schedule for all CATV systems of 30 cents a subscriber annually, effective August 1, 1970, with the first payment due April 1, 1971. Filing fees for notices of commencement of service and

petitions for special relief are $10 and $25, respectively. Fees Schedule, 23 F.C.C. 2d 880 (1970)

CROSS OWNERSHIP RULES

By rule, effective August 10, 1970, the three national television broadcast networks are precluded from owning, operating, controlling or having an interest in CATV systems; TV stations may not have CATVs wholly or partly within the TV's predicted Grade B contour; and, translators may not have CATVs serving the same community. Of course, the reverse is also true for CATV. Systems cannot own the three broadcast networks, TV stations, or translators under the same circumstances. Second Report and Order in Docket 18397, 23 FCC 2d 816 (1970)

A new section added to the FCC's rules (74.1131) notes that "control" means actual working control, and "interest" is interpreted as common officers, directors and partial as well as whole ownership. Special consideration is given to public corporations with over 50 investors (1% common ownership prohibited) investment companies (3% common ownership prohibited), and stock held in street names, etc. Three years is allowed for divestiture, with opportunity for extensions.

CARRIAGE AND NONDUPLICATION

The present carriage and nonduplication rules are continued, and the documents seem to anticipate the filing of informational reports already proposed by the FCC. It would also appear that the Commission will continue the freeze on CATV expansion in television markets until new rules are adopted.

THE PRESENT PROPOSALS

The Commission's present proposals generally provide for new rules in several areas.

PROPOSALS ON CROSS AND MULTIPLE OWNERSHIP

In a companion rulemaking proceeding, Docket 18891, Notice of Proposed Rule Making and of Inquiry, 23 FCC 2d 833 (1970), the FCC proposes rules which would preclude

CATV and AM radio cross-ownership if the cable system is located within the AM radio station's primary service area, and which would preclude CATV and FM radio cross-ownership if the CATV system were located within the FM radio station's 1 mv/m contour.

Limitations on multiple ownership of CATV systems of over 1,000 subscribers are also proposed. For purposes of multiple ownership, all systems within the same Standard Metropolitan Statistical Area (SMSA) under common ownership are treated as a single system. Where there is no media cross-ownership, ownership of 50 systems would be allowed; of the 50, only 1 could be located in the three largest SMSA's; 2 in the top 10; 3 in the top 25; 4 in the top 50; 7 in the top 100; no more than 10 in adjoining states; no more than 5 in the same state with only one in a top 100 SMSA.

If the CATV has cross-ownership with more than 1 TV or 2 AM's or 2 FM's or 2 newspapers, ownership of only 25 systems would be allowed, of which only 1 could be located in the 10 largest SMSA's; 2 in the top 50; 4 in the top 100; 5 in the same or adjoining states, with only one in a top 100 SMSA.

As an alternative, or perhaps an addition, a total limit of 2,000,000 subscribers with a 10% growth factor, would be imposed. "Ownership", "control", and "interest" would be defined the same as in the cross-ownership rules. An inquiry was started into cross-ownership between CATV and ETV's, newspapers, microwave carriers, equipment manufacturers, national news magazines, advertising agencies, and unnamed others.

TECHNICAL STANDARDS

The FCC also proposed rules setting technical standards for CATV systems in Docket 18894, Notice of Proposed Rulemaking, 25 F.C.C. 2d 38 (1970). The technical proposals include a suggested 20 to 40 minimum channel capacity, two-way capability with a 4 K Hz return from subscribers, and capability for separate program origination centers in "communities" within the franchised areas. The proposed performance standards do not prescribe methods or kinds of equipment the CATV system must use, but do require annual compliance reports.

The proposals list seven new definitions: cable television channel; channel frequency response; system noise; subscriber terminal; terminal isolation; visual signal level; CATV system channel capacity. Complete performance tests will be required once a year and certified to the FCC. The tests must be performed at three widely separated subscriber terminals, one of which is representative of terminals most distant from system input.

The proposed standards will require a minimum signal level to subscribers of 0 dBmV (1 millivolt in 75 ohms). The level is to be maintained within 6 dB of the value reported to the commission. Adjacent channels must be within 6 dB and visual signal level on any other channel must be within 10 dB. Aural signal levels are to be within -13 to -17 dB of the associated visual signal. Visual carrier frequency must be held at 1.25 MHz ± 25 KHz above the lower boundary of the cable channel. The aural carrier frequency must be 4.5 MHz ± 1 MHz above the visual carrier frequency. Low frequency disturbances, such as hum, may not exceed 5% of the peak-to-peak visual signal level. Amplitude response must be within ± 2 dB for frequencies within -1 MHz and +4 MHz of the visual carrier. Signal to Noise ratio at subscriber terminals for Grade B signals is proposed at 35 dB. Discrete frequency interference, cross-modulation, intermodulation, co-channel, etc., signals must be suppressed 46 dB below desired visual level. The proposed standards include a terminal isolation of not less than 30 dB, except between separate TV and FM terminals at the same subscriber where it must be not less than 15 dB. Systems would have three years to be brought into compliance.

THE PUBLIC DIVIDEND PLAN

Of major importance to the growth of the CATV industry was the FCC's proposed rulemaking in Docket 18397-A, Second Further Notice of Proposed Rulemaking, 24 F.C.C. 2d 580 (1970). The FCC said it is searching for alternative distant signal policies which will:

(a) assist independent UHFs and ETVs;
(b) not undermine healthy operation of other TVs;
(c) be "fair" to copyright owners; and,
(d) allow sufficient distant signals to permit successful CATV operation in major markets.

The Commission stressed that its proposals were merely "proposals" and are dependent on legislation making CATV liable for copyright payments.

CORPORATION FOR PUBLIC BROADCASTING FEE

In addition to a copyright royalty payment, which presumably would be made by all CATV systems, the FCC proposed to impose a fee (5% of gross revenues from subscriptions)--on CATV systems in the top 100 markets only--to be paid to the Corporation for Public Broadcasting (ETV). Even systems of 2-3,000 in top-100 markets may be exempted from such payments. It was proposed that a television market would be defined by 35-mile circles computed from present market reference points.

CARRIAGE OF LOCAL AND DISTANT SIGNALS

In top-100 markets, if the proposals are adopted, CATV systems could carry local signals, perhaps "missing" network stations, four distant independent commercial signals, and unlimited distant ETV signals (provided they were not objected to by the "local" ETV licensee or permittee at the time notice was given.). Independent programming on distant network stations could be counted as an "independent" signal.

In the smaller markets, CATV systems could carry local signals, plus four distant commercial signals (includes "missing" network signals in the total of four), and unlimited distant ETV signals (again, provided the local ETV licensee or permittee did not object). Local signals would be predicted for local signals in overlapping major markets. CATV systems outside of any markets could carry unlimited distant signals.

On imported distant signals, commercials would be deleted and replaced with commercials provided by local commercial stations (primarily independent UHFs). Fund appeals on imported ETVs would be similarly replaced with fund appeals provided by the local ETV. The switching cost for commercial substitution was proposed to be imposed on the beneficiary stations. It was proposed, however, that CATV systems bear the cost for ETV fund appeal substitution. However, the FCC desired comment on whether CATV systems should help bear the cost in any event.

Where there are overlapping major markets, commercials would be substituted by TV stations putting a higher grade contour over the CATV system after commercials were deleted on local, but lower grade contour, signals. The expense and income from commercial substitution generally would be shared first by local independent UHFs, then by local VHFs (after waiting two years for UHFs to develop); and, by any station which was able to prove special hardship.

LEAPFROGGING

If distant signals were to be imported, the FCC proposed partially to relax the present leapfrogging restrictions. In top-100 markets, two of the four independent signals would have to come from in-state, if available. In smaller markets, the "missing" network signal, if any, and two independent signals would have to come from in-state, if available. There would be no other restrictions on leapfrogging. The FCC did not discuss the availability of microwave facilities for distant signals.

CABLECASTING CHANNELS

The FCC proposed, at least in the "core city" of major markets, to require capacity for diverse program origination. For example, the cablecasting requirement is continued (perhaps 10,000-subscriber systems will be required to originate 21 hours a week in prime time with an undisclosed percentage to be of "local nature") and new systems of 20 or more channels might have been required to provide 50% of their channels for origination on demand.

A "sports blackout" on origination channels corresponding to that of broadcasters would be imposed.

In addition to the cablecasting channel, the new CATV systems would have to have the capacity to carry all local television signals, and to provide for at least one free local government channel, free local public access channels, leased channels and channels devoted to instructional uses. The Commission stated it will take appropriate action to insure availability of leased channels, including rate surveillance, if necessary.

GRANDFATHERING

Most existing CATV systems would be "grandfathered". In top-100 markets, if a CATV system extended its trunkline into new areas it would lose its grandfather status in the new area (as a practical matter, that would probably mean the entire system). In smaller markets, CATV systems could expand within their franchised areas. But, if the system added a new signal or expanded into a new community, it would, perhaps, not be allowed the full complement of distant signals proposed for small markets.

The foregoing were the major proposals relating to CATV system operation under the Public Dividend Plan. There were other proposals, alternatives, and hedges.

FEDERAL/LOCAL REGULATION OF CATV

The FCC also proposed rules which would preempt regulation of CATV based on a federal-local government dual regulatory approach, Notice of Proposed Rulemaking in Docket 18892, 25 FCC 2d 50 (1970). Under the Commission's preferred approach, the FCC would retain regulation of carriage and distribution of television signals and of program originations.

The local government would determine the successful applicant for use of the public ways by measuring all applicants against standards set by the FCC. The successful applicant would be certified to the FCC which would then, presumably, license the CATV operation.

western union Telegram

607P EST APR 19 71 PA199
P ATA148 FG NL PDF LINWOOD NJER 19
HAROLD C HOLLENBECK
ASSEMBLYMAN ROOM 218 STATE HOUSE TRENTON NJER
OUR LONG EXPERIENCE WITH CABLE TV IN OUR COMMUNITY HAS CONVINCED ME THAT OUR COMMUNITY, OUR PEOPLE AND CATV IS BEST SERVED WHEN LOCAL GOVERNMENT IS IN CONTROL. WE ARE PLEASED WITH PRESENT CABLE TV SERVICE HAVE ADEQUATE CONTROLS FOR THE PROTECTION OF OUR PEOPLE. RECEIVE MUCH NEEDED REVENUE AND FIND ALPINE CABLE TV VERY COOPERATIVE. I SEE NO NEED FOR ASSEMBLY BILL #2139 AND AM OPPOSED TO IT
GEORGE K FRANCIS MAYOR OF LINWOOD NJ

SF-1201 (R5-69)

western union Telegram

320P EST APR 16 71 PA182
P NTA159 LA PDF EAST BRUNSWICK NJER 16 300P EST
ASSEMBLYMAN HOLLENBACK
RM 218 STATE HOUSE TRENTON NJER
PRESENTLY WE HAVE AN OPERATING SATV SYSTEM OVER WHICH WE KEEP CLOSE CONTROL. THERE HAVE BEEN NO CONSUMER PROBLEMS AND WE ARE SATISFIED THAT YOUR COMMUNITY CAN ADQUATELY CONTROL CABLE TW THEREFORE I OPPOSE PUC CONTROL.
HENRY BEHRE EXECUTIVE V P MIDDLESEX CABLEVISION EAST BRUNSWICK NJER.

(302).

western union Telegram

1231P EST APR 19 71 PB060
P ATA065 MG PDF TDAT SOMERSPOINT NJER 19 1150A EST
ASSEMBLYMAN HOLLENBECK
ROOM 218 STATE HOUSE TRENTON NJER
FOR OVER FIVE YEARS OUR CITY HAS BEEN SERVED BY ALPINE CABLE TG. WE ARE PLEASED WITH THE SERVICE AND COOPERATION RECEIVED. OUR CITY RECEIVES MUCH NEEDED REVENUE AND WE CAN VERY ADEQUATELY CONTROL CABLE TV THEREFORE I OPPOSE P U C CONTROL
GEORGE F ROBERTS MAYOR OF SOMERS POINT NJ
(1222).

SF-1201 (R5-69)

western union Telegram

930P EST APR 16 71 PA285
P TNA376 DP PD LAMBERTVILLE NJER 16 510P EST
HON HAROLD C HOLLENBECK, DLY 75
TRANSP AND PUB UTIL COMM STATE HOUSE TRENTON NJER
RE CRANE BILL A2139 WE ARE SATISFIED WITH OUR PRESENT CATV SYSTEMS MUNICIPAL CONTROL AND DISSATISFIED WITH THE POSSIBILITY OF URURPTION OF THISCONTROL BY THE STATE. LOCAL CONTROL RESULTS IN BETTER COOPERATION FOR TH MUNICIPALITIES INDIVIDUAL OR PARTICULAR NEED OF THE POLICE, FIRE DEPARTMENT ETC. COMMUNITIES BENEFIT FROM COMMUNITY CONTROL, NOT TO MENTION IN THE TWO PERCENT WHICH WE WOULD LOSE
MAYOR ANTHONY J NANNI CITY OF LAMBERTVILLE NJER .

(637)

SF-1201 (R5-69)

western union Telegram

1132A EST APR 20 71 PA082 SYD062
SY NB174 XNT0255 CJ PDF TDN BAYONNE NJER 20 900
- 3'5
CHAIRMAN HOLLENBECK , DLY 75
TRANSPORTATION AND PUBLIC UTILITIES COMMITTEE STATE HOUSE
ROOM 218 TRENTON NJER
DUE TO A DEATH I WILL BE UNABLE TO TESTIFY ON BEHALF OF NTHE
NEW JERSEY CABLE TV ASSOCIATION MY EXPERICENCE AS PRESIDENT
AND NOW BOARD CHAIRMAN OF THEN NEW JERSEY JAYCEES CONVINCED
ME THAT AN HONEST EFFORT WAS MADE TO BRING QUALITY TO LOCAL
PROGRAMING TO MANY CITIES IN NEW JERSEY STATE REGULATIONS WOULD
SERIOUSLY CURTAIL THE GROWTH ANND EXPANSION OF THIS COMMUNITY
SERVICE
J A NOWICKI.

(913)

SF-1201 (R5-69)

western union Telegram

122P EST APR 20 71 PB094
P EDA012 PD WASHINGTON NJER 19 947A EST
ASSEMBLYMAN HOLLENBECK, DLY .75
ROOM 218 STATE HOUSE TRENTON NJER
PRESENTLY WE HAVE AN OPERATING CATV SYSTEM OVER
WHICH WE KEEP CLOSE CONTROL. TO MY KNOWLEDGE THERE HAVE BEEN
NO CONSUMER PROBLEMS AND I AM SATISFIED THAT OUR COMMUNITY
CAN ADEQUATELY CONTROL CABLE TV. THEREFORE I OPPOSE PUC CONTROL

ADAM E SADOWSKI MAYOR WASHINGTON NJ
(953).

Focusing On CATV – Part 1

Promise & Problems Of The Cable

Almost every week in New Jersey some municipality sells a chunk of the public domain to a cable television company.

Nobody is quite sure that the municipalities have the legal right to do this. Virtually everyone in and out of the cable, or community antenna (CATV) business says that the municipalities don't have the expertise to choose among the bids or regulate the cable system once it is installed.

But the buying and the selling goes on. Contracts are signed. The patterns are imbedded and by the time the State Legislature or the Public Utilities Commission or the Federal Communications Commission gets around to coming to grips with CATV, it may well be too late to insure that the industry is developed to best serve the public interest.

Technology Present

CATV holds enormous promise. Right now it can guarantee perfect reception of local and distant channels and some rudimentary local programming — the weather and a dash of local news and sports.

But at some point in the future it may well be delivering your mail and daily newspaper, taking your shopping orders, adjusting your bank balance, giving you two-way visual communication, delivering reams of computerized data, and providing you with a home reference service.

These are not futuristic pipe dreams. The technology is here or just around the corner.

CATV is the most promising, politically sensitive, and potentially lucrative technological development since the rise of the computers—only more so.

It is also an industry that depends on public sufferance and cooperation, yet it is virtually unregulated.

Thus each of New Jersey's 567 municipalities is free to sign with whatever company it chooses.

Competitive Field

The result is municipal contracts that vary widely in the length of time franchises run, on installation costs, performance bonds, number of channels offered, and perhaps most important, firm requirements for public service.

The field is fiercely competitive and municipal councilmen are under heavy pressure from salesmen to sign up. And now things have been complicated by a scandal in Johnstown, Pa. and an investigation in Mercer County.

Irving B. Kahn, president of TelePromTer, the nation's

(Continued on Page 13, Part 1)

It's Not Pay TV

How CATV Is Operated

Despite its rapid growth, there has been little published about CATV and virtually no discussion about it on network television.

Many people confuse it with pay TV.

Cable television is a system where the set owner receives signals through a coaxial cable rather than over the air. A tower is constructed on a hill or a high apartment building. On the tower is a carefully rigged antenna system, often with a separate antenna for each channel to be received. Distant signals come to the towers by way of microwave systems.

At the foot of each tower is a small control station called a headend. Here signals are brought up to maximum strength. A trunk line extends from the tower equipped with amplifiers at every 1,500 feet or so to keep the signals strong.

From the trunk line, "tap-offs" or "housedrops" carry the signals into households, usually from telephone poles, but not over telephone wires.

The first systems were built to get television reception into areas where over-the-air broadcast signals were hampered by hills, or distance.

For the most part this remains the best selling point for CATV — that plus their ability to guarantee perfect color reception. Also, the cables can pick up and amplify the weaker UHF signals, often giving cutomers UHF reception they simply could not get before the cables were installed.

The nation's largest system is in San Diego, with almost 30,000 subscribers but the average system has only 1,500 customers.

In the 20 years since it was started, CATV has developed tremendous technological performance and potential.

The first burst of growth was in remote areas; the next is expected to come in and near the huge urban centers. Television puts an enormous demand on electronic frequencies — and as the nation expands, the demand for these frequencies is getting intense. Mucht of CATV's potential exists in its abilities to transmit by cable and freeing these frequencies for other uses, while at the same time providing set owners with as many as 80 separate channels.

(Continued from Page 1, Part 1)

largest CATV enterprise, is under indictment for allegedly bribing three city officials in Johnstown, Pa. for their favorable intercession in a franchise bid.

And the Mercer County Grand Jury has embarked on an investigation of TelePromTer franchises awarded by Trenton and Hamilton Township.

Meanwhile, the bidding for franchises goes on, the pace perhaps hastened by the threat of regulation by the FCC or PUC. The idea is to get in now and get the terms established. Even if regulation does come, existing deals may be allowed to stand under grandfather clauses.

Newspapers and other publishing concerns are moving into the CATV field, giving rise to monpoly and conflict-of-interest problems.

The giant Bell Telephone system and the national networks and large independent broadcasters are watching and lobbying heavily to protect their interests — interests that don't necessarily coincide with the public's.

And the struggling UHF stations, threatened in some cases by extinction by CATV, are crying for protection.

The New Jersey Public Utilities Commission has long advocated state regulation of CATV—a point of view supported by former Governor Richard J. Hughes but never acted on by the Legislature.

There are regulatory bills before the Legislature now but the administration of Governor William T. Cahill has yet to take a position on the issue.

In short, everything is up in the air.

The Center for the Analysis of Public Issue, the consumer-oriented private investigatory agency in Princeton, is putting together an extensive report on the CATV industry in New Jersey and it will be making recommendations to the state.

Richard C. Leone, the center's director, says the report will also include guidelines which should be useful to municipalities considering CATV franchise bids.

Leone thinks that franchises are awarded for too many years. (Terms as long as 20 or 25 years are common.) He also believes that the municipalities are settling for too few channels (the range is eight to 24); that the municipalities should insist on local programming guarantees, and that there are curious discrepancies in fees towns get in return for franchise awards.

But most of all, Leone says, every municipality should demand that at least four channels, and more where possible, be set aside for public use. Of these, one should be available to any citizen or group who wants to use it as a forum for discussion of public questions.

The contracts that Trenton and Hamilton Township signed with TelePromTer guarantee 20 channels. But this is a unique area with more over-the-air television available than in any other section of the country.

In most of the middle Delaware Valley, channels 3, 6, 10, 12, 17, 29 and 48 are available from Philadelphia.

From New York come channels 2, 4, 5, 9, 11, 13, 31 and 47.

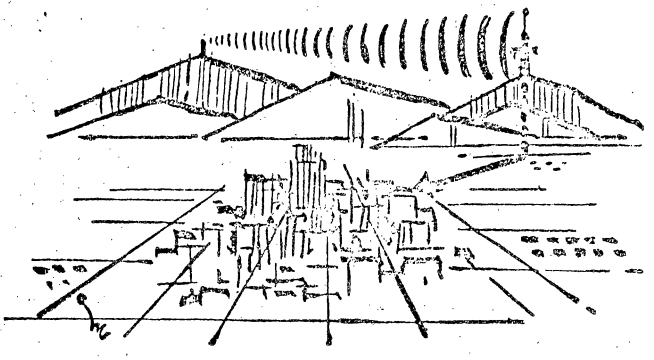
And beginning in April, channel 52 — New Jersey's first public broadcasting system — will be on the air. That makes a total of 17 channels, leaving only three for other purposes.

In discussing the number of available channels it is important to bear in mind CATV's potential.

The technology is here now to do incredible things. With print-out receivers at home or office, mail can come over the cable, daily newspaper and many other kinds of technical and computerized data.

Indeed, the FCC is considering requiring all cable systems to set aside at least 10 channels for business and public purposes.

Leone points out that the revenue taken in from the



cables for these extra services could well result in free cable TV for subscribers now paying $60 a year and more.

Every word in the Bible can be transmitted over cables in 30 seconds.

It would take hours for today's print-out devices to put the message on paper, of course, but the sending time is the vital factor because it means that vast amounts of material can be sent from one central source to vast number of customers.

Dominate Field

Most students of modern communications believe that CATV will dominate the field in time, and the cable systems may well evolve into the most influential and powerful business enterprises in any given community, offering a wide variety of services and freeing the dwindling supply of over-the-air UHF frequencies for other uses.

Yet, at this point, little thought is being given to what the cable firms should be doing in terms of community service, what activities they can best perform, what kind of profits they should make, how advertising should be handled and what effect the cables will have on other media.

The industry is growing at the rate of 25 percent annually. Almost five million people in the United States get their TV over cables. In 1970 cable revenues around the country totaled $264 million.

The projections are for $875 million in 1975 and $3 billion by 1980. Big money. Big business.

CATV – Part 2

Need For Uniform Code

Focusing On

Rapid Growth Signals

By JOHN McLAUGHLIN
Staff Writer

Within the next few years fully half of New Jersey's municipalities may be wired for cable television.

The industry got its start in New Jersey in 1952 with the construction of a CATV system in Atlantic City. There are now 24 in operation in the state, servicing 76 communities. Another 50 franchises have been awarded, with construction to start this year, and there are applications pending before 100 municipalities.

Cable TV is flying high. When the Atlantic City system was constructed 19 years ago, there were only 70 operations in the nation. At the end of 1970, 2,350 systems were wiring television to 4.5 million customers.

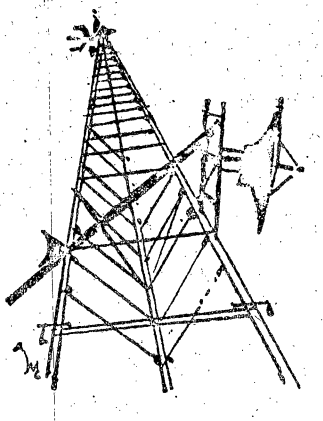
This kind of growth has caused renewed interest in regulating the cable companies under the New Jersey Public Utilities Commission.

Set Standards

Felix G. Forlenza, chief counsel for the PUC, says state regulation would avoid expensive duplication of services, protect municipalities by setting minimum service standards, and guarantee the public standard and reasonable rates.

For instance, PUC regulation might have meant in the past that franchises would be awarded on a county-wide basis. Presumably this would have made installation much cheaper, reduced monthy fees and provided the citizens with regional networks.

And even a cursory view of the contracts municipalities have signed with cable interests indicates some question-



able differences between one municipality and another, and a need for uniform standards.

Most communities, for example, are guaranteed five percent of the revenue taken in from monthly service charges and installation fees. But some settle for a percentage of monthly charges only and some municipalities (Willingboro, for example) get seven percent of revenues.

Variations Are Wide

Why the difference?

Why does Garden State TV charge subscribers in Bridgeton a $15 installation fee and subscribers in Northfield no installation fee at all?

Why is it that installation costs in Atlantic City run $25 and only $10 to $15 in most other places? Why does Lambertville settle for only two percent of revenues from the franchise awarded there?

And why did the city council in Atlantic City in 1965 sign a contract with the Atlantic Coast Cable TV which gives the city only $2,000 per year in fees?

If Atlantic City got the standard five percent on monthly service charges alone, the annual payment to the city from the cable firm would be just under $50,000.

What persuaded East Brunswick to permit the cable operators there to charge subscribers $20 for installation when most other subscribers in other towns are paying $10?

Regulated In 4 States

Most cable operators and the New Jersey League of Municipalities are opposed to state regulation. Four states, including Connecticut, do regulate cable firms as public utilities.

The municipalities oppose regulation as an attempt to subvert local powers and responsibilitieus. The cable operators fear that regulation will stifle growth and profits.

"The red tape is so bad in Connecticut that it takes two years to get a franchise. Nothing is happening with cable TV up there," says one CATV owner.

But there are problems on the horizon that only some kind of central regulation can cope with.

There is, for example, the question of interlocking systems. Many school districts in New Jersey and Bucks County encompass more than one municipality.

Suppose, for example, that one cable firm signs up Princeton and another, Princeton Township. Both comprise the Princeton Regional School District. How does the school system handle educational programming? How do public issues involving the school systems get discussed? Will everything have to be done twice?

And what happens when all

(Continued on Page 5, Col. 7)

Growth Signals Code Need

(Continued from Page One)

of Mercer County is wired? Will candidates for county-wide office have to appear on half a dozen separate programs? How will all the viewers in the county be guaranteed access to programs of county-wide significance?

There is a need for interlocking hookups but who will make the cable companies respond?

Another question is profits and rates.

Cable operators say it takes at least six to eight years before a system can turn a profit.

That may be but there is no doubt the potential for profits is vast.

In October of 1968, the investment firm of Drexel, Harriman and Ripley published a report, showing that a typical firm, assuming that it was successful in signing up 5,500 subscribers quickly, could earn $167,000 a year in profits on an investment of $56,000 — and that it could sell its franchise for four times the initial investment within five years.

Rapid Gains

Federal tax laws permit rapid depreciation of cable firms and it is not uncommon for an entrepreneur to set up a system, run it for five years and sell it off for a handsome capital gain. His successor, of course, is free to repeat the process.

This kind of thing is more frequent in areas of the country where over-the-air reception is poor and customers are anxious to sign up.

But, if the PUC were to regulate the cable field, the public would at least be assured that profits would be limited to reasonable levels, that rate increases would have to be approved by the State and that there would be a central agency with the legal leverage to work effectively in the public interest.

There is a real question as to whether the municipalities are within their rights in levying what amounts to a special tax on cable subscribers. Obviously the cut that the municipality gets for awarding the franchise comes out of the pockets of the subscribers.

Maker's Role

And is it wise for the municipality to have a vested interest in the cable firms' revenues? The better the firm does, the more the municipality takes in. But the public interest may well be better served by more service rather than higher profits.

Another area that bears thoughtful investigation is the role of electronic equipment manufacturers in CATV.

General Electric and Kaiser Industries have bought heavily into CATV across the nation and so has Gulf and Western, owner of Paramount Pictures. CATV gives Gulf and Western a ready market for its equipment and also for its movies when the age of paid television dawns.

In New Jersey, one of the most active franchise seekers is Jerrold Corp. —a pioneer in the field under the leadership of Governor Milton Shapp of Pennsylvania, who divested himself of ownership when he first ran for that office in 1966.

Trading as South Jersey TV Cable and Alpine Cable, Jerrold holds franchises in Pleasantville, Fieldsboro, Monroe Township, Mount Holly, National Park and Stratford. The company has also applied for franchises in 16 more communities.

Jerrold is one of the most successful manufacturers of CATV equipment in the nation.

Obviously when Jerrold needs equipment for one of its systems, it will buy from itself. Aside from the question of competitive advantage, there is a public interest problem.

What if some other manufacturer develops and markets innovative equipment better and cheaper than Jerrold's? Would Jerrold buy it or do without?

Vikoa is another manufacturing firm active in New Jersey, operating the state's widest-based system in Burlington County.

Vikoa trading as Cable TV of Burlington County, services Burlington, Burlington Township, Delran, Delran Township, Edgewater Park, Maple Shade, Mt. Laurel Township, Riverside, Westhampton Township, Willingboro and Willingboro Township. And it holds permits in Eversham and Florence Townships. Who is to guarantee that these 13 communities will get the service they deserve if Vikoa doesn't stay abreast of new developments?

Potential For Social Services

Cable TV As Cop And Teacher

For a city like Trenton, beset by violence, racial discord and fiscal turmoil, a cable television system could provide significant social services.

Olean, N.Y. uses its CATV system for police surveillance. Through strategically-placed cameras, 75 percent of the city's downtown area can be kept constantly in view by a single police officer at a cost of $6,500 per year.

Such a system could help to eliminate muggings and purse-snatchings, keep traffic moving and in general, contribute to the peace of mind of Trenton's people. With luck and some demonstrated success, it might even help to revive the commercial area.

Cameras also could be installed in the violence-filled hallways of Trenton High.

There is very little meaningful dialogue between the city's black and white communities. A CATV channel devoted to local issues and problems could help to resolve that. And the schools could begin broadcasting education material into the city's homes.

And if, as appears to be the case, teacher strikes are to be commonplace, a school-system wide television system could provide continuing instruction with only a relatively few teachers needed to make it go.

Indeed, this kind of a system might even make the teachers hesitant about calling strikes because televised instruction would mitigate the effects of the walkouts.

During riots and other disturbances, mobile cameras could greatly assist police in keeping order and preventing looting. And CATV permits the city government to break in on all programs with emergency alerts and information.

Focus On CATV – Part 3

TelePrompTer Probe May Effect U.S. Control

By JOHN McLAUGHLIN
Staff Writer

The Mercer County Grand Jury investigation of TelePrompTer Corp. contracts in Trenton and Hamilton Township may well persuade Congress, the Federal Communications Commission and the State Legislature to get down to serious business over the regulation of CATV.

Jack Mayer, deputy chief of the FCC's CATV Bureau, notes there is considerable agitation for Congressional action.

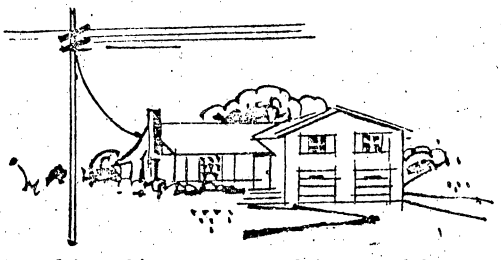
"If this investigation shows there were irregularities in the awarding of these franchises, I would assume there will be new impetus for legislation," Mayer said.

Could Be Trouble

He also implied that TelePrompTer, by far the largest of the CATV enterprises, could find itself in trouble with the FCC.

"We are in a funny position. Under the present rules we don't license CATV companies, so even if this results in convictions, there would be no immediate effect. But there are collateral problems because we do license TelePrompTer in other areas and there would be the question of whether we would want to review their qualifications in these areas," Mayer said.

CATV transmits distant television signals by means of microwave and it is in this area that the company is licensed by the FCC. Moreover, Hughes Aircraft, a major TelePrompTer stockholder, has applied to the FCC for permission to put up a communications satellite similar to Telstar. In the future, satellites, rather than microwaves, will be the main transmitters of distant signals, making world-wide television a reality.



was extorted from him.

This turn of events has prompted the grand jury's curiosity here as to why TelePrompTer was selected from among the various bidders for exclusive franchises in Trenton and Hamilton Township.

If the grand jury determines that there was something wrong, these findings could have a national impact because TelePrompTer holds 150 CATV franchises in the United States and Canada with 500,000 subscribers.

* * *

When a TelePrompTer competitor heard about the investigation, he said: "This is bad — very bad. It is going to hurt everybody in the business."

Meanwhile, the FCC is going ahead with hearings on CATV, its problems, and its aspirations. The hearings will open in Washington Thursday and will probably run through March 26.

These hearings will have an important impact on how CATV will develop in New Jersey in general and in the Trenton area in particular.

One of the questions being considered is whether publishers should own cable systems. This is important to the Delaware Valley area because one of the more active cable firms here is Philadelphia CATV, owners of 43 franchises, including two in operation in Salem and Levittown, Pa.

The Philadelphia Bulletin owns 60 percent of the firm and Time-Life, Inc. owns the remaining 40 percent.

Cross ownership is just one of Philadelphia CATV's problems with the FCC.

The firm's 2,000 subscribers in Levittown are now receiving all of the Philadelphia channels plus the three New York independents — Channels 5, 9, and 11.

Now, the FCC currently prohibits cable firms in major

* * *

$15,000 Exchange

Irving B. Kahn, president of TelePrompTer, has been indicted in Johnstown, Pa., on charges of giving $15,000 to three officials there in exchange for their help in securing a franchise.

Kahn contends the money

market areas from picking distant signals off the air if objections are filed by local over-the-air broadcasters. Somehow, no one objected when Levittown was wired in 1967, despite the importation of the New York signals.

But a year later, Channels 17 and 3 in Philadelphia did object and the FCC, in effect, told Philadelphia CATV that it couldn't expand its system.

Need N.Y. Stations

It was objections from Philadelphia UHF stations that blocked contruction of the TelePrompTer systems in Trenton and Hamilton Township. Both firms concede they can never make a go of it here unless they can provide customers with broadcasts from New York as well as Philadelphia.

Despite its current rule, the FCC has proposed for discussion at the hearings that cable firms be permitted to bring in four independent (non-network) stations to customers. But even with that it might be difficult to sell CATV if the New York network stations were excluded.

Once a TV set is hooked up to a cable it can't pick up signals over the air.

So sports fans in this area on cable would be deprived of the Giants and Jets games they now get over Network Channels 2 and 4. Also sports programming on the ABC affiliates in New York and Philadelphia is often different.

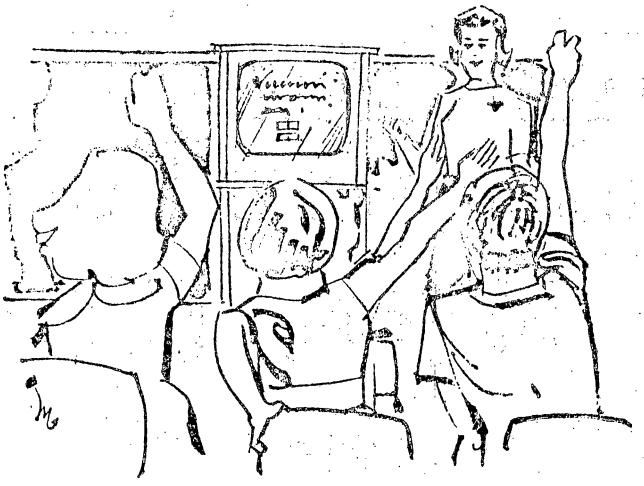
It goes without saying that sports are an extremely important consideration to subscribers. TelePrompTer and Manhattan Cable, who have wired Manhattan, are sold largely on the basis that they can get broadcasts of the Knicks and Rangers games from Madison Square Garden.

Fans who rely on unwired sets don't get this. Philadelphia CATV is considering buying the Madison Square Garden package for Levittown and the Garden broadcasts are a big selling point for cable firms now moving into North Jersey.

Another FCC proposal would have an effect on Channel 52, the New Jersey Education station that will go on the air in April.

5 Percent Levy

The FCC has suggested that CATV systems importing distant signals be required to pay five percent of their subscription revenues to the Corporation for Public Broadcasting. Half of this money would be returned to the local educational channel — in this case Channel 52.



The Commission also has some ideas on how channels should be used and how many should be offered. It has recommended that at least one channel be available for use by local citizens and groups who want to discuss public issues, that there be a number of channels available for lease by third parties (businesses and industries for example) and that there be channels devoted to education.

Systems with 20 or more channels would have to devote half of them for these purposes.

This is a special concern in this area because if the CATV firms are to thrive they must bring in both New York and Philadelphia stations and if they do that, there simply won't be 10 channels left over.

Jack Mayer, the FCC officials, says this could result in 36 channels for the Trenton area. The coaxial cables now carry 12 channels each as a rule. But a third cable would require each subscriber to have a converter atop his set to switch the individual cables systems on and off.

Technology Will Follow

These converters are not perfected to a point where they can be mass-produced but Mayer says that if the market is there the necessary technology will follow.

Richard C. Leone, director of the Center for the Analysis of Public Issues, says he is disappointed that the FCC hasn't considered making franchises available to non-profit groups.

The Center is currently preparing a report of franchise contracts in New Jersey.

"You have to bear in mind that these franchises are being given away by the public so that very substantial profits can be rolled up by private operators. Why shouldn't non-profit groups be given an opportunity to operate franchises?" Leone says.

The FCC is also inviting discussion on what roles the federal, state and local governments should play in regulating the industry.

At this point, the commission seems to be leaning toward a combination of federal licensing and state regulation. In states where it has been tried, regulation has not been conspicuously successful.

But the New York Public Utilities Commission, in recently published 200-page report, claims that the big problem is the lack of clear federal guidelines. The commission argued that with such guidelines, the states could do the job and do it well.

Finally, there is the question of municipal franchise fees. The FCC has suggested they be limited to two percent. Should this rule be adopted, a decision will have to be made on whether to require thousands of new contracts or to allow fees already agreed on to stand under grandfather clauses.

Media Giants Push For Own Interests

The Federal Communications System's hearings on CATV that will be held this month amount to a confrontation among the giants of the nation's media.

The network broadcasters see in cable television a threat to their domination of the television market. American Telephone and Telegraph is worried about CATV's potential ability to supplant the Bell Telephone System. The publishers and radio broadcasters are concerned about the threat to their advertising markets. And the movie theater owners fear the cables will bring pay TV and end to movie theaters.

Each of these groups has powerful friends in Congress and other areas of the national government. The lobbying has been fierce. It will get more so.

The network broadcasters and the telephone companies were quick to see the potential of CATV and as late as 1968 together had bought up more than half the systems in the nation.

Audience Competition

The FCC forced both to divest themselves of their holdings. The network broadcasters are the happy owners of one of the most profitable enterprises in the history of business. CATV, with its potential to bring into the home widely varied television shows, threatens the networks hold on the captive American television audience.

Most Americans can receive only three or four television stations. If three is the limit, then those three will be the local ABC, NBC and CBS affiliates.

Cable television threatens to break up this arrangement.

As for the telephone company, much of its profits in future years are expected to come from such innovations as the picture-telephone.

More Economic

CATV has two-way broadcast abilities and it can do it cheaper.

The publishers and the radio broadcasters depend heavily on local retail advertising for their existence.

CATV is just beginning to sell advertising over programs originating with local systems. The retailers have only so much to spend in their advertising budgets. If a chunk of it starts to go the CATV stations it will come from funds that might have been spent on radio and television advertising.

THE WIRED NATION

RALPH LEE SMITH

Mr. Smith, the author of seven books in the fields of national and international affairs, specializes in consumer problems and communications. He is currently working on a Ph.D at Columbia University on the history of public regulation of the cable television industry. This article was prepared under a grant from the Fund for Investigative Journalism.

Last summer I asked a high-ranking aide to one of the seven Federal Communications Commissioners: "What do you think the Commission should be doing about cable TV?" He sighed and waved his hand. "I don't know what we should be doing. If you get any ideas, let me know!" I gathered that the Commissioner is in the same quandary.

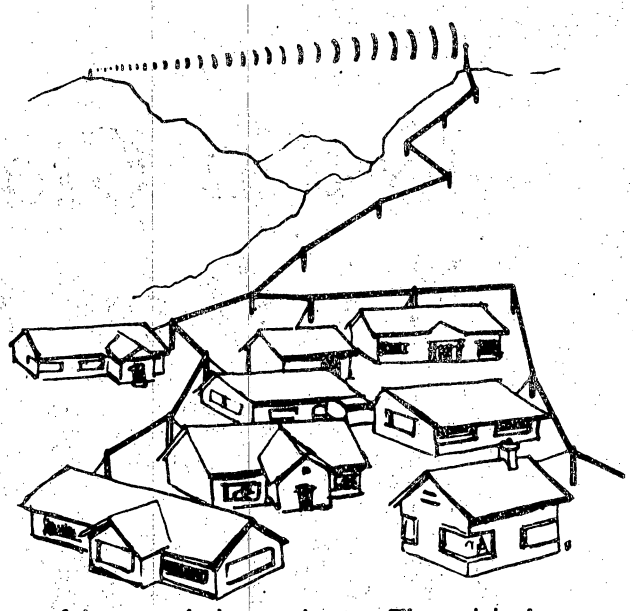
Cable television, often called CATV (community antenna television), began as a minor adjunct to the present system of over-the-air commercial broadcasting. Now it is on the verge of becoming a major communications medium in its own right. As cable systems are installed in major U.S. cities and metropolitan areas, the stage is being set for a communications revolution—a revolution that some experts call "The Wired Nation." In addition to the telephone and to the radio and television programs now available, there can come into homes and into business places audio, video and facsimile transmissions that will provide newspapers, mail service, banking and shopping facilities, data from libraries and other storage centers, school curricula and other forms of information too numerous to specify. In short, every home and office will contain a communications center of a breadth and flexibility to influence every aspect of private and community life.

But despite the importance and imminence of this new force in society, its possibilities and problems are almost unknown to the public. Few local, state or national legislators are better off. Even members of the Federal Communications Commission and of state and municipal regulatory bodies are not sure what their agencies should do. The problem is made more difficult by the fact that much of the information on cable television that government bodies and the public do receive, comes from sources that have their own interests to serve. It seems, therefore, that a basic primer on cable TV would be of value to both legislators and the public, and it is hoped that this article will serve as such a handbook.

WHAT IS CABLE TELEVISION?

Cable television, or CATV, is a system whereby the set owner receives his signals through a coaxial cable instead of over the air. Persons who wish to enjoy the service pay an installation charge to have their set hooked to the cable, and a monthly service charge.

If it is true, as it seems to be, that cable TV is about to effect a revolution in communications, it must be said that a revolution has rarely been created by persons of less revolutionary intent. The original purpose, and still the principal function, of CATV is to provide the viewer with better reception and a larger selection of existing TV stations than he can get from the air.



Cable TV was invented and developed by TV servicemen in small towns and rural areas, where reception is poor or nonexistent, and where in any case very few channels are on the air. The Federal Communications Commission has never required broadcasters to set up relay systems to provide adequate TV service to the substantial portions of the nation that it does not suit the commercial interests of the industry to serve.

To remedy this situation, Robert J. Tarlton of Lansford, Pa., twenty years ago set up the world's first commercial cable TV system. Born in Lansford in 1914, Tarlton graduated from high school in 1933 and opened a radio sales and service shop. During World War II he served as an enlisted communications technician in Italy, then returned to his shop.

When TV sets became commercially available in the late 1940s, Tarlton had trouble selling them because reception in Lansford was abominable. The nearest stations were in Philadelphia, 65 miles away, the signals reaching Lansford were very weak, and further blocked by a mountain that overshadows the town. Tarlton experimented in 1949 with installing individual antennas for set owners on the mountain. That worked fairly well, and Tarlton quickly got a better idea. It was, however, beyond his ability to finance, so he and several friends pooled their resources and set up a firm called Panther Valley Television Company.

Panther Valley built a tall master antenna atop the mountain, to spear the faint Philadelphia signals. These were fed into an amplifier to bring them back to full strength, and then into a coaxial cable that was strung on poles down the mountainside and into town. The company offered to hook customers up to the cable for an installation charge of $125 and a monthly service

charge of $3. Television-hungry residents of Lansford immediately began buying sets from Tarlton's shop and "going on the cable." They received three Philadelphia channels with greater fidelity and clarity than did a lot of people living within 10 miles of Philadelphia—or even in the city itself.

Today, with its system modernized and rebuilt, Panther Valley Television provides twelve channels to 2,900 residents of the Pennsylvania hill towns of Lansford, Coaldale, Havto and Lake Havto, who would otherwise have little or no TV. Tarlton remains president of the company, and also of Titusville Cable TV in Titusville, Pa. He has an assured niche in history, in the special catalogue of persons who, without intending to, Really Started Something.

A modern cable system is simply a more sophisticated version of Tarlton's original rig. A tower is constructed on a hill or other spot selected for good reception. The antenna system on the tower is carefully engineered, usually with a separate antenna for each channel that is to be received. In some instances, distant signals come to the tower by a relay system of one or more microwave transmitters.

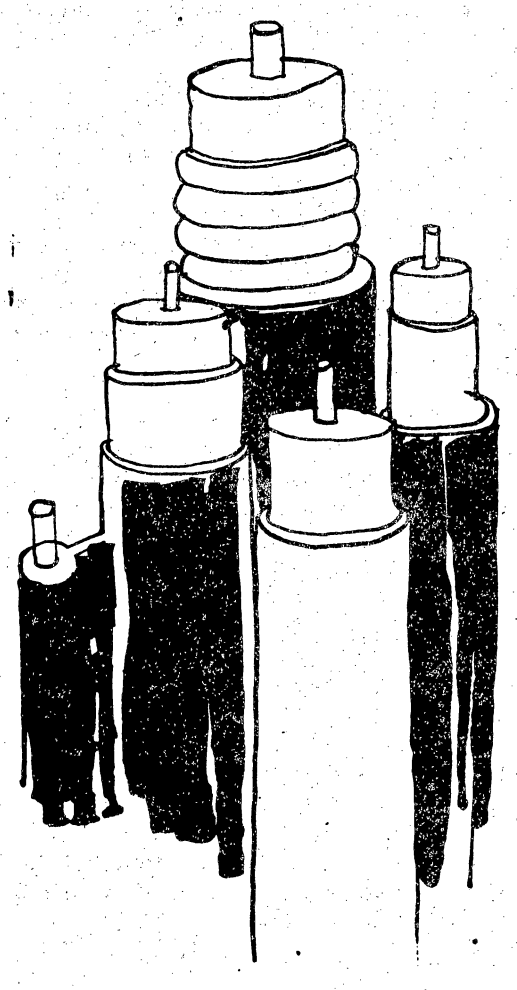
At the foot of the tower is a small control station, called the "headend," where the signals are brought up to maximum strength and clarity. Here, also, some of the signals may be rechanneled. It is customary, for example, for cable systems to put UHF stations on empty VHF channels. Amplifiers placed at distances of 1,500 to 2,000 feet along the trunk line into town keep the signals strong. From the main cable, feeder lines, "tap-offs," and "housedrops" carry the signals to individual streets and the subscribers' homes. These days, the installation fee usually runs from $10 to $20, and the monthly service charge is about $5.

Cable TV has proved to be immensely popular. By last June, 2,321 systems were operating in the United States, with another 2,003 under construction. An additional 2,370 applications for franchises were pending before the city fathers of some 1,300 cities, towns and communities. In recent years the number of subscribers has grown at a rate of 20 to 25 per cent annually, and the systems now serve 12 million people—about 6 per cent of the population. Investment in CATV plants exceeds $500 million and is soaring; estimated annual revenues of the industry are in excess of $300 million and also rising fast.

In the first stage of the CATV boom, most of the activity has been in those cities, towns and communities that do not qualify as heavily concentrated markets, and which have therefore not been regarded by the FCC or the broadcasters as deserving full TV service. About 46 per cent of the population lives in towns and cities ranging from 2,500 to 50,000 population, and few of these communities have their own TV stations. Today, many such communities get more and better TV than do residents of major market areas. Towns in northern Vermont receive New York City channels more clearly than many residents of the five boroughs, whose reception can be fogged and snowed by tall buildings. In Aspen, Colo., residents could receive only one channel before the cable arrived. Now they get all three major networks plus an independent station and a channel of educational TV. Fort Madison, Ia., gets seven channels plus weather information on an eighth and a view of an AP wire service ticker on a ninth. Bradford, Pa., which formerly considered itself lucky to receive one channel, now gets eleven.

Most cable systems are still small, the average setup having about 1,500 subscribers, and the largest, in San Diego, having 28,325. Restrictive policies of the Federal Communications Commission, developed in response to urgent requests from the broadcasting industry, have retarded the growth of CATV systems in metropolitan areas. Nevertheless, cable installations are now coming to heavily populated urban centers, and it is here that the next big growth stage for CATV will occur. Irving Kahn, President of TelePrompter Corporation, one of two companies franchised to build cable systems in Manhattan, predicts that within ten years 85 per cent of TV reception in the United States will be by cable.

Clear reception and a wide selection of stations are of course desirable, and the success of cable TV shows how badly they are wanted. But the excitement about the Wired Nation is not being generated by these present major uses alone. "Cable television," says a report issued in 1968 by Mayor Lindsay's Advisory Task Force on CATV and Telecommunications in New York City, "offers the most promising solution to a



number of difficult communications problems facing our larger cities." The Task Force is referring to *potential* uses to which the cable can be put. To understand them, one must look first at the star performer in this drama—the cable itself.

A coaxial cable consists of three elements. In the center, like the lead in a pencil, runs a copper wire. This is surrounded by an insulating layer of polyethylene foam, which accounts for the major portion of the diameter of the cable in cross section. The insulation, in turn, is surrounded by a tubular shield of braided copper wire or a seamless aluminum sheath.

When a current or signal is introduced into the cable, an electromagnetic interaction takes place between the center wire and the surrounding sheath. The interaction prevents currents from radiating off the cable. This is the secret of the cable's key characteristic—its immense capacity for carrying electronic signals, data and information. Comparing a coaxial cable to a telephone wire, says FCC Commissioner Nicholas Johnson, is like "comparing Niagara Falls to a garden hose." As we shall see, the phone company is very much aware of the comparison.

Television is a colossal hog of the electronic frequencies. The elbowroom required by each channel is what makes the over-the-air very high frequency (VHF) TV spectrum the scarcest of our natural resources. No more than twelve channels can be carved out of this choicest part of the TV transmission spectrum. When additional allowance is made to avoid overlapping and interference, and for the further restrictions imposed by the economics of a commercially based broadcasting system, it works out that 75 per cent of all American viewers get no more than three or four channels.

One of cable TV's great potentials is its inherent ability to end this economy of scarcity, on which the power of the present TV broadcasting oligarchy is solidly based. Many new CATV rigs are being built for twenty-channel reception, and San Jose, Calif., is installing one of forty-two-channel capacity. Experts believe that the cable could carry as many as eighty channels with present technology. If more were ever needed, they could probably be tacked on by using more sophisticated input equipment.

In addition to opening up as many channels for TV broadcasting as any community could possibly use, cable TV greatly facilitates more diversified use of television by cutting the cost of transmission. A year ago, President Nixon, under sharp prodding from Rep. Torbert H. Macdonald (D., Mass.), chairman of the House Commerce Committee's Subcommittee on Communications, finally released the text of a Johnson administration Task Force report on national communications policy. Among other things, the report concluded that money, even more than lack of space on the spectrum, was a major barrier to the expanded use of TV. The cost of building and running over-the-air transmitters, and programming costs, which are rising at a rate of about 8 per cent annually, make any expansion of the present system almost prohibitively costly.

In a CATV system, it is possible to transmit directly over the cable without receiving any signal from the air. Some cable systems already do this on one or more empty channels; they call it "cablecasting" or "program origination." This eliminates the high cost of building and running an over-the-air transmitter. In addition, while a commercial over-the-air broadcaster derives his entire revenues from his programming, a cable system does not make its money on what it transmits. The cable runs on the profit from the subscribers' fees, whether or not the system is used for cablecasting.

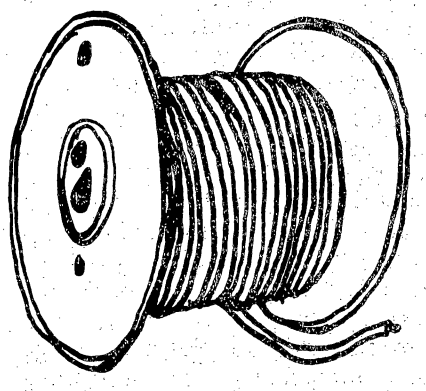
Together, then, the elimination of channel scarcity and the sharp reduction of broadcasting cost, can break the hold on the nation's television fare now exercised by a small commercial oligarchy. Television can become far more flexible, far more democratic, far more diversified in content, and far more responsive to the full range of pressing needs in today's cities, neighborhoods, towns and communities.

A second area of great promise was made vivid by an exhibit at the 1968 Annual Convention of the National Cable Television Association. It displayed a home communications center, in which the user, through appropriate switching circuits, could enter into two-way exchanges with local stores, could "dial-a-play," and could have at his finger tips the full information contained in vast libraries. This is no dream. The cable could carry it all, and the technology is in existence or soon will be.

Looking a bit farther into the future, it may be that we are heading toward a single, unified system of electronic communications. "Before very long," says Brenda Maddox in a booklet entitled "Communications: The Next Revolution," issued by the London *Economist*, "information theory will have been brought to its logical conclusion in public communications; there will be a single unified network for all kinds of messages . . . separate systems for telephones, telegraph, television and data transmission will disappear. Information will flow through the network as on-off digital signals and appear as pictures, sound or print, according to the choice of those sending and receiving it." The speed with which such a network could rattle off bundles of information is hard to appreciate. "Information," says AT&T's W. M. Ellinghaus, "can now be moved at the rate of 1.5 million words per minute. *Gone With the Wind* can be transmitted in about twenty seconds. The Bible would take a little longer—about half a minute."

LOCAL TELEVISION SERVICE

In the early years, cable TV operators did not originate any programming over their own wires. In time, however, to make the service more attractive, systems began filling one or more empty channels on their viewers' sets with such simple fare as weather reports, stock market quotations, and views of an AP or UPI news ticker. Such "programming" costs little, and is easily provided by even a very small system. Soon, a few systems went a step farther—they began to transmit live local material. Today, 5 to 10 per cent of cable systems offer live programming of local origin, usually transmitted for a few



hours a day, or irregularly when events of interest take place. These include newscasts, religious programs, school activities, county fairs, fund-raising drives, sports, cultural events, political debates, public hearings, school board meetings, children's programs, and daily variety shows featuring local persons and events.

In southwestern Massachusetts, High Fidelity Cable Television of Great Barrington serves some 2,800 subscribers in Great Barrington, Stockbridge, Lee and Lenox. Without the cable, many viewers in this area can get only one faint signal, from a VHF station in Schenectady. The cable brings in eleven VHF, UHF and educational stations from Hartford, New Britain, Springfield, Albany, Schenectady, New Haven and New York City.

None of this, however, provides the subscribers in the four towns with coverage of their own communities. The cable system has therefore hired a full-time news director, who broadcasts two local news roundups, complete with video-tape clips, at 6:15 and 11:15 each evening. Special events such as political campaigns and school activities are covered as they occur. Community interest is high; in Great Barrington, 95 per cent of homes within reach of the cable subscribe to it. "We are an entirely new news medium in the southern Berkshires," says John Mooney, the system's general manager.

This local initiative emphasizes a second basic shortcoming in the present system of over-the-air broadcasting. In addition to discriminating against the large percentage of the population beyond the clear sighal range of a few major metropolitan centers, it has not been able to offer real community service. When over-the-air broadcasters say that they provide community or local signal, they mean that they send out a highly generalized service to a large, poorly defined audience.

The precise coverage of a cable TV system makes it the logical medium for solving the problem of local television service. "This potential," said FCC Commissioner Kenneth A. Cox in a 1968 speech to the National Association of Broadcasters, "excites a good many social scientists, who envisage every little town having its own outlet for local self-expression, even though it is far too small to support a regular broadcast station in the foreseeable future. Indeed, these people believe that a cable system in metropolitan Washington or in New York City would be able to provide pinpointed service to subcommunities within the larger complex, either by franchising several operations along political or ethnic or by other relevant lines, or by equipping an overall system with switching or filtering devices to enable the operator to deliver certain programming only to those areas likely to be interested in it."

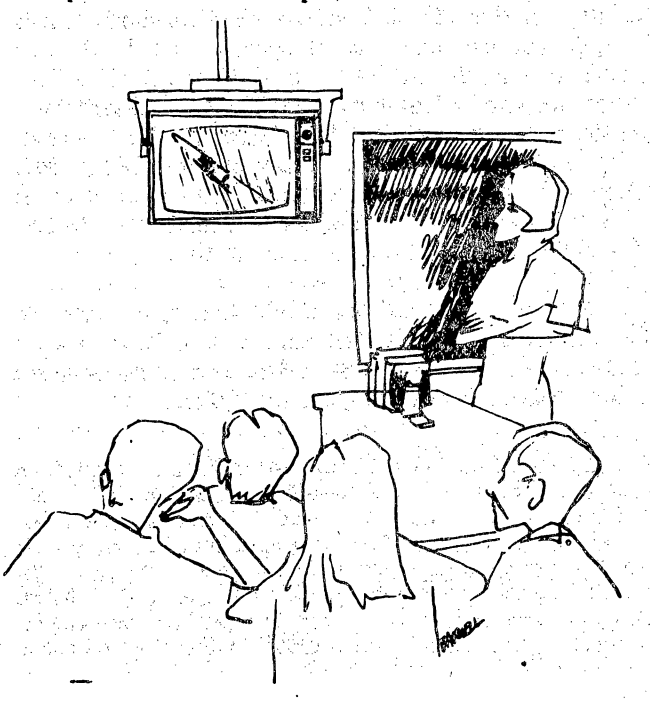
Most CATV systems provide free or at-cost service to schools and municipal offices. Trenton, N.J., made this a requirement for the franchise. In Caspar, Wyo., the system shares its facilities and studio with the school district. Scheduled course material and films are transmitted directly to TV sets in the classrooms. In summer, review courses can be seen at home by students needing remedial instruction. The school system plans to add a high school news program, a teen discussion forum, a disc jockey show, and a job and career information program for young people.

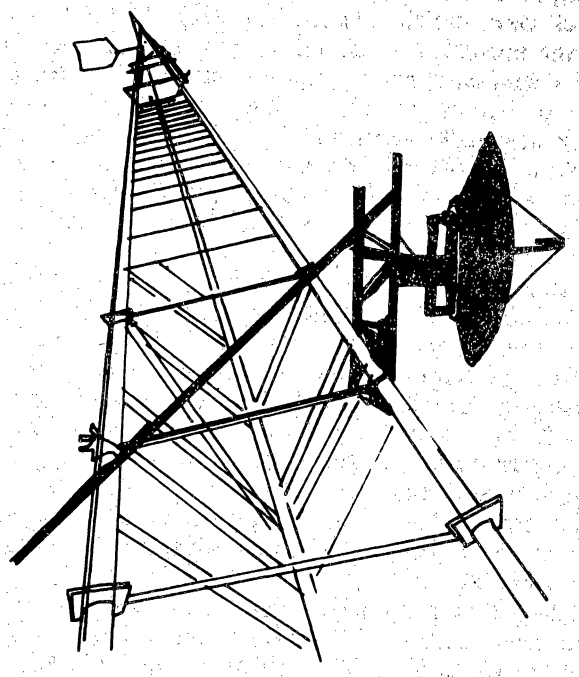
Similar arrangements have been worked out between the cable system and the school system in Grand Junction, Colo. The schools there and the cable operator are also investigating the use of a sub-channel on the cable for selective communication among schools, teachers and students, by means of a two-way switching system.

Some towns and cities have adopted a switching system that permits a local municipal authority to cut into all channels to broadcast emergency alerts. In Liberal, Kan., the device is used to warn citizens of tornadoes, and to broadcast descriptions of lost children.

Cable systems are also being used to improve the efficiency of police work. In Olean, N.Y., the cable operator recently installed a monitoring system for the police department. Through a series of strategically placed cameras, 75 per cent of the city's downtown area can be kept in view by a single police officer at headquarters. In addition to serving as a crime-prevention device, the hookup makes it possible to oversee traffic conditions, and to respond quickly to an accident or to unusual congestion. The cost to the city is about $6,500 a year, less than the salary of a single patrolman.

Such applications are only a bare beginning of the cable's potential. For example, six TV channels can be





move was a political impossibility. The FCC therefore took what seemed the next best step: it opened up the UHF spectrum for commercial licensing. The Commission hoped especially that the new UHF stations would move into the area of community service. With strong FCC urging, Congress in 1962 passed a law requiring all new TV receivers to have UHF tuners.

Far from resisting this approach to a broadening of available TV fare, the VHF broadcasters applauded it. Assuming that public policy could not indefinitely ignore the results of the VHF giveaway, this "reform" promised existing broadcasters the least trouble. It provided the illusion that something effective was being done, and could keep the FCC busy for years building up UHF broadcasting. For the VHF broadcasters these would be additional years of grace.

The ultra-high frequencies are poorer signal carriers than the very high frequencies. To produce a signal of given strength and clarity, a UHF station must install more expensive equipment than is required by a VHF station. Few UHF outlets have been able to make this additional investment, and their signals are therefore inferior.

At the same time, UHF stations get less return on the investment they do make, because the VHF outlets are already squarely camped on most existing sources of revenue. UHF, therefore, is always on the verge of starving to death, and the FCC has in fact devoted much time stations were in operation, but only forty-four showed trying to prevent it from foundering. In 1967, 133 UHF profits, and of these, forty-two had network affiliations. Thus, of eighty-nine non-network UHFs, only two were in the black. In Chicago, one of the nation's largest advertising markets, four UHF stations have died.

With little to invest in programming, and with almost no chance to succeed unless they are affiliated with a network, UHFs cannot provide a genuine alternative to existing types of programming. And they certainly cannot mount comprehensive and creative community services of the kind the FCC so naively foresaw. "Is it any wonder," says Washington TV consultant Arthur Alpert, "that the typical UHF station consists of a transmitter, a film projector, old situation comedies and ancient movies?"

But the more incompetent UHF has proved itself as an alternative to VHF, the harder the FCC has pushed it. Behind this unswerving devotion lies an intensive lobbying effort—not by the UHF stations, which have no money to hire lobbyists but by the VHF industry. For them, this approach to better U.S. television is a dream come true.

Americans are so accustomed to their system of broadcasting that it probably occurs to only a few that different arrangements exist in every other country in the world. And if they do notice the difference they assume, no doubt, that our system is the result of clear national choice. Quite the opposite is the case. "Perhaps never before in history," says Harry J. Skornia, professor of communications at Northwestern University and author of *Television and Society,* "have the most powerful channels to the people been so completely controlled by so small a segment of the national life." The point is elaborated by Alexander Kendrick in *Prime Time,* his biography of Edward R. Murrow: "Far from being an expression of majority desire, as the networks say, television programs are the imposition of a social minority on the majority, the minority consisting of the fifty top advertisers, the three networks and a dozen advertising agencies. It is what they think public taste is and demands that governs the nature of broadcasting."

Only in America is this true, because only in America is television basically a commercial enterprise. Back in the years 1948-51, when the FCC was allocating the twelve channels of the VHF, the question arose as to who should get the licenses. At least some staff members of the Commission took the question seriously. A number of major interests in American society might reasonably have claimed a share of the scarce spectrum. Corporations and commercial interests were one; education was another; nonprofit public programming, subsidized either by the government or by a combination of government funds and private philanthropy, was a third. Labor was certainly entitled to consideration, particularly if part of the spectrum was to be licensed to corporations. Religious groups, and other important interests in society, might merit consideration. But, as it turned out, the group with the real power in Congress and at the FCC—the existing commercial radio industry and radio networks—walked away with the whole pie. Incredibly, the entire VHF spectrum was given to a very small group of immensely wealthy persons and corporations, to be used for the sale of cigarettes, soap and a few other consumer products noted principally for the large amount of advertising expense represented in the retail price.

Educational TV and public TV have belatedly edged onto the fringes of the spectrum, with budgets that depend on the largess of foundations and the uncertain annual whim of Congress, and that in any case would hardly keep U.S. commercial television on the air for more than a few hours a year. The solid sweep of the

VHF spectrum is still in the hands of the hucksters, and they will not give it up.

Television is one of the most remunerative activities in the annals of business. Broadcasters average a 90 to 100 per cent return on their tangible investment annually. However, some members of this money-making fraternity do better than others. The gold mines are the stations affiliated with one of the three major networks. They hook themselves onto the network line and receive an unending flow of mass-audience material. The network pays them for the audience they contribute, and they can also sell commercials on spots adjacent to network shows. Stations with this arrangement find it impossible not to amass huge profits; except for a few independents in the largest cities, stations without network affiliation usually cannot make the grade at all.

Thus the way to succeed in commercial U.S. television is to get a network contract, do little or nothing to build up local programming, and confine one's efforts to making regular trips to the bank. One need not live in, or be interested in, the community where the station is located. One can buy a string of these little wonders, here and there throughout the country, and rake in the proceeds. That is what is done; that is the shape and the form of television in the United States.

It has had at least two notable effects. First, and catastrophically serious, a nation beset by multiple crises has been deprived of its most potent medium of communication, a medium it could have used in the service of its overwhelming social needs. Second, the content and emphasis of the programming designed by the powerful few to deliver the public to the advertiser may have made at least some of the social problems worse. On the one hand, there has inevitably been, as Skornia puts it, an "authoritarian imposition of attitudes and values manufactured by the business community." On the other hand, in the words of a recent statement by the National Citizens Committee for Broadcasting: "The great majority of broadcast programs are devoted to vulgarity and violence. . . . We believe this inferior programming on commercial TV and radio undermines our society. . . ."

Capturing the VHF spectrum for private exploitation was an impressive achievement by perhaps the most powerful of Washington lobbies. As I said earlier, the broadcasting industry controls an access to the public that is essential to all members of the government. In addition, at least thirty Senators and Congressmen are owners or part owners of TV or radio stations, and a far larger number have interests either in corporations that own or operate broadcast properties, or in closely allied communications industries. Broadcasters have long had their way in matters of legislation. Says Skornia: "The fact that in recent years so large a proportion of legislation has been devoted to protection of property and of the rights of broadcasters, rather than to protection of the consumers, reveals the power of the broadcast industry to define regulation and effect legislation on their own terms."

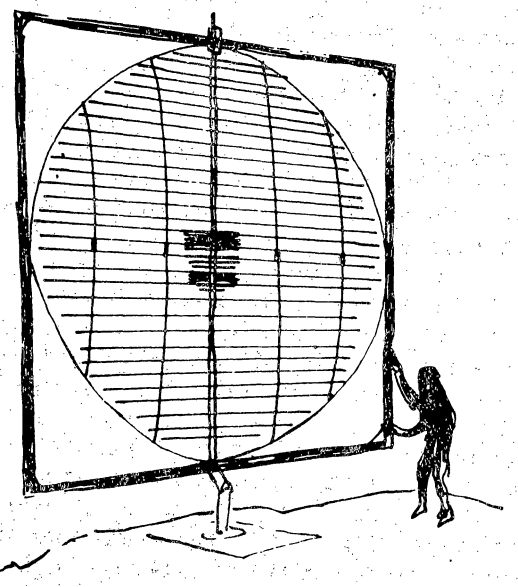
A current instance is the FCC's activity on the license renewals of certain TV stations. Recently, civic groups have been formed in several communities to bid for the licenses of certain TV stations when they came up for renewal, the interest being to turn the stations into better vehicles of community service. The law requires the FCC to hold hearings whenever such a challenger comes along, and it has held a number of such hearings. In one 1968 action, the Commission refused to renew the license of station WHDH-TV, owned by the *Boston Herald-Traveler*. The principal reason given was undue concentration of media ownership.

But cross-ownership of media is more the rule than the exception, and the frightened broadcasters turned to Congress for help. Congress responded quickly. Sen. John O. Pastore (D., R.I.), chairman of the Senate Commerce Committee's Subcommittee on Communications, introduced a bill to reverse the requirements of the present law. It would prohibit the FCC from holding hearings when a station whose license was up for renewal was faced with a challenge. Instead, the FCC could consider a new application only after it had canceled a license. This would prevent the FCC from comparing an existing station's programming record with proposals submitted by competitors for the channel.

The FCC got the message. On January 15, it issued a statement reassuring broadcasters that it would not consider license challenges against radio or TV stations that "substantially" met the programming needs of their communities. Challenges to such stations would be dismissed without reference to other issues, and their licenses would be renewed. "Other issues" obviously include cross-ownership of media, and a challenger's promise of better programming. The statement, of which Dean Burch, Nixon-appointed FCC head, was the principal author, was endorsed by a 6-to-1 majority. Commissioner Johnson was the only dissenter.

The NAB was jubilant, but served notice that it also wanted the even more stringent Pastore bill. "The policy statement is great," said Vincent T. Wasilewski, the Association's president, "but we still feel that there is a necessity for the legislation."

In this fashion Congress, responding to the broad-



casting lobby, keeps the FCC in line. It also plays the broadcasters' game by keeping the Commission small and underfinanced.

Before he assumed office, President Kennedy commissioned a number of studies and task force reports. One on the FCC, prepared by James Landis, stated that no other government agency was subjected to pressures of the intensity of those exerted on the FCC; that no other agency bowed more completely to the pressures; and that no other agency was in greater need of being freed from them. Ten years later, the need is greater than ever.

THE CABLE AND THE FCC

Cable television men depict the FCC as an ogre intent on destroying their industry. The source of the Commission's animus is alternately ascribed to an excessive lust for power and to its role as the humble servant of the broadcasters and other powerful segments of the communications industry. Describing recent FCC policies relating to cable TV at the 1969 NCTA Convention, general counsel Bruce Lovett told the audience that, by its actions, "the Commission demonstrated its intent to constantly probe our industry for new thresholds of pain and to continue a policy of oblivion for cable television."

The picture is overdrawn. It assumes a higher degree of malevolent intent, and a greater capacity for carrying it out, than the alleged villain has ever possessed. Such a theory cannot account for the complete fragmentation of opinion among the commissioners, revealed by separate statements attached by a number of them to the Commission's basic regulatory orders, and to decisions in a number of cases arising under these orders. Neither can it account for certain individual actions of the Commission. For example, when TelePrompTer Cable TV sought FCC permission to experiment with transmitting cable signals for short distances by over-the-air microwave relay in crowded sections of New York City, where the laying of cable is very costly, the FCC granted the request over vigorous objections by AT&T, Comsat and Western Union, all of which want to develop this area of technology themselves, and all of which have plenty of friends in Washington.

Nevertheless, when every allowance has been made, the FCC's activity in the field of cable TV must be regarded as a serious failure. The problem stems principally from the fact that the Commission has defined the public interest as the perpetuation of the over-the-air television industry as it now exists. "I think you should remember the fundamental hypothesis of the Second Report and Order adopting our CATV rules in March of 1966," Comr. Kenneth A. Cox said to an NAB group in 1968. "It concluded that rules were necessary in order to keep CATV a supplemental service, rather than risk its displacing our basic over-the-air system." FCC's goal, Commission chairman Rosel H. Hyde told members of the House in 1969, has been "to integrate the CATV operation into the national television structure in a manner which does not undermine the television broadcast service." In this context, anything that threatens to "undermine the television broadcast service" becomes "unfair competition."

The shortcomings of this approach are obvious. First, the assumption that the public interest lies in preserving the present setup is open to challenge. Many knowledgeable observers hold an almost opposite view. Second, by using this concept as a basis for making policy, the Commission becomes a party to economic struggles between competing interests and technologies. "Protecting existing interests from the superiority of a new form is a derogation of the Commission's statutory responsibility," said the American Civil Liberties Union in a brief on cable TV filed with the Commission in 1969.

Third, this approach assumes that the public interest is divorced from what the public wants. Indeed, it assumes that the more the public wants the cable, the more vigorously the Commission must act to prevent the public from having it, since high public demand increases the likelihood that the cable will threaten existing broadcasting interests. Last, and far from least, preoccupation with "unfair competition," has involved the FCC in control of what a cable system may carry. Such action raises fundamental issues of free speech and freedom of the press, and it is puzzling that this aspect of the FCC's cable policy did not result in a barrage of court challenges years ago.

When cable systems first appeared, broadcasters welcomed them because they increased the potential audience, but it soon became evident that the effect would be more complex. By bringing a greater number of channels and a greater diversity of fare to a given area, CATV fragmented the audiences that local stations regarded as their private property.

The first agitation by broadcasters to control cable TV came during 1958 Senate Commerce Committee hearings on the problems of bringing TV service to smaller communities. Twelve TV station owners who were called to testify begged Congress to protect them from the cable systems that had invaded their bailiwicks.

This familiar cry of alarm has never been supported by real evidence. For example, none of the twelve stations that in 1958 asked Congress for protection has gone out of business. Despite the cable, all have fared well, and have substantially increased their advertising rates. In the cities in which two of the stations are located, additional TV stations have gone on the air. In two other cities, the owners who subjected Congress to such a woeful picture of their predicament, have since sold their stations at substantial profit.

In the larger picture, cable TV has quadrupled since 1958, both in number of systems and in audience size. In addition, most cable systems, which offered only five channels in 1958, can now carry twelve, a flexibility that further increases the "competition." Nevertheless, 173 new commercial and 120 educational stations have gone on the air in this period, forty-four of them in communities where cable systems were already operating.

Having made its pitch to Congress, the broadcast industry pounded on the doors of the FCC. In 1959 the Commission ruled that it did not have jurisdiction over cable TV. Congressional reaction was prompt. Senator Pastore introduced a bill providing for FCC control of

cable TV through licensing procedures. The bill (S.2653) narrowly failed, but FCC got the point. It was obvious, the Commission realized on re-examining the problem, that it had jurisdiction at least over cable systems that used over-the-air microwave relays.

In 1962 the Commission began to rule on individual cases of cable systems using such relays, and its authority to do so was upheld by the courts. In 1965 the Commission issued its "First Report and Order," setting forth certain general rules for microwave-served cable systems. In 1966 it issued a "Second Report and Order," asserting its authority over all types of cable systems, whether or not they were served by microwave relays. The Second Order applied the rules of the First Order to all cable systems, and added some new rules. Its general assertion of authority over all cable TV, and the specific rules contained in its two orders, were again sustained by the courts.

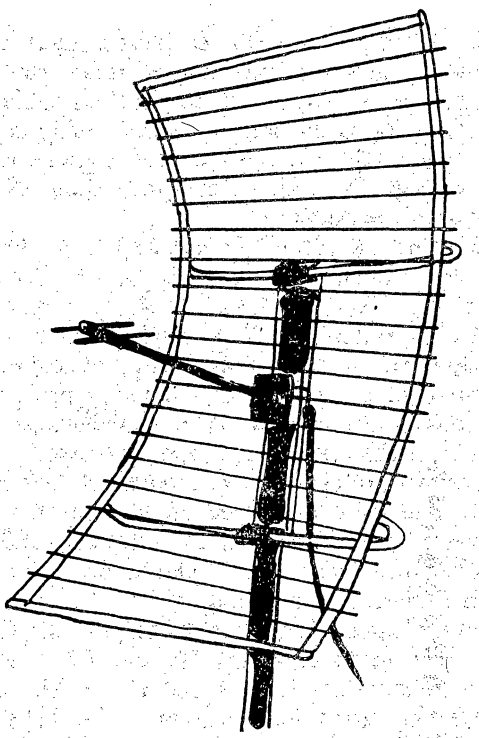
In 1968 the Commission issued a "Notice of Inquiry and Proposed Rulemaking," setting forth some proposed new rules, listing a number of questions about the growth and direction of cable, and soliciting comments on both from the communications industry and from social scientists. Opinions, most quite strong, have poured in.

Each of FCC's major rule-making efforts—The First Report and Order, the Second Report and Order and the Notice of Inquiry—is encompassed in a long, sometimes confusing, document. FCC policy is further embodied in decisions in a number of cases and controversies. The major requirements that FCC has placed on the cable can, however, be set forth without entering too far into the jungle of subsidiary issues.

The First Report and Order. This set forth what are usually referred to as the carriage and non-duplication rules. The carriage rule requires a cable system in a given community to carry the local TV station, along with whatever other stations it may offer. The purpose is to insure that cable subscribers are not cut off from their local TV outlet. (A TV set hooked to the cable can no longer receive over-the-air signals.)

The non-duplication rule concerns the importation, from a distant station, of a program that is being shown by the local station. Such action, FCC Chairman Hyde said in his 1969 Senate testimony, "fractionizes the local audience, and audience is what the local station in effect sells. . . ." The rule prohibits a cable system from showing such programs on the same day that the local station shows them.

The carriage rule has aroused little controversy. There are reasons why a television viewer should not be deprived of local broadcasts when he goes on the cable, and in practice few cable systems ever intended to do this to him. The non-duplication rule is now also accepted with little grumbling, but it launches the Commission much further into the fields of economic protectionism and control of TV content. The supposition on which it rests, that local stations may die for lack of sufficient advertising revenues if certain of their offerings are also delivered to cable viewers from a distant station, is entirely undemonstrated. But even if such drastic consequences could be proved, efforts to prevent it by controlling the content of the cable raise issues at least as serious as those that the policy is designed to solve.



Adoption of the First Report and Order by the Commission was not unanimous; Comrs. Robert T. Bartley and Lee Loevinger issued dissenting statements. Loevinger's was eloquent, and went to the heart of the issue. "The Commission is doing the wrong thing when it seeks to control, directly or indirectly, the specific programs which shall be presented to the audience. . . . I disagree with the non-duplication rule which I believe is an improper attempt to limit competition by controlling programming. . . . Apparently the Commission has not yet learned that the expansion of service is not to be attained by the limitation of competition and the imposition of rigorous regulation, but rather by stimulating competition and moderating regulation."

The Second Report and Order. The FCC nevertheless went much further down the path of program control in its Second Report and Order in 1966. The most important provision of this document relates to cable systems that propose to operate in any of the nation's 100 largest urban market areas. The rule states that if any established TV station in the market area, or even any group that *intends* to establish a new UHF station, objects to the cable system's plan to import distant signals, then the cable system cannot import them unless it can prove to the Commission's satisfaction that such importation "would be consistent with the establishment and healthy maintenance of TV broadcast service within the area." Existing or projected stations in the area do not need to offer any evidence that importation of distant signals will harm them; they need only object. The cable system must then prove that such importation will do no harm to established local interests. Such proof, obviously, is not easy to get.

antees. For comparison, it notes that the Federal Interstate Highway System has received more than $50 billion in outright federal grants in the past ten years.

It is hard to assign a dollar value to many or most of the educational, cultural, recreational, social and political benefits that the nation would receive from a national communications highway. It is easier to assert the negative—that the nation probably cannot afford not to build it. But some interesting estimates have been worked out in areas where dollar values can be calculated.

IED/EIA believes that its proposed videophone-BCN network would result in immense annual savings. It summarizes as follows:

Domestic air travel	— over	$6 billion
Highways	— over	$6 billion
Police protection	— over	$3 billion
Fire protection	— over	$1 billion
Post Office	— nearly	$6 billion
Recreation	— over	$28 billion
Total	— over	$50 billion

The City Club of New York stated in testimony before the state legislature that communications economists foresee public and business purchases of broad-band communications services, once the network is completed, of between $40 billion and $80 billion a year. If 10 per cent of this total were spent in New York State, the City Club observed, and if it were subject to the usual franchise tax of 5 per cent, the annual revenue to government units in the state would run between $200 million and $400 million.

All these figures are rough, and they do not agree; but this much is evident—the network for a wired nation is well within the capacity of the economy. It can be done, and in one fashion or another it undoubtedly will be done.

Therefore, a number of important questions need to be answered, and soon. An agreed-upon overall plan is needed, and reasonably accurate cost figures must then be developed for it. The answer to the problem of remote homes may lie in the creation of a Rural Communications Administration, similar to the Rural Electrification Administration. Another serious question is how the nation's poor will pay for the new service, if and when it supplants, wholly or in part, the present system of free over-the-air transmission. The difference between current charges of $5 and up per month and the $1 to $1.50 figure of Professors Greenberg and Barnett, is fundamental for public policy in this area. A subsidy for the poor, if it proves necessary, cannot be shirked.

There are yet other issues. It cannot be assumed that all the social effects of the cable will be good. For example, the exodus of the middle and upper-middle class from the cities is expected to continue during the 1970s, and the stratification of society along geographic-economic lines will thereby be increased. At the same time, the cable will make it less and less necessary for the more affluent population of the suburbs to enter the city, either for work or recreation. Lack of concern and alienation could easily deepen, with effects that could cancel the benefits of community expression that the cable will bring to inner-city neighborhoods. At the very least, such dangerous possibilities must be foreseen, and the educational potential of the cable itself must be strongly marshaled to meet them. The bland treatment of this issue in the IED/EIA report is chilling.

There are other serious problems. Police surveillance by cable, and the compiling of financial, credit, and other personal information about individuals in computer banks, raise unprecedented issues of civil liberties and privacy. Privacy problems are also involved in the transmission of mail by cable. And in the creation of Facsimile Data Services such as those envisioned by IED/EIA in its report, the question is, who will decide what data is to be included in these services, and what is to be left out? Unless the issues involved in these future uses of the cable are understood and faced, 1984 could easily come well in advance of George Orwell's prediction.

Under any circumstances, however, the cable will be built, and the aim must be, through positive policy and intelligent action, to take every advantage of its tremendous potentials for social good. The way forward now is through the establishment of a Presidential commission on the Wired Nation. It would have as its mandate the development of a plan for creating a national broad-band communications system in the United States during the 1970s, and should be asked to submit its report within a year. That commission should conduct extensive consultations with economists, the business community, communications technicians and social scientists. Its report and recommendations might well serve as the basis for a special Presidential message to Congress, setting forth the plan, describing the type and amount of recommended federal participation, and seeking full Congressional and public support.

There is no reason to think that such support would be denied. But further delay at this juncture will forfeit great opportunities for shaping the swiftly approaching communications revolution for the public benefit. Leadership is required, and the time is now. □