

DOCUMENT RESUME

ED 074 788

EM 011 004

AUTHOR Jones, William K.  
TITLE Regulation of Cable Television by the State of New York.  
INSTITUTION New York State Public Service Commission, Albany.  
PUB DATE Dec 70  
NOTE 309p.  
AVAILABLE FROM Public Service Commission, Central Library, 44 Holland Avenue, Albany, New York 12208 (initial copy free, additional copies carry a fee)

EDRS PRICE MF-\$0.65 HC-\$13.16  
DESCRIPTORS \*Broadcast Industry; \*Cable Television; Community Antennas; \*Federal Laws; Mass Media; \*State Laws; Technological Advancement

ABSTRACT

In order to determine the appropriate role for the State of New York in relation to cable television, a comprehensive report was prepared for the state Public Service Commission by one of its members. In addition to background detail on the technology and potential of cable television, the report investigates current cable systems and current regulatory structures at the federal, state, and local levels. After reviewing the positions of various parties concerning the regulation of cable television by the State of New York, detailed recommendations about franchising, rates, service quality, system coordination, the role of the telephone company, etc., are presented. (Author/RH)

ED 074788

C

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

A

Regulation of Cable Television  
by the State of New York

Report to the Commission by  
Commissioner William K. Jones

December, 1970

T

V

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Regulation of Cable Television  
by the State of New York

U.S. DEPARTMENT OF HEALTH,  
EDUCATION & WELFARE  
OFFICE OF EDUCATION  
THIS DOCUMENT HAS BEEN REPRO-  
DUCED EXACTLY AS RECEIVED FROM  
THE PERSON OR ORGANIZATION ORIG-  
INATING IT. POINTS OF VIEW OR OPIN-  
IONS STATED DO NOT NECESSARILY  
REPRESENT OFFICIAL OFFICE OF EDU-  
CATION POSITION OR POLICY.

Report to the Commission by  
Commissioner William K. Jones

December, 1970

ED 074788

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Television Broadcasting and the Federal Communications Commission.....	7
A. Use of the Radio Spectrum.....	7
B. Geographical Distribution of Television Assignments.....	14
C. Concentration of Control of Mass Media.....	18
1. Limitations on networks.....	18
2. Limitations on ownership of multiple television stations.....	21
3. Limitations on ownership of multiple media in the same market.....	21
4. Other limitations on concentration of control.....	23
D. Licensing of Individual Broadcasters.....	25
1. Radio spectrum and other technical considerations.....	25
2. Geographical distribution of facilities.....	26
3. Restrictions on concentration of control.....	27
4. General qualifications.....	27
a. Citizenship.....	27
b. Character.....	27
c. Financial ability.....	28
d. Program proposals.....	28
5. Economic injury to existing broadcasters.....	29
6. Comparative proceedings.....	30
E. Efforts to Achieve Programming Diversity and Responsiveness to Local Needs.....	41
1. Reflections in general policies.....	41
2. Renewal of licenses of television stations.....	43
3. Educational television.....	44
4. Subscription television.....	46
F. FCC Control of Program Content.....	49
1. Restrictions on objectionable programming.....	49
2. Political and public affairs programs.....	50
3. Diversity of programming and responsiveness to local needs.....	51
4. Limitations on commercial advertisements.....	53
G. Other FCC Controls Over Television Broadcasters.....	53
III. Federal Regulation of Cable Television.....	54
A. Origin and Development of Cable Television.....	54
B. The FCC's 1966 Report (the "Second Report").....	57
1. Local carriage.....	57
2. Same-day exclusivity.....	58
3. Importation of signals from distant markets.....	59
C. The Supreme Court's 1968 Co. right Ruling.....	61
D. Further FCC Actions on Importation of Distant Signals.....	62
1. The 1968 Notice of Proposed Rulemaking.....	62
2. The 1970 Second Further Notice.....	65
E. Telephone Companies and CATV Systems.....	69
F. Originations by CATV Systems.....	72
1. Authority to originate.....	72
2. Requirement of origination.....	73
3. Advertiser support.....	75

TABLE OF CONTENTS (continued)

	<u>Page</u>
4. Per program subscription.....	77
5. Limitations on CATV programming.....	78
6. Relation to state law.....	79
G. The Common Carrier Function of CATV Systems.....	79
H. Concentration of Media Control.....	83
1. Cross-ownership of CATV systems and other media.....	83
2. Common ownership of CATV systems in different markets.....	86
3. CATV control of multiple channels.....	88
4. Limitations on other affiliations.....	89
I. Technical Standards.....	90
1. Minimum channel capacity.....	90
2. Two-way capability.....	91
3. Community origination centers.....	91
4. Standards of performance.....	92
J. Reporting Requirements.....	94
1. System data.....	94
2. Service data.....	94
3. Ownership information.....	95
4. Information on non-automated programming.....	95
5. Information on advertising support.....	96
6. Information on programming by others.....	96
7. Financial data.....	96
K. Federal-State-Local Relations.....	98
IV. State Regulation of Cable Television.....	103
A. The General Approach of State Public Service Commissions.....	103
B. Special State Regulatory Provisions.....	105
1. Connecticut.....	105
2. Nevada.....	106
3. Rhode Island.....	110
4. Vermont.....	111
5. Hawaii.....	113
6. Model statutes prepared under the auspices of N.A.R.U.C.....	117
7. The Kelly Bill.....	119
V. Municipal Regulation of Cable Television.....	124
A. Municipal Franchises Generally.....	124
B. Franchises in New York.....	124
1. General franchise provisions.....	125
a. Franchise term.....	125
b. Franchise exclusivity.....	127
c. Franchise fees.....	127
d. Rates to subscribers.....	128
e. Prohibitions against discrimination.....	130
f. Free services and facilities.....	132
g. Schedules for construction and operation.....	133
h. Construction and maintenance of CATV systems.....	135
i. Service standards: programming and related aspects.....	136
j. Service standards: technical and general aspects.....	137
k. Service standards: innovation.....	141
l. Business restrictions.....	142
m. Transfer.....	142
n. Abandonment.....	143

TABLE OF CONTENTS (continued)

	<u>Page</u>
o. Reports and inspections.....	143
p. Insurance and indemnification.....	144
q. Performance bonds and right of cancellation.....	144
r. Superseding regulation.....	145
2. Franchises in New York City.....	147
a. Task force recommendations.....	147
b. The 1970 franchises.....	150
VI. Cable Television in New York State and in the Nation.....	159
A. Cable Television in New York State.....	159
B. Cable Television in the Nation.....	163
VII. Positions of Various Parties Concerning Regulation of Cable Television by New York State.....	166
A. Consumer Interests.....	166
B. Educational Interests.....	167
C. Civil Liberties, Intellectual and Related Interests.....	168
D. Municipalities.....	169
E. CATV Industry.....	169
F. The Federal Communications Commission.....	170
G. Other Groups.....	171
VIII. Variations in Cable Operations and Potential for Future Operations.....	172
A. Functional Variations in CATV Operations.....	172
1. The video relay function.....	172
2. The video origination function.....	173
3. Other one-way broadband functions.....	174
a. Facsimile reproduction of newspapers.....	174
b. Marketing.....	174
c. Mail, telegram and message delivery.....	175
4. Limited two-way capability.....	176
a. Marketing.....	176
b. Polls and voting.....	177
c. Instructional television.....	177
d. Program selection.....	177
e. Other ordering of information services.....	178
f. Protective services.....	178
5. Unlimited two-way capability.....	179
6. Summary.....	179
B. Prospects for CATV Development.....	180
1. Development in New York City.....	180
2. Development in other areas of New York State.....	182
3. The underlying problem of development.....	182
IX. Recommendations and Conclusions.....	186
A. Franchising.....	186
B. Rates.....	190
C. Service: General Quality of Existing Service.....	193
D. Service: Major Changes in Existing Service.....	196
E. Interconnection and System Coordination.....	198

TABLE OF CONTENTS (continued)

	<u>Page</u>
F. Common Carrier Operations.....	198
G. Franchise Fees, Free Channels and Support for Education.....	201
H. The Role of the Telephone Company.....	204
I. Landlord-Tenant Problems.....	206
J. Franchise Termination and Optional Conversion to Public or Non-Profit Ownership.....	207a
K. Concentration of Control.....	208
L. Other Measures.....	209
1. Insurance.....	209
2. Inspections and reports.....	210
3. Transfers, amendments and renewals.....	210
4. Abandonments.....	210
M. Representation Before the Federal Communications Commission.....	211
N. Selection of a State Agency.....	213
O. Federal-State Relations.....	214
1. Federal primacy.....	214
2. Joint federal-state concern.....	215
3. Local primacy.....	217

## I. Introduction

On July 1, 1970, Governor Rockefeller requested the Public Service Commission to investigate the operations of CATV systems in the State of New York. The Governor stated:

"I am deeply interested in the development of CATV systems within the State, and cognizant of their enormous potentials as communications media. At the same time, I believe the people of the State should be assured that the rates, services, and operations of the companies doing business in this area are designed to serve the public interest, and that the potentials for service to the people are fully developed.

"At present CATV services are provided with only limited public scrutiny and control. To assist in determining whether State regulation of CATV and CATV companies, with or without preemption of local regulation, is in the public interest, to promote adequate, economic and efficient CATV systems service to the citizens of this State, I am asking you to undertake a comprehensive investigation to include a review of:

- The extent to which CATV services are being provided, and the quality and comprehensiveness of such services;
- The potential of CATV and its present and future importance to the convenience, welfare and economy of the State and its citizens;
- The extent of the industry as it now exists and its nature and possibilities for growth, and the rate of such growth, as presently foreseeable;
- The extent of existing governmental supervision both in New York State and as practiced by other jurisdictions; and
- Whether regulation is necessary or desirable in the public interest and, if so, the form which such regulation should take.

"In addition, as to existing CATV operations, the investigation should ascertain the basis for the present rates and charges for services and consider whether such fees seem just and reasonable.

"As the PSC is the agency with general responsibility for regulation in the utility and communication fields, I am asking it to undertake this study. Your investigation should afford all interested parties an opportunity to express their views, and public hearings should be held to the extent you deem it necessary or desirable."



The CATV industry is a growing one, but it has tended to develop on a monopolistic basis--with but a single system serving any geographical area. Observing this development, the Federal Communications Commission in 1968 stated: "We...believe that local, state and federal governmental agencies must face up to providing some means of consumer protection in this area." This report considers the role of the State in regulating CATV operations with a view to protecting consumers and other interests of vital State concern, while at the same time facilitating development of the CATV industry.

On the same day as the Governor's request, the Federal Communications Commission issued a Notice of Proposed Rulemaking concerned with Federal-State-Local relations in the area of CATV regulation. The Notice is discussed infra at pp. 99-101. While this report is intended primarily as a response to the Governor's request, it also suggests positions that the Public Service Commission and the State of New York might take in relation to the FCC Notice of Proposed Rulemaking and other proceedings pending before that Commission.

CATV systems, as presently constructed and operated, consist of three main parts: (1) an origination point, usually referred to as the "headend," which consists of a receiving antenna and electronic conversion and amplification equipment--designed to receive, filter, convert and amplify broadcast signals (television and FM) available at the antenna site; (2) distribution lines, consisting of coaxial cable and associated amplifiers and filters, which branch out from the origin point to the areas served by the CATV

system; and (3) a small coaxial cable, or "drop," which connects the subscriber's television set to the nearest CATV distribution line.

Several variations are possible. The antenna at the "head-end" may simply pick up broadcast signals available at that point, or it may receive signals relayed from more remote points by coaxial cable or microwave (usually the latter). In addition, the CATV system may have facilities at the "headend"--primitive or elaborate--for feeding nonbroadcast programming into the system in lieu of signals picked up off the air.

The coaxial cable used for distribution, and related supporting structures, may be installed in their entirety by the CATV

system. But this is rare. Typically, the CATV system arranges to string its cable on the poles (or in the ducts) of local telephone or utility companies for an agreed rental. Or the CATV system leases a telephone-supplied channel to deliver its signals from the head-end to its subscribers' sets. The former is the more common practice.

A subscriber's set, when connected to the CATV system, may be equipped with a switch, so that the subscriber also may receive programs off the air. But such equipment is rarely employed, and a television set connected to a CATV system usually cannot receive programs off the air.

Without going beyond the present state of the art, the potential of CATV, both for public and private purposes, is very great. This potential stems from two factors:

First, the number of CATV channels is not subject to any prescribed limitation, and there is every indication that the costs of furnishing additional channels is low relative to the cost of the general system (and very low relative to other media with similar characteristics, such as additional over-the-air broadcasting stations). Thus, the prospect is that systems with increasingly large numbers of channels will be constructed. Teleprompter, the largest CATV operator in New York and in the nation, is making provision for 27 channels in all new construction activities, and a system with 42 channels is being constructed at San Jose.

Second, since the signals are routed through cables, it is technologically simple, relatively speaking, to "filter" signals so that some go to certain subscribers and not to others (in contrast

to broadcast signals, which go to everyone within range of the station).

These two factors, added to the existing technology of television origination and reception, make possible:

1. An increased number, and improved reception, of conventional television broadcast signals. Increasing the number of signals is important in areas where off-the-air television signals are few. Improving the reception of signals is important in areas where buildings or terrain interfere with over-the-air transmissions (this is a particularly difficult problem in the case of color transmissions).

2. The presentation of additional television programming, of interest only to a locality or to a particular group of viewers, which could not be supported financially on over-the-air television (such as local sports, dramatic presentations, and town meetings). The large number of channels, the ability to direct programs to particular audiences, and the possibility of charging for particular programs, all combine to make this an attractive prospect. Even in the absence of per-program charges, local or specialized advertising might suffice to support local or specialized programming if the cost of such support is reduced by economical CATV operations.

3. The increased use of television for instructional and educational purposes. Again, the availability of large numbers of channels and the ability to direct them to specific audiences increases the flexibility of the medium for educational purposes: courses can be offered in different subjects simultaneously, or in the same subject at different times; post-graduate education can be

offered to members of various professions; job training or retraining programs can be undertaken for the unemployed, the temporarily disabled, or the mother with small children. Programs of a cultural, as well as an instructional, nature may be offered.

4. Use of television for programs involving governmental assistance. In addition to educational programs, the CATV system could provide informational programs on employment opportunities, types of government assistance available for various kinds of problems, instructions on driving safety, on home maintenance and on preparation of tax returns.

5. Greater use of television in programs concerned with politics and public affairs. Through use of appropriate filtering techniques, it is possible for political candidates to tailor their presentations on CATV to their respective constituencies (an impossibility with over-the-air broadcasts), with a substantial reduction in program costs. Also, such techniques could make available programming of interest only to a limited section of a larger city (such as local school developments), making possible the creation of more cohesive communities within large urban areas (encompassing ghettos at the one extreme, and suburban districts at the other).

6. A variety of miscellaneous services on specialized channels, including weather, time, news ticker, stock ticker, music, traffic conditions, etc.

These possibilities are all well within the potential capabilities of the current state of the art, and most of them, with the exception of those requiring extensive filtering, are being undertaken somewhere or other by operating CATV systems. Discussion

of the additional potential of more advanced systems is reserved for future consideration.

In order to determine the appropriate role for the State of New York in relation to cable television, it is necessary to cover an extensive, and highly complex, matrix of industrial, governmental and technological developments. This report considers the following major topics:

Television Broadcasting and the Federal Communications Commission

Federal Regulation of Cable Television

State Regulation of Cable Television

Municipal Regulation of Cable Television

Cable Television in New York State and in the Nation

Variations in Cable Operations and Potential for Future Operations

Positions of Various Parties Concerning the Regulation of Cable Television by the State of New York

Recommendations and Conclusions

## II. Television Broadcasting and the Federal Communications Commission

Cable television developed initially as an adjunct to over-the-air television broadcasting, and the principal function of CATV today continues to be the transmission of television signals or broadcast over-the-air. It is necessary, therefore, if CATV problems are properly to be understood, to consider first the development and regulation of over-the-air television broadcasting.

### A. Use of the Radio Spectrum

The single most significant characteristic of over-the-air television broadcasting is that it makes use of the electromagnetic or radio spectrum. Electromagnetic waves, produced by the acceleration or oscillation of an electric charge, radiate outward from the source at the speed of light, 300 million meters per second. These waves have a frequency, expressed in cycles per second (or Hertz), and a wavelength, generally expressed in units of the metric system. Since the speed of electromagnetic waves is constant at the speed of light, the frequency and wave length are inversely related to one another: the longer the wave length the shorter the frequency, and vice-versa. The product of the two is always equal to 300 million meters per second. The physical characteristics of radio wave propagation--distance travelled as a function of power input, susceptibility to physical obstruction, attenuation attributable to rain, etc.--vary significantly from one frequency range to another.

The radio spectrum, which ranges upwards from frequencies of 10 kilohertz (10,000 cycles per second), is used for a wide variety of purposes, most of them involving some form of

communications: military and defense facilities; space technology; air and maritime navigation; radio and television broadcasting; communications common carriers; business and industrial radio; police, fire and other local emergency services; air, maritime, rail, taxi and other transportation services; atmospheric and geodetic exploration; and citizens and amateur radio. In the absence of some form of regulation, use of the radio spectrum by one party for a particular purpose could create electronic interference with the use of the radio spectrum by another party for the same or a different purpose. While the phenomenon of electronic interference involves many variables, it may be said, in general terms, that interference will occur unless care is taken to assure an adequate separation between potentially interfering signals in one or a combination of four ways: (1) separation in space (one signal sufficiently remote from the other in geographical terms); (2) separation in frequency (one signal sufficiently remote from the other in frequency employed); (3) separation in time (one signal sufficiently separated from the other in time, including the use of intervals in the transmission of one signal in order to transmit another); and (4) distinction in transmission characteristics, such as polarization, in which one signal varies over one plane while the other varies over a different plane.

Over the years, the capacity of the radio spectrum has been greatly expanded, both in the range of frequencies made available for use and in the intensity of use of particular frequencies. The former development involves the utilization of progressively higher frequencies with correspondingly shorter wavelengths; even so, most present uses of the spectrum are below



15 GHz (15,000,000,000 cycles per second). The second development involves two kinds of improvement: the use of narrower frequency bands to accomplish a particular purpose, and the refinement of separation techniques so that multiple uses of the same or adjacent frequencies become more extensive.

Notwithstanding these technological developments, the demand for radio spectrum space, and for specific radio frequencies in particular, has exceeded the available supply since the early twenties, when radio broadcasting was initiated. In order to regulate electromagnetic emissions, with a view to controlling excessive electronic interference, Congress in 1927 empowered the Federal Radio Commission (FRC) to license all radio emissions of private parties under the terms of the Federal Radio Act. The Federal Communications Commission (FCC) succeeded to the responsibilities of the FRC when the Federal Radio Act was reenacted in substantial measure as Part III of the Communications Act of 1934.

Under the Communications Act, the FCC licenses all uses of the radio spectrum subject to two limitations. First, federal agencies do not require FCC approval in order to use the radio spectrum; but the radio practices of the federal agencies have been coordinated with FCC licensing procedures, since the beginning of regulation, by one or another representative of the executive branch. Second, the FCC is obliged, in formulating and implementing its licensing policies, to abide by international treaties (extensive in number and scope) which pertain to the use of the radio spectrum. Within these two limitations, however, the authority of the FCC is plenary and preempts any possibility of state or local control of the radio spectrum.

The rationale for this extensive authority is evident from the face of the Communications Act itself, which vests in the FCC authority over radio signals which cross state or national boundaries, or which are transmitted within any federal territory or from any United States vessel or aircraft, and also radio signals "within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within any said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State." Since one of the enumerated effects almost invariably can be shown, even in the case of the most local radio transmission, the courts have treated every use of the electromagnetic spectrum as one involving a transmission in or affecting interstate commerce and subject to the control of the FCC.

The Communications Act also expressly proscribes the creation of any private property interests in the radio spectrum and authorizes the FCC to permit use of the spectrum only for limited periods of time. The Act provides that its purpose is "to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license." Applicants for licenses must sign "a waiver of any claim to the use of any particular

frequency or of the ether as against the regulatory power of the United States because of the previous use of the same," and each license must state that it "shall not vest in the licensee any right to operate the station nor any right in the use of frequency designated in the license beyond the term thereof nor in any other manner than authorized therein." License terms are limited to a maximum of three years for broadcast licenses and five years for other types of authorizations; but license renewals, for similar limited periods, are permitted.

Thus, over-the-air television broadcasting must be conducted within a framework of federally regulated radio spectrum usage. This has meant, among other things, that television broadcasting has had to compete for spectrum space with other possible alternate uses, and that the amount of spectrum space available for television broadcasting has had to be limited by the need to meet the legitimate claims of other users of the radio spectrum. At present, television broadcasting is authorized in the following portions of the radio spectrum (MHz equals 1,000,000 cycles per second):

Channels 2 to 4	54-72 MHz
Channels 5 and 6	76-88 MHz
Channels 7 to 13	174-216 MHz
Channels 14 to 36	470-608 MHz
Channels 38 to 69	614-806 MHz

Channel 1 was eliminated in the early days of television broadcasting because of interference with other spectrum uses. Channel 37 (608-614 MHz) is reserved, at least until 1974, for radio astronomy. And former channels 70 to 82 (806-890 MHz)

recently have been reallocated to other purposes (private and public land mobile radio).

Channels 2 through 13 are known as VHF channels (very high frequency) and channels 14 and above are known as UHF channels (ultra high frequency). For present purposes, two general observations are pertinent:

First, the number of television channels is limited to 66, and this number is not likely to be expanded in the near future. There are two reasons for this: (1) Other demands upon spectrum space are intensive, so much so that the FCC recently has reallocated broadcast space (channels 70-82) to other uses and has permitted land mobile radio to use the lower UHF channels (14-20) under a sharing arrangement with television broadcasting in certain large cities; thus, the prospect that more spectrum space will be allocated to television broadcasting is extremely remote. (2) Television broadcasting is not likely to be able to squeeze additional channels into the spectrum space allocated to it at present; this would require changes, not only in broadcast transmission equipment, but also in television receivers in the hands of the general public; the obsolescence of the billions of dollars of consumer investment in television receivers is a substantial political impediment to the introduction of new technology narrowing the 6 MHz of bandwidth required for each television channel.

Second, VHF and UHF channels have significantly different technical and economic characteristics. At the present time, the technical differences are less significant than the economic differences, but, even from a technical point of view, UHF channel assignments are less advantageous than VHF channel

assignment. Because more power and antenna height are required for UHF's to obtain the same area coverage as VHF's, and UHF signals are more vulnerable to obstacles such as rough terrain. But the major problem goes back to the beginning of television operations, when technical differences were even more pronounced than they are today. VHF channels were the first ones licensed and they tended to dominate the major mass markets. Because most of the popular programming was on channels 2 through 13, there was little consumer interest in television receivers capable of receiving UHF channels. In the absence of such receivers, UHF broadcasters were unable to reach substantial audiences; they were therefore unable to interest advertisers in their programming; and, as a consequence, they lacked the financial means to underwrite popular mass audience programming. Accordingly, UHF broadcasters did not prosper and the consuming public continued to evidence a distinct lack of interest in television sets capable of receiving UHF signals.

After several other efforts to activate the UHF channels, the FCC in 1962 obtained Congressional enactment of its All-Channel Receiver statute. Acting pursuant to this statute, the FCC by rule provided that television sets manufactured after April 30, 1964 could not be shipped in interstate or foreign commerce unless they were capable of receiving all VHF and UHF channels. Since 1964, the percentage of receivers capable of receiving UHF signals has increased substantially, and there has been a revival of broadcaster interest in UHF assignments. Television sets capable of receiving UHF signals reached 68% in 1970 and are expected to reach 90% in 1973. The number of UHF stations increased from 86 in 1964 to 183 in 1970. However, many UHF assignments still

lie fallow; and, for the most part, UHF broadcasters have been unable to conduct profitable operations. In a recent regulation, the FCC sought to rectify one UHF disadvantage by requiring UHF sets to have "click" tuners at specified future dates.

By contrast, VHF operations have proved highly profitable, particularly in the large urban areas; and, with the exception of some sparsely populated sections of the country, all VHF channel assignments are in use. Where VHF and UHF stations are in direct competition with one another, the VHF stations almost invariably prove to be the most successful financially.

#### B. Geographical Distribution of Television Assignments

The frequencies assigned to television broadcasting-- both VHF and UHF--have a significant propagation characteristic: their signals tend to travel in a straight line. Thus, even with high-powered transmitters, propagation of television signals is limited by the horizon. Even so, given sufficient power, large areas can be covered by constructing extremely high transmission antennas and elevating reception antennas. Still larger areas can be covered by using air-borne transmitters (some actually were used in experimental educational broadcasting in the Midwest). And today, using satellites for transmission, all or large portions of the nation could be covered by a single transmitter (with some adaptation in reception antennas). Using the available frequencies for a relatively few transmitters covering large areas would maximize the number of signals available for television audiences, substantially without regard to the urban or rural location of the audiences. For policy reasons, however, the FCC has not taken this approach.

In the evolution of pre-television radio, the concept developed that the radio station (or at least certain classes of radio stations) should function as a local institution, operating "as a sort of mouthpiece on the air for the community [the station] serves, over which its public events of general interest, its political campaigns, its election results, its athletic contests, its orchestras and artists, and discussions of its public issues may be broadcast." The FCC undertook to apply this concept to television, and in 1952 assigned television channels to large numbers of communities. The guiding policy considerations, developed in the context of radio, were stated in this order of priority:

First, to provide all persons in the United States with at least one service.

Second, to provide each community with at least one station.

Third, to provide all persons with multiple services from which they are able to make a selection.

Finally, to provide larger communities with additional local stations.

But a system of local assignments made it difficult to provide most audiences with a large choice of signals, particularly while the UHF channels remained dormant. In order to avoid electronic interference, it is necessary to establish mileage separations, not only between stations on the same channel but between stations on adjacent channels (note that channels 4 and 5 and channels 6 and 7, while adjacent on the dial, are not adjacent in the radio spectrum). For this purpose, the United States has been divided into three zones. Zone I encompasses most of the heavily

populated northeastern quadrant of the nation. Zone III is the Gulf area, which presents special tropospheric interference problems. The remainder of the United States is included in Zone II. Minimum separations for stations on the same channel are:

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

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

What this means, in practical terms, is that no more than seven VHF channels can be assigned to a single city. Only New York and Los Angeles have received this maximum number. And for New York City to have channels 2, 4, 5, 7, 9, 11 and 13, these channels have had to be made unavailable to every community within 170 miles of the City, and channels 3, 6, 8, 10 and 12 can be employed only by communities located at least 60 miles from New York City's antenna site in lower Manhattan. Most substantial cities have only three VHF channel assignments, although about a dozen have four or five.

But the FCC in 1952 assigned both VHF and UHF channels to a large number of communities, hundreds (mostly UHF) to communities with populations of 5,000 or less. The general distribution, embodied in a "Table of Assignments," was as follows:

<u>City Population (1950)</u>	<u>Number of Assignments</u>
1 million and above	6-10
250,000 to 1 million	4-6
50,000 to 250,000	2-4
Under 50,000	1-2



Many of the channel assignments, however, would not support viable stations. For the reasons indicated above, UHF stations fared poorly when compelled to compete with VHF stations; the FCC's "intermixture" of VHF and UHF stations created conditions least conducive to the survival and growth of UHF stations. In addition, many of the assignments went to communities with audience sizes insufficient to support the number of channels assigned; communities with populations sufficient to support one or more radio stations could not generate the advertising revenues necessary to support the considerably more expensive operation of television broadcasting stations. Despite assignments to 1,274 communities, all operations are now being conducted in 275 television "markets" (many of them embracing several communities each).

While there has been growth in the television industry since the fifties, including some increased activation of UHF channels following the All-Channel Receiver law, the number of television signals available to most audiences is limited: six or more in the larger markets, three to five in intermediate markets, and three or less in smaller markets. And it should be emphasized that the effective service areas of television stations tend to be significantly more limited than the mileage separations. The "Grade A contour," a circular boundary line along which 70% of the audience receives good signals 90% of the time, may range anywhere from 20 to 60 miles from the transmitter depending on antenna height, transmitter power and nature of terrain. The "Grade B contour," a more remote circular boundary line along which 50% of the audience receives good signals 90% of the time, may range from 50 to 100 miles out.

The policy decision in favor of local community stations assumed that locally oriented programming was a significant desideratum and that this objective would be furthered by the proliferation of local stations. Yet the objective appears not to have been realized. Overall, the percentage of programming that is locally originated tends to be relatively small--about 15%. Programs of the three networks--ABC, NBC and CBS--account for the lion's share--about 55% overall. The difference is made up of nationally distributed syndicated programs (mostly re-runs) and motion picture films. In evening prime time, from 7:00 to 11:00 p.m. in the East, the three networks account for more than 90% of television programming.

### C. Concentration of Control of Mass Media

With television developing as the nation's most popular mass medium, and with the number of television outlets (particularly VHF) severely limited, the FCC has adopted a number of measures directed toward limiting concentration of control over television and other mass media. Many of these restrictions are adaptations of measures adopted in the context of pre-television radio,

1. Limitations on the networks. Without question, the networks are the dominant force in television broadcasting. Next to the FCC franchise, the most valuable asset a broadcaster can possess is a network affiliation. As indicated above, the networks are the most significant source of programming, surpassing all other sources combined. Network programs occupy this position because, by and large, they are the most popular and generate the largest audiences for advertisers. Popular mass appeal programs

generally are expensive to produce, and the networks, by reason of their existing dominance, are in the best position to finance and distribute expensive programs. And so network dominance tends to perpetuate itself.

Largely to overcome this dominance, and to assure some measure of station autonomy and independent programming by network affiliates, the FCC has adopted a number of regulations applicable to network operations:

(1) Network affiliation agreements may not be exclusive and may not prevent the affiliated station from broadcasting the programs of another network.

(2) Network affiliation agreements may not afford the network's affiliate more than a right of "first call" on the network's programs. If the affiliated station declines to carry a network program, the network may not be precluded from offering the same program to another station in the same community.

(3) Network affiliation agreements may not exceed two years in duration.

(4) Network affiliation agreements may not require the affiliated station to give the network an "option" on broadcast time prior to the network's agreement to schedule network programs during that time.

(5) Network affiliation agreements must assure the affiliated station the rights: (a) to reject any network program "which the station reasonably believes to be unsatisfactory or unsuitable, or contrary to the public interest," and (b) to substitute for the network program "a program which, in the station's opinion, is of greater local or national importance."

(6) Networks are permitted to own broadcast stations except under very limited circumstances, but they are prohibited from operating more than one network in the same territory at the same time.

(7) Network affiliation agreements may not restrain the affiliated station in fixing or altering its rates for the sale of broadcast time for transmissions other than the network's programs.

(8) Networks may not represent affiliated stations in the sale of non-network time.

(9) Stations may not schedule more than three hours of programs of the three national networks during the four hours of evening prime time (between 7:00 and 11:00 p.m. in the East) in any of the top fifty television markets having three or more commercial television stations. Networks normally have programmed  $3\frac{1}{2}$  of these four hours. The rules make an exception for network programming of "fast-breaking news events, on-the-spot coverage of news events and political broadcasts by legally qualified candidates for public office;" they also provide that the portion of the time from which network programming is excluded may not be filled with off-network syndicated series programs or feature films broadcast in the market within the last two years. (This regulation, recently adopted and presently being reviewed in the courts, is not scheduled to take effect until October 1, 1971.)

(10) Networks may not engage in "syndication" (distributing programs other than for network exhibition) except under limited conditions. (This regulation, recently adopted and presently being reviewed in the courts, is not scheduled to take

effect until October 1, 1971 as to some aspects, and October 1, 1972 as to others).

As indicated by the extent of network programming, and by the FCC's recent actions in adopting the last two regulatory restraints, the dominance of the television networks has yet to be effectively countered.

2. Limitations on ownership of multiple television stations. The number of television stations which may be brought under common ownership is limited to seven (in different areas), no more than five of which may be VHF stations. There also is a more general prohibition against "concentration of control of television broadcasting in a manner inconsistent with public interest, convenience, or necessity;" but it has been rarely invoked. The FCC recently considered whether to impose an additional restriction, limiting multiple ownership in the top 50 markets to three television stations per owner, no more than two of which could be VHF. But the proposal has been abandoned.

In communities other than those in which its television stations are located, a television station operator may own as many as seven AM radio stations, seven FM radio stations, and an unlimited number of publications or other media of mass communications. The problem of common ownership of facilities in the same community will be considered next.

3. Limitations on ownership of multiple media in the same market. For many years, the FCC has prohibited ownership by a single firm (or its affiliates) of more than one television station in the same market. Under the so-called "anti-duopoly" rule, overlapping Grade B contours are prohibited if there is

common ownership of the two or more television stations involved. Similar restrictions apply to common ownership of AM stations and common ownership of FM stations in the same market. But until recently there was no flat prohibition against common ownership of different mass media in the same market. Thus, a single owner could control a television station, an AM radio station, an FM radio station ~~and~~ one or more newspapers serving the same community.

In March of 1970, the FCC adopted new regulations concerned with common ownership of different media in the same market. In general, the regulations prohibit the ownership of AM or FM stations by television stations, and vice-versa, where the primary broadcast contour of one (the Grade A contour for television) encompasses the entire community in which the other is located. Limitations also are imposed on common ownership of AM and FM stations in the same community. But divestiture of existing facilities is not required; common ownership of newspaper and broadcast facilities is not restricted; and there are numerous exceptions to the new proscriptions (for example, common ownership of UHF and AM or FM stations in the same market is to be considered on a case-by-case basis). Contemporaneously with the adoption of the new regulations, the FCC proposed further rulemaking which would prohibit common ownership of broadcast and newspaper interests in the same market, and would require divestiture of commonly owned newspaper-broadcast interests and of diverse broadcast facilities, over a period of five years, with a view to limiting a single owner to a newspaper, a television station, or a radio station (AM, FM or AM-FM) in any given market (again, with certain exceptions). The newly adopted regulations are not yet in full effect because of a pending petition

for reconsideration, and their fate--as well as the fate of the additional proposed restrictions--is in doubt, because of changes in the membership of the Commission.

4. Other limitations on concentration of control.

In addition to the restrictions embodied in the network regulations, the multiple ownership rules, and the single-market restrictions, the FCC has sought to apply a policy against undue concentration of control in individual licensing cases. The most common instance is where several applicants seek to obtain the same broadcast authorization. If all are otherwise qualified, the FCC, in making a choice among the various applicants, will give favorable consideration to a selection that does not lead to increased concentration of control over the media of mass communications (preferring an unaffiliated applicant to one with ownership interests in other broadcast facilities or in newspapers). This policy, however, has not proved to be very effective because: (a) in individual licensing cases involving multiple applicants, many factors are considered, and those unrelated to concentration of control may be held to warrant the selection of a mass media owner; (b) following the grant of a license to an unaffiliated applicant, the licensee may transfer the license to a mass media owner (although under present transfer regulations, a delay of three years generally is required); and (c) in many instances, the only applicant for a particular broadcast authorization is a mass media owner, so no contest develops and no opportunity is afforded to select an unaffiliated applicant. The results are shown most clearly in the case of newspaper-broadcaster affiliations--presently not controlled by any specific rule but supposedly a matter of concern in comparative cases. As of

November 1967, 30 of the top 50 television markets and 15 of the top 25 television markets were characterized by common ownership of a major newspaper and a VHF television station; approximately 60 communities had local broadcast stations owned or controlled by newspapers, or with the latter holding minority interests in the stations; 76 communities had only one AM station and one daily newspaper, with cross-ownership interests between the two; and 14 communities had one AM station, one TV station, and one daily newspaper, all commonly owned.

While the FCC could refuse to license mass media applicants in cases other than multiple applicant proceedings because of undue concentration of control, it has not done so--unless the degree of concentration exceeds the limits prescribed by its regulations. Similarly, questions of undue concentration of control have been raised in connection with applications to renew or transfer licenses; but again, unless the degree of concentration exceeds the limits of its regulations, the FCC almost invariably grants its approval.

The FCC is in the midst of a proceeding considering the implications of ownership of broadcast facilities by firms with substantial non-broadcast interests (the "conglomerate inquiry"). Some preliminary observations have been reported, but no rules dealing with conglomerates have been proposed or adopted. During the pendency of the proceeding, the FCC continues to approve acquisitions of broadcast facilities by conglomerate corporations. The only such acquisition to be thwarted was the ABC-ITT merger, which was abandoned after the Department of Justice appealed an FCC ruling approving the merger.



The effect of FCC determinations in individual cases in restricting concentrations of control of mass media has been virtually nil. For the reasons indicated above, the only effective limitations on concentrations of ownership are those embodied in specific regulations. Within the restrictions imposed on total number of television stations, and the prohibition against ownership of multiple television stations in the same market, concentrations of control have grown without hindrance from the FCC. Recently some newspaper-broadcast combinations have been challenged under the anti-trust laws, and, as noted above, new regulations recently have been proposed or adopted in the areas of concentration of control of the mass media in the same community.

#### D. Licensing of Individual Broadcasters

As previously indicated, no person may operate a television station in the United States (or emit any other electromagnetic waves) without a license from the FCC. The licensing of individual broadcasters is conducted within the framework outlined above.

##### 1. Radio spectrum and other technical considerations.

An applicant for a television station must confine itself to the frequencies allocated for that purpose. In addition, technical standards must be observed in connection with equipment employed for television transmission. Regulations similarly govern the location of the transmission antenna to assure: (a) that the population in close proximity to the transmitter is not unduly large (because intense signals from the transmitter tend to "blanket" or drown out all other signals); and (b) that there are no physical obstructions in close proximity to the antenna, which might cause

distortions or "radio shadows." Hazards to air navigation also must be avoided.

2. Geographical distribution of facilities. Applicants must confine themselves to those channels which are assigned to the particular community they seek to serve (or some other community within 15 miles of that community). If some other frequency is desired, the applicant must petition the FCC to revise the Table of Assignments to make available the frequency sought in the particular community; only if the petition is granted, and the Table is revised in a rulemaking proceeding, will the FCC entertain individual applications for use of the frequency. In general, the Table of Assignments resolves all major questions relating to geographical distribution of television broadcast facilities.

Nonetheless, other requirements involving geographical considerations recur. Thus, the television transmitter must be so located that all mileage separations underlying the Table of Assignments are observed. Also, the transmitter must render a premium level of service (specified in terms of signal strength) to the community to be served, and the operator must maintain its main studio in that community. In some cases there are disputes as to the point at which the transmitter should be located in order to optimize service to the population in the surrounding area. Finally, the frequency sought must be unoccupied. If some other broadcaster presently is using a particular frequency, a prospective applicant must wait until the incumbent's three-year license expires, and then, if so minded, seek the frequency at the time the incumbent applies for renewal of its license.

3. Restrictions on concentration of control. In the absence of multiple applicants for the same broadcast authorization, compliance with the multiple ownership and common market regulations normally is all that is required. Although the FCC asserts authority to preclude concentrations of control which fall short of those specified in its regulations, it does not do so as a practical matter.

4. General qualifications. There are a number of minimum requirements, based on the terms of the Communications Act, which all applicants must satisfy.

(a) Citizenship. If the applicant is an individual he must be a United States citizen. If the applicant is a partnership, all of its members must be citizens. If the applicant is a corporation, it must be organized under the laws of a United States governmental unit, and aliens must not hold positions as officers or directors or own more than 20% of its capital stock. Limitations also are placed on alien ownership or control of a corporation owning more than 25% of the stock of a corporate applicant, and representatives of aliens and foreign governments are excluded from receiving broadcast licenses.

(b). Character. An application may be denied because of the poor "character" of the applicant, as manifested by: past or present misrepresentations to the Commission; procurement of broadcast licenses for speculative purposes (i.e., "trafficking"); misuse of a prior broadcasting license; conviction of a serious offense or one casting doubt on the reliability of the individual in a broadcasting function; prior conduct violative of the anti-trust laws or otherwise indicating an inclination to suppress

competition by resort to unfair tactics; and improper, fraudulent or deceptive business practices. However, the FCC is not always consistent in disqualifying applicants for these character defects; and some of the inquiries may turn into investigations of the prior programming practices of the applicant.

(c) Financial ability. The applicant must be financially qualified "to construct and operate the proposed station." Although the applicant has to show that it can commence operations, it need not be in a position to sustain losing operations over an extended period. The rough rule of thumb is that the applicant must have sufficient funds to construct the station and to operate the station for one year following its construction. "In those instances where operation during the first year is dependent upon estimated advertising revenues, the applicants will be required to establish the validity of the estimate," according to the FCC.

(d) Program proposals. Applicants must submit detailed descriptions of their proposed programming, and these descriptions must be based on a survey of community needs. Recently, considerable confusion has developed as to the nature of the survey required, the FCC indicating that a mere compilation of program preferences does not suffice as a survey of community needs (which tend to be equated to community problems). While the applicant is given considerable discretion in shaping proposals it believes to be responsive to community needs, the FCC occasionally rejects applications because of inadequacies in the survey or a failure adequately to explain the relation of the program proposals to the survey results. The subject of FCC review of

station programming will be considered subsequently in further detail.

5. Economic injury to existing broadcasters. As a matter of policy, the FCC generally prefers not to consider whether the licensing of a new broadcast station will cause financial loss to existing broadcast stations in the same or adjacent markets. The courts, however, have insisted that the FCC consider the issue (called the Carroll issue) where the existing station claims that it will cease operation, or be compelled to downgrade its operation, if confronted with competition, to the detriment of the public in the community it serves. Without going into detail, it may be generalized that the FCC seeks to avoid adjudicating this issue and, on occasion, has displayed remarkable ingenuity in eliminating the issue from pending proceedings.

The Carroll issue, as a general proposition, is not of great importance here, since the issue has arisen almost exclusively in contests between radio stations (AM or FM), and not between television stations. In the context of television, the issue of financial impact generally is presented only when a VHF station seeks to compete with a UHF station. At one time, the FCC sought to minimize this competition among unequals by "deintermixture" proceedings, making some markets all-UHF and some markets all-VHF. These proceedings had to be abandoned, as a concession to Congress, in order to achieve passage of the All-Channel Receiver legislation in 1962. However, the question of adverse impact on UHF stations is still presented, and litigated, whenever a VHF station seeks to change its antenna location or other broadcasting pattern in such a way as to impinge on an area served by

a UHF station (or to make greater inroads on such an area). In contrast to its distaste for the Carroll issue generally, the FCC has been quite protective of UHF stations threatened with an adverse impact from altered VHF operations.

6. Comparative proceedings. In the absence of multiple applications for the same authority, the FCC will grant a television broadcast license to an applicant satisfying the requirements in the five preceding categories. Where, however, more than one qualified applicant seeks the same authority, the FCC must choose between the mutually exclusive applications in a comparative proceeding. In such cases, the FCC historically has considered a wide variety of factors:

(a) Local residence. Preference has been given to an applicant owned by local residents. This factor has been considered significant (a) as tending to promote responsiveness to local needs, with which the local resident is presumed to be familiar and concerned; and (b) as tending to corroborate program proposals, since the local owner is presumed to be more amenable to community pressures to live up to its programming proposals. The criterion often has been difficult to apply because (i) each of the several applicants usually has a number of owners, (ii) the residence qualifications of owners with local affiliations vary considerably, and (iii) it is difficult in some cases to identify the real owners or principals. Moreover, the weight given local ownership has varied considerably. In some cases the FCC has implied a responsiveness to local needs from local ties other than local residence of the owners, and in other cases the FCC has found that the prior broadcast record of the nonresident applicant

gave sufficient assurance of effectuation of program proposals and obviated the need for community pressure on a local resident.

(b) Integration of ownership and management. Preference has been given where the station is to be directly managed by its owners. Such direct participation has been felt (a) to produce better programming, since the owner presumably will worry more about what is broadcast than will a salaried manager, (b) to increase responsiveness to local needs, where the owners are local residents, and (c) to provide assurance that programming proposals will be effectuated. The criterion has proved difficult to apply in some instances, because of problems in identifying owners and managers and tracing the lines of authority running from one to another; and in other instances, where the owner is a publicly held corporation or an institution, the criterion has proved to be extremely elusive: the best that can be achieved under such circumstances is the integration of management and the elimination or minimization of intervening layers of control (since there is no identifiable individual "owner").

(c) Diversification of the backgrounds of owners. Weight has been given, on occasion, to variety in the backgrounds of owners. Where the owners are local residents, the preference may be justified as providing greater responsiveness to diverse local needs; but even where the owners have been nonresidents, the preference has been awarded on the ground that such diversification will assist the station in solving its problems.

(d) Participation in civic affairs. Preference has been given where the applicant's principals have been active in civic affairs. Again, where the owners are local residents, this

factor may be justified as assuring greater responsiveness to local needs. But weight also has been given to out-of-town civic activity.

(e) Proposed programming and program policies.

Generally there is little basis for a preference here because (i) if the applicants' proposals are similar, obviously there is no basis for decisional distinction, and (ii) if the applicants' proposals are different, the FCC is placed in the awkward position of making a choice it would prefer not to make--as to what kind of programming is "best". But programming preferences have been granted based on greater "balance" (programming of different types); on more extensive local live programs; and on attention to particular local needs (e.g., farmers). More often, the FCC has found that the proposals of all the applicants fall within a tolerable range and has refused to characterize one program proposal as better than another.

(f) Carefulness of operational planning and relative likelihood of effectuation of proposals. Occasionally, preferences have been given based on one or the other of these related factors, as tending to assure that program proposals will be carried out.

(g) Broadcast experience. Preference frequently has been given where one of the applicants has prior broadcast experience; but the basis for the preference is not entirely clear. On occasions this factor seems to have been advanced merely as a circumstance corroborative of program proposals: projections into the future by a veteran broadcaster may be more reliable than forecasts lacking a basis in experience. On other occasions the factor seems to have been accorded independent significance, perhaps on the ground that an experienced broadcaster probably will devise



better programs than an inexperienced broadcaster. The weight given to prior broadcast experience sometimes has been very substantial.

(h) Past broadcast record. Preferences (or demerits) can be awarded on the basis of a past broadcast record on either of two grounds. First, the inquiry can be made: does the applicant keep its promises? If so, the past record may be a significant corroborating circumstance on the effectuation of programming proposals; if not, a contrary inference may be drawn. Second, the FCC can attempt to assess the quality of the applicant's past programming as a means for projecting probable future program quality. But again this places the FCC in the position of having to pass directly on program content, a position it seeks to avoid. However, preferences have been given to applicants for "imagination" and "initiative" in programming award-winning shows and in acquiring special equipment in the conduct of prior operations.

(i) Technical facilities and staffing. Preferences have been given on both of these matters, which relate basically to the ability of the applicant to effectuate its proposals. This has drawn the FCC into such areas as the comparative merits of studio toilet facilities and parking lots and the extent of familiarity of various staff members with the community to be served.

(j) Violations of law and other reflections on character. Demerits have been given where the facts reveal violations of law or other past conduct that cast doubt on the ability of an applicant properly to conduct broadcast operations, but are not so serious as to disqualify the applicant. Examples are anti-trust violations, gambling violations, advertising fraud,

misrepresentations to the FCC, and attempts to influence the decisional process by ex parte contacts with FCC personnel.

(k) Areas and populations to be served. Occasionally, there may be differences in the applicants' proposals as to populations and areas to be served, because of differences in power, antenna height, antenna location, or antenna design of the transmitter. A judgment must be made as to which is the more desirable proposal in light of the considerations discussed in connection with geographical distribution of broadcast facilities.

(l) Diversification of control of mass media. Preferences have been given to an applicant not affiliated with other media of mass communications over an applicant engaged in broadcasting, newspaper publication, or other of the mass media. The criterion has been applied both to media within the community to be served and media elsewhere. Sometimes the former has proved more disadvantageous; in other instances, the emphasis has been reversed. The weight given to this factor has varied considerably.

As the enumeration of these factors indicates, television comparative proceedings can be extremely complex. Indeed, during the high-water period of the fifties, they proved to be a disaster in almost every way.

First, since applicants knew in advance the considerations the Commission emphasized, they tended to prepare "packages" which would be acceptable to the Commission: program proposals became similar; principals of the applicant included local residents, experienced broadcasters, persons active in civic affairs, and individuals with diverse business backgrounds; and technical facilities, broadcast staff, and station organization were designed to meet

FCC approval. This tended to reduce the extent of differences and remove areas of real decisional significance.

Second, to the extent that substantial differences emerged, they tended to point in opposite directions. For example, the local newspaper might score high on local residence and civic participation, but, by its very nature, it had to score low on integration of ownership and management and diversification of media of mass communications. A local resident unaffiliated with other mass media might score high on these two counts, but, almost as a corollary, he would be weak in broadcast experience and often in some of the other areas of comparison (technical facilities, staffing, etc.) that are dependent on such experience. Since the areas of comparison had no common denominator, it was not possible, on any rational basis, to determine the manner in which preferences in certain categories offset deficiencies in others.

Third, the comparative proceeding became an administrative monstrosity. Multiple parties, concerned with numerous areas of comparison, were offered seemingly limitless opportunities to promote their own positions and attack the positions of others. The record degenerated into an omnibus of trivia as parties vied for minute advantages over one another. Attacks upon adversaries often amounted to sordid character assassinations, as every questionable incident in the background of any of the principals became a subject of dispute.

Fourth, since the comparative proceeding could be resolved in favor of almost anyone, under the variety of rationales afforded, and since the licenses at stake were extremely valuable

(some worth millions of dollars), the temptation for corruption was very great. Not only were instances of actual improprieties revealed, in a series of scandals involving favors received and given by FCC members, but the whole process became "political" in the worst sense of the word. During the fifties, the grants of television licenses to newspapers could best be explained in terms of the political positions of the papers: those which supported Eisenhower or remained neutral in Presidential elections did markedly better than those which supported Adlai Stevenson.\* The comparative proceeding brought the entire functioning of the FCC into national disrepute.

Finally, it is not clear that any useful purpose was served by the comparative proceeding. By definition such a proceeding could occur only if the multiple applicants all were qualified. And it was an accident--which actually occurred only in a small minority of cases--that multiple applicants chose to engage in a struggle for a single license. Where multiple applicants did not appear, the sole qualified applicant received the grant. When a contest did occur, it is not clear that anything was gained. (Indeed, the FCC always appeared to be delighted if the parties resolved their differences in private.) The winner usually affiliated with the same network as the loser would have done if it had prevailed. With opportunities for relatively free transfer of licenses, no dramatic gains were achieved in promoting local ownership, integration of ownership and management, or diversification of the media of mass communications. In short, no one has ever demonstrated that the game was worth the candle, and there is an impressive body of evidence (particularly on diversification) that it was not.

---

\* See Schwartz, Comparative Television and the Chancellor's Foot, 47 Geo. L.J. 655 (1959).

Recognizing the shortcomings of the comparative proceedings, the FCC in 1965 issued a policy statement on the subject, which stated in part:

"This statement is issued to serve the purpose of clarity and consistency of decision, and the further purpose of eliminating from the hearing process time-consuming elements not substantially related to the public interest.... We believe that there are two primary objectives toward which the process of comparison should be directed. They are, first, the best practicable service to the public, and, second, a maximum diffusion of control of the media of mass communications. The value of these objectives is clear. Diversification of control is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities. Equally basic is a broadcast service which meets the needs of the public in the area to be served, both in terms of those general interests which all areas have in common and those special interests which areas do not share. An important element of such a service is the flexibility to change as local needs and interests change. Since independence and individuality of approach are elements of rendering good program service, the primary goals of good service and diversification of control are also fully compatible.

"Several factors are significant in the two areas of comparison mentioned above, and it is important to make clear the manner in which each will be treated.

"1. Diversification of control of the media of mass communications. Diversification is a factor of primary significance since, as set forth above, it constitutes a primary objective in the licensing scheme.

"As in the past, we will consider both common control and less than controlling interests in other broadcast stations and other media of mass communications. The less the degree of interest in other stations or media, the less will be the significance of the factor. Other interests in the principal community proposed to be served will normally be of most significance, followed by other interests in the remainder of the proposed service area and, finally, generally in the United States. However, control of large interests elsewhere in the same state or region may well be more significant than control of a small medium of expression (such as a weekly newspaper) in the same community. The number of other mass communication outlets of the same type in the community proposed to be served will also affect to some extent the importance of this factor in the general comparative scale.

"2. Full-time participation in station operation by owners. We consider this factor to be of substantial importance. It is inherently desirable that legal responsibility and day-to-day performance be closely associated. In addition, there is a likelihood

of greater sensitivity to an area's changing needs, and of programming designed to serve these needs, to the extent that the station's proprietors actively participate in the day-to-day operation of the station. This factor is thus important in securing the best practicable service. It also frequently complements the objective of diversification, since concentrations of control are necessarily achieved at the expense of integrated ownership.

"We are primarily interested in full-time participation. To the extent that the time spent moves away from full time, the credit given will drop sharply, and no credit will be given to the participation of any person who will not devote to the station substantial amounts of time on a daily basis. In assessing proposals, we will also look to the positions which the participating owners will occupy, in order to determine the extent of their policy functions and the likelihood of their playing important roles in management. We will accord particular weight to staff positions held by the owners, such as general manager, station manager, program director, business manager, director of news, sports or public service broadcasting, and sales manager. Thus, although positions of less responsibility will be considered, especially if there will be full-time integration by those holding those positions, they cannot be given the decisional significance attributed to the integration of stockholders exercising policy functions. Merely consultative positions will be given no weight.

"Attributes of participating owners, such as their experience and local residence, will also be considered in weighing integration of ownership and management. While, for the reasons given above, integration of ownership and management is important per se, its value is increased if the participating owners are local residents and if they have experience in the field. Participation in station affairs on the basis described above by a local resident indicates a likelihood of continuing knowledge of changing local interests and needs. Previous broadcast experience, while not so significant as local residence, also has some value when put to use through integration of ownership and management.

"Past participation in civic affairs will be considered as a part of a participating owner's local residence background, as will any other local activities indicating a knowledge of and interest in the welfare of the community. Mere diversity of business interests will not be considered. Generally speaking, residence in the principal community to be served will be of primary importance, closely followed by residence outside the community, but within the proposed service area. Proposed future local residence (which is expected to accompany meaningful participation) will also be accorded less weight than present residence of several years' duration.

"Previous broadcasting experience includes activity which would not qualify as a past broadcast record, i.e., where there was not ownership responsibility for a station's performance. Since emphasis upon this element could discourage qualified newcomers to

broadcasting, and since experience generally confers only an initial advantage, it will be deemed of minor significance. It may be examined qualitatively, upon an offer of proof of particularly poor or good previous accomplishment.

"The discussion above has assumed full-time, or almost full-time, participation in station operation by those with ownership interests. We recognize that station ownership by those who are local residents and, to a markedly lesser degree, by those who have broadcasting experience, may still be of some value even where there is not the substantial participation to which we will accord weight under this heading. Thus, local residence complements the statutory scheme and Commission allocation policy of licensing a large number of stations throughout the country, in order to provide for attention to local interests, and local ownership also generally accords with the goal of diversifying control of broadcast stations. Therefore, a slight credit will be given for the local residence of those persons with ownership interests who cannot be considered as actively participating in station affairs on a substantially full-time basis but who will devote some time to station affairs, and a very slight credit will similarly be given for experience not accompanied by full-time participation. Both of these factors, it should be emphasized, are of minor significance. No credit will be given either the local residence or experience of any person who will not put his knowledge of the community (or area) or experience to any use in the operation of the station.

"3. Proposed program service. . . . The importance of program service is obvious. The feasibility of making a comparative evaluation is not so obvious. Hearings take considerable time and precisely formulated program plans may have to be changed not only in details but in substance, to take account of new conditions obtaining at the time a successful applicant commences operation. Thus, minor differences among applicants are apt to prove to be of no significance. . . . (T)he applicant has the responsibility for a reasonable knowledge of the community and area, based on surveys or background, which will show that the program proposals are designed to meet the needs and interests of the public in that area. . . . Contacts with local civic and other groups and individuals are also an important means of formulating proposals to meet an area's needs and interests. Failure to make them will be considered a serious deficiency, whether or not the applicant is familiar with the area.

"Decisional significance will be accorded only to material and substantial differences between applicants' proposed program plans. . . . Minor differences in the proportions of time allocated to different types of programs will not be considered. Substantial differences will be considered to the extent that they go beyond ordinary differences in judgment and show a superior devotion to public service. For example, an unusual attention to local community matters for which there is a demonstrated need, may still be urged. We will not assume, however, that an unusually high percentage of time to be devoted to local or other particular types of programs is necessarily to be preferred. Staffing plans

and other elements of planning will not be compared in the hearing process except where an inability to carry out proposals is indicated.\*

"In light of the considerations set forth above, and our experience with the similarity of the program plans of competing applicants, taken with the desirability of keeping hearing records free of immaterial clutter, no comparative issue will ordinarily be designated on program plans and policies, or on staffing plans or other program planning elements, and evidence on these matters will not be taken under the standard issues. The Commission will designate an issue where examination of the applications and other information before it makes such action appropriate, and applicants who believe they can demonstrate significant differences upon which the reception of evidence will be useful may petition to amend the issues.

"No independent factor of likelihood of effectuation of proposals will be utilized. The Commission expects every licensee to carry out its proposals, subject to factors beyond its control, and subject to reasonable judgment that the public's needs and interests require a departure from original plans. If there is a substantial indication that any party will not be able to carry out its proposals to a significant degree, the proposals themselves will be considered deficient.

"4. Past broadcast record. This factor includes past ownership interest and significant participation in a broadcast operation by one with an ownership interest in the applicant. It is a factor of substantial importance upon the terms set forth below.

"A past record within the bounds of average performance will be disregarded, since average future performance is expected. Thus, we are not interested in the fact of past ownership per se, and will not give a preference because one applicant has owned stations in the past and another has not.

"We are interested in records which, because either unusually good or unusually poor, give some indication of unusual performance in the future. Thus, we shall consider past records to determine whether the record shows (i) unusual attention to the public's needs and interests, such as special sensitivity to an area's changing needs through flexibility of local programs designed to meet those needs, or (ii) either a failure to meet the public's needs and interests or a significant failure to carry out representations made to the Commission (the fact that such representations have been carried out, however, does not lead to an affirmative preference for the applicant, since it is expected, as a matter of course, that a licensee will carry out representations made to the Commission).

We will similarly not give independent consideration to proposed studios or other equipment. These are also elements of a proposed operation which are necessary to carry out the program plans, and which are expected to be adequate. They will be inquired into only upon a petition to amend the issues which indicates a serious deficiency. (Footnote by the FCC.)



"If a past record warrants consideration, the particular reasons, if any, which may have accounted for that record will be examined to determine whether they will be present in the proposed operation. For example, an extraordinary record compiled while the owner fully participated in operation of the station will not be accorded full credit where the party does not propose similar participation in the operation of the new station for which he is applying.

"5. Efficient use of frequency. In comparative cases where one of two or more competing applicants proposes an operation which, for one or more engineering reasons, would be more efficient, this fact can and should be considered in determining which of the applicants should be preferred. . . .

"6. Character. The Communications Act makes character a relevant consideration in the issuance of a license. . . . Significant character deficiencies may warrant disqualification, and an issue will be designated where appropriate. Since substantial demerits may be appropriate in some cases where disqualification is not warranted, petitions to add an issue on conduct relating to character will be entertained. In the absence of a designated issue, character evidence will not be taken. Our intention here is not only to avoid unduly prolonging the hearing process, but also to avoid those situations where an applicant converts the hearing into a search for his opponents' minor blemishes, no matter how remote in the past or how insignificant.

"7. Other factors. As we stated at the ~~meeting~~, our interest in the consistency and clarity of decision and in expeditiousness of the hearing process is not intended to preclude the full examination of any relevant and substantial factor. We will thus favorably consider petitions to add issues when, but only when, they demonstrate that significant evidence will be adduced."

The FCC's policy statement contains so many indefinite variables (with references to a variety of "significant" and "substantial" factors) that it is far from a clear guide to FCC action. Moreover, the statement came after the high-water mark of television licensing had passed, so its significance is difficult to judge. Some improvement has been noted, but disputes and uncertainties continue to characterize the process.

#### E. Efforts to Achieve Programming Diversity and Responsiveness to Local Needs

1. Reflections in other general policies. Everyone recognizes that the essence of television is programming, and the policies of the FCC described in the preceding sections have been concerned largely with the objective of achieving programming more diverse and more responsive to local needs.

Thus, the geographical distribution of broadcast facilities has as a major purpose the advancement of locally originated (or locally oriented) programming, in contrast to a national uniformity in programming. Given the dominance of the networks, and the important secondary role played by nationally syndicated programming, the FCC's success in this area hardly can be described as more than modest.

Similarly, the FCC's policies in opposition to concentration of control of the media of mass communications have been concerned with assuring diversity of program sources: the more sources, the more diverse the program offerings are likely to be. Again, the FCC's success cannot be described as more than modest. While it has prevented the emergence of commonly owned television chains of national proportions, much the same result is achieved through the network affiliation process. And despite the regulatory restrictions on the networks, network programming continues to predominate. Similarly, while the FCC has precluded common ownership of multiple television stations in the same market, it has not prevented other forms of single-market concentration (the local AM-FM-TV-newspaper combine), although there has been some recent activity in this area.

Finally, in individual licensing cases, the FCC has given some weight to factors related to local responsiveness and dispersal of ownership: through the requirement of local program surveys in all cases, and the preferences for local residence and diversification of media control in comparative cases. But these processes have been of limited value. The weakness of the comparative proceeding as an instrument of policy already has been discussed.

And the required survey of community needs appears to be little more than an exercise in paperwork: all form and no substance. Recent efforts to provide more substantive content have led to great confusion in this area.

There are three other areas, however, which are of significance.

2. Renewal of licenses of television stations. As previously indicated, all broadcast licenses are limited by statute to three-year terms. This means that, every three years, the FCC has an opportunity to review the performance of a television station and to refuse renewal if the performance is deemed unsatisfactory. The FCC has used this occasion in the past to exert pressure on licensees to increase diversity and local responsiveness in their programming. The pressure takes the form of questions on the renewal applications; informal quotas for local programming and for types of broadcasts not frequently carried (programs other than entertainment and news); delays and official inquiries directed to those licensees falling short of these quotas; and the threat of a hearing on the renewal application. The intensity of the pressure has varied from substantial to nil depending on changes in FCC membership, and when the pressure is substantial it is not without effect. But it is difficult to measure the effect, and the area is one characterized by extraordinary erraticism in FCC policy. At present, pressure of this type appears to be negligible, and attention has focused on the proper method of conducting surveys of community needs (required of renewal applicants as well as initial applicants).

Recently, a new dimension was added to the process when outsiders began to challenge renewals of television licenses

and to seek to supplant the existing licensee. The movement received considerable impetus from an FCC decision concerning WHDH in Boston, which indicated that in such a situation the Commission would treat the incumbent and the newcomer on a par--in contravention of previous FCC policy, which had accorded the incumbent a substantial margin. But under pressure from the television industry and from Congress, the FCC modified its position to something akin to its earlier stand. The preference for the incumbent would assure renewal if its performance, in meeting the needs of the community it served, was "substantial," but not if its performance had been "minimally adequate." The extent of the FCC's policy change, if any, is likely to be reflected in a current proceeding in which a newcomer is vigorously challenging the license of WPIX in New York City.

3. Educational television. In the geographical distribution of broadcast facilities in 1952, the FCC reserved a substantial number of channel assignments for noncommercial educational television. Unfortunately, many of these assignments were in the UHF band, and, in addition to their other problems, educational broadcasters on UHF channels suffered the same difficulties as UHF broadcasters generally.

The major problem of educational broadcasters, however, has not been channel availability, but financing. Commercial television has been financed by advertising, but under FCC regulations this source is not available to the educational broadcaster (and probably advertising would subvert the nature of the educational station's operations if it were to become a substantial source of financing). Educational broadcasters have relied on

financing from federal, state and local governments, from foundations (particularly the Ford Foundation), and, to a limited extent, from viewer contributions. An extensive study made in 1967 indicated the need for additional financing and recommended federal aid to be channeled through a governmentally supported corporation specifically established for the purpose. In the Public Broadcasting Act of 1967, Congress responded by establishing the Corporation for Public Broadcasting (CPB). In addition to continuing federal financial support for the construction of educational stations, the statute vested CPB with responsibility for program development and procurement for educational stations and for making interconnection arrangements among such stations. The statute also authorized the FCC to permit reduced rates by communications common carriers for interconnection of educational stations. However, CPB was prohibited from owning any broadcasting station, system or network, community antenna television system, or program production facility; and, despite extensive legislative debate, a firm plan for financing CPB has yet to emerge.

The record of the educational stations is a spotty one. On the one hand, there is little question that educational broadcasting is a substantial factor in television. A recent study indicated that 75% of television households could receive ETV signals and that 8 million homes per week watched educational television stations (without any demonstrated bias in favor of "upper class" families). A more recent announcement indicates that ETV weekly circulation is now 11 million homes. Another recent study indicated that, in terms of promoting program diversity, the addition of a single educational station to a market surpassed in effectiveness

the addition of several commercial stations in the same market.\* On the other hand, educational television audiences are quite small in comparison to commercial television audiences, so much so that sometimes they defy measurement. Moreover, the problem of ETV financing remains to be resolved. The two problems may be inter-related to some degree, since audience size undoubtedly is dependent in substantial measure upon adequate financing of programming. But the most respected study of television viewing preferences yet to be undertaken indicates that the American television audience strongly prefers light entertainment to intellectual programming; that this preference holds even when a clear choice is accorded between high quality programs of each type; and, despite their claims to the contrary, the more highly educated segments of the population behave in precisely the same manner as the population generally (choosing entertainment over intellectual fare when a choice is afforded).

Nevertheless, ETV makes a distinctive contribution. Extended coverage of United Nations, Congressional and other hearings of special interest probably draw large numbers of viewers on sporadic occasions, and have value independent of such numbers. The popularity and critical acclaim for "Sesame Street" indicate that ETV may play a leadership role in important areas such as children's programming. And educational television performs a distinct function to the extent that it carries formal instructional programs intended for classroom use or home study courses. In the area of classroom television, the ETV broadcaster is supplemented by the Instructional Television Fixed Service, which provides multiple channels for classroom instruction. The transmissions are over-the-air (sharing 2,500 to 2,890 MHz

---

\* The methodology of the study has been justly criticized, but this generalization probably still holds true.

with other uses), but the transmissions are beamed to specific school antennas and are not broadcast generally.

4. Subscription television. In 1959, the FCC approved experimental pay-television operations subject to a series of limitations. The experiment was launched only after a most intensive struggle with opposing forces--broadcasters and theater owners primarily--which channeled their opposition through the

House Committee on Interstate and Foreign Commerce. Only one experiment actually was conducted, in Hartford, Connecticut, and that experiment failed to settle most of the major matters in dispute. The proponents of subscription television contended that, by permitting audiences to pay for programs, financial support could be obtained for programs that did not appeal to audiences large enough to be supported by advertisers (advertisers generally do not pay more than half a cent an hour per household). Opponents of pay-television argued that the large revenues afforded by subscription television would "siphon" programming and talent away from advertiser-supported television, with the result that audiences either would have to pay for what they once received free or would be relegated to the inferior rejects of the subscription system. The Hartford experiment relied heavily on movies and sports--they constituted over 90% of programming--and ran at a substantial loss; however, no siphoning occurred. But all of these results might be altered in the case of a national subscription service, as opposed to a single experimental system operating in a limited market.

In 1969, the FCC approved the licensing of subscription television stations under the following conditions:

(1) Four commercial nonsubscription television stations must be operational in the market the subscription television station seeks to serve.

(2) No more than one subscription television station may be authorized in a single market.

(3) In addition to subscription services, the authorized subscription television station must carry a minimum quantity of "free" programming (28 hours per week).



(4) Commercial advertisements may not be carried when programs are being offered on a subscription basis.

(5) The licensee of the subscription station must retain discretion and responsibility for all programming and determinations as to subscription charges (except that limited advance programming commitments may be made with FCC approval).

(6) Subject to limited exceptions, subscription services may not include (a) motion picture films with a general release date in the United States more than two years in advance of the proposed subscription showing; (b) sports events which were televised live on a nonsubscription, regular basis in the community during the two years prior to the proposed subscription showing; or (c) any "series type of program with interconnected plot or substantially the same cast of principal characters." Under Congressional pressure, the FCC recently proposed to extend the second limitation to cover sports events "televised live on a nonsubscription, regular basis in the community during any one year in the five years preceding their proposed subscription broadcast."

(7) No more than 90% of total subscription services may consist of feature films and sports events combined.

The FCC did not undertake to regulate the charges of subscription television services, but it did provide:

"(1) Unless a satisfactory signal is unavailable at the location where service is desired, subscription television service shall be provided to all persons desiring it within the Grade A contour of the nonsubscription television service provided by the station broadcasting subscription programs: Provided, however, That geographic or other reasonable patterns of installation for new subscription services shall be permitted: And provided further, That, for good cause, service may be terminated.

"(2) Charges, terms and conditions of service to subscribers shall be applied uniformly: Provided, however, That subscribers may be divided into reasonable classifications approved by the Commission, and the imposition of different sets of terms and conditions may be applied to customers in different classifications...

"(3) Subscription television decoders shall be leased, and not sold, to subscribers."

Implementation of the FCC's regulations was delayed by continuing controversy with the House Committee on Interstate and Foreign Commerce, but applications for subscription service are now being received and processed. The FCC is of the view that, subject to the limitations imposed, subscription television will not "siphon" substantial talent and programming from advertiser-supported television. At the same time, at least some opportunity for diversity will be afforded, if only in the form of uninterrupted first-run movies and otherwise unavailable sporting events. And, possibly, if permitted to operate on a national basis, other potential sources of programming may be tapped by subscription television.

#### F. FCC Control of Program Content

In a variety of contexts, the FCC has been concerned with direct regulation of television program content.

1. Restrictions on objectionable programming. In some areas, such as false and misleading advertising, the restrictions on program content parallel restrictions imposed on other media of mass communication. But in other areas, restrictions on television programming exceed the restraints applicable to other media. Thus, penalties have been imposed for vulgar or off-color programming, which clearly would not qualify as obscene in the Constitutional sense, and would not be the subject of sanctions in other contexts. Broadcast stations are severely limited in the information they may broadcast about lotteries; cigarette advertising

is to be prohibited after January, 1971 under recently enacted legislation; and commercial advertisements and commercial sponsorship must be identified. Restrictions on fraud and deception extend beyond advertisements to program content, such as rigged quiz shows.

2. Political and public affairs programs. Under the "equal time" provision of the Communications Act, a television station, if it makes time available for a "legally qualified candidate for any public office," must "afford equal opportunities to all other such candidates for that office." No more than the station's regular charges may be imposed for such use. The requirement is subject to three important limitations: (1) the station is not obligated to permit any candidate to use its facilities; (2) a use by a supporter of the candidate, including a member of the candidate's staff, does not qualify as a use by the candidate (there must be a personal appearance by the candidate to invoke the doctrine); and (3) once any candidate is afforded access (whether free, at reduced rates, or at regular rates), the same opportunity under the same terms must be afforded to all legally qualified candidates for the same office, no matter how numerous they may be nor how small a following any of them may have.

In addition to the specific, and rather limited, requirements of the "equal time" provision, the FCC has evolved a "fairness doctrine," which, as codified by subsequent statutory amendment, imposes on broadcasters "the obligation...to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." Application of the fairness doctrine has raised a host of troublesome issues:

(1) Is the obligation solely one to present conflicting views on an issue once it is broached by the broadcaster (as in the "equal time" requirement), or is there a broader obligation to initiate discussion on "issues of public importance"? In short, can the station satisfy the doctrine simply by remaining silent on public issues? The question is an open one at the moment, although a station undoubtedly would be challenged if it remained silent on all public issues.

(2) If one side of a public question is presented, who is to present the other side? Ordinarily the broadcast licensee is given broad discretion on this matter. But in two contexts specific respondents must be invited: (a) where the program takes the form of an attack on the character, integrity or like qualities of a person or organization, the person or organization attacked must be invited to respond; (b) where the program takes the form of an endorsement of a political candidate, the candidates opposing the recipient of the endorsement may name their respondents.

(3) In what manner are opposing views to be presented? Again, the FCC accords the broadcaster great latitude in determining both the quality and quantity of response. There is no requirement of equal time. Recently, however, the FCC ruled that opponents of President Nixon's Vietnam policies must be accorded at least one uninterrupted segment of prime time to respond to the President's speeches on the subject.

(4) What kind of programming suffices to give rise to a need for response? Does the broadcast of a religious service call for a response on the merits of atheism? Does the broadcast of military recruitment appeals call for a response on the merits of the

Vietnam War? Do advertisements for automobiles and detergents call for responses on the problem of pollution? The FCC has given negative answers to these specific questions, but has required stations to carry anti-smoking messages in response to cigarette commercials.

The "fairness doctrine" presents many other intricate issues, and its application raises particularly acute problems in the context of contemporary politics--characterized by highly charged controversies on a wide variety of issues.

Closely related to the fairness doctrine is the problem of news distortion. The FCC has disclaimed any power to censor news programs to determine whether they are "true" or not. But it has investigated charges of "staged" news events and knowing distortion of the news; it has condemned the failure of a newscaster to reveal a financial conflict of interest; and it has required opportunities to reply, under the fairness doctrine, where it has concluded that a news program or documentary was too one-sided.

Needless to say, none of these restraints apply to other media of mass communications.

3. Diversity of programming and responsiveness to local needs. At the present time, the FCC's efforts in this area are largely indirect: through its geographical distribution of broadcast facilities, limitations on the networks, restrictions on concentration of control, promotion of educational broadcasting, and authorization of subscription television. But, as previously indicated, the FCC has employed direct pressures in the past to seek to achieve minimum quotas of "public service" and "local" programming. Some pressures probably remain, but they are relatively slight. However, this is an area which changes rapidly and frequently, and the

future cannot be predicted with any measure of certainty. In the initial licensing of broadcast stations, and on renewal, some pressure toward local responsiveness is sought to be achieved by requiring applicants, and existing licensees, to make surveys of community needs. But the confusion surrounding the nature of the survey required, and the latitude afforded the applicant in shaping its programming response to the survey, appear to deprive this approach of any significant effectiveness.

4. Limitations on commercial advertisements. The FCC has no regulations restricting the number or frequency of commercial announcements. When it attempted to adopt such regulations in 1963, industry and Congressional pressure forced a retreat. Excessive commercialization is an issue in license renewal proceedings, but the standards are wholly informal and there is no consistency in their application. When television commercials begin to exceed 16 minutes per hour, there is at least the possibility that the FCC will delay the renewal application and demand an explanation.

#### G. Other FCC Controls Over Television Broadcasters

Most of the regulatory actions of the FCC have been described in the preceding sections. They center to a large extent on initial licensing, and, at this time, the FCC considers the legal, technical, financial and character qualifications of the applicant. Restrictions on concentration of control and programming have been described in some detail. Two other areas deserve mention.

First, the FCC is rather continuously concerned with the technical performance of licensed television stations. The failure of a broadcaster to adhere to technical standards, particularly those designed to preclude electronic interference, are treated

as a serious matter, whether the deficiency is raised on renewal of the license or during the course of the broadcaster's license term.

Second, the FCC does police the ~~business~~ practices of broadcast licensees to a limited extent. The Communications Act is explicit that ~~broadcasters~~ shall not be considered "common carriers," and, as a general matter, the FCC does not undertake to regulate the rates of broadcast stations, discrimination in the application of broadcast rates, or refusal by a station to carry the commercials of a particular advertiser. However, the FCC has intervened to interdict fraudulent billing practices in respect of advertisers, to impose penalties for activities artificially inflating a station's audience rating, and to condemn any business practice inconsistent with its proscriptions on concentration of control (e.g., the provision of incentive compensation arrangements by networks designed to discourage non-network programming, or the "tying" of access to one broadcast medium to access to another medium of communications). These are exceptions, however, to the FCC's general disinclination to intrude upon station business practices.

### III. Federal Regulation of Cable Television

#### A. Origin and Development of Cable Television

Television stations began broadcasting in large urban centers and, even after the promulgation of the FCC's Table of Assignments in 1952, many localities found themselves without television service. A number of remedies were improvised.

Beginning in 1954, the FCC authorized the construction and operation of "satellite" television stations in communities

large enough to support a full-fledged operation. The satellite  
ved regular authority, in accordance with the Table of Assign-  
, but local programming was not required; the satellite, gen-  
y owned by the primary station, could rely on duplication of  
ams of the primary station.

In 1956, the FCC authorized the use of "translators"  
tend television service to remote communities. Translators re-  
the signal of a primary station, convert it to a different fre-  
y and amplify it, and then rebroadcast it for reception by the  
al public in the area. These supplementary stations may be op-  
d by the primary station or by an independent organization; if  
atter, the consent of the primary station must be obtained be-  
its signals are rebroadcast. Translators may be authorized for  
HF or UHF channel as long as they do not interfere with signals  
gular broadcast facilities and conform to other FCC policies.

The development of translators was preceded in the  
es by another, extralegal device--television boosters. These  
ons, constructed by local private or governmental groups with-  
CC authorization, received weak signals of primary stations and  
adcast them on the same frequency with greater strength. The  
tions were clearly unlawful, but it took over a decade for the  
o achieve a transition from illicit booster operations (which,  
other things, caused "ghosting" of television signals) to  
l translator operations.

It was also during the fifties that cable television  
to develop. Operations initially took the form of a community  
r antenna. Persons unable to receive television signals direct-  
f the air, because of remoteness or terrain, subscribed to a



system which constructed an antenna (part of the "headend" equipment) at a favorable location, and, for a fee, amplified and conveyed signals via cables to the television sets of the system's subscribers. As the industry developed, headend antennas were located further and further from the subscribers to be served, necessitating longer cable runs. Then, to expand the signals available to subscribers further, or to reach communities still further removed from television markets, television signals were relayed to the local CATV system by coaxial cable or microwave, usually the latter. Through these techniques, it became possible to import television signals from remote markets over great distances.

The next major development occurred approximately in the mid-sixties when cable television operators turned their attention from bringing television signals to remote underserved rural areas to bringing supplementary television signals to major urban markets. This proved to be the most significant turning point in CATV development.

Through the fifties, and in an extensive opinion in 1959, the FCC declined to exercise jurisdiction over CATV systems on the grounds (a) that they did not use the radio spectrum to communicate with their subscribers and thus were not broadcasters, and (b) they did not have the characteristics of common carriers by wire. During the early sixties, the FCC adhered to this view but began to regulate CATV systems indirectly by regulating the microwave relay systems serving CATV (which, as users of the radio spectrum, required FCC licenses in order to operate). Some rudimentary conditions were imposed on CATV systems, as customers of the microwave relays, in order to protect economically marginal over-the-air

vision stations. These restrictions formed a partial basis for rules promulgated by the FCC in 1966 when it asserted jurisdiction over all CATV systems.

#### B. The FCC's 1966 Report (the "Second Report")

In its 1966 decision, the FCC reversed its prior position and asserted jurisdiction over CATV systems. It did not classify them either as broadcasters or as common carriers, but relied instead on general introductory language in the Communications Act stating that the Act's provisions applied to "all interstate communication by wire or radio...and to all persons engaged within the United States in such communication." Since, as previously discussed, electromagnetic emissions are regarded as interstate transmissions in all instances, the relay of broadcast signals, whether wire or microwave, could aptly be characterized as "interstate communication" (i.e., continuation of a stream of interstate transmission initiated by the original broadcast, over the air, of the signal being relayed). The FCC also relied on provisions of the Act giving it authority over the geographical distribution of broadcast facilities and asserted that this authority was being undermined by the uncontrolled retransmission of broadcast signals via CATV. The Supreme Court subsequently upheld the FCC's assertion of jurisdiction.\*

In its 1966 decision, the FCC imposed three substantive requirements:

1. Local carriage. CATV systems are required to carry over-the-air television signals available in the area being served, on request of the local stations, in accordance with specified priorities. The reason for this requirement is that, when

ERIC has exempted CATV systems with less than 50 subscribers and those serving a single residential complex under common ownership.

television sets are attached to a cable, they typically are disconnected from the set antenna. Thus, if a local signal is not available over the cable, it is not available to the CATV subscriber at all. The FCC endeavored to assure that all local signals would continue to be available to CATV subscribers.

2. Same-day exclusivity. The FCC also sought to protect the interests of local stations in their programming, for which they had bargained and agreed to pay compensation. The method chosen was to require the CATV system not to carry the same program on the same day as the local station (where the CATV is within the local station's Grade B contour), whenever (i) the local station requests exclusivity, (ii) the local station carries prime time programs in prime time and color programs in color, (iii) the market will not be left with less than two network programs, and (iv) the program is not of a nature (e.g., a speech) where timeliness is critical.

Same day exclusivity provides substantial protection for network affiliates, since they have an exclusive first call on network programming, and there is little incentive (or opportunity) for a CATV system to carry the same programs one or more days later. However, this rule does not offer much protection for non-network programming. This type of programming--particularly motion picture films and syndicated features--may be shown in different markets at different times, and a CATV system has the opportunity to import a motion picture or syndicated feature into the market in advance of the date it is scheduled to be shown by the local station, thereby depriving the local station of much of the benefit it sought to secure in obtaining the programs in the first instance.

3. Importation of signals from distant markets. With

the plight of the independent station in mind, particularly the UHF station lacking network affiliation, the FCC ruled that, prior to importation of any distant signal into the Grade A contour of a television broadcast station in a major market, a hearing should be held as to the impact of such importation on local television stations. The FCC was concerned primarily about two aspects of the situation: (1) since passage of the All-Channel Receiver legislation in 1962, the FCC had been endeavoring to promote UHF stations, and extensive CATV systems might threaten the viability of marginal UHF operations, and discourage new entrants, by fragmenting the potential audience for such stations; and (2) to a significant extent, UHF and VHF independents were in competition for the same audience--i.e., the minority of television viewers not watching network programming--and the unrestricted importation of distant signals by CATV systems was manifestly unfair to the independent television station, since the latter had to pay the program originator or proprietor a fee for the programming while the CATV system simply picked the same or comparable programming off the air without paying compensation to anyone.

In order to implement its substantive policies, the FCC imposed the following procedural requirements:

Outside the top one hundred markets

(a) Systems operating on March 17, 1966 may continue to do so, unless they propose to extend lines into a new community.

(b) CATV systems proposing to serve a new community, or to import a distant signal into a community, must give at least 30 days notice to all television stations within whose Grade B contour the proposed operation will occur.

(c) If a petition to deny is filed by any such station, or any other interested party, within the 30-day period, the new CATV operation may not commence until the FCC rules on the petition to deny.

(d) If no petition to deny is filed, or the petition is rejected, operations may be commenced as proposed. If the FCC considers that the petition raises legitimate questions about "the establishment and healthy maintenance of television broadcast service in the area," the FCC may set the matter for hearing and resolve the dispute on the basis of a record.

Within the top one hundred markets

(a) Systems operating on February 15, 1966 may continue to serve the geographical areas served, and import the distant signals imported, on that date. Any extensions, with respect to areas served or signals imported, will be the subject of further FCC consideration if a petition to deny is filed.

(b) Any proposal by a CATV system to import distant signals into a major market requires either: (i) that an application be filed, which will be the subject of an evidentiary hearing; or (ii) that a waiver of the hearing requirement be sought. In either case, the central issue is stated to be "the establishment and healthy maintenance of television broadcast service in the area."

(c) If a waiver of the hearing requirement is granted, CATV operations may be commenced forthwith. If a waiver is denied, or is not sought, an evidentiary hearing must be held, with the result dependent upon the record made.

The top 100 television markets encompass over 80% of the nation's population and nearly 90% of the nation's television

households. They include New York City, Buffalo, Syracuse, Albany-Troy-Schenectady, Rochester, Binghamton, and, (in Connecticut) Hartford-New Haven (which serves part of New York State).

### C. The Supreme Court's 1968 Copyright Ruling

From the beginning, CATV systems denied copyright liability and refused to pay royalties to copyright owners for carrying copyrighted materials, such as motion pictures, over their systems. In the Fortnightly litigation in 1968, the Supreme Court upheld the position of the CATV industry, reasoning that the mere relaying of a broadcast signal by a CATV system is not a "performance" within the meaning of the Copyright Act and thus is not actionable. The relay in that case was accomplished exclusively by cable for relatively short distances (52 to 82 miles). A question has been raised as to whether the Fortnightly decision would protect CATV systems relying on microwave relays for long-distance transmission; the matter is presently being litigated, although it is difficult to see any distinction between the two situations under the Supreme Court's rationale. By contrast, a lower court has held that a CATV system engages in a "performance," for which the consent of the copyright owner is required, if it tapes a broadcast signal for replay on its system at a later time.

Both before and after the Fortnightly decision, there has been intensive activity in Congressional Committees concerned with the application of copyright to CATV. No resolution of the issue is in sight, but one type of solution seems to recur in various discussions. It provides that CATV systems will be permitted to carry television signals within the Grade B contour of the broadcast station (local signals) without copyright liability, and that CATV

systems will be permitted to import distant signals on the payment of a blanket fee related to the size of the CATV system (number of subscribers) and the number of signals imported. CATV fees would be aggregated and paid over to copyright owners in accordance with some formula related to usage. There are a great many variations of this proposal, and it cannot be said at this time whether this, or any other proposal, will be enacted by Congress.

D. Further FCC Actions on Importation of Distant Signals

1. The 1968 Notice of Proposed Rulemaking. Following the 1966 report, the FCC concluded only a single hearing involving importation of distant signals. It ruled that the importation of Los Angeles signals into San Diego posed such a threat to the survival of independent stations in the latter market that importation should not be permitted. However, the FCC waived the hearing requirement on numerous other occasions, thereby permitting the importation of distant signals into at least some portions of major markets. In 1968, following the Supreme Court's decision in Fortnightly, the FCC decided to revise its approach to CATV. A comprehensive Notice of Proposed Rulemaking was issued.

Since most of the matters discussed in the 1968 Notice have been treated more definitively in subsequent FCC pronouncements, their consideration may be temporarily deferred. Of significance for present purposes is the Commission's treatment of importation of distant signals.

Once again, the FCC distinguished between the top one hundred markets and smaller markets.

As to the top one hundred markets, the FCC proposed:

(a) That the area into which distant signals may not be imported should be a zone defined by a 35-mile radius from the main post office of the one or more communities designated in the major market (rather than the Grade A contours previously used).

(b) That the prohibition should be absolute in the sense that neither evidentiary hearings nor waivers would be a basis for permitting importation of distant signals.

(c) That the only basis for such importation by a CATV system would be a retransmission consent granted by the originating station (it later was made clear that the originating station must have authority to grant the consent and that the equivalent of a "quit claim" deed would not suffice).

The FCC further ruled that, pending the outcome of the proposed rulemaking, no CATV operations would be permitted that would be inconsistent with the proposed rules (described as a "freeze"); that all hearings concerned with CATV operations within the 35-mile zones would be terminated; that proceedings concerned with operations beyond the 35-mile zones but within the Grade A contours would be processed in accordance with procedures previously established, at least insofar as grant of waivers was concerned; and that any CATV systems lawfully importing distant signals as of the effective date of the Notice (December 20, 1968) would be permitted to continue to do so.

As to smaller television markets (outside the top 100), the FCC also proposed limitations:

(a) The restricted area was again described as a zone defined by a 35-mile radius from the main post office of the one or more communities designated in the market.



(b) Importation of distant signals was restricted to those required to provide the community (counting local signals) with a full network station for each national network and one independent station--plus one or more educational stations in the absence of objection by local or State educational interests--as long as the most proximate distant signals were imported (the "anti-leapfrogging" restriction).

(c) Signals for which a retransmission consent was obtained would be exempt from the foregoing restriction.

Again the FCC proposed to "grandfather" any lawful operations in being on the effective date of the Notice and to process any outstanding petitions to deny pertaining to new operations. However, no "freeze" was imposed in respect of new systems planning to operate in contravention of these proposed limitations, although the FCC did state that it would refuse to approve microwave relay authorizations to serve such non-conforming systems during the pendency of this proceeding.

CATV systems located outside the 35-mile zone of any television market were not proposed to be subjected to any restrictions other than the "anti-leapfrogging" restriction, and it was indicated that this restriction might be waived in appropriate cases.

The most significant impact of this Notice was the "freeze" it imposed on importations of distant signals into 35-mile zones around major markets. This was offset, of course, by the contraction of the proscribed area (the Grade A contour sometimes extended for 60 miles) and by the exemption for instances in which retransmission consents were obtained. The latter specification was intended to eliminate the unfair competition between local independent

stations and CATV systems in the same community by placing both on a par as far as program procurement was concerned. Although the FCC stated that the 35-mile zone roughly coincided with the dividing line previously employed in granting waivers of the hearing requirement with respect to importations of distant signals under the existing rules, the CATV industry regarded the Notice generally--and the "freeze" in particular--as antithetical to CATV development.

2. The 1970 Second Further Notice. In a Second Further Notice of Proposed Rulemaking, issued in July 1970, the FCC proposed an alternative solution to the problem of distant signal importation. It did not lift the 1968 "freeze". Nor did it discard its 1968 proposal based on retransmission consents. It observed, however, that the industry was uninterested in experimentation with retransmission consents, and that retransmission consents had been supplied to CATV operators, and approved by the FCC on a limited basis, in only two instances since the 1968 proposal. The CATV industry, rather than seeking retransmission consents, had been seeking to reach a general agreement with other interested parties (broadcasters and copyright owners) and to obtain legislation that would have reversed the FCC position; they had been unsuccessful on both fronts. In an effort to break the impasse, the FCC, in its 1970 Second Further Notice, put forward the following alternative proposal:

"CATV systems in the top 100 markets, in addition to local signals, may carry four distant independent signals, but will be required to delete commercials from the independent distant stations they carry and replace them with commercials provided by local stations as follows:

"(a) If there are independent UHF stations in the market, the commercials provided by these stations will be substituted.

"(b) If there are no independent UHF stations in an intermixed market, the commercials of the UHF network affiliates will be substituted.

"(c) In all-VHF markets or all-UHF markets, after a period of two years to permit applicants for the new UHF stations time to obtain permits, the commercials of all the local stations will be substituted.

"(d) Any local station, upon special showing of a threat to its viability or its ability to adequately serve the public, will also be given the right to provide their commercials for substitution. The station need not wait for impact resulting from CATV to seek such relief, but may do so at any time, by the submission of an appropriate detailed showing."

The FCC stated that the number of distant signals would be divided equally among eligible local stations in the market in accordance with a system of rotation (several possibilities were described). The FCC requested comments on such matters as the definition of the top 100 markets and the proscribed zones (if different from the 1968 definition); the treatment of markets with less than three network affiliates; the number of distant signals (if other than four) which should be permitted to be imported (non-network programming of distant network affiliates would be treated as independent signals for this purpose); and the definition of "local station."

The FCC additionally proposed:

"CATVs may carry any number of distant non-commercial educational stations if no objection is made by the local educational licensee or permittee at the time he is informed of the system's intention to carry the distant stations. Upon request of such licensee or permittee, the CATV would, at its own expense, delete appeals for funds on distant stations and substitute appeals provided by the local entity."

Further, the FCC proposed that "CATVs importing any distant signals under the proposed plan, pay 5% of their subscription revenues quarterly to public broadcasting." The money might go to the Corporation for Public Broadcasting "which could in turn distribute

half to the local ETV station, if there were one." Comments requested on this aspect, and on the possibility of exempting smaller systems in the major markets (e.g., those with less than 100 or 3,000 subscribers) from this requirement. The FCC estimated that the contribution would amount to \$3.00 per year per subscriber, \$30 million annually for every 10 million subscribers.

The FCC considered that its proposal would be beneficial both to UHF commercial stations and to ETV stations. As to the former, the FCC noted that, in CATV homes, the local UHF station would have equivalent tuning and reception with VHF (and) the commercial time to sell on the independent distant signals being carried, more than offsetting the audience fractionalization due to competition of distant signals." The FCC expressed its belief that local VHF stations, generally in a strong position, would not be prejudiced by its proposal for the importation of distant signals because: the number of signals to be imported into a market was to be limited; the CATV audience in the market would be limited; and a VHF station confronted with special difficulty could become a participant in the commercial substitution plan. Indeed, in the roughly half of the 100 markets where there were only three VHF stations operating, the VHF stations would be the beneficiaries of commercial substitution (after two years).

The FCC declined to take any action on copyright liability, ruling that this was a matter for Congress. It pointed out, however, that its proposal was not incompatible with a system of fair compensation for the copyright owner, attaching a staff study indicating that, if CATV systems were required to pay 0.7% of their revenues per distant signal imported, the revenue generated would

suffice to compensate the copyright owner for loss of revenue attributable to fractionalization of the audiences of local stations and reimburse him for the benefit derived by the CATV system (treating each CATV channel as a local television station). The payments would be divided among copyright owners in proportion to total volume of business done by each copyright owner with all the television stations (but not networks) in the United States. The FCC did not endorse the staff proposal, but put it forward to show that it was possible to compensate copyright owners fairly within the context of its own proposal governing the importation of distant signals.

The FCC invited comments on the technical feasibility of its commercial substitution arrangements, their costs, and who should bear the costs. Its present view was stated to be that the costs should be borne by the local stations benefiting from the commercial substitutions. The FCC also proposed to grandfather systems presently operating in the top 100 markets "in their present discrete areas (with copyright payments to be made as decreed by Congress);" but would subject them to the above proposals if they expanded operations by extension of trunk lines into new areas. The grandfathering of systems in markets below the top 100 also was proposed, but comments were requested as to subjection of new services by such systems to the FCC's proposal. As an alternative to its anti-leap-frogging limitation in the 1968 Notice, the FCC proposed that at least two of the four imported independent signals be from within the state in which the CATV system was located (if such signals were available).

Finally, the FCC raised the question of whether other alternatives should be explored: "an effective non-duplication

requirement for non-network programming (perhaps with some exemption for programming shown in prime time over the distant signal but not locally...), or a system of payments to the UHF and ETV by the CATV system..."

#### E. Telephone Companies and CATV Systems

CATV systems rarely provide their own facilities in toto. Usually they follow one of two courses: (1) Most often they rent space on telephone or electric utility poles in order to run their own cable from their headend antennas to their subscribers. (2) Alternatively, they may subscribe to channel service offered by the telephone company; in this event, the telephone company provides all, or virtually all, of the transmission facilities between the headend antenna and the CATV's subscribers.

The FCC has moved, in a series of rulings, to assert jurisdiction over virtually all aspects of CATV-telephone company relationships. Initially, in 1966, the FCC held that tariffs providing for leased channels for CATV service had to be filed with the federal agency, since the tariffs pertained to an interstate service. Then, in 1968, the FCC held that the construction of facilities by telephone companies to provide channel service to CATV systems was covered by Sec. 214 of the Communications Act, and that certificates of public convenience and necessity were required prior to such construction. In its determination, the FCC established interim procedures so that existing facilities, constructed without Sec. 214 certificates, could continue to function while the question of their certification was pending.

In 1970, in a rulemaking proceeding, the FCC imposed severe restrictions on CATV offerings of telephone companies:

First, no telephone company is permitted, directly or indirectly through an affiliate, to furnish CATV service to the viewing public in its telephone service area. This includes service provided through telephone channels, or through use of conduit space or pole rental arrangements. Two exemptions are specified: (a) As to existing CATV services, telephone companies have until March 16, 1974 to divest themselves of the operations. (b) As to communities where CATV service demonstrably could not exist except through a CATV system related to or affiliated with the local telephone company or for other good cause, the prohibition may be waived.

Second, when telephone companies seek authority under Sec. 214 to construct facilities for channel service to unaffiliated CATV systems, they must show "that the independent CATV system proposed to be served, had available, at its option, and within the limitations of technical feasibility, pole attachment rights (or conduit space, as the case may be), at reasonable charges and without undue restrictions on the uses that may be made of the channel by the customer." The policy must be made known to the local franchising authority, if any, and must exist prior to the customer's decision to seek an award of a local franchise, if one is required.

The rules were adopted to preclude telephone company domination of the CATV industry. With a monopoly of the most readily accessible means of distribution--leased telephone lines or pole attachment rights--the local telephone company, in the judgment of the FCC, was in a position to: (a) exclude CATV operations altogether; (b) favor affiliated CATV systems over unaffiliated CATV systems; or (c) favor CATV systems leasing channels from it over those seeking pole right attachments. The FCC indicated that, within the limits

of technical feasibility, the telephone company must accommodate all CATV applicants in the area in order to comply with the above provisions.

Several questions remain pending:

- (1) Are pole attachment (or conduit) rights common carrier offerings for which a tariff must be filed with the FCC?
- (2) Is a telephone company free to withhold pole attachment (or conduit) rights from CATV systems as long as it is not seeking to serve CATV systems via leased channels? In short, can the FCC compel a telephone company to make its facilities available to CATV systems?
- (3) If the answer to the last question is affirmative, does the FCC also have power to compel other utilities--electric companies in particular--to grant pole attachment rights to CATV systems at reasonable rentals?

The first issue has been raised in inquiries by the FCC's Common Carrier Bureau, and the second and third issues are involved in a proceeding presently pending before the FCC.

Additional problems are posed if a telephone company seeks to provide leased channels to a CATV system seeking to serve an area also being served by a CATV system making use of some other arrangement (pole attachment or conduit rentals). The FCC now has before it such a case in the Comtel litigation involving New York City. Comtel, a CATV system unaffiliated with the telephone company but using telephone channels exclusively, is seeking to extend service into areas served by other CATV companies. Under New York law no city franchise is required in such a case. But the telephone company, in order to accommodate Comtel, must obtain certification under



Sec. 214. The FCC's hearing examiner ruled that certification of Comtel's service for a trial period of two years should be authorized, "subject to regular authorization thereafter upon sufficient showing that competition is actually providing public benefits that outweigh any detriments. Such conditional or limited authorization at this time can provide assurance that Comtel's operations are subject to a measure of regulatory review for the protection of the public while the City and State move to clear up the uncertainties as to their regulatory jurisdictions. This will also afford the Commission a reasonable opportunity to satisfy itself probatively that there are continuing competitive benefits to be derived."\*

#### F. Originations by CATV Systems

In its 1968 Notice of Proposed Rulemaking, the FCC asked for comments on whether CATV systems should be permitted, or required, to originate programming of their own. In 1969, in its First Report and Order in this proceeding, the FCC resolved the issue in the affirmative. It found that origination of programs by CATV systems was in the public interest--because of the increased diversity such programming would contribute and because of the opportunity afforded for programming at the local level--and it ruled as follows:

1. Authority to originate. All CATV systems should be permitted to originate programming. The FCC rejected broadcaster arguments that CATV originations should be prohibited, or restricted because such programming would tend to divert audiences from television broadcasters. The FCC observed that unfair competition was not involved, since broadcasters and CATV systems competed on an equal footing in program procurement as far as originations were

---

\* The examiner's decision is pending before the FCC.

concerned. And the FCC found no basis for believing that the diversion of audiences would be so severe as to imperil over-the-air broadcasting. No restrictions were placed on the type of programming CATV systems could originate, nor on the interconnection of CATV systems to form regional or national networks. The FCC observed, however, that "in the event that adverse consequences on service by individual stations or broadcast networks should appear imminent, the Commission can and would take such remedial or preventative action as may be necessary to preserve service to the public." It referred to the limitations it had imposed on subscription television, and asserted its authority to impose similar or other appropriate limitations on CATV originations if the need should arise.

2. Requirement of origination. The public interest in CATV originations was considered so great that the FCC decided to require that all systems carrying relayed broadcast signals to more than 3,500 subscribers operate "to a significant extent as a local outlet by (programming other than relayed broadcast signals) and (have) available facilities for local production and presentation of programs other than automatic services," beginning January 1, 1971 (later postponed to April 1, 1971). In the FCC's view, the requirement, described as "cablecasting," would increase locally originated programming, in accordance with the FCC's policies relative to geographical distribution of broadcast facilities, and also would make available the facilities needed for local originations by parties other than the CATV operator (see the discussion of the common carrier function, infra). The FCC drew the line at 3,500 subscribers because it believed that systems of this size clearly had the financial means to support program originations; it left open the possibility

of extending the requirement to smaller systems on the basis of further experience and information. At the time, the FCC's requirement would have encompassed less than 10% of CATV systems in operation.

On local originations to a "significant extent," the FCC commented:

"By 'significant extent' we mean something more than the origination of automated services (such as time and weather, news ticker, stock ticker, etc.) and aural services (such as music and announcements). Since one of the purposes of the origination requirement is to ensure that cablecasting equipment will be available for use by others originating on common carrier channels, 'operation to a significant extent as a local outlet' in essence necessitates that the CATV operator have some kind of video cablecasting system for the production of local live and delayed programming (e.g., a camera and a video tape recorder, etc.). If the cablecasting equipment and technical personnel are available, there should be a natural tendency for the CATV operator to use them for some origination presenting local personages and events. However, ...we do not mean to suggest that originations to a 'significant extent' could not also include films and tapes produced by others, and CATV network programming."

The FCC refrained from any specifications as to hours of origination, categories of programming, type of cablecasting equipment, and technical standards. It preferred "a period for free experimentation and innovation by the cable operators," after which standards might be set forth.

On reconsideration, the FCC adhered to its position, observing that it had been furnished "no data tending to demonstrate that systems with 3,500 subscribers cannot cablecast without impairing their financial stability, raising rates, or reducing the quality of service." The FCC also observed:

"Innovative arrangements are also possible, such as agreements with educational institutions, under which a channel is made available for the use of the school which, with its own studio and other facilities, will produce educational, cultural and other programming. The CATV of course would be expected to see to it that local political and other affairs are covered on that or a different channel, but the costs of origination to it would be sharply reduced."

Another "innovative arrangement," however, brought a sharply negative reaction. The FCC observed that some cable operators simply leased an origination channel to a local radio station, which in turn presented its disc jockey shows over this channel for virtually the entire broadcast day. Such an arrangement, the FCC asserted, defeated one of the purposes of local origination--i.e., providing access to television for "the mayor, the local political candidates, those willing to discuss controversial issues, etc." Accordingly, the FCC amended its regulation on local originations to provide that "the system shall not enter into any contract, arrangement or lease for use of its (local origination) facilities which prevents or inhibits the use of such facilities for a substantial portion of time (including the time period 6:00-11:00 p.m.), for local programming designed to inform the public on controversial issues of public importance."

On the local origination requirement, the FCC stated: "There is always the possibility of waiver in a particular case, but we stress that it will be granted only because of unusual circumstances."

Contemporaneously, in the Second Further Notice of Proposed Rulemaking, the FCC raised "the question whether the CATV system in the core city of one of (the top 100) markets, when it reaches a specified size (e.g., 10,000 subscribers) should not be required to program a designated minimum number of hours (e.g., 21 hours a week), with a specified percentage of this minimum to be of a local nature."

3. Advertiser support. The FCC concluded that advertising "should be permitted at natural breaks in originations

with no interruption of program continuity." It believed that revenues in addition to regular subscriber fees might be necessary in some communities to support local origination, and might support origination operations in smaller communities than otherwise would be possible. Also, the FCC believed it desirable to provide additional outlets for small local advertisers who might not be able to afford over-the-air broadcast service. The FCC rejected the arguments of those favoring additional subscriber fees, in preference to advertising, by expressing the belief that the benefits of origination "are more likely to be achieved at an early date if we permit advertising at natural breaks than if we insist upon a mode of operation that may be more difficult and take longer to achieve." The FCC left open the question of whether advertising should be permitted in conjunction with possible CATV network operations, since such operations might be financed solely through subscriber fees. The FCC also found little likelihood of adverse impact on local broadcast stations by CATV carriage of local advertising, although some ~~diversion~~ diversion from local radio stations was possible; the latter contingency was one on which the Commission was prepared to act on a case-by-case basis in the event of "documented claims of imminent adverse impact on the public's free broadcast service."

The FCC justified its requirement that commercials be limited to "natural breaks" on the grounds (1) that this would afford the viewer a new and diversified service; (2) that CATV could operate under such a limitation because (in contrast to broadcasters) it was not wholly dependent upon advertisers for revenues; and (3) that advertising subjected to such a limitation would be less likely to

affect revenues available to local broadcasters than unlimited CATV advertising. As for the meaning of the limitation, the FCC said:

"By natural intermissions or breaks, we mean at the beginning or end of a part of an originated program, or at any intermission in the program materials which is beyond the control of the cable operator, such as time-out in a sporting event, an intermission in a concert or dramatic event, a recess in a city council meeting, or an intermission in a long motion picture which was present at the time of theatre exhibition, etc."

4. Per-program charges. In its First Report and Order, the FCC left open the possibility of financial support other than through advertising. It said:

"While we believe that the subscribing public should not be required to pay extra fees in order to obtain access to local public service programming or presentations by political candidates on the CATV's origination channel, we do not presently contemplate any prohibition against higher monthly fees or per program charges for other minority interest programming, or special charges for extra services (e.g., burglar alarm and fire detection systems, etc.)."

In its opinion on reconsideration, the FCC adhered to this view, but stated that where CATV origination "is accompanied by a per-program or per-channel fee, it is akin to subscription television and presents the same threat of siphoning programs away from free television," because potential revenues from such charges are substantial. Accordingly, the FCC adopted rules for CATV similar to those for over-the-air television:

(a) With certain exceptions, "(f)eature films shall not be cablecast which have had general release in theaters anywhere in the United States more than two years prior to their cablecast;"

(b) "Sports events shall not be cablecast which have been televised live on a non-subscription, regular basis in the community during the two years preceding their proposed cablecast."

There are a number of additional limitations relating to sports, and in a recent Notice of Proposed Rulemaking the FCC proposed to increase the two-year interlude to five years.

(c) "No series type of program with interconnected plot or substantially the same cast of principal characters shall be cablecast."

(d) "Not more than 90 percent of the total cablecast program hours shall consist of feature films and sports events combined."

(e) "No commercial advertising announcements shall be carried on such channels during such operations."

These rules were deemed necessary to insure that cablecasting will not "force the public to pay for what it now receives free," and to protect those "who do not wish, or cannot afford, to pay for television," and those who are not cable subscribers. The rules were not considered necessary in the absence of per-program charges, because there was felt to be no threat of siphoning "when CATV operates in its present fashion (i.e., a flat charge in generally well-defined range)."

(In a related matter, of peripheral importance, the FCC has pending a rulemaking proceeding defining the obligations and limitations of CATV systems in respect of over-the-air subscription broadcasts by local stations.)

5. Limitations on CATV programming. The FCC ruled that programs originated on CATV systems shall be subject to certain of the obligations applicable to broadcasters:

(a) The requirement of affording "equal time" for candidates for public office;

(b) The requirement that sponsorship of programs be announced; and

(c) The requirement of the "fairness doctrine" that

reasonable opportunity be made available for the discussion of conflicting views on issues of public importance.

The FCC considered that the policies underlying these requirements--to assure an informed public--were equally applicable to CATV originations. But it did not discuss possible differences between these requirements in the context of scarce broadcast frequencies--as compared to abundant CATV channels--except to note that CATV systems had tended to develop in a monopolistic manner (one system for any given area).

On reconsideration, the FCC added to the three foregoing restrictions the limitation against broadcasting information concerning lotteries. It also made clear that printed newspapers distributed via CATV facilities (through facsimile reproduction) would not be subject to the above requirements--although television programs prepared or sponsored by newspapers would remain subject to the restrictions. The basis for the distinction was not made clear.

6. Relation to state law. The FCC observed in its First Report and Order that any "state or local regulations or conditions in conflict with these Federal regulatory policies are, we believe, preempted." Subsequently, the FCC ruled that New York City limitations on the types of programs that might be originated on local CATV systems (prohibiting conventional movies, inter alia) were invalid. However, the FCC observed that "States and localities should remain free to impose additional affirmative obligations on CATV systems, so long as they refrain from imposing restrictions which are inconsistent with the Federal regulatory policies."

G. The Common Carrier Function of CATV Systems

In its First Report and Order, as in its earlier



Notice of Proposed Rulemaking, the FCC stated its view that "CATV systems should be encouraged, and perhaps ultimately required, to lease cable space to others for originations of their own choice on a local or interconnected basis, in order to promote diversity of control over the media of communication and diversity of program choices as well as to increase the opportunities for television communication with the public by more widespread sources." The FCC cited the expanding channel capacity of CATV, then generally 12, and holding "promise of 20-40 or more." It noted that the limited number of national networks, and the limited sources of non-network programming, imposed a serious restriction on the ability of CATV to diversify program choice (except as to timing) by importing increasing numbers of distant signals. It expressed concern about the concentration of control that might emerge if the CATV operator, which normally had a monopoly in its area, originated programs on more than one channel (automated services aside); but it imposed no limitation on multi-channel origination in this proceeding. Finally, the FCC noted that there were various entities that might seek to communicate to the public if television were made available at low cost, including "political candidates, municipal and State governmental authorities, educational interests, civic and professional organizations, amateur dramatic groups, professional program producers, advertisers, etc." Such entities "should be permitted to communicate with the public in a community, or in a particular segment of a community, or in a number of communities on a State, regional or national basis to the extent that cable facilities are available and are interconnected." And "CATV operators should be

ble to furnish studio facilities and technical assistance as part of the service, but should have no control over program content except as may be required by the Commission's rules and applicable law."

However, the Commission adopted no rules on the subject, believing further study was required. It similarly reserved judgment on (a) "whether automatic services should be subject to displacement if there is a greater demand for leased channels than can be accommodated;" and (b) "a possible ceiling on the number of broadcast signals that may be carried where channel scarcity is a factor."

On reconsideration, the FCC made clear that the program content rules applicable to local originations (equal time, fairness, sponsor identification, and lottery information) "apply to programs originated by others than the CATV operator, when presented on the channel or channels controlled by the CATV operator."

In both the original proceeding and on reconsideration, the FCC declined to adopt a proposal of the National Association of Educational Broadcasters to establish "priorities of service to be required of CATV systems, i.e., television signals required to be carried by our rules, State or local requirements, public service use in conjunction with educational agencies, common carrier service." It also rejected a proposed requirement that "cablecasters coordinate educational and public service programming with affected educational institutions." The FCC concluded that such matters were not ripe for determination, partly because of lack of experience with the new medium. Contemporaneously, however, in the Second Further Notice of Proposed Rulemaking, the FCC affirmed that it "must make an effort

to insure the development of sufficient channel availability on all new CATV systems to serve specific recognized functions." In addition to the CATV's own local origination channel, these functions were enumerated as follows:

"(a) Local government channel. At least one channel for use without charge by local governments and for free 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 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.); lectures). We ask for comments on the number of such channels (e.g., a specified number; a percentage of the system's capacity).

"Thus, whatever the channel capacity of a system operating in one of these large markets, we propose that it be required to set aside a specific number of channels for each of the above purposes, cablecasting (originations), and of course, the carriage of local signals; after fulfillment of these requirements, the system could then import distant signals and provide automatic services. A further proposal upon which we request comments is to require the 20-channel (and larger) system to provide no less than 50% of its channels (on a when demand basis) for the purposes specified in (a)-(d), above."

The FCC also pointed out that, "since an important goal is the availability of channels for leased purposes, the Commission would have to take all appropriate actions to insure such availability (e.g., that the rates charged in such channels are reasonable and nondiscriminatory). Indeed, as the use of leased channels increases, there might well be need to reevaluate the role of the CATV system as an originator of programming, rather than the owner of transmission facilities."

## H. Concentration of Media Control

In its 1968 Notice of Proposed Rulemaking, the FCC requested comments on three types of concentration of control affecting CATV systems: (1) cross-ownership of CATV systems and other media of mass communications serving the same area; (2) common ownership of multiple CATV systems serving different areas; and (3) CATV operator control over multiple channels of program origination on the same system. Each area will be considered separately.

### 1. Cross-ownership of CATV systems and other media.

In its Second Report and Order, issued in 1970, the FCC proscribed ownership of a CATV system by:

- "(1) A national television network (such as ABC, CBS, or NBC); or
- "(2) A television broadcast station whose predicted Grade B contour...overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers);
- "(3) A television translator station authorized to serve a community within which the system is serving subscribers."

As to the first prohibition, the FCC emphasized "the fact that the networks already have a predominant position nationwide through their affiliated stations in all markets, their control over network programming presented in prime time, and their share of the national television audience."

As to the second prohibition, the FCC adverted to its traditional policy of attempting to assure a multiplicity of different "voices" within the same market. As CATV systems become originators of programming, they become separate "voices," with a role in molding public opinion. At the same time, there was evidence

that 30% of all CATV systems were owned by broadcasters, and that 46% of all recently started systems were owned by broadcasters. The FCC found that there was "no evidence, or reason to assume, that a CATV system's local program origination would suffer if denied the assistance of a co-owned local television station; indeed such joint ownership might discourage effective CATV program origination, insofar as it threatened to reduce the station's own program audience."

The FCC observed that it "would consider waivers on an ad hoc basis where it is clearly established that a cross-ownership ban would not result in greater diversity," as, for example, where no one is willing to apply for an available broadcast channel in a sparsely populated area except a local CATV operator interested in providing CATV-originated programming to a wider area. The FCC also noted that it had no objection to television broadcaster ownership of CATV systems in areas they did not serve; indeed, the FCC indicated that such a possibility was advantageous, since it afforded television broadcasters an opportunity to bring themselves into conformity with the local cross-ownership proscription by exchanging CATV systems.

As to the third prohibition, the FCC said only: "In our case-by-case consideration of existing translator-CATV cross-ownership, we have observed that such combinations are unlikely to yield the best translator service to the public." It expressed its willingness to entertain waivers.

As to new acquisitions, ownership interests or franchises not in existence on July 1, 1970, these prohibitions became effective August 10, 1970. As to existing interests--those antedating

July 1, 1970--a three-year period was afforded for divestiture, until August 10, 1973.

In a Notice of Proposed Rulemaking issued contemporaneously with the Second Report and Order, the FCC said:

"Although the Commission is not at this time favorably disposed toward exemption of non-commercial educational stations from these cross-ownership strictures, it invites, and will fully consider, further comments concerning the desirability and possible specific provisions of such an exemption. The Commission is, of course, aware that operation of a local CATV system might be financially beneficial to the ETV station. At the same time, however, it desires to provide local television audiences with a multiplicity of separately controlled 'voices;' and notes that a CATV system in the same locality is not the only potential source of funds needed to operate an ETV station."

In the same Notice, the FCC raised questions concerning common ownership of radio and CATV systems, and newspapers and CATV systems, where the various media served the same area.

As to the former, the FCC observed that CATV systems may be more competitive with radio than with television. As far as originations are concerned, both are locally oriented, are likely to deal with local issues, and will draw primarily on local advertisers. On the other hand, common use of studio facilities, equipment and personnel would facilitate CATV program origination, and in many areas there already exists a multiplicity of radio "voices." In addition to the extremes of a complete ban of common ownership in the same area, or no ban at all, the FCC raised questions as to (i) a selective ban (e.g., in markets with less than 5 AM outlets); (ii) the possibility of shared facilities (joint use of technical facilities and personnel between separately owned CATV systems and local radio stations); and (iii) use by the radio station of a common carrier channel on the CATV system to supplement local broadcast originations.

As to CATV-newspaper affiliations, the Commission deemed it wise to postpone decision pending the outcome of its rule-making proceeding concerned with newspaper-television affiliations in the same market. In any case, newspapers should have access to CATV systems, on fair terms, for facsimile delivery of printed newspapers.

2. Common ownership of CATV systems in different markets. Concerned that large-scale CATV operations may be imminent, the FCC proposed to limit multiple ownership before excessive concentration came about and presented serious problems of divestiture. It did not consider common ownership to be essential either for network interconnection or for the provision of other common carrier services, but left open the possibility that some fairly high degree of multiple ownership might be necessary to provide a financial base for programming efforts around which CATV networks might be built. It also left open the question of divestiture of systems inconsistent with the proposal ultimately adopted.

The FCC made two alternative proposals:

First proposal.

"(a) For the purposes of this proposal --

- (1) Where a CATV system (including all parties under common control) directly or indirectly owns, operates, controls, or has an interest in other CATV systems within the same SMSA (Standard Metropolitan Statistical Area, as defined by the U.S. Census Bureau), all of the related CATV systems within the same SMSA shall be collectively viewed as one system; and

(2) Systems with fewer than 1000 subscribers need not be counted.\*

"(b) No CATV system (including all parties under common control) shall be permitted to carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in more than 50 CATV systems, of which --

- (1) No more than 1 may be located within the top 3 SMSA's;
- (2) No more than 2 may be located within the top 10 SMSA's;
- (3) No more than 3 may be located within the top 25 SMSA's;
- (4) No more than 4 may be located within the top 50 SMSA's;
- (5) No more than 7 may be located with the top 100 SMSA's;
- (6) No more than 10 may be located within adjoining States; and
- (7) No more than 5 may be located within the same State only 1 of which may be located within a top-100 SMSA.

"(c) Where the CATV system (including all parties under common control) owns, operates, controls, or has an interest in more than 1 television broadcast station or more than 2 AM or FM stations or more than 2 newspapers, the maximum number of CATV shall not exceed 25, and the maximums within SMSA's and States are --

- (1) No more than 1 within the top 10 SMSA's;
- (2) No more than 2 within the top 50 SMSA's;
- (3) No more than 4 within the top 100 SMSA's;
- (4) No more than 5 within the same State or adjoining States; and
- (5) No more than 1 within a top-100 SMSA in the same State."

---

\* "We note that the record in this proceeding reflects that almost 70 percent of all existing CATV systems had fewer than 1000 subscribers in 1969. However, we raise the question of whether the exemption for systems to be counted should not be 3500--the number specified for mandatory origination." (Footnote by the FCC.)



## Second Proposal.

"In the alternative (or as a companion provision), the Commission proposes that --

- "(a) No CATV system (including all parties under common control) shall be permitted to carry the signal of any television broadcast station if such system alone, or together with other CATV systems which it directly or indirectly owns, operates, controls, or has an interest in, serves more than 2,000,000 subscribers: Provided, however, That --
- "(b) Where such a system, or group of systems, has acquired that number of subscribers, it may increase its roster of subscribers up to an additional 10 percent -- but only within the communities which it already serves. (The purpose of this proviso is to avoid a situation in which a group of systems, having reached an arbitrary limit nationwide, would be prevented from extending service to residents of a community in which it already is operating. The additional leeway of 200,000 should give ample opportunity to avoid such a situation -- and to provide time for voluntary divestiture of systems and their subscribers in certain communities in order to permit further expansion in others.)"

In this connection, it may be noted that the Commission recently approved the merger of H & B Communications and Teleprompter, the first and fourth largest CATV owners in the country. The consolidated enterprise, with 129 systems and 413,000 subscribers, accounts for approximately 10% of all CATV homes in the nation. This merger required FCC approval because transfers of microwave licenses were involved. Other CATV mergers, not involving such transfers, have been occurring with some frequency, including some recent (and smaller) acquisitions by Teleprompter.

3. CATV control of multiple channels. In the 1968 Notice of Proposed Rulemaking, the FCC, in accordance with its traditional anti-duopoly policy, proposed "to limit the number of channels on which CATV originated programming may be presented to one,

not including any channels devoted to services of an automated nature such as time and weather, news ticker, stock market ticker, etc." Additional origination would be programmed by others on channels leased to them by the CATV system on a common carrier basis.

The problem was discussed in the 1969 First Report and Order. The one channel limitation was based on the FCC's "tentative view that one entity should not control the content of the program materials on all cable channels not used for carriage of broadcast signals." Comments filed in the proceeding "raised the issue of whether there should be a limitation based on percentage of channels (e.g., to take into account the difference between a 12-channel and a 40-channel system), or whether there should be an initial period in which the CATV operator would not be restricted to only one channel for origination." The First Report and Order did not resolve the issue and it has not been raised in subsequent determinations and proposals of the Commission, except for a comment in the Second Further Notice of Proposed Rulemaking that, at some point, it may be appropriate to sever the transmission and origination functions of cable systems.

4. Limitations on other affiliations. In the First Report and Order, the FCC observed:

"Diversification rules would be desirable even if CATV operations were limited to carriage of broadcast signals and common carrier activities, in view of the limited number of broadcast and newspaper media in all communities, and the potential importance of cable facilities in providing many communications services."

And in the contemporaneous Notice of Proposed Rulemaking, the FCC requested comments as to "whether other CATV-ownership patterns warrant consideration under the public interest standard (e.g.,

ownership of CATV systems by microwave carriers, CATV-equipment manufacturers, national news magazines, advertising agencies)."

### I. Technical Standards

In its 1968 Notice of Proposed Rulemaking, the FCC requested comments on the general question of whether technical standards should be made applicable to CATV systems. In a Notice of Proposed Rulemaking, released July 1, 1970, the FCC made proposals, and requested comments, in four separate areas.

1. Minimum channel capacity. Noting the growth of CATV interest in the large urban markets, the possibility of a nationally as well as internationally interconnected cable grid, and the potential of CATV to alleviate the problem of availability of air time (replacing an economy of scarcity with an economy of abundance), the FCC placed CATV operators on notice that it intends "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." The FCC observed that there had been predictions of an "ever increasing demand for cable channel capacities (some estimates ranging above 100);" that 20-channel systems were then being proposed by CATV operators for major markets; and that there were indications that "40-channel systems can be installed without too great an incremental cost over the 20-channel systems."

The FCC stated its objective to be "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." It requested comments on:

(a) What the minimum number of channels should be in the major markets (here apparently referring to the top 50 markets)?

(b) Whether some lesser figure should be applicable to systems operating in the smaller markets, and, if so, the number of channels and the method by which such markets should be identified?

(c) How any such regulation should be made effective insofar as timing is concerned (e.g., in respect of existing systems, systems under construction, systems being planned)? What period should be permitted for conversion or revision of construction or plans?

2. Two-way capability. On this subject the FCC's comments were limited. It said:

"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. The return communication capability should provide at least the capacity equivalent to a single 4kHz message channel and 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."

3. Community origination centers. Observing that CATV "has the potential to be a vehicle to much needed community expression," the FCC stated that "cable systems should supply a separate channel, available on a when-desired basis, for each distinct community within its franchised area," and that "each community (should) possess the local capability for production of material to be cablecast over its channel." The FCC invited comments on:

(1) How this objective might be achieved? By "limiting cable systems to franchised areas of limited size"? By requiring systems "to have technical facilities in each community--the studios, equipment and distribution facilities--designed to facilitate local access and service"? By other arrangements under which each community within the franchise area of the system would be "equipped with production capability for the programming of its community channel"?

(2) How is "community" to be defined?

The FCC observed:

"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')."

4. Standards of performance. The FCC proposed technical standards of performance, in considerable detail, which are set forth in Appendix A. Some general observations are:

(1) The standards are aimed primarily at "furthering the quality of service rendered the public;" but the FCC also hoped that they would assure "a degree of compatibility among systems which in the future may be useful for accomplishing system inter-connection."

(2) The standards prescribe minimum levels of performance at subscriber terminals, not the methods or kinds of equipment the cable system must use.

(3) Annual reports concerning system performance are required in connection with certain tests. Additional tests may be required, and individual subscribers should be assured good quality

service independently of the system's compliance with the general standards (which do not provide absolute assurance that service to an individual subscriber is satisfactory).

(4) Certain standards not imposed at the outset may be added subsequently, as the state of technology and regulatory experience indicate. Thus, no standards were proposed for carriage of FM signals, or with respect to "the allowable degree of 'ghosting' or interference caused by reflections, or for phase relationships in the system, all of which intimately affect the quality of color television technology."

(5) While not required by the proposed standards, the FCC expressed its "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."

(6) The FCC agreed that its standards should be "sufficiently flexible to permit operation of multi-pair cable techniques or switched techniques." The standards proposed were directed primarily to "the single coaxial cable which carries a plurality of standard television broadcast signals occupying individual frequency bands in the cable." But the FCC would consider other systems "provided an adequate engineering showing is made as to the quality of service such (systems) would render."

(7) The detailed technical standards are closely related to technical standards applicable to over-the-air television broadcasting, as indicated, inter alia, by various cross references to broadcasting standards.

(8) The FCC proposed to permit existing CATV systems three years from the effective date of the technical standards to bring their systems into compliance.

## J. Reporting Requirements

In the 1966 Second Report, in which it asserted jurisdiction over all CATV systems, the FCC required the filing of a single report by each CATV system providing information about the system's operations. The FCC's 1968 Notice of Proposed Rulemaking proposed that CATV systems file annual reports. More recently, in early 1970, the FCC proposed a form of annual report for CATV systems which requires submission of the following information.

1. System data. Community served; its population and location; the date of commencement of CATV service; channel capacity of CATV system; number of subscribers (classified into four groups--residences, apartments, commercial customers, such as hotels, and institutional customers, such as schools and hospitals); number of homes and apartment units adjacent to cable; number of drops; number of miles of cable; location of headend antenna; copy of franchise.
2. Service data. Subscriber fees (installation, monthly, other); stations carried (their location, their broadcast channel, their channel on the CATV system, their mode of reception by the CATV system--off-the-air, microwave); CATV channels used for automated services, giving number of channels and hours per week (time and weather, news ticker, stock ticker, other); CATV channels used for other services (burglar alarm, fire alarm, police surveillance, facsimile reproduction, access to computers, other); CATV channels used for non-automated programming; CATV channels leased to others; CATV channels not used; AM and FM signals carried; extent of importation of distant signals (relation of CATV system to 35-mile zone of major and smaller television markets).

3. Ownership information. Nature of owning enterprise;

identity of individual owner or members of partnership; as to corporate owners--capitalization, officers, directors, stockholders with more than a 1% interest, and similar information as to all controlled or controlling corporations (with ownership of 25% share of the corporation's voting stock as the criterion); identification of family relationships among enumerated principals; identification of any ownership interests held in a fiduciary capacity; identification of cross-ownership interests between CATV principals and AM, FM or television stations, other CATV systems, daily newspapers, other publishing enterprises, communications common carriers, entertainment enterprises, and banking and financial institutions; felony convictions of any of the principals; alien status of any of the principals.

4. Information on non-automated programming. Number of

channels and hours per week of programming from diverse sources-- local live (including any program, 51% or more contributed by station, even if shown on delayed basis), film, video tape, CATV network or interconnection, other; percentages of programs by different types (all as defined in some detail)--News, Sports, Public Affairs, Religious, Instructional, Entertainment, Public Service, Children, Other; public service announcements (number during three designated portions of the day); equipment employed in originations (by make, model and year where applicable)--black and white cameras, color cameras, audio equipment, film projectors and film chains, video tape recorder, lighting, monitoring and test equipment, control console, modulator to convert audio and video signals to proper channel frequencies, mobile van for transporting equipment, studio (including its dimensions), other equipment.



5. Information on advertising support. As to both automated and non-automated programming--percentage of program time sponsored; minutes of commercial advertising per hour of program origination; percentage of advertising drawn from different sources (local, nearby communities, regional, national, other); advertising rates.

6. Information on programming by others. Number of channels leased to others; identity of channel lessees; duration of leases; compensation for leases, if any; principal types of programs carried by lessees; extent of supervision over programs of lessees; policy of CATV system and charges for use of channels on a short-term basis.

7. Financial data. Subscriber revenues (for installation, subscription, maintenance, other); non-subscriber revenues (from advertising, sale of time or lease of facilities); other operating revenues; total operating revenues; service expense (divided into six subheadings); program expense (divided into five subheadings); selling and general and administrative expense (divided into five subheadings); depreciation (specifying class of property, original cost, depreciation reserve, property life, depreciation method); total operating expenses; operating income or loss; assets (investments, net tangible property, construction work in progress, other); liabilities (no details); net worth; number of employees (full time and part time); revenues related to program originations (from leasing of channels, commercial advertising, allocable portion of subscriber fees, other fees or revenues); operating expenses related to program originations (seven subheadings); income or loss related to program originations.

It is proposed that the report be filed annually, and also within 30 days after certain events (such as changes in ownership). A separate report must be filed for each CATV system; and each community is considered to be a separate system even though served by a single headend antenna under unified ownership.

## K. Federal-State-Local Relations

In its 1968 Notice of Proposed Rulemaking, the FCC

observed:

"Cable television service has tended to develop on a noncompetitive, monopolistic basis in the areas served. The normal protection afforded consumers by providing a choice between alternative suppliers has not, in most instances, been available to the cable television subscriber. This consideration involves such matters as quality of service and repair, the reasonableness of the rates charged, technical standards, and so forth. Such protection has traditionally been provided the public by some form of government regulation of monopoly services. We do not now urge the application of our jurisdiction to the licensing of CATV systems by the F.C.C. We do, however, believe that local, state and federal governmental agencies must face up to providing some means of consumer protection in this area. While we recognize that other problems are involved (such as rates to the public and regulation of any common carrier activities of CATV operators.), it follows that local entities, either at the State or municipal level depending on State law, should--among other things--be concerned with various licensing considerations pertinent to the public interest judgment to be made by the local authority (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 provision of channels for public or municipal use). Such regulation, while called for in the case of present CATV operations, would be particularly appropriate in light of CATV operations with originations. Indeed, a question is presented whether these are matters as to which we should strongly urge local consideration or should make their consideration and disposition by local authorities, where appropriate under local law, a condition for the carriage of broadcast signals. Finally, in those relatively few instances where there need be no local franchise consideration, we request comments on whether Federal consideration is not then appropriate..."

The 1968 Notice also posed the questions:

"What should be the division of regulatory functions between federal and state or local authorities with respect to the local communications system or systems, e.g., construction of facilities, terms and conditions of access by those offering communications services, services and charges to the public, licensing etc?"

"Which aspects of the local system or systems would require uniformity and centralized regulation or would be important to the effectuation of national communications policies, which aspects would be primarily of local concern and appropriately subject to state or local regulation, and which aspects might better be left unregulated?"

In the same proceeding, in connection with its proposal for local origination, the FCC commented:

"While we are permissive of the condition carriage of broadcast signals on a requirement that CATV systems cooperate to a significant extent as a local outlet by originations, this obligation might be met in a variety of ways and would be an appropriate area for additional requirements by the locality. Although we think commendable the suggestion that municipalities reserve some channel capacity for their own use without charge, a requirement of this nature is appropriately the function of local or state franchising authorities."

In the First Report and Order, which adopted the local origination proposal, this point was reaffirmed. The origination required by the FCC was stated to be a minimum requirement; states and localities might impose additional obligations for origination. See p. 73, supra. However, states and localities could not impose restraints on originations which the FCC had found to be in the public interest.

In subsequent proceedings, the FCC proposed rules concerned with areas which initially it had left to local supervision. Thus, extensive technical standards have been proposed. See pp. 90-93, supra. And in the Second Further Notice of Proposed Rulemaking, the FCC advanced proposals in the very area it previously had indicated was appropriate for local regulation--i.e., the nature and extent of affirmative obligations on CATV systems to provide channels in addition to those required for compliance with FCC rules (channels for carriage of local signals and one channel for local origination). See pp. 81-82, supra. Finally, in July 1970, contemporaneously with the latter two pronouncements, the FCC issued a Notice of Proposed Rulemaking concerned with Federal-State-Local relationships in the CATV field.

The FCC observed that: "With respect to choice of the CATV operator on the basis of his character and the nature of his proposal, areas to be served, and services and charges to the public, local authority has been the sole regulating entity." It indicated its tentative view that local authority to act in these areas rested on the FCC's policy determination to decline to act, rather on any lack of legal authority in the FCC. The FCC then outlined three main approaches to the Federal-local relationship:

"(i) Federal licensing of all CATV systems on the (basis of various provisions of the Communications Act.) Obviously, for this approach to be effective, considerable resources would have to be made available to this agency.

"(ii) Federal regulations, enforced by (cease and desist) proceedings...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...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...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."

The FCC expressed its preference for the third approach and requested comment on what standards should be adopted as applicable

to local regulation. It also noted the problem of "preventing 'overbuilding', i.e., duplicative construction of CATV systems in circumstances where it does not serve the public interest." Finally, the FCC observed that its program in the Second Further Notice of Proposed Rulemaking for supporting ETV--by requiring CATV contributions of 5% of gross revenues for this purpose--could be frustrated if CATV systems were overburdened with local franchise fees. It therefore proposed to fix 2% of the CATV's gross revenues as the maximum local franchise fee, subject to possible grandfathering of existing arrangements outside the "core city of the 100 largest markets." As to the latter markets, the FCC felt that the cities would not be deprived of revenues, since, if its proposal resulted in the growth of CATV, the cities could derive more revenues through 2% of a large CATV gross than through a larger percentage of a small gross.

The FCC made clear that its proposals were concerned solely with video services and did not encompass use of CATV for other communications services.

The General Counsel of the National Association of Regulatory Utilities Commissioners recently has filed comments in the proceeding, opposing the extension of FCC jurisdiction to the regulation of CATV franchising, rate regulation, and supervision of CATV services. The NARUC General Counsel maintains that there should be a line of demarcation between matters such as these, which are of local concern and subject to state and local regulation, and matters of federal concern, such as program carriage--analogous to the distinction made between the authority of federal and state agencies in the case of telephone companies.

In support of his view, the NARUC General Counsel contends that: "Knowledge concerning the legal, technical, financial and character qualifications of the franchise applicant is uniquely within the province of State and local authorities." Moreover: "Service standards and rate structures necessarily must vary from State to State and even within a single State," and the FCC "does not have the funds, or the personnel, . . . to regulate the local aspects of CATV . . . ." The General Counsel's objection extends to the prescription of Federal guidelines for regulation of local matters, but no specific comment is directed to the proposed FCC limitation on local franchise fees.

The NARUC General Counsel also contends that the FCC "does not possess the requisite jurisdiction under the Act to further intrude into the regulation of the local aspects of CATV operations." The authorities cited in support of this assertion are not very persuasive. They consist mainly of: (1) FCC statements indicating an unwillingness to act on local CATV matters, and encouraging state and local regulation; and (2) several court decisions upholding state and local regulation in the absence of contrary FCC regulation. Neither go to the FCC's power to regulate such local aspects of CATV operations as franchises, rates and service.

The leading case (U.S. v. Southwestern Cable), in upholding the general power of the FCC to regulate CATV systems, said:

"Nor can we doubt 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 Court then reviewed the relation of CATV operations to television broadcasting in terms similar to the FCC's reasoning in the 1966

report, and, without commenting on the validity of the specific regulations adopted, stated:

The FCC's authority "is restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting."

It is this language, and the practical considerations noted earlier in the General Counsel's brief, which provide the best basis for resisting federal regulation of specific aspects of CATV operations. To the extent that it can be persuasively argued: (1) that a particular phase of CATV regulation is not "reasonably ancillary" to effective broadcast regulation, or (2) that the practicalities of the situation are such that the local concern far surpasses any minor broadcasting interest perhaps a legal case can be mounted. But the same considerations also are pertinent to making a presentation to the FCC on policy grounds, and this is the approach that will be followed hereafter. In short, without conceding that the FCC has plenary authority, an effort will be made to indicate those areas where state or local regulation should prevail (or should coexist with federal regulation), with a view to achieving FCC concurrence. In the event of an impasse, litigation may be required.

#### IV. State Regulation of Cable Television

While there has been some variation from state to state in the application of state regulatory measures to cable television, there also has been a degree of consistency.

##### A. The General Approach of State Public Service Commissions

In the absence of special legislation, the states have been virtually unanimous in concluding that CATV systems are not public utilities subject to regulation by the state's public service



commission. The New York Public Service Commission has taken this position. The only recent contrary ruling is in Hawaii. Special statutes have been enacted subjecting cable systems to varying degrees of public service commission control in Connecticut, Nevada, Rhode Island, Vermont and Hawaii.

Similarly, most state commissions have disclaimed authority to regulate the leasing of pole space by telephone companies and electric utilities to CATV systems. Again, the New York Public Service Commission has taken this position. There are rulings in a few states, relying on special statutory provisions, which hold that telephone companies are under a duty not to discriminate in pole leasing arrangements.

Finally, virtually all state commissions have approved tariffs by telephone companies offering to provide transmission service for CATV systems (connecting the system's headend antenna and its "drops" to subscribers). New York, like most other commissions (Florida is an exception), has held that such a service by a telephone company is a public utility offering subject to tariff. At the same time, most commissions (New York included), have declined to require that telephone companies determine whether the CATV systems they serve have necessary local authorization before providing service. And several state commissions have refused to disapprove a tariff offering because the CATV system making use of the telephone facilities would compete with another CATV system in the same area.

In view of the FCC's assumption of jurisdiction over CATV channel service provided by telephone companies (see pp. 69-72, supra), the validity of these state tariffs is open to serious

question. The relay of broadcast signals is clearly an interstate service subject to the telephone company's FCC tariff; but the state tariffs may continue to be operative as regards locally originated programming.

In view of the recency of the special statutes applicable to CATV, there is very little experience with state commission regulation of cable television. There are two court cases which sustain state commission regulation in the face of arguments based on federal preemption; and one of these was affirmed summarily by the United States Supreme Court. But both cases involved the certification of new CATV operators, to the exclusion of disappointed applicants, and the rationale of both cases was that the states remained free to regulate this aspect of CATV operations in the absence of any FCC regulation of the matter. It appeared to be conceded that, to the extent the FCC acted, state regulation would be preempted.

#### B. Special State Regulatory Provisions

State regulatory measures, enacted and proposed, may be briefly summarized.

1. Connecticut. In 1963 and 1965, Connecticut amended its public service law to classify community antenna television companies using public thoroughfares as "public service companies" and placed them under the jurisdiction of the Public Utilities Commission. This subjected CATV systems to most of the usual regulatory requirements applicable to public utilities, including adequacy and safety of facilities; requirement of service to all; rate and tariff regulation; supervision of accounts and requirement of reports; securities regulation; and regulatory control of mergers, sales of utility

property, and dissolution of utility companies. These statutory provisions are the ones applicable to public service companies generally.

The only provisions specifically applicable to CATV are those dealing with the provision of new service. A certificate of public convenience and necessity is required from the Connecticut Commission before a CATV system may be constructed or operated in the State. The certificate carries with it the right to occupy public highways; is not transferable without the consent of the Connecticut Commission; and is subject to amendment, revocation or suspension by the Commission for "due cause shown" (including revocation for non-exercise within two years of issue). At the time of issue, or from time to time thereafter, the Commission may specify "such terms and conditions as the public interest may require." The only standard stated for certification is that the Commission "shall take into consideration the public need for the proposed service, the suitability of the applicant (or applicant's corporate management), the financial responsibility of the applicant and the ability of the applicant to perform efficiently the service for which authority is requested." The statute also authorizes other public service companies to lease facilities to CATV systems (presumably only to those which have been certificated) pursuant to rates filed with the Commission.

2. Nevada. The Nevada legislation of 1967 is similar to that of Connecticut in subjecting CATV systems to the usual regulatory controls; but its provisions are directed more specifically at CATV systems. The purpose of the legislation is stated to be to:

"(a) Provide fair regulation of CATV companies in the interest of the public, to promote adequate, economical and efficient CATV system service to citizens and residents of this state;

"(b) Provide just and reasonable rates and charges for CATV system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

"(c) Encourage and promote harmony between CATV companies and their subscribers;

"(d) Cooperate with other states and with the Federal Government in promoting and coordinating efforts to regulate effectively CATV companies in the public interest; and

"(e) Vest authority in the (Nevada Public Service Commission) to regulate CATV companies and their rates, services and operations, in the manner and in accordance with the policies set forth in this chapter."

CATV companies are defined as those operating over public thoroughfares, but exclusive of (i) regulated telephone, telegraph or electric utilities leasing wires or cables to CATV systems; (ii) telephone or telegraph companies providing channel service to CATV systems pursuant to published tariffs; (iii) CATV systems serving fewer than 50 subscribers; and (iv) CATV systems serving only the residents of one or more apartment dwellings under common ownership or control (and related commercial establishments).

Certification is required to construct, operate or extend a CATV system, and the standard stated is the same as in the Connecticut legislation: "the commission shall take into consideration, among other things, the public need for the proposed service..., the suitability of the applicant, the financial responsibility of the applicant, and the ability of the applicant to perform efficiently the service for which authority is requested."

The commission also has authority:

(1) To order a CATV system to "construct and operate any reasonable extension of its existing CATV system within the certified territory";

To order a CATV system to "make any reasonable repair or improvement of or in addition to such system;"

(3) To visit the premises and examine the records and facilities of CATV systems;

(4) To revoke, suspend or alter any certificate of a CATV system for willful violation of the Act or regulations or orders of the Commission thereunder.

(5) To supervise and regulate CATV systems generally, including their "property, easements, property rights, equipment, facilities, contracts, certificates, and franchises so far as may be necessary to carry out the purposes of the (Act,) and to do all things whether specifically designated in the legislation or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction."

(6) To approve or disapprove leases or rental of facilities to CATV systems or arrangements to provide channel service.

(7) To approve or disapprove mergers of CATV systems with "another organization in this state."

The duties of CATV companies are defined in these terms:

"1. Every CATV company...shall provide safe and adequate service, equipment and facilities for the operation of its CATV system.

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

"3. All rates, charges and classifications for the service rendered by a CATV company shall be just and reasonable.

"4. No CATV company may make any unjust or unreasonable discrimination in rates, charges, classifications, practices, regulations, facilities or services for or in connection with like service,

directly or indirectly, by any means or device, or make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality or subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

"5. Every CATV company...shall obey and comply with the rules, regulations and orders adopted by the commission under provisions of this chapter."

The Nevada statute, however, also defines community antenna systems as "public utilities" and, as a consequence, subjects them to statutory provisions governing public utilities generally. Some of these duplicate the CATV provisions; some of them supplement the CATV provisions; and some of them cover entirely new matter. Thus, a system with over 25 subscribers and \$15,000 annual revenues is seemingly subjected to all of the usual utility regulatory controls: requirement of reasonably adequate service; specification of service standards; commission power to order repairs and installation of safety devices; requirement of reasonable charges and the filing of tariffs; requirement of maintaining uniform systems of accounts and furnishing reports to the commission; requirement of certification, with power in the commission in respect of transfers or suspensions of certificates; prohibition against discontinuance, modification or restriction of service without commission approval; and regulation of securities issues. Although the specific CATV provisions make cross-reference to the more general public utility provisions, it is not clear how the two sets of provisions relate to one another where there is a conflict or inconsistency. Among other things, the general public utility provisions do not apply to firms earning annual revenues of less than \$15,000, which, at current subscriber rates, would exclude systems larger than those which are exempted from the specific CATV provisions.

3. Rhode Island. In 1969, the Rhode Island Division of Public Utilities was given jurisdiction over CATV systems operating in the State (excluding telephone, telegraph or electric public utilities), but the nature of the jurisdiction was stated in general terms. CATV systems were declared to be "communications carriers" and subject to "such reasonable rules and regulations as the division may prescribe with reference to the erection and maintenance of (CATV facilities in public thoroughfares) in order to safeguard the safety of the public and to preserve the environment and scenic assets of the state." Moreover, the Division

"shall supervise and regulate every CATV company operating within this state so far as may be necessary to prevent such operation from having detrimental consequences to the public interest, and for this purpose may promulgate and enforce such reasonable rules and regulations as it may deem necessary with reference to the issuance of certificates, territory of operation, abandonment of facilities, elimination of unjust discrimination among subscribers, financial responsibility and insurance covering personal injury and property damage, safety of equipment and operation and filing of reports. No certificates shall be issued or remain valid unless the applicant has filed with the division and revised to keep current a schedule of rates and charges for its services. Such rates and charges shall be reasonably compensatory so as not to encourage unfair or destructive competitive practices and shall be applied without discrimination."

The statute is specific on only two subjects: certification of operations and placement of poles and cables.

Certification is required in order to operate a CATV system and is to be issued if "the applicant is of good character and is fit, willing, technically qualified and financially able properly to perform the service proposed and to conform to the requirements, orders, rules and regulations of the division, and (if) the proposed operation will be consistent with the public interest." Division approval is required for transfer of a certificate. The

certificate is to "specify the service to be rendered, the routes of aerial and underground feeder and distribution cables, the area of operation, and any plans, contracts or arrangements for pole line attachments with a public utility or arrangements with a common carrier, and other appropriate feasibility plans." The Division may revoke, suspend or alter a certificate for wilful violation of the Act or Division regulations or orders thereunder, "or for failure to commence operations within a reasonable time, or for other reasonable cause. If a holder of a certificate after commencing operations shall fail for a continuous period of sixty (60) days to render proper service without good reason therefor, the administrator (of the division) shall revoke such certificate....(T)he (division) may revoke or refuse to renew the license of any CATV company whose programs originating within this state are offensive to commonly accepted standards of morality and decency of the community."

As to the placement of poles and cables, the statute requires municipal consent prior to any construction employing public thoroughfares. "All such equipment, fixtures and facilities shall be so placed or constructed as not unreasonably to inconvenience travel on the highway or use thereof by public utilities or other persons or companies having rights therein."

4. Vermont. In 1969, the Vermont Public Service Board was given "general supervision" over CATV companies, except nonprofit organizations. The only specific provisions pertained to certification, abandonment and fees.

A "certificate of public good" is required to operate a CATV system. And the system also is required to hold a license "issued annually under rules and regulations prescribed by the board."



No standards are specified, but applicants are required to furnish data on the "owners or incorporators of the company, a description of the territory proposed to be served, a statement as to the proposed financing for the company, and such other information as the board by rule requires."

Prior approval of the board is required before a CATV company may abandon or curtail any service.

A schedule of annual license fees is prescribed which is related to the gross operating revenues of the CATV system for the preceding year. The proceeds are paid into a fund to support the Board's engineering and accounting staff.

However, the newly enacted CATV provisions also provide that CATV companies "shall have the privileges provided in and be subject to the provisions of Chapters 1 through 7 of this title." The described chapters encompass most of the usual public utility regulatory provisions, some of which overlap areas covered by the specific CATV provisions: incorporation of public service corporations and commencement of service; control over adequacy of service and equipment; supervision of rates, including prohibitions against discrimination; regulation of holding companies, mergers, sales of utility property and securities issues; requirements as to uniform systems of accounts and reports to the board; and conferral of the right of eminent domain upon the systems. It is unclear to what extent these other provisions can be made fully applicable to CATV systems, but there is no apparent conflict in the two sets of provisions.

5. Hawaii. The most recently enacted legislation pertaining to CATV regulation at the state level is that of Hawaii. In 1970, the legislature vested in the Director of Regulatory Agencies "power and jurisdiction to supervise and regulate every CATV system operating within this State so far as may be necessary to carry out the purposes of this chapter." The principal authority vested in the Director is to issue nonexclusive "CATV permits", which authorize CATV systems to use public rights of way. Exempted from the coverage of the act are: (a) regulated telephone companies or other utilities leasing facilities or providing channel service to CATV companies, (b) CATV companies not using public rights of way, (c) non-profit CATV systems serving less than 100 subscribers, or (d) CATV systems using a master antenna and an internal distribution system to serve the residents of one or more apartment houses or hotels under common ownership (and businesses on the premises).

Except for systems presently operating and entitled to "grandfather rights" as defined by the statute, no CATV service may be initiated or extended without obtaining a CATV permit. The application for the permit shall set forth "such facts as the director may prescribe as to the citizenship, character, and financial, technical and other qualifications of the person seeking to operate the CATV system, and complete information as to the principals and ultimate beneficial owners (including nominal and beneficial owners of more than 10% of a corporate applicant's stock) and such other information as the director deems appropriate and proper." Also, each "applicant shall make full disclosure as to the true ownership of the facilities to be employed in

rendering service, as to the source of funds for the purchase, lease, rental, and installation of such facilities..., and as to his ability to extend service at a reasonable cost to the potential subscribers in the proposed service area. Each application shall set forth the rates to be charged, the services to be offered, the facilities to be employed, the general routes of the wires, cables, conduits, or other devices used in the redistribution of signals, the service area or areas, the commencement and completion dates of construction of the CATV system, and the proposed date service will be available to the areas named."

The applicant must agree in advance to avoid all unnecessary damage to trees, structures and improvements along its route; to indemnify the State and county for any liabilities they may incur as a result of installation of the system; to provide a cable drop, at reduced rates or at no cost, to any school adjacent to the cable; to remove its facilities upon expiration or termination of the permit; to submit a performance bond, prior to commencement of construction, no less than 50% of the cost of construction, to assure "satisfactory completion of installation of the CATV system in accordance with the schedule of installation proposed in the application."

The CATV permit, if issued, authorizes use of public highways for twenty years, and is renewable for terms of ten to twenty years each. Such use is subject to State laws and regulations pertaining to use of the highways and the construction of utility facilities. The Director has discretion to issue part of the authority sought,

and to impose "such terms, limitations, and conditions which he deems the public interest may require." The permit is non-exclusive, and is to include a description of the area to be served and the approximate date on which service is to commence.

In deciding whether to issue a permit, the Director "shall take into consideration, among other things, the public need for the proposed service or acquisition, the ability of the applicant to offer service at reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the ability of the applicant to perform efficiently the service for which authority is requested, and any objections arising from the public hearing, the CATV advisory committee, or elsewhere." (The statute establishes a five-member CATV advisory committee to advise the Director in the execution of his duties with respect to CATV systems.) "In determining the area which is to be serviced by the CATV company, the director shall take into account the geography and topography of the proposed service area, and both the present operations and the planned and potential expansion of the applicants' and other CATV companies."

As to rates, in addition to the preceding references, the statute provides:

"The director shall require each CATV company to submit a schedule of its rates and all terms and conditions of service in such form and on such notice as the director may prescribe. The duty of the director shall be to maintain surveillance over such filed rates and terms and conditions of service to insure that the rates and terms and conditions of service are fair both to the public and to the CATV company, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing CATV service to subscribers in the service area.

"Any disagreement between the director and a CATV company over its filed schedule or rates shall be resolved by the director after a hearing has been held.."

The Director may promulgate "such rules and regulations as are necessary to carry out this chapter, including rules and regulations establishing criteria which:

"(1) Categorize CATV companies according to their method of operation or any other appropriate criteria;

"(2) Identify general requirements for the designation of service areas; and

"(3) Govern the quality of the signal required to be transmitted by the CATV system."

The Director also has power to approve or disapprove provisions of contracts between CATV companies and public utilities concerning use of the latter's property (except where the matter is regulated by the FCC or the state public utilities commission); to inspect and examine records and facilities of CATV companies, with power to compel attendance of witnesses and production of records; and to cancel CATV permits on a number of grounds--including repeated failure to maintain signal quality under standards prescribed by the Director; inability to provide CATV service at reasonable cost; and violation of the statute, the Director's regulations or the CATV company's permit.

CATV permits may be transferred only with the consent of the Director. CATV companies are required to file annual reports.

It should be noted that, prior to the enactment of this statute, the Attorney General of Hawaii ruled that CATV companies were public utilities within the terms of the existing public utility

statute. However, there was no provision under that statute, or under municipal regulation, which required a CATV system to obtain a franchise or license before commencing operations.

6. Model statutes prepared under the auspices of the National Association of Regulatory Utility Commissioners. In 1966,

the NARUC General Counsel, pursuant to a resolution of the 1965 NARUC Annual Convention, prepared a "Model State Community Antenna Television System Act." The Act has many similarities to the Nevada legislation previously described (i.e., the specific CATV provisions), and is set forth as Appendix B. The Model Act provides for certification of new CATV systems; regulatory approval of the transfer of CATV certificates; revocation of certificates for wilful violations; regulation of rates; control over abandonments, adequacy of service, and discrimination; requirements as to financial responsibility, insurance, uniform systems of accounts, records, reports, and safety of operations and equipment; regulatory authority to compel extensions and repairs, to grant the right of eminent domain and to control the placement of poles and cables; regulatory control over leasing of channels by CATV systems from telephone companies; regulation of securities issues and mergers; regulatory authority to compel joint use of utility poles by CATV systems; and an optional provision on control of municipal franchises.

In 1970, an Ad Hoc Committee on CATV Regulation proposed to the NARUC Executive Committee an alternative statute: the "Model State CATV Regulatory Surveillance Act." The latter act was considered "less objectionable by the CATV industry." The principal difference between the Model Surveillance Act and the earlier Model Act is that in the subsequent proposal CATV systems are declared not to be public utilities; regulation of rates is precluded; and no provision is made for eminent domain or a uniform system of accounts. Provisions as to certification, transfer and revocation of certificates are retained, as are provisions pertaining to adequacy of service, abandonments, discrimination, records and reports, safety of

operations and equipment, financial responsibility and insurance, compulsory improvements or additions, and joint use of other utility poles. A provision is added limiting the amount of municipal fees. A copy of the Model Surveillance Act is attached as Appendix C.

7. The Kelly Bill. There have been a significant number of bills proposed in the New York legislature over the last several years. It would be impossible to review all of them. They vary considerably in detail, but most resemble one or another of the regulatory measures previously discussed. The Kelly bill, Assembly 6700-A in the last session, warrants detailed consideration on several grounds: (a) the approach taken is distinctive; (b) there have been several extended hearings on the proposal; and (c) the proposal is backed by a significant research effort on the part of the Assembly Central Staff.

In essence, the Kelly bill proposes a continuation of the present system of municipal franchising, supervision of such franchising by a newly formed commission, and a series of restrictions to be imposed upon the issuance of franchises and the activities of CATV operators. Only the highlights of the bill will be reported here. The complete text of the bill (including amendments) is reproduced as Appendix D.

The Kelly bill would be applicable to all CATV systems except those with less than 250 subscribers and those serving only the residents of one or more apartment dwellings under common ownership or control (including related commercial establishments). The bill is specifically made applicable to CATV systems which provide service exclusively through the facilities of a telephone company.



All cable systems would require a municipal franchise as a prerequisite to operation. Such a franchise would confer the right to use public thoroughfares. But the franchise would have to be approved by a newly created State Commission on Cable Television. The seven members of the proposed Commission "shall be representative of the broad range of interests and disciplines related to telecommunications needs including so far as possible, the fields of broadcasting, educational television, cable television, communication system regulation and communication electronics and at least two members shall represent consumer interests." The duties of the Commission are enumerated as follows. The Commission shall:

"(a) establish standards for franchising procedures and practices of municipalities;

"(b) establish standards for provisions to be included in cable television franchises;

"(c) establish guidelines for equipment, service and safety of cable television systems for use by municipalities;

"(d) provide advisory assistance to municipalities in matters relating to cable television;

"(e) review and act upon applications for certificates of approval in accordance with such standards and as hereinafter provided;

"(f) represent the interests of the people of the state before the federal communications commission and inform municipalities of developments at the federal level;

"(g) consult with the cable television industry, other states and agencies of this state to promote the rapid and harmonious development of cable television..."

In exercising its function of issuing certificates of approval, "the commission shall take into consideration, among other things, the public interest, the suitability of the applicant, the financial responsibility of the applicant, the ability of the applicant

to perform efficiently the service for which authority is requested and the substantial conformity of franchise provisions with standards set by the commission." The following are disqualified from holding CATV franchises after the effective date of the statute: "any company engaged in the business of newspaper publication, public utilities, radio or television broadcasting or production of program materials for interstate distribution including movies, entertainment and sports."

There is a grandfather clause to protect existing operations. But a certificate of approval is required in the event of amendment, extension or transfer of the franchise. Furthermore, any franchise not exercised by "substantial performance" within one year of the effective date of the Act would be invalidated, and a new franchise and certificate of approval would be required.

Cable television systems would be required:

- (1) To furnish such reports to the Commission as it may require;
- (2) To pay to the Commission two percent of gross annual revenues (subject to specified minima);
- (3) To obtain Commission approval for any merger with "another organization;"
- (4) To obtain Commission approval to lease or rent cable distribution facilities or cable channel service;
- (5) To refrain from engaging in the business of manufacturing, selling, renting, installing or servicing any "hardware" related to cable operations or subscriber equipment (divestiture is required for existing operations);

(6) To avoid unjust or unreasonable discriminations and undue and unreasonable preferences or advantages;

(7) To refrain from entering into contracts with building owners that would interfere with existing rights of a tenant to avail himself of master or individual antenna equipment;

(8) To provide safe and adequate service, equipment and facilities "in accordance with the highest and best accepted standards of the industry;"

(9) To maintain and service its facilities, and to maintain a local office available to subscribers;

(10) To obtain the approval of the Commission prior to abandonment of all or part of its system or facilities;

(11) To abide by the safety standards of the municipality within which it operates;

(12) To abide by rate schedules "fixed by Law or by order of the commission or by agreement of any municipality and local authority," and not to collect any rate except in accordance with such schedule.

The final requirement, added by an amendment, seems to be at variance with the general tenor of the bill, which is to refrain from subjecting CATV systems to full public utility regulation. Thus, among other things, the declaration of legislative findings and intent states that CATV "operations must be protected from restraint and regulation so as to assure the maximum penetration of cable television services to homes in this state as rapidly as economically feasible, that municipalities could benefit from valuable educational and public services through cable television systems."

and that cable television is in a period of rapid growth and corporate consolidation and many municipalities lack the resources to protect subscriber and public interest in franchise negotiations."

## V. Municipal Regulation of Cable Television

Most local regulation of CATV systems has been undertaken pursuant to the franchises of municipal authorities, based on their power to control access to public streets and thoroughfares within their boundaries. Here there is much wider variation and much greater uncertainty.

### A. Municipal Franchises Generally

In numerous cases, local franchises have been held to be invalid: sometimes because franchising procedures, prescribed by state statute, were not followed; sometimes because the CATV system (not being a public utility under state law) was not eligible for a franchise under the pertinent state statute; sometimes because the franchise, in imposing a variety of regulatory conditions, was held to exceed the authority of the municipality over its streets and invade the regulatory prerogatives of the state government under the police power; and in one recent case (Wonderland Ventures) it was held that a franchise fee on the gross receipts of a CATV system was invalid as a tax on the revenues of interstate commerce. All but the last decision involve rulings on issues of state law, and on each it is possible to find decisions to the contrary. Some states have statutes authorizing municipal franchising of CATV systems and, in some cases, imposing limitations and procedures.

### B. Franchises in New York

In New York State, the courts have held that CATV systems are eligible to receive franchises from municipalities for the use of their streets, and that the attachment of regulatory conditions does

not invalidate the franchise. But the courts also have held that, if the CATV system transmits its signals through the facilities of a duly franchised telephone company, rather than through its own lines, the CATV system need not obtain a franchise from the municipality in which it is operating.

Franchises in New York State are required by law to be non-exclusive, and there are provisions requiring that the award of a franchise be preceded by notice and a public hearing.

1. General franchise provisions. Municipal franchises vary greatly, but most contain certain common provisions. (The term "franchise" is used in its broadest sense, to cover any license or permit to use public thoroughfares.) The following generalizations are based on an examination of 18 franchises, submitted as representative by the New York Cable Television Association.

a. Franchise term. Of the 18 franchises submitted only six--or one-third--had definite terms running from the effective date of the franchise: Olean (10 years), Moreau (10 years), East Fishkill (10 years), Haverstraw (25 years), Cicero (30 years), and Penn Yan (30 years). Another five franchises had terms which were somewhat less definite but reasonably ascertainable: Geddes (15 years from date first customer is provided service), Oneida (initial term of 10 years, followed by successive terms of 10 and 5 years at option of the company), Schenectady (two successive ten-year terms, unless contrary notice is given by either party one year before end of first term), New Windsor (initial term of 25 years, renewable by town for an additional 25 years), Lake George (initial term of 10 years, renewable by company for an

additional 10 years, with rates subject to renegotiation and possible arbitration at time of renewal).

The remaining seven franchises have terms described in language of varying degrees of vagueness and complexity. The Auburn franchise, with an initial term of 15 years, provides:

"In the event this Ordinance is strictly complied with by the Company, and the relationship between the Company and City is found to be mutually advantageous, the said Company shall at the expiration of the time set in this Ordinance, be entitled to a renewal of the Ordinance under similar terms and conditions to be arrived at between the parties at that time."

The Groton franchise, with an initial period of 10 years, provides that the "Grantee shall have the first privilege of being granted an extension of this franchise for a further term of five years ...on such terms as may be agreed upon between the Village and the Grantee." The Pittsford franchise, with an initial term of 20 years, provides that, upon notice from the grantee, the municipality "will negotiate with the grantee for a renewal or extension of this franchise." And the Jamestown franchise, with a 15 year initial term, has a similar provision that, upon notice from the grantee, "the parties (will) commence negotiations immediately thereafter in good faith looking to a further extension (of the franchise) upon mutually acceptable terms." It is possible that these four renewal clauses all are too vague to effect extensions of the franchises beyond their initial terms over the opposition of the municipalities involved.

However, two franchises--for Gates and Greece--are more specific. Both are for initial 20 year terms and both provide that if, after notice and negotiations, the parties are unable to agree upon a

renewal, an arbitration panel "shall be duly empowered to arbitrate the respective differences of the parties."

"While this panel shall not be considered an adjudicatory body, it shall operate under the rules of evidence and shall submit a formal report of its findings to the grantee and grantor... Renewal of the Ordinance shall be for a period of twenty (20) years in the same form as the instant Ordinance."

The Corning franchise is wholly indefinite as to duration.

b. Franchise exclusivity. Only about half of the franchises examined (10) expressly provide that they are non-exclusive. None purports to be totally exclusive. However, one franchise (New Windsor) provides that areas being served by the franchised CATV system would not be franchised to other systems--although areas not served could be franchised to others if the franchise-holder, after notice, did not extend service to such unserved areas.

c. Franchise fees. Franchise fees, normally expressed as a percentage of gross revenues, vary considerably. For the 18 franchises examined, the range is from zero to 6%:

- Zero - East Fishkill (\$500 per year)
- 1% - Corning, Groton
- 2% - Penn Yan, Jamestown
- 2.5% - Cicero (first 8 years)
- 3% - Cicero (latter 22 years), Oneida, Moreau (plus single payment of \$4,500), New Windsor, Auburn, Schenectady (first 5 years)
- 4% - Schenectady (second 5 years), Olean
- 5% - Haverstraw, Geddes, Greece, Gates, Pittsford
- 6% - Lake George

However, there are variations in addition to the stipulated percentages. These include (1) the base (some include all gross receipts; most are limited to gross monthly rentals and exclude installation charges); (2) the presence or absence of dollar minima (for one or more years); and



(3) the presence or absence of "favored nation" clauses (giving the municipality the benefit of a higher franchise fee if one is granted elsewhere in the county).

d. Rates to subscribers. Of the 18 franchises examined, only seven contain wholly firm rate commitments (to remain in effect absent mutual agreement between the municipality and the CATV system to change rates). Considering only the basic installation and monthly rental charges, these are:

	<u>Installation</u>	<u>Monthly Rental</u>
Corning	\$19.95	\$4.50
Haverstraw	10.00	5.00
Jamestown	30.00	4.90
Moreau	25.00	5.00
Olean	16.50	5.50
Penn Yan	18.00	5.50
Pittsford	20.00	5.00

One additional franchise, Cicero, provides that unspecified rates will be filed, and that these will not be subject to change without town approval.

An additional seven franchises contain initial rates, but include in them various mechanisms for change.

	<u>Installation</u>	<u>Monthly Rental</u>
Auburn	\$15.00 to \$20.00	\$5.00
East Fishkill	0 to 20.00	4.85
Gates	0 (in cabled areas)	4.75
Geddes	\$10.00	5.00
Greece	0 (in cabled areas)	4.75
Groton	25.00	4.50
Lake George	15.00	5.00

Auburn: "Rates charged by the Company...shall be fair and reasonable and designed to meet all necessary costs of the service, including a fair rate of return on the cost, operation, maintenance, development and replacement of its properties under efficient and economical management. The Company agrees that it shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having

competent jurisdiction to fix just, reasonable and compensatory television signal distribution rates. (The initial rates) shall remain in effect until changed or modified in accordance with the general standards set out in this section... The Company... shall serve upon the city any (changes in its) schedule of charges at least 30 days prior to their effective date."

East Fishkill. Rates shall be reduced if the Company provides CATV service to another town in the same county at rates lower than those specified. "Any increase of the maximum charges... shall first be approved by the Town Board... and such increase shall be permitted only upon a showing of necessity based upon increased costs."

Gates. A "change (up or down) in the basic price will be permitted upon thirty (30) days' written notice by the grantee... if the cumulative percent change in the price is not more than the cumulative price change in the cost of living as measured by the official standard of the United States," using December 1968 as a base. If the grantee proposes a greater change in price and the municipality disapproves, the Municipality's Executive "will hold an administrative hearing (at which the rules of evidence will be followed)... at which time the grantee and the Municipality's Executive will offer evidence to show what a fair price should be. The test of a fair price will be the price which will produce a fair rate of return on the value of the total investment needed to provide CATV service to subscribers in Rochester at the time such a determination is made. Further, a fair rate of return is defined as that rate of earnings which will enable the grantee to maintain its credit and the integrity of the value of its capital and permit the grantee to attract capital in the market place at reasonable cost rates in competition with other companies with similar risk characteristics for a reasonable time period in the future. The total income or return available to pay for the use of such capital will not be more or less than the rate of income earned by other investors in similar or comparable companies with corresponding risks and uncertainties..."

"If, in the future, the State of New York or the Federal Government regulates the rates of the grantee for the service provided for in this license, this section shall be of no effect during such state or federal regulation to the extent of any conflict therewith."

Geddes. "Rates charged by the Company for service hereunder shall be fair and reasonable. The Company agrees that it shall be subject to all authority now or hereafter possessed by the Town, or any other regulatory body having competent jurisdiction, to fix just, reasonable and compensatory television signal distribution rates." The initial rates "shall not be increased without approval of the Town Board, but the Board will not unreasonably withhold its approval for increases in the rates if conditions warrant the same."

Greece. Same as Gates.

Groton. "The rates and charges established by this franchise shall not be increased without prior approval of the Village Board of Trustees. Such increase shall be permitted only if increased costs of operation show such increase to be reasonable and necessary. Similarly, the rates and charges may be decreased by the Village Board provided such decrease shall permit the Grantee a reasonable profit or return on his investment."

Lake George. "Any increase in the maximum charges must first be approved by the Town Board..., and will be permitted if increased costs show it to be reasonably necessary."

There are no rate provisions in the New Windsor, Oneida or Schenectady franchises, although the latter requires the Company to furnish the City a schedule of rates.

Most of the franchises with rate provisions contain specifications for rates in addition to the basic installation and rental charges quoted above. Some are quite cryptic and others quite extensive (covering additional sets, removals, restorals and the like). Some permit rates to be negotiated with commercial customers, and in some instances (notably installations beyond a prescribed distance from the main cable), the installation charge is to be based on cost to the Company.

e. Prohibitions against discrimination. Perhaps the most comprehensive prohibition against discrimination appears in the Auburn franchise:

"The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

"The Company shall file with the City Clerk a statement of its policy for extending service to sparsely settled sections within the City. Such policy shall not discriminate with respect to any applicants so that all applicants will be entitled to service at the same rates as applicable to all users."

The substance of the first paragraph is repeated in a

number of other franchises, but subject always to qualification. Thus, as to Gates, Greece and Pittsford, the franchises, though containing general anti-discrimination clauses, provide that "any area within the Municipality with 60 homes per mile of system may be added to the system on a schedule that is convenient and reasonable to said grantee." As to Geddes, Penn Yan, New Windsor and Schenectady, the general anti-discrimination clause is followed by a proviso to the effect that "nothing in this permit and franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled." In addition, the latter franchise has a special provision pertaining to unserved areas:

"The Town Board recognizes that it may not be feasible to provide service to all areas of the Town simultaneously, due to economic considerations. Therefore, the Company shall have the right to determine the order in which it will provide service to various geographic locations within the Town. However, should the Company fail to provide service to any locations (within two years of the franchise date), and should another qualified firm offer to serve such locations in accordance with the terms of this Contract, the Town shall notify the Company in writing that it has received such an offer. The Company shall then have six months from the date of such notification in which to provide service to the locations specified. If such service is not commenced within said six-month period, the Town may contract for service in the aforementioned locations with any firm it may select."

In lieu of anti-discrimination clauses, some franchises simply require service to all who desire it. The Jamestown franchise, for example, provides: "Grantee shall be required to permit any individual or corporation to have access to the services of the holder of this Franchise subject only to the payment" of stipulated charges. The Groton franchise is similar. However, there are qualifications in other franchises. The Lake George franchise states: "Distribution

facilities will be installed in those areas of the Town which are populated, or have a population density of approximately 40 homes per lineal mile." The Moreau franchise contains a similar qualification. The population density exclusion is 60 dwellings per lineal mile in the franchise of East Fishkill.

The Corning franchise simply requires that the franchisee shall supply CATV "service to all persons desiring the service offered in any area of the City where said cable is installed" upon payment of stipulated charges. The Schenectady franchise requires service to residents "wherever practicable." Four franchises are silent on the subject of discrimination and duty to serve.

One franchise provision which bears on discrimination, and the duty of the Company to serve, is that enabling the company to promulgate rules. In the Geddes franchise, for example, the Company has 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 perform its obligations under this permit and franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of New York, and shall, where applicable, be subject to approval by the regulatory body, local, State or Federal, having jurisdiction over the Company's operations."

The Auburn and Penn Yan franchises are similar. A more abbreviated provision appears in the New Windsor and Schenectady franchises.

f. Free services and facilities. Of the 18 franchises examined, 14 provide some form of free or reduced-rate service to schools or municipal buildings or both. The general pattern includes, as a

minimum, waiver of monthly rental charges for one or more "drops" at schools.

One franchise (East Fishkill) also provides for a 30% reduction in rates for certain elderly persons.

Seven franchises provide for provision of a channel for community or educational use:

Olean: channel to be made "available...to the subscribers in the City of Olean."

Haverstraw: channel to be made available for "municipal and educational closed circuit programming."

Oneida: no charge "for transmitting any education program on any channel now contemplated or hereafter to be made available."

East Fishkill: system to be made "available to the Town in accordance with reasonable rules and regulations," with the Company to furnish studios and equipment.

Cicero: reservation of "one channel and the requisite facilities for locally originated educational programs."

Moreau: requirement of "facilities for transmitting local civic events and affairs."

Lake George: requirement of one "closed circuit channel for exclusive community use."

With the exception of the ~~Oneida franchise~~ which is ambiguous as to the nature of the CATV operator's obligation--none of these franchises are clear on whether the channels will be furnished free of charge, although such is the probable intent.

A number of franchises also provide that the CATV system's poles may be used, without charge, for town police and fire alarm systems.

g. Schedules for construction and operation. The franchises vary widely as to the time at which construction and service shall commence:

Jamestown: franchise is void if no pole attachment agreement is obtained within one year of date of franchise, or if no construction is undertaken within one year of FCC microwave approval of three independent New York City channels.

Greece: construction shall commence within 360 days after procurement of pole attachment agreements and necessary consents from the FCC to carry distant signals.

Gates: same as Greece.

Moreau: installation shall commence within 30 days after obtaining microwave authority from FCC and consummation of pole attachment agreement with utility companies.

Oneida: service shall begin within 15 months of franchise execution.

Haverstraw: construction shall commence within 6 months of pole attachment agreements and continue "with due diligence until completion."

Lake George: construction shall be commenced within one year of franchise date and service provided to customers not later than February 1, 1971 (date of franchise is December 31, 1969).

Schenectady: application shall be made to FCC for microwave authority within 60 days, and construction shall be commenced within 15 months, of effective date of franchise.

East Fishkill: service shall begin within twelve months after execution of franchise.

Cicero: installation shall be commenced within 90 days after effective date of franchise and extensions and service shall be pursued with "due diligence."

New Windsor: installation shall commence within six months after completion of pole attachment agreements, and service shall be made available within six months from the date on which construction is begun or within two years from the date of the franchise, whichever is earlier.

Groton: system shall be in operation within nine months from franchise date.

Geddes: service shall begin within 18 months after the company has obtained all necessary local, state and federal authorizations, including approval to carry proposed distant signals and pole attachment agreements with utilities.

Pittsford: construction shall commence within 360 calendar days after procuring the necessary pole-line attachments and necessary consents from the FCC to receive signals.

Olean: service shall commence within six months of execution of franchise agreement.

Penn Yan: franchise shall be contingent upon execution of pole attachment agreement with utility within 12 months of date of franchise, and construction within 18 months.

Auburn: service shall begin within one year of the effective date of the franchise, or within one year after all necessary permits and authorizations (including utility attachment agreements and microwave authority) are received, whichever is later.

Corning: none.

In considering the effectiveness of these requirements, consideration must be given to the population density exclusions, and other qualifications, noted above in connection with anti-discrimination provisions. Also, it should be noted that provisions pertaining to the initiation of construction, or even the commencement of service, usually are not accompanied by provisions governing the extension of service to all areas in the franchised territory.

h. Construction and maintenance of CATV systems. In general, the franchises require that the CATV system use the poles of existing utilities where available, and, if additional poles are necessary that the CATV system obtain municipal approval for the construction of such poles. Facilities are required to be constructed in such a way as not to obstruct traffic or interfere with use of public ways; and, in some cases, undergrounding is mandated where other utilities are required to place their facilities underground. The CATV system is responsible for the expense of any repairs its installations may require to be made to public property and for the expense of relocating its facilities if necessary to accommodate changes in municipal facilities.



Construction generally is required to conform to the National Electric Safety Code and all state and local laws. In addition, some franchises specify the type and placement of facilities; and a few require that resident employees be available to repair CATV facilities (Haverstraw, Greece, Pittsford, Gates). A number impose such general requirements as that the system shall be "maintained in safe condition" (Corning); installations shall be "of permanent nature, durable and installed in accordance with good engineering practice" (Lake George); the CATV system shall be installed and maintained "in accordance with the highest standards of good engineering practices" (Cicero); the system shall maintain "high quality standards prevailing in the television cable industry" (Penn Yan); facilities "shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair" (Gates, Greece, Pittsford). The Olean, New Windsor and Schenectady franchises incorporate language from various of the previous examples.

i. Service standards: programming and related aspects.

Of the 18 franchises examined, 10 specify the minimum number of channels required of the CATV system:

- Six: Groton
- Nine: Oneida, Penn Yan (six from western New York and three to be imported by microwave)
- Ten: Corning
- Twelve: Jamestown, Auburn (including one educational), Olean (plus FM), East Fishkill (plus FM; also 11 of 12 channels assigned to specific stations).
- Fifteen: Geddes (plus FM)
- Twenty: Lake George (including 9 assigned to specified television stations; one channel for time, weather and public service announcements; one channel for news ticker; and one channel for community use).

Seven franchises require the carriage of all local signals (Gates, Geddes, Greece, Jamestown, Oneida, Pittsford, Schenectady), and one requires that, if distant signals are imported, all local signals shall be carried (Corring). Three franchises proscribe pay television (Jamestown, Olean and Schenectady), and one (Olean) prohibits as well (i) origination (except automatic unsponsored time and weather), (ii) advertising (except as such is involved in the retransmission of broadcast television signals), and (iii) duplication of the local television station (to the point of permitting cancellation of the franchise if the local television station is forced off the air).

In addition, a number of franchises expressly require 24-hour operation so that television signals can be received at any time (Olean, Lake George, Oneida, East Fishkill).

j. Service standards: technical and general aspects.

Six of the 18 franchises examined require that the CATV system be capable of color transmission, at least "where technically feasible" (Olean, Oneida, East Fishkill, Greece, Gates, Pittsford). Five specify that a local office be maintained to receive complaints (Haverstraw, Penn Yan, Greece, Gates, Pittsford). Six require prior notice of any interruption in service except in the case of emergency (Auburn, Geddes, Penn Yan, Pittsford, Gates, Greece). Several state, in general terms, that reception by non-subscribers shall not be subject to interference (Moreau, Lake George, Schenectady); and a few specify that signal quality shall conform to FCC standards (Gates, Greece, Pittsford). But technical specifications are more detailed in some franchises. Thus, the Oneida franchise requires inter alia:

"Radiation from the system shall be less than the following:

- |                   |                                     |
|-------------------|-------------------------------------|
| a. 0 to 54 mc.    | 15 microvolts per meter at 100 feet |
| b. 64 to 132 mc.  | 20 microvolts per meter at 10 feet  |
| c. 132 to 216 mc. | 50 microvolts per meter at 10 feet  |
| d. 216 mc. up     | 15 microvolts per meter at 100 feet |

"Radiation shall be measured in accordance with sub-part B of the Federal Communications Commission's specifications, paragraph 15.161.

"The system shall provide a signal of no less than 1,000 microvolts per meter across a 300 ohm termination at the point to which the receiver is normally connected on all utilized channels.

"The system amplitude vs. frequency response shall not vary more than 2 decibels across the 6 mc band width of any television channel utilized.

"The signal to noise ratio on any television channel utilized shall be no less than 40 db.

"60 cycle hummodulation shall not exceed 2 percent.

"Cross modulation effects on any channel shall be at least 40 db. below the picture carrier level.

"All measurements shall be made in accordance with good engineering practice."

Detailed specifications of a similar character are included in the Olean franchise, and specifications of a somewhat different character are included in the Corning franchise. See Appendix E. The Cicero and East Fishkill franchises refer to system specifications, but none were attached to the documents examined.

Most franchises do not contain detailed technical specifications. They provide instead for service quality in general terms. Thus, the Pittsford franchise provides:

"The grantee shall:

- (1) Produce a picture meeting all technical standards prescribed, or to be prescribed, by the rules and regulations of (the FCC);

(2) Limit failures to a minimum by locating and correcting malfunctions promptly.

(3) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

"The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible..."

The Greece and Gates franchises are similar.

The Groton franchise provides that the grantee shall furnish

"a wire service capable of producing as good a quality of television picture or reception as may be practicable from time to time, and shall make all reasonable and practicable betterments of said services as improvements in the sciencies of the carrying of television signals shall warrant, as well as in the elimination of radio interference."

The Lake George, East Fishkill and Moreau franchises are similar. More abbreviated general service standards appear in the franchises of Penn Yan, New Windsor, Schenectady and Haverstraw.

The Geddes franchise provides:

"The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Board as provided for in Section 12 of this resolution, or by any regulatory body, State or Federal, having jurisdiction of the Company's operations.

"Sec. 12... The right is hereby reserved to the Town to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of New York."

The Auburn franchise is similar.

No general service standard appears in the Cicero or Jamestown franchises. The Oneida franchise contains a clause proscribing signal degradation.

Several franchises contain additional provisions of interest in relation to maintenance of service. After requiring "service in accordance with the best accepted standards of the industry, so as to provide its subscribers with the highest possible level of quality and reliability," the New Windsor franchise provides that:

"At such time as certain standards are established by a Federal and/or State regulatory agency for performance of cable television systems, then the system operated by the Company in the Town shall comply with such standards."

The Olean franchise, in addition to the detailed technical specifications noted above, provides:

"City may employ a representative of a recognized national manufacturing company or an independent CATV consultant of recognized stature within the industry at the sole expense of the Company to inspect in the presence of City employees and Company employees the technical operation of the physical facilities of the Company.

"...The person so employed will render...a report as to the adequacy of service being rendered together with recommendations as to their improvement... The Company agrees to take such action as is recommended in the report within a reasonable time after receipt of a copy thereof..."

The Moreau franchise, in addition to the general service standard noted above, provides that, at the option of the town, a clause may be added to the franchise requiring "prompt and diligent steps" by the Company to remedy "any complaint of sub-standard signal or reception, or of interference with signal or reception, either by a subscriber or non-subscriber" within 96 hours; if not remedied within this time, the complaint must be submitted to a "CATV Grievance Committee", which will have authority to determine the source of the complaint and to require the CATV Company to remedy the situation "with all due diligence" if caused by its fault.

"In the event that said problem is of such aggravated nature as to seriously impair complainant's reception, and an unreasonable length of time will be required to remedy the situation, (the Company) agrees that during this period (a) if complainant is a subscriber, all rental fee shall be waived, and (b) if complainant is a non-subscriber, free use of the system shall be provided until the condition has been alleviated."

k. Service standards: innovation. As noted above, several franchises provide, in general terms, for improvements in the CATV system to match advances in the art. In addition, several franchises (Greece, Gates, Pittsford) provide:

"It shall be the policy of the Municipality liberally to amend this franchise upon application of the grantee, when necessary to enable the grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers. Provided, however, that this Section shall not be construed to require the Municipality to make any amendment or to prohibit it from unilaterally changing its policy stated herein."

The same franchises contain these provisions:

"The grantee shall, at all times during the life of the franchise be subject to all lawful exercise of the police power by the Municipality and to such reasonable regulation as the Municipality shall hereafter provide.

"The right is hereby reserved to the Municipality or the Council to prescribe, in addition to the provisions contained herein, and in applicable ordinances, such additional regulations as it shall find necessary, provided that such regulations, by ordinance or otherwise, shall be reasonable."

The Gates and Greece franchises add at the end: "and not in conflict with the rights herein granted." It is possible that clauses of this type, or of the type noted in the preceding section (the Geddes franchise, section 12), might provide a basis for municipal requirement of system improvement. Rights of subsequent town regulation are reserved in the franchises of Auburn, Cicero, Groton, Olean, Penn Yan and Corning (the latter as to reception of ETV and FM radio signals only).

One significant limitation on future innovation may be the manner in which the franchise grants are phrased. Virtually all of them describe CATV systems as engaged in the reception, transmission and

distribution of television (and sometimes radio) signals. The Greece, Gates, Pittsford and Lake George franchises describe this function as the "primary" purpose of the system, presumably leaving room for additional incidental activities. The New Windsor franchise encompasses the "transmission of visual and/or audio signals by means of electrical impulses over coaxial cables or other suitable means, consistent with the services being offered and the state-of-the-art within the industry," and the Olean franchise is slightly ambiguous in its reference to "television electronic, electrical and radio signals, audio and video." The Haverstraw and Oneida franchises are so cryptic that some latitude for new operations may be found in their lack of specificity. Only the Schenectady franchise is broadly worded to encompass transmission of "television, radio, electrical and electronic energy, pictures, sounds, signals, impulses and communications, uni-directional and multi-directional of every nature and description, audio and video, embracing any and all of the frequencies of the electromagnetic spectrum, and to otherwise engage in the business, services and activities generally known and practiced now and in the future by community antenna television and audio communications services."

1. Business restrictions. Fifteen of the eighteen franchises preclude the CATV operator from engaging in the business of selling or repairing television sets. Two additional franchises (and two of the above fifteen) preclude the CATV operator from designating the source (or, in one case, the type) of television equipment employed by the subscriber.

m. Transfer. Fifteen of the eighteen franchises preclude transfer of the franchise without the consent of the municipality. One

franchise bars assignment altogether (Pittsford); one appears to permit an unconsented assignment as long as proper notice to the municipal authorities is given (Moreau); and one franchise says nothing on the subject (Jamestown).

Despite the prevalence of franchise transfer provisions, they vary markedly in scope. Some apply to the system property, while most are limited to the franchise itself. Some expressly apply to mortgages; some expressly do not; and some are silent on the point. Only three franchises expressly encompass transfers of the stock of the franchised corporation (Auburn, East Fishkill, Schenectady).

n. Abandonment. Abandonment of CATV operations is not mentioned in most franchises, presumably imposing on the CATV operator the obligation to continue service for the duration of the franchise. However, two franchises provide that the CATV operator may abandon operations on notice to the municipality: Jamestown requires 90 days notice, and New Windsor 60 days notice.

o. Reports and inspections. Most franchises require the franchised operator to supply various reports and documents to the town. These include:

Certifications or statements of gross income: eleven

Other financial statements: four

Copies of documents filed with other governmental authorities: four

Maps and plats of existing or proposed construction: six

Plans and progress reports: five

Company rules: two



Performance data: one

Any report required by the city: two

All but two franchises contain some kind of reporting requirement, but there is no franchise with a requirement of a uniform system of accounts, and the four that require financial statements are either cryptic in their terminology or call for very limited financial information.

Six franchises provide for an audit or inspection of books and records of the company; and three permit the municipality to inspect the company's properties as well. But one franchise is limited to inspection of gross income records and company rules; one is limited to company properties; and seven have no provision whatever for inspection of company records or property.

p. Insurance and indemnification. All eighteen franchises require some form of insurance. All but one require public liability insurance, and nine require workmen's compensation coverage as well. All but one include undertakings by the CATV system to indemnify the city for any damages or liabilities incurred by the latter as a result of the system's operations.

q. Performance bonds and right of cancellation. Eight of the eighteen franchises require a deposit, surety or performance bond, to secure faithful performance of the CATV operator's responsibilities, in the following amounts:

\$5,000	---	one
\$10,000	---	three
\$20,000	---	one
\$25,000	---	three

The \$20,000 performance bond (Moreau) is required to be accompanied by an

"escrow account (containing) so much of the installation charges paid to the Grantee by the purchasers of this service as would adequately reimburse such customers in the event of failure to continue the service contracted for, and the Grantee shall certify to the accuracy of account to the Town...quarterly."

Fourteen of the eighteen franchises afford the town a right of cancellation in the event of violation of the franchise by the CATV operator (and sometimes certain other contingencies, notably insolvency of the operator). One franchise (Moreau) apparently limits the right of cancellation to instances in which the franchise operator fails to pay its fees to the town or to render reports related to such fees. Three franchises are silent on the matter of cancellation.

One franchise (Groton) provides for fines in addition to a right of cancellation: \$50 for a first violation, and \$100 each for subsequent violations.

r. Superseding regulation. Most of the franchises require conformity to federal, state and local law on a wide variety of subjects. But several franchises are more specific on the subject of subsequently enacted regulatory measures. The presence of such a provision in the New Windsor franchise, relative to service quality, already has been noted. Also noted above is the provision in the Gates, Greece and Pittsford franchises providing for supersession of their rate provisions in the event of future federal or state regulation of rates. In addition, the latter three franchises provide:

"(a) The provisions of this franchise of any right, privilege or license granted hereunder shall be subject to any federal (including Federal Communications Commission) and state legislation, rules or regulations enacted or adopted or which shall hereafter be adopted

pertaining to the construction, operation, and maintenance of closed-circuit television transmission and transmission and distribution systems commonly known as CATV.

"(b) If any agency of the Federal government or the State of New York shall, by law, be given general authority and regulatory control over grantee, which authority shall supersede the authority of Municipality to issue the rights and privileges granted by Municipality to grantee under this franchise, then all obligations of grantee to Municipality under this franchise shall likewise cease and be unenforceable at law."

The Jamestown franchise provides more simply:

"In the event that by law jurisdiction over (the CATV system) is given to the Federal Communications Commission, the New York Public Service Commission, or any other State or Federal governmental body, Grantee hereby agrees to comply with whatever requirements may be imposed as a result thereof, including modifications of the rates (to subscribers) and fees (to the City), irrespective of the fact that Grantee has commenced operations prior to such jurisdiction having been asserted."

s. Status of the system on termination of the franchise.

Four franchises provide that, upon expiration or other termination of the franchise, the CATV operator shall remove all its facilities from public thoroughfares (Schenectady, Jamestown, Olean, Lake George). Two other franchises are similar except that they provide that, with the consent of the town, some of the CATV facilities may be abandoned in place (Oneida, East Fishkill).

Three franchises do not deal with the ultimate disposition of the system, but do provide that the CATV operator may be required to maintain and operate the system, following termination of the franchise, while the town determines upon a future course of action (Penn Yan, Geddes, Auburn).

Two franchises deal with limited contingencies only. The Groton franchise provides that, if the revocation of the franchise is attributable to bankruptcy or franchise violation by the CATV operator, the town "shall issue such directions as may be reasonable with respect to the disposition of the cable and other equipment and appurtenances of the Grantee." The New Windsor franchise provides that, if the franchise is terminated at the option of the company, the company shall have six months to remove its facilities from public thoroughfares; any company property not so removed shall become the property of the town.

Seven franchises contain no provision whatever dealing with the status of the system upon expiration or other termination of the franchise.

2. Franchises in New York City. Since 1965, three cable television companies have been authorized to operate in New York City under interim franchises. In 1968, Mayor Lindsay received a comprehensive report from his Advisory Task Force on CATV and Telecommunications, headed by Fred W. Friendly. In 1970, New York City awarded long-term contracts to two of the three existing franchisees. Because New York encompasses such a large percentage of the State's population, and because both the task force report and the franchises are among the most sophisticated attempts at achieving effective municipal regulation, both will be considered in some detail.

a. Task force recommendations. The task force recommended that the City be divided into approximately ten areas, each to be served by a separate cable company.

The recommendation for separate service areas was based on these considerations: (1) A cable system "does not have a costly central facility as does, for example, a telephone system;", "there would be no large savings if a single system were required for the entire City." (2) Technological compatibility can be achieved through regulation, so there is no technological necessity for a single system. (3) A single system might result in undue diffusion of effort which would slow down the introduction of cable television. (4) The multiplicity of systems would enable each to serve as a yardstick for the others.

The recommendation for a single CATV system in each area was defended on these grounds: (1) an unlimited number of systems, leading to say ten systems in an area, would result in high costs

and high charges to subscribers; (2) with such a number, there would be inconvenience resulting from laying many cables in the same street; (3) with only two or three systems per area, there may be some beneficial competition without these adverse consequences, but probably it would be short-lived: "Either one system would come to dominate a cable television service area because it offered superior service, with its rivals ultimately abandoning the field, or the rival systems would collude and coexist without competing."

According to the task force report, the cable operator for each area should be selected according to these criteria:

(1) It must be financially and technically qualified and of good general character.

(2) It must submit a plan indicating mode and timing of installation (backed by a performance bond).

(3) It must not be a local television station or be affiliated with such a station.

(4) A selection among qualified applicants for an area should be made by open, competitive bidding, based on payment of a percentage of gross revenues to the City.

(5) Multiple ownership of the various City cable systems should not be permitted.

The task force recommended that the franchises be for ten-year terms with opportunity for renewal.

The task force recommended that all systems have at least 18 channels; that the systems be compatible and interconnected; and that the City regulate the quality of technical performance.

Assuming 18 channels, the task force recommended that they be allocated as follows:

(a) Eleven channels for carriage of local signals.

(b) Three channels reserved for the City for municipal purposes (e.g., in-school instruction, vocational training programs, provision of space to private nonprofit organizations or political candidates, service to particular ethnic groups).

(c) Two channels for leasing to others, with preference on one channel to public service organizations (rates to be regulated by the City).

(d) Two channels to be operated by the cable operator, one for public service programs and the other as a general broadcaster.

As additional channels become available, the task force recommended that they be allocated along similar lines.

The task force would permit financing of programs by commercials or by subscription. But the City would get a minimum of 25% of revenues from pay television. The task force saw this point as applicable to four channels ((c) and (d), above).

The task force further recommended:

1. That franchises not be transferable without the consent of the City.
2. That CATV systems not be permitted to discriminate among areas to be served, serving the rich but not the poor--everyone wishing to subscribe should have CATV service available.
3. That landlords be required to permit tenants to subscribe, obtaining the required right of way by eminent domain proceedings if necessary.
4. That CATV systems using telephone facilities be required to obtain a municipal franchise and be subjected to municipal regulation (including the payment of franchise fees).

5. That the City secure for CATV operators space in the ducts operated by New York Telephone Company or its subsidiary, exercising existing contract rights to duct access in Manhattan and the Bronx and eminent domain proceedings in the other boroughs if necessary.

6. That the rates of CATV systems be regulated at regular intervals--on the one hand, to protect the subscriber against excessive charges, and, on the other, to provide the cable television company with a fair return and the incentive to serve its subscribers well.

7. That in the event of poor performance, renewal of a franchise should be denied, "and new applicants for the particular cable television service area should be invited to come forward. The City Government also should retain the right during the life of an authorization to terminate it where there is a substantial failure or inability to perform."

8. That a new municipal office for cable television and cable telecommunications should be established to supervise cable television operations and advise the Mayor and Board of Estimate of any actions that may be warranted.

b. The 1970 franchises. In 1970, the New York City Board of Estimate awarded identical franchises to two CATV companies, one for the northern half of Manhattan and one for the southern half. The term of each franchise is twenty years, subject to reopening and renegotiation of all provisions after ten years (except as to duration of the franchise and identity of the franchisee). Any unresolved disputes arising out of the renegotiation are to be submitted to



arbitration. The franchises are non-exclusive and are not transferable except with the consent of the City.

The terms of the franchises are quite complex and provide for channels in addition to the eleven devoted to carriage of local signals:

"City Channels" means channels on the System which are reserved by this contract for use by the City.

"Public Channels" means channels on the System which are reserved by this contract for carriage of program material provided by persons who lease channel time and, if necessary, studio facilities, from the Company..

"Company Channel" means the channel on the System which is reserved by this contract for the carriage of program material originated by the Company or by another person in accordance with the F.C.C.'s cablecasting rules and regulations.

"Additional Channels" means the channels on the System so designated in this contract which the Company may use for such purposes as automated programming, Additional Service, over-the-air television broadcasts authorized but not required by the F.C.C. to be carried on the Company's System, or other video and/or audio programming.."

"Additional Service" means any communications service other than Basic Service, provided over its System by the Company directly or as a carrier for its subsidiaries, affiliates or any other person engaged in communications services including, by way of example but not limited to, burglar alarm, data or other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.

"Basic Service" means the simultaneous delivery by the Company to television receivers (or any other suitable type of audio-video communication receivers), of all subscribers in the District of all signals of over-the-air television broadcasters required by the Federal Communications Commission to be carried by a community antenna television system as defined by the F.C.C.; the Company Channel; City Channels except as may be designated for special purposes by the Director of Communications; Public Channels; and Additional Channels at the option of the Company."

At the outset the franchisee is required to transmit 17 channels to residential subscribers, to be used as follows: eleven channels for local signals, one Company Channel, two Public Channels, two City Channels and one Additional Channel. Within three years,

the system is required to be capable of delivering 24 channels to residential subscribers. The seven additional channels are to be assigned as follows: one City Channel, two Public Channels, and three Additional Channels, (one is specified). In order to assure that subscribers are able to receive all channels, the cable company is required to provide all customers with "converters," with a capacity of 24 channels, by the end of 1971. A converter is defined as "an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations."

With respect to City Channels, Public Channels, and Additional Channels, the franchises include the following specific provisions:

"For the purpose of permitting the simultaneous transmission into any one or more subdistricts of isolated, discrete signals of City Channels, Public Channels, and the Company Channel, the Company shall within four (4) years from the effective date of this contract have arranged the System so that it is capable of such transmission to no less than ten (10) subdistricts, each containing approximately the same number of dwelling units. Furthermore, the Company shall immediately undertake the development of a plan to divide the District into the greatest number of subdistricts possible, which subdistricts may be variously combined so as to constitute neighborhood communities, school districts, Congressional districts, State Senate and Assembly districts, and the like, for the simultaneous transmission into any one or more of such subdistricts of such isolated, discrete signals. Such plan shall be submitted to the Director of Franchises within a reasonable time after the effective date of this contract. The Director shall approve or modify such plan giving due regard to economic, technological and engineering considerations. Within a reasonable time thereafter, such plan shall be implemented and the System be capable of simultaneous transmission of such isolated signals. It is the intention of the parties under this subdivision that the System be capable of simultaneous delivery of different programming to each subdistrict at the same dial locations.

"Without charge to the City, the Company shall provide all facilities necessary to pick up the signals of City Channels and transmit them throughout the System from a studio whose location in the District shall be designated by the Director of Communications after consultation with the Company.

"For the presentation of programming on Public Channels, the Company shall lease time and, if necessary, adequate studio facilities to members of the public at rates filed pursuant to Section 6 of this contract, and pursuant to rules and regulations promulgated by the Director of Franchises. Appropriate technical assistance shall also be furnished by the Company. Time shall be leased on a first-come, first-served basis, except that the Company shall endeavor to lease such channel time to as many different persons as is practical, it being the intent of the parties that such Public Channels serve as a significant source of diversified expression. In order that there be a maximum opportunity for freedom of expression by members of the public, such programming shall be free from any control by the Company as to program content, except as is required to protect the Company from liability under applicable law. The Director of Franchises may direct that the Company discontinue, or not deliver, a program on the Public Channels which he finds to be essentially promotional or otherwise related primarily to the conduct of a business, trade, or profession; provided, however, that this provision shall not be construed as a prohibition of advertiser-supported programming on Public Channels. Such a direction shall not prejudice any person's right to utilize any other transmission service offered by the Company.

"Priority on Additional Channels shall be given to the use of the System's transmission capability by persons other than the Company, its subsidiaries and affiliates, to provide auxiliary communications services of kinds different from those provided over the other types of Channels specified herein. There shall be open, non-discriminatory access to such Channels within the limits of available capacity. However, to the extent such channels are not so used, they may be used for audio-video programming by others who lease time segments thereon or for auxiliary services rendered by the Company, its subsidiaries or affiliates. When any of such channels are used for audio-video programming, the Company may determine the reasonable length of time segments to be leased, impose reasonable limitations on the general type of programs for which such segments are made available, and itself use segments which it is unable to lease to other persons. If at any time after five years from the effective date of this contract the Board determines, following a public hearing on notice, that rendition of any auxiliary service by the Company or a subsidiary or affiliate has tended to create a monopoly or to restrain trade, the Board may issue such direction relating thereto as it deems appropriate to protect the public interest, including an order to discontinue one or more particular services or to divest any financial interest in the entity operating such service or services within a reasonable time.

"At those daily time segments during which no signals are transmitted over Public Channels or City Channels, the Company may utilize such channels for any purpose consistent with the provisions of this contract. Upon request of the Company, the Director of Communications shall notify the Company as far in advance as is practical of any contemplated fallow time on City channels.

"The Company shall not engage in Pay Television, nor shall it deliver signals of any person engaged in Pay Television, unless and until affirmatively authorized by the F.C.C. It is understood by the parties that the failure of the F.C.C. to prohibit Pay Television, as is presently the case, shall not constitute such an affirmative authorization. When and if so authorized, the Company shall not engage in, nor deliver the signals of any person engaged in, Pay Television until the amount of compensation payable to the City by the Company or other person engaged in Pay Television has been fixed by the Board. Such compensation shall not exceed twenty-five (25) percent of the Gross Receipts attributable to such Pay Television. The Director of Communications shall thereafter designate a dial location therefor.

"In the operation of the Company Channel, the Company shall provide, on a non-discriminatory basis, a reasonable amount of free time to legally qualified candidates for public office."

"Pay television" is defined to mean "the delivery over the System of video signals in intelligible form to Residential Subscribers for a fee or charge (over and above the charge for Basic Service) on a per program, per channel or other subscription basis."

The franchises impose various obligations on the cable companies with respect to the construction and maintenance of their systems.

"The Company shall extend the installation of cables, amplifiers and related equipment throughout the District as rapidly as is practicable. Within four (4) years from the effective date of this contract, the Company's trunk line installations of cable, amplifiers and related equipment shall be capable of providing Basic Service to every block within the District. Thereafter, the Board may impose such further construction obligations as are necessary to bring Basic Service to any building within the District.

"Upon the reasonable request for service by any person located within the District, the Company shall promptly furnish the requested service to such person. A request for service shall be unreasonable, for the purpose of this subdivision, if occurring within four (4) years from the effective date of this contract and no trunk line installation capable of servicing that person's block has as yet been installed, or, if occurring at any time and direct access cannot be obtained to such person's premises and all other means of access are highly impracticable.

"The Company shall put, keep and maintain all parts of the System in good condition throughout the term of this contract.

"The Company shall respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible, but in all events within forty-eight (48) hours after notice thereof. For that purpose, the Company shall maintain a competent staff of employees sufficient to provide adequate and prompt service to its subscribers.

"The Director of Franchises, after consultation with the Director of Communications, may, from time to time, issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of this contract.

"The Company shall undertake any construction and installation as may be necessary to keep pace with the latest developments in the state of the art, whether with respect to increasing channel capacity, furnishing improved converters, instituting two-way services, or otherwise.

"After consultation with the Director of Communications, if the Director of Franchises determines, giving due regard to technological limitations, that any part or all of the System should be improved or upgraded (including, without limitation, the increasing of channel capacity, the furnishing of improved converters, and the institution of two-way transmission), he may order such improvement or upgrading of the System to be effected by the Company within a reasonable time thereafter. If the Company disputes any such determination or the reasonable time within which it is to be implemented, it may...demand that the matter be arbitrated..."

The franchisee also must carry out construction in accordance with normal building permit procedures governing such matters; not interfere with City public works; relocate its lines at its own expense if required by City construction; not interfere with the signals of any electrical systems in any buildings wired by the system nor interfere with an inhabitant's right to utilize an individual or mast antenna; utilize the ducts of Empire City Subway Company if available; and interconnect with CATV systems in adjacent territories (and have the capability within four years to interconnect with any broadband communications system).

As to service, the franchises provide (in addition to the above provisions relating to service and maintenance):

"The Company shall furnish to its subscribers and customers for all services the best possible signals available under the circumstances existing at the time, to the satisfaction of the Director of Communications, and shall provide quality reception of its Basic Service to each subscriber so that both sound and picture are produced free from visible and audible distortion and ghost images on standard television receivers in good repair."

On rates, the franchises provide:

"Rates for Basic Service to Residential Subscribers shall not exceed the following amounts:

1. For service, \$5 a month for the first outlet and \$1 a month for each additional outlet.
2. For each converter, \$1 a month.
3. For installation of each outlet, \$9.95 and for moving and reconnecting an outlet, \$9.95.

"The Company shall file with the Director of Franchises schedules which shall describe all services offered, all rates and charges of any kind, and all terms or conditions relating thereto. No rates or charges shall be made except as they appear on a schedule so filed.

"All rates, charges, and terms or conditions relating thereto shall be non-discriminatory.

"The Board may at any time increase or decrease any rate, require discontinuance of any scheduled service, or revise or delete any term or condition applicable thereto upon a determination, made after a public hearing following notice to the Company, that a particular rate, service or term or condition (1) explicitly or implicitly violates this contract or (2) has the effect of unreasonably restricting the use of Public Channels.

"The Board may reduce rates for Basic Service at any time after five (5) years from the effective date of this contract and rates for Additional Service after eight (8) years from the effective date of this contract upon a determination, made after a public hearing following notice to the Company, that such rates or a particular rate can be reduced without impairing the ability of the Company to render service and derive a reasonable profit therefrom."

The compensation to the city consists of 5% of gross revenues from residential subscribers, subject to certain minima; 10% of other gross revenues; and up to 25% of gross revenues from pay television. In addition, no charge shall be made for the City

Channels; one free outlet shall be provided for every floor of "all prisons, reformatories, detention centers, hospitals, police and fire stations, day care centers and public schools;" a 25% discount shall be provided for Basic Service to other city agencies and to nonprofit and governmental institutions; and a 33-1/3% discount shall be accorded for any Additional Service provided the City.

The City has the right to inspect the system's facilities, books and records; and the companies are obliged to furnish planning, construction, operational and financial reports to the City. At the request of the Director of Communications, the cable company must send questionnaires to designated subscribers eliciting "their appraisal of the service they receive," with responses to the Director of Communications. The City has the right to cancel the franchise for noncompliance with the terms of the franchise; non-compliance with any reasonable order, direction or permit issued by a city agency pursuant to a provision of the franchise; non-compliance with any reasonable regulation of the Director of Franchises which is consistent with the franchise; or inoperativeness of the system for 10 consecutive days or for 30 days in any 12 consecutive months. There are procedures under which the City may acquire the facilities of the company in the event of cancellation or expiration of the franchise (ultimately subject to arbitration).

The franchises also contain provisions which:

1. Permit the city to interrupt the system's programming in the event of an emergency.
2. Prohibit the cable company from repairing television sets.

3. Require indemnification of the city for any liability incurred on account of the franchisee's operations, and require the cable company to maintain specified types and amounts of liability insurance.

4. ~~Require the maintenance of a \$250,000 fund to provide~~ security for faithful performance of the obligations of the franchise.

5. Require the cable company to engage in collective bargaining with its employees and not to discriminate in hiring.

6. Prohibit cross-ownership or other affiliation with another cable system in the City; a radio or television station whose signals are carried on the system on a regular basis; any television network other than a network consisting entirely or substantially of cable systems; or any newspaper or magazine whose principal circulation market is New York City.

7. Require the cable company to match any terms more favorable to the City in the event of different terms in franchises subsequently issued pursuant to competitive bidding (subject to arbitration).

8. Require the system to extend into adjacent areas under certain circumstances.

The complete text of the City franchises is set forth in Appendix F.



VI. Cable Television in New York State  
and in the Nation

A. Cable Television in New York State

According to information furnished by the New York Cable Television Association:

There are 138 operating CATV systems in New York State, serving about 299,000 subscribers. This constitutes approximately 5% of all television households in the State.

The total population of communities and areas now wired for CATV includes 863,975 television households. Thus, the number of subscribers represents about 35% of the total number of potential subscribers in areas with access to CATV.

Between 1966 and 1970, CATV has grown from 92 systems with 175,000 subscribers to the present 138 systems with 299,000 subscribers.

Franchises are outstanding in 63 communities where CATV systems are not operational. Of these, 45 are located within the 35-mile zone of major markets and thus are "frozen" insofar as importation of distant signals are concerned. An additional 11 are within the Grade A contours of major markets and must obtain a waiver under the FCC's 1966 rules in order to import distant signals. Seven are within the 35-mile zone of a small market and, while not "frozen" under the 1968 rulemaking, are subject to the restrictions there stated (one of these also is within the Grade A contour of a major market). Only one outstanding franchise is neither within the Grade A contour of a major market nor within the 35-mile zone of a small market.

Of the total of 63 franchise holders, 23 are seeking waivers of top 100 market limitations and 13 are subject to a mandatory stay because of petitions for special relief filed under the FCC's rules. Seven of the total of 63 have proposed construction within the next six months.

There also are 251 additional franchise applications being processed in the State by various municipalities.

Of operational CATV systems, the average number of channels carried is eight. The average installation charge is \$35.00 and the average monthly subscriber's fee is \$4.65. More recently authorized systems have installation charges averaging \$21.00 and monthly service charges averaging \$5.00. Forty-six systems are capable of originating programming (this figure, however, includes systems with no more than automated services).

The size distribution of existing systems is as follows:

<u>Number of subscribers</u>	<u>Number of systems</u>
Under 500	55
500 - 1,000	16
1,000 - 1,500	18
1,500 - 2,000	9
2,000 - 2,500	8
2,500 - 3,000	3
3,000 - 3,500	4
3,500 - 5,000	8
5,000 - 8,000	9
Over 8,000	8
	<u>138</u>

This enumeration, however, does not take account of multiple ownership of systems. There are eleven companies which own more than one system. These are:

<u>Owner</u>	<u>Number of systems</u>	<u>Number of subscribers</u>	<u>Percent of total subscribers</u>
Bradley TV Cable Service, Inc.	3	2,030	0.7%
C & U Video	6	2,317	0.8%
Champlain Cablevision	2	975	0.3%
<u>Newhouse Broadcasting Co.</u>	<u>8</u>	<u>27,357</u>	<u>9.1%</u>
TeleCable Corp.	3	2,600	0.9%
TelePrompter Corp.	4	54,800	18.3%
Alan Gerry	4	5,220	1.7%
Jerrold Corp.	5	8,450	2.8%
Long Island Cablevision	4	7,679	2.6%
National Broadcasting Co.	2	7,800	2.6%
Viko, Inc.	<u>2</u>	<u>5,208</u>	<u>1.7%</u>
Total	43	124,436	41.0%

Under recently adopted FCC rules, assuming they are upheld on reconsideration and judicial review, NBC would be required to divest itself of its two systems, and Newhouse would be required to divest itself of four of its systems with 16,186 subscribers-- leaving it with 4 systems and 11,171 subscribers, amounting to 3.7% of total New York State CATV subscribers.

On the other hand, there are substantial systems in New York that are not affiliated with any multiple owner: two systems serving Manhattan (Manhattan Cable, 19,541, and Comtel, 11,000), and systems serving Binghamton (16,211), Ithaca (12,000) and Utica (10,000). The subscribers of these systems, combined with the subscribers of the top 5 multiple owners (Newhouse, TelePrompter, Jerrold, Long Island Cablevision and NBC), amount to 174,838. Even

after giving effect to possible divestiture of 16,186 subscribers by Newhouse, these 10 systems would serve 158,652 subscribers or over 53% of New York State's CATV homes. (No consideration has been given to the effect of NBC's possible divestiture, since NBC could sell its systems as a package.)

In response to questions concerning the basis of CATV charges, no answer was forthcoming other than that such charges, particularly the monthly service charge, are "traditional" in the industry.

Examination of financial data supplied by the State Board of Equalization and Assessment, covering 93 CATV systems for the year 1969, indicated the following industry-wide results (excluding 7 with incomplete reports):

Number of systems (some multiple owned)	86
Net investment and working capital	\$27,553,902
Gross earnings	\$14,788,711
Net earnings	\$ 2,182,173
Return on net investment and working capital	7.92%
Operating Revenues as percentage of net investment	56.70%

The earnings of individual systems varied as follows (all percentages computed in relation to net investment plus working capital):

Return	<u>Gross Revenues</u>				
	<u>Under \$25,000</u>	<u>\$25,000-\$100,000</u>	<u>\$100,000-\$250,000</u>	<u>\$250,000-\$1,000,000</u>	<u>Over \$1,000,000</u>
Over 100%	5		1		
80-100%	2				
60-80%	2		1		

Gross Revenues (continued)

<u>Return</u>	<u>Under \$25,000</u>	<u>\$25,000- \$100,000</u>	<u>\$100,000- \$250,000</u>	<u>\$250,000- \$1,000,000</u>	<u>Over \$1,000,000</u>
40-60%	1	1	1	1	1
20-40%	5	2	1	5	1
10-20%	5	5	4	3	
0-10%	5	5	6	1	1
Loss	8	8	3	2	
Total	33	21	17	12	3

Evaluation of these results is complicated by three factors: (1) in some instances the commonly owned systems of a multiple owner are counted as a single system and in some instances the commonly owned systems are tabulated as separate systems; (2) all financial reports were summary in nature and generally were not audited; and (3) depreciation in the industry is taken over a relatively short projected life, resulting in relatively low earnings on investment for systems with low accrued depreciation and relatively high earnings on investment for systems with high accrued depreciation. See Appendix G.

B. Cable Television in the Nation

For purposes of comparison and perspective, it may be useful to consider some national data. CATV growth, in the nation as a whole, is as follows:

	<u>Systems</u>	<u>Subscribers</u>
1952	70	14,000
1953	150	30,000
1954	300	65,000
1955	400	150,000
1956	450	300,000
1957	500	350,000
1958	525	450,000

	<u>Systems</u>	<u>Subscribers</u>
1959	560	550,000
1960	640	650,000
1961	700	725,000
1962	800	850,000
1963	1,000	950,000
1964	1,200	1,085,000
1965	1,325	1,275,000
1966	1,570	1,575,000
1967	1,770	2,100,000
1968	2,000	2,800,000
1969	2,260	3,600,000
1970	2,350	4,500,000

There were 2,530 systems operating in November 1970, serving 4,286 communities. In addition, there were 2,323 outstanding franchises issued to systems not operating and 1,460 communities in which 2,552 franchise applications were pending.

The size distribution of CATV systems nationally is as follows (size is as of February 1969 for systems operating on March 9, 1970):

20,000 and over	8
10,000 - 19,999	50
5,000 - 9,999	144
3,500 - 4,999	123
2,000 - 3,499	279
1,000 - 1,999	423
500 - 999	427
50 - 499	730
49 and under	46
Not available	260
	<u>2,490</u>

Many of these systems are under common ownership. The largest system, Teleprompter, accounts for about 10% of all CATV homes; the four largest systems account for about 20% of all CATV homes; and the eight largest account for about 30% of all CATV homes. As to ownership by other media, the percentages of systems are:

	<u>Systems</u>	<u>Percent</u>
Broadcasters	910	36.5%
Telephone companies	146	5.8
Newspaper-publishing firms	207	8.2

Financial data for the industry at the national level appears to be unavailable.

The channel capacities of existing CATV systems in 1970, for the nation as a whole, are as follows:

Over 12	86
6 - 12	1,720
5 only	459
sub-5	61
Not available	<u>164</u>
	2,490

Of these systems, 1,019 are engaged in automated originations (time, weather, news ticker, etc.) and 226 are planning to engage in such operations. A total of 399 systems are engaged in more extensive local originations (live or film or both) and 273 are planning to engage in such operations. The two categories are not mutually exclusive, and there is overlap in the figures given.

VII. Positions of Various Parties Concerning  
Regulation of Cable Television by New  
York State

In recent hearings before Assemblyman Kelly's Committee, concerned with Assemblyman Kelly's proposed CATV legislation, and in other pronouncements, filings and publications, a number of distinct interests and positions have become evident.

A. Consumer Interests

There has been no organized consumer opposition to CATV operations, and, relatively speaking, a paucity of consumer complaints. The complaint heard most often pertains to landlord interference with tenant's access to CATV services. While the general lack of consumer complaints is pertinent, it is hardly dispositive. Consumers typically are poorly organized and inarticulate, particularly where, as here, no regulatory body has comprehensive jurisdiction over the business involved. CATV is still in its promotional phase, and, in order to obtain and retain customers, it usually must provide good service at reasonable prices; the same pressure may not exist as CATV becomes more firmly entrenched. And it appears to be conceded that CATV will develop largely along monopolistic lines -- i.e., one CATV system for any given area.

In light of the monopoly character of the business, and its potential importance to subscribers as its services expand, the government will have to consider such traditional areas as: rate regulation; adequacy of service; and duty to serve without discrimination. All are complex, but the question of adequacy of service



has particularly unique aspects. The issues are:

(a) What kinds of technical standards are appropriate in terms of (i) quality of reception, (ii) number of channels, and (iii) auxiliary aspects (localized service and presence of limited two-way capability)?

(b) How well does the system meet the technical standards it purports to follow, in terms of number of outages, frequency of repair, and promptness and efficacy of repair?

(c) How well does the programming of the system meet the wishes of subscribers? In many cases, CATV operators have discretion both as to the distant signals they will import and the types of programs they will originate.

(d) As and when additional services are offered (other than the relay and origination of television programs), further questions will arise as to the types of supplemental offerings, the standards appropriately to be applied, and the efficacy of enforcement of these standards.

#### B. Educational Interests

One of the few groups actively pressing for state legislation at this time is the education group (school administrators, educational television operators, etc.). They seek two things: (1) access to a minimum number of CATV channels for educational purposes (in addition to the CATV system's carriage of local or distant over-the-air ETV signals); and (2) some share of the proceeds of the CATV system to assist in financing educational programs. The figure most often mentioned in connection with the first objective

is 20% of available channels without charge to the educational system. The second claim is more nebulous. Some educators seek to have a financial stake in the CATV system and receive a share of the profits; others urge a percentage of gross revenues. It seems to be conceded that there is no current problem of channel access, since most CATVs, with excess channel capacity, are prepared to make channels available to educators on request. There is not the same general willingness by CATV operators to make a firm commitment on future channel availability or to provide financial support for educational programming.

C. Civil Liberties, Intellectual  
and Related Interests

A rather diffuse group of individuals and groups are concerned about the direction of CATV technology (some educators also share this concern). They seek to have the State assert regulatory authority with a view to changing the structure of the CATV industry and pressing for certain types of technological change. In the view of these parties, CATV should be operated as a common carrier; it should not be involved in program production and other mass media operations; and it should provide a maximum number of channels with two-way capability so that both individuals and business firms will have access to broadband communications as and when desired: (a) the former should be able to "dial a program" or other informational material (selected from a catalogue) at whatever time he wishes to watch it; (b) the latter should have access to broadband channels for data transmission and other business purposes at economical rates.

Educators are concerned about the availability of two-way systems for instructional purposes.

#### D. Municipalities

Municipalities generally are opposed to State regulation of CATV. Arguments of "home rule" are advanced, and there is some feeling that local regulation will be more responsive to the wishes of the community. Naturally, there also is great concern about possible loss or diminution of franchise fees if State regulation ensues; and there is some intergovernmental jealousy about spheres of influence. Privately, municipal representatives appear less dogmatic and recognize that they would have difficulty effectuating certain types of regulatory control.

#### E. CATV Industry

The CATV industry is strongly opposed to State regulation. They state that all possible areas of regulation either are preempted by FCC regulation or are adequately handled at the local level. They argue that they are an infant industry, the growth and development of which would be hampered by still another layer of regulation (and possibly an additional imposition of fees). They also argue that their record of performance is good and that they must continue to perform well if they are to compete effectively for the consumer's entertainment dollar (as against "free" over-the-air television, movies, sporting events, etc.).

Two points are particularly pressed. First, it is contended that CATV service, unlike other utility services, is not essential and there are available competitive alternatives (notably

over-the-air television signals). But except as these alternatives suffice to control the conduct of the CATV monopolist, the argument is unpersuasive: gas, electricity, telephone--all were luxuries when they were first introduced. And the availability of alternatives (e.g. fuel oil in place of natural gas) is not dispositive as long as there are those who do not regard the alternative as satisfactory (i.e., viewers who do not regard over-the-air signals as satisfactory and wish to have CATV service available).

The second point is that state regulation, where tried, has proved to be a failure. Connecticut is the example generally cited. With regulation dating back to 1963, Connecticut has yet to achieve an operational CATV system. The argument may have value in pointing up the need to avoid the mistakes made by Connecticut at both the legislative and administrative levels. But this one example does not establish that proper state legislation, effectively administered, cannot have a beneficial rather than a harmful effect on CATV development.

Recently, the CATV industry has been seeking total federal preemption over all phases of CATV regulation.

#### F. The Federal Communications Commission

The FCC properly construes its legally authorized actions as preemptive when they conflict with inconsistent state or local regulations. However, the FCC does not appear to wish to preempt the entire field of CATV regulation, but rather to develop some kind of working relationship with state and local authorities. Unquestionably, there are some areas--such as distant signal importation and copyright liability--

where federal law might well be considered to exclude any state regulation. But there are other areas--such as rates and service--where the FCC appears to be looking to the states for assistance.

#### G. Other Groups

No mention is made here of the interests of broadcasters and copyright owners, since their interests in CATV, while very real, are almost certainly going to be resolved at the federal level. Nor is any consideration given to the interests of theater owners, since their interest is related solely to the suppression of a competitive mode, which, to be effective, must attract the patronage of consumers and be preferred by them.

## VIII Variations in Cable Operations and Potential for Future Operations

### A. Functional Variations in CATV Operations

Much of the discussion of the need for cable television regulation involves controversy over the capabilities of CATV systems-- what they are, and what they might become. While it is impossible to anticipate and describe all of the potential uses to which CATV systems might be put, a summary description of the areas of discussion will be attempted.

1. The video relay function. The initial, and still the primary, function of CATV systems is to receive over-the-air television signals at the head-end antenna and transmit them--after suitable conversion, amplification and filtering--to the sets of subscribers. This function serves three interrelated functions: (1) it makes signals available which formerly were unavailable as a result of distance or terrain; (2) it increases the number of available signals by importing additional signals from distant markets; and (3) it improves reception in areas, such as New York City, where buildings or other impediments cause "ghosting" or other signal degradation (particularly troublesome to the subscriber in the case of color television). It is the practice also to relay FM radio signals where channel capacity is available. There is no question that the first two situations noted above (signal availability and signal augmentation) are the economic mainstays of the CATV industry as currently constituted.

Technological advances in relation to television signal relay include progressive increases in the number of channels CATV systems can carry--from 3 to 5 to 12 to 20--so that systems of 40 or more channels are now in contemplation (Teleprompter's new amplifiers all have capabilities for handling 27 channels and a 42-channel system is under construction at San Jose). There also are experiments

under way which would permit the substitution of short-haul microwave techniques for cable in areas where the cost of installing cable is very high (in effect, these short-haul microwave relays would replace some of the coaxial cable, the "trunk lines", running from the head-end antenna to the subscribers' homes).

2. The video origination function. Beginning with automated services--time, weather, news ticker, stock ticker--CATV systems have been expanding their capacity to produce video programming of their own. Now a substantial and growing minority of systems carry programs which are not picked up off the air--feature films; local sports events; locally produced news, documentary and talent shows; and some syndicated film. While activity in this area is growing, originations still constitute a very small fraction of the output of a minority of the industry.

Originations may become more prominent as separate CATV networks come into being, or the CATV market becomes large enough to obtain rights to major entertainment offerings to the exclusion of over-the-air broadcasters. These two conditions both may be necessary and network operations may be accelerated by developments in satellite technology, which is particularly promising in the area of video networking (since the same signal can be transmitted simultaneously to a number of CATV system antennas).

Another element of CATV originations which has promising implications is signal filtration--enabling programs of interest to a particular portion of the CATV's service area to be directed to that area (for example, a political subdivision, or a neighborhood embroiled in a particular local issue), while the remainder of the CATV system

receives other programming (of interest to them) on the same channel. While filtering (or subdistricting) is required under the New York City franchises, and is being considered in a pending FCC rule-making, it is not now an established aspect of CATV operations.

The use of per-program charges also might accelerate originations in certain areas, particularly first-run movies and non-televvised sporting events.

3. Other one-way broadband functions. The foregoing exhausts existing CATV functions (except for a few pilot operations). But the potential obviously is much greater. Possible proximate uses of CATV include:

a. Facsimile distribution of newspapers. Like video relays and video originations, newspapers are a mass media requiring distribution in one direction only. With the addition of suitable sending and receiving devices (now being tested in connection with over-the-air television), a CATV system could use one or more of its channels to distribute newspapers. The only problem here appears to be economic feasibility.

b. Marketing. CATV channels, if sufficiently numerous, could be used for marketing merchandise. A subscriber could select a particular store (or particular line or merchandise, according to how the channels are arranged) and watch the channel until an item of merchandise has been selected. The selection then could be ordered by telephone from the appropriate store--as is now done after consulting mail order catalogues or newspaper advertisements. This type of



operation is simply a specialized form of video origination, and requires no additional equipment. Its implementation probably will depend on a substantial increase in channel capacity and appropriate classifications of channels sufficient to alter customer buying practices (or appeal to particular kinds of buying practices).

c. Mail, telegram and message delivery. Use of CATV for this purpose would require a combination of facsimile reproduction and a filtration process which directed dispatches to individual customers (mass mailings or general notices would be the same operationally as newspaper distribution, with perhaps some filtration process to encompass limited distributions). Like all of the functions previously discussed, this function involves one-way distribution and thus is compatible with this technological aspect of current CATV operations. However, these messages are individual messages, not mass messages, so the filtration system would have to be so arranged that, through coding, a particular message reaches the set of the proper subscriber and no one else. This involves a filtration system of much greater complexity, and places a burden on the capacity of the system--since whatever channel capacity or portion of channel capacity is being used to deliver a particular message cannot be employed simultaneously for other messages; the entire path of the one-way system from point of origin to the subscriber's set is preempted for the duration of the message (for this purpose a "path" may be intervals in the division of a channel by various multiplexing techniques). However, the prospect nonetheless is a promising one since: (1) mail can be transmitted in off-peak

hours of the late night and early morning when there is little other demand for channel capacity; the channels are wide (6 MHz), so messages could be transmitted without consuming much time; and the wide channels lend themselves to subdivision for this purpose, including various multiplexing techniques. (This discussion assumes that the message reaches the CATV origin point by some non-CATV process--telephone or other lines from local areas, and intercity microwave from remote areas.

4. Limited two-way capability. There has been considerable discussion of using CATV for two-way transmissions, but the concept is not free from ambiguity. On the one hand, there is the possibility of having a limited return capability (e.g., a single narrow-band or broad-band channel to the point of origin). On the other, there is the possibility of having multiple broad bands channeled in a variety of directions. The nature and importance of the distinction will be illustrated in the examples that follow.

a. Marketing. As noted above, the subscriber could use the telephone to communicate with the store to make a purchase seen while watching a video market display origination. The alternative would be to have a telephone channel running to the point of origin as part of the CATV system, on which the selection could be registered in much the same way as if the order were transmitted by telephone. The CATV system would then arrange to relay the orders to the appropriate store. Since such a one-way return channel would preclude questions and discussions, probably it would be less advantageous than the telephone.

b. Polls and voting. The same telephone grade channel running in the reverse direction could be used to register votes or other responses to a program received over a CATV broadband channel. For this limited purpose, the reverse one-way channel probably would be preferable to an independent telephone connection.

c. Instructional television. The same operational format would permit students to give responses to questions posed by an instructional program over a broadband channel. For examinations or self-testing, the previously described technology probably would suffice. But if the nature of the message received by the student from the set is to vary in accordance with his answer to a question, it would be necessary to use multiple channels (or a subdivision of channels) and a fairly complicated filtration process. To permit a full-scale dialogue, it would be necessary to have more than the limited two-way capability here under discussion.

d. Program selection. There has been much discussion of the possibility of a subscriber ordering a program out of a catalogue and viewing it at a time of his own selection. Limited two-way capability would suffice to place the order--only a telephone grade bandwidth (or less) is needed for this purpose. But the CATV system would have to provide a separate "path" (here, presumably, a full channel) from the point of origin to the subscriber's premises. This involves capacity far beyond anything that present CATV systems, or prospective CATV systems, seem likely to be able to handle (in contrast to mail, which can be compressed into short time intervals and/or narrow channel space and sent with substantial discretion as to timing).

A pilot system on Cape Cod is being developed to enable subscribers to dial programs; but the system requires separate cable pairs from the CATV exchange to the individual subscriber. It is estimated that larger versions would require 10 exchanges per square mile. The alternative to switched systems (discussed hereafter) is a radial system of this type with separate paths from point of origin to each subscriber. If multiple exchanges are employed, presumably switching capacity also will be needed. In either case, a technology would be involved that seems well beyond the present generation of CATV systems.

e. Other ordering of information services. With respect to remote viewing of library books, or access to computers, the problem is much the same. The telephone grade line to the origin probably would suffice, but would the system have sufficient separate "paths" to various subscribers calling for diverse services at different times?

f. Protective services. Here a somewhat different problem is posed. There is no need for the CATV system to communicate with the subscriber. The problem is to view the subscriber's premises to protect against fire, burglary or other damage. The function is so disparate from the normal CATV function that it is difficult to see why it should be related to CATV (as opposed to the telephone network). But undoubtedly it is technically feasible, and "reverse" broadbands could permit a viewer at the origin to scan each subscriber's premises. The problem would be to hire a sufficient number of viewers at the origin point, since there is a limit to how many sets a single person can watch. (If watching is not involved, and the alarm is some kind of automatic signal, then a narrowband return channel should suffice. The same technology would accommodate meter reading.)

5. Unlimited two-way capability. If broadbands are to be dedicated to individual use, and if one sender is to be able to reach different receivers, probably it will be necessary to go to a circuit switched system analogous to the telephone, or at least a message-switched system operated by store-and-forward computers. Both would be a substantial technological leap beyond existing CATV systems. But without such switching capability it is difficult to conceive of the CATV distribution system (in contrast to some of its interconnecting facilities) being used for some of the purposes frequently mentioned: data transmission, and face-to-face or multi-party video conferences (for educational, marketing, financial or other purposes). For such purposes, and also for some of the purposes previously mentioned (notably ordering programs or information unique to each subscriber), a whole new generation of CATV systems will be required, probably involving separate cable pairs from each subscriber to a switching center (analogous to the present telephone network).

6. Summary. Based on this very simplified discussion of the present and potential technological dimensions of CATV, it would seem desirable to press ahead in areas involving filtration, maximum channel capacity, and limited two-way capacity (a telephone grade channel in the reverse direction). However, two-way broadband transmission appears to present a substantial advance over present technology and should not be permitted to detain present CATV development. Of the functions enumerated, the following appear to be reasonably within range of

existing CATV systems: 1, 2 (including filtration), 3a, 3b, 3c (as to mass mailings), 4a, 4b, 4c (short of full-scale dialogue). The following appear more problematical: 3c (as to individual mailings), 4d, 4e, 4f. Unlimited two-way capability (5) seems remote.

## B. Prospects for CATV Development

The extent to which the potential of CATV becomes a reality depends upon technological considerations only in part. The major problems are economic and political. To consider these factors, it is well to distinguish New York City (and immediate environs) from the remainder of the State.

1. Development in New York City. New York City is almost unique among American communities in that the future of CATV in the City is wholly independent of the problem of importation of distant signals (and thus is largely independent of FCC policy). New York City has a plenitude of off-the-air broadcast signals and the CATV entrepreneur is not going to obtain subscribers by undertaking to import additional signals (the ~~desired~~ signals, sought to be imported elsewhere, come from New York City). The promotion of CATV in New York City will depend on: (a) the extent to which improvements in television reception is valued by television viewers; (b) the extent to which CATV systems can deliver attractive mass appeal programming of their own, not available off the-air, such as Ranger and Knickerbocker home games and uninterrupted movies; and (c) the extent to which CATV services of an ancillary nature--such as a stock ticker, or closed circuit programs for specialized audiences (doctors, businessmen, administrators)--can expand the number of subscribers. As the CATV market expands,

and more subscribers are attracted, more funds become available to the CATV operator to bid for attractive originations and to explore additional ancillary services--which, in turn, provide the foundation for further expansion.

Because the New York City situation is so unique, it is impossible to predict with any pretense of accuracy the extent to which CATV service may grow there. But the City market is so large--over 2,700,000 television households in New York City and almost 1,000,000 additional television homes in the immediate New York State environs--that even if CATV penetration is limited to modest proportions--say 20%--the resulting market would suffice to support a number of CATV systems larger than the largest existing system (San Diego, 39,000 subscribers). At present rates, and in the absence of any special charges for particular programs or ancillary services, the annual revenue from a system of 100,000 subscribers would exceed five million dollars.

The only obstacle to growth in the New York City area is the danger of perverse governmental policy. If experimentation is restricted; if revenues are depressed by stringent rate regulation or excessive fees or taxes; if the entry of new systems is retarded--the necessary cycle of (a) attractive programming, (b) increased penetration, (c) increased revenues and (d) augmented programming, may be stopped short of its full potential. Thus, as to New York City, regulation should be held to a minimum. The most useful thing that the government could do at this time is to assure that landlords do not impose obstacles to tenant subscription to CATV. In rent-controlled buildings, landlords are permitted to assess tenants \$2 additional per month for CATV service.

In both rent-controlled and non-rent-controlled buildings, landlords can insist upon payment from the CATV operator to permit entry to the building. Both practices have a retarding influence on CATV penetration and, as a consequence, restrict its development

2. Development in other areas of New York State. The remainder of New York State is not unlike the remainder of the nation except that it is more heavily urbanized than most sections. The critical factor here is the importation of distant signals, and the major problem is FCC policy. With a relaxation of FCC policy on distant signals, it is not unrealistic to expect that CATV systems would penetrate to the extent of 40% to 50% of television households, even in urban areas with three network signals available. This has been the experience in urbanized areas of Canada, and in those urban areas of the United States where distant signal importation has been permitted. For such significant markets as Buffalo, Syracuse, Albany-Troy-Schenectady, Rochester and Binghamton, the potential is sizeable. The television households in these markets (most but not all of which are in New York State) total over two million--enough for eight to ten CATV systems with over 100,000 subscribers each if 40 to 50% penetration is assumed.

As noted above, the principal impediment to the development of CATV in New York State (outside of New York City) is the FCC's distant signal importation policy. If the state is interested in furthering CATV development, it should consider participating actively in seeking to resolve the distant signal problem.

3. The underlying problem of development. The development of CATV requires capital. Capital may come from two general sources:



(i) government, or (ii) private industry. With the budgetary problems facing federal, state and local governmental bodies today, it is beyond the realm of possibility that any substantial amount of capital will be forthcoming from public sources (although public participation may prove possible in some instances).\* This leaves the problem of capital supply to the private sector, which, as is well known, will advance funds only when the anticipated return more than compensates for the risk involved. CATV is promising, but it is also a risky business. This means that the anticipated return--while not quantifiable in precise terms--will have to be substantial. Substantial returns depend upon two things: (a) substantial gross revenues, and (b) a significant margin of profit from those revenues.

(a) The only present source of substantial revenues for CATV systems is the mass television audience--interested in imported signals, attractive originations, and improved reception. No one has suggested any other source of substantial revenues for the CATV industry as presently constituted: a one-way mass medium with significant, but not unlimited, channel capacity. Unless CATV can obtain substantial revenues by attracting large segments of the television audience, its growth unquestionably will be retarded, if not halted entirely.

(b) The ability of CATV to retain a substantial margin of its revenues as profits is threatened by the prospect of stringent rate regulation on the one hand, and the payment of extensive fees on the other (to municipalities, to copyright owners, to educational television). The reduction of the profit margin can be just as damaging to the development of CATV as the reduction of gross revenues. If the

---

\* Revenue bond financing may be available for CATV operations of proven feasibility.

margin becomes inadequate, the necessary private capital will not be forthcoming.

At some point in the industry's development, rate regulation may be useful not only in preventing consumer exploitation, but in expanding the demand for the industry's product--which probably is sensitive to price reductions. But this is not the present problem.

Many of the proponents of CATV development seem unwilling to face these realities. They are interested in the potential of CATV for providing many services other than additional popular programming for the mass television audience--educational purposes, governmental purposes, business purposes. But unless some other motive force for development is uncovered, these other purposes will have to remain secondary to mass appeal television programming. Without the impetus provided by the latter, CATV will not be available to serve any purpose.

This approach has its drawbacks. A system designed for mass appeal television programming may not serve as well some of the other purposes envisaged. But many of the other purposes are compatible with CATV's primary role (particularly through use of filtration devices, large channel capacity and limited two-way capability, as described above). Those which are not--which require unlimited two-way capability and switching--may have to wait for the next generation of CATV development or may have to come via another route (i.e., the telephone company). But there is much to be gained from more extended development of the present generation of CATV systems (with, perhaps, some limited modifications); and, in the absence of a massive governmental financial

commitment, there seems to be no alternative to following the route dictated by the mass television audience.

It is difficult to predict, at this point in time, how long it will take for the non-video functions of CATV to develop. The one thing that is certain is that if the video functions do not develop (through signal importations, program originations, and improved reception), nothing else will be forthcoming from CATV. Unfortunately, the only road to the long-run is through the short-run.

In order to dispel any misconception, it should be emphasized that the short-run potential of CATV is not insubstantial. The wishes of millions of television viewers for additional mass appeal programming are not to be ignored--without regard to how others may judge the nature or quality of that programming. These persons act as free men, and as consumers, just as much when they watch television as when they decide where to live, what to purchase, and how they will spend their leisure time generally. In addition, the availability of programming for minority interests, for local political and community affairs, for educational and governmental purposes, will be expanded by CATV--with, perhaps, some appropriate regulatory inducement. And even as presently structured, the CATV industry offers ample opportunity for experimentation with new techniques in educational instruction, in newspaper distribution, in mail delivery, in marketing, and in a variety of other areas. Although the millenium of universal two-way switched broadband communications may not be reached at the outset, substantial gains are possible and should not be foregone.

## IX. Recommendations and Conclusions

It is recommended that CATV operations be subjected to State regulation; that the agency exercising such regulatory authority be the New York Public Service Commission; but that the regulatory legislation adopted be carefully limited to take account of the existence of extensive federal and municipal regulation in this field.

### A. Franchising

As to existing CATV companies actually engaged in operations, it is recommended that the new legislation confirm their franchises (subject to any infirmities which are in issue in pending litigation and subject also to compliance with Commission regulations, infra). There is no indication that any existing CATV operator is unfit.

As to outstanding unexercised franchises, it is recommended that they also be confirmed if either (i) the franchise holder and the franchise meet minimum Commission requirements, infra; or (ii) prior to the effective date of the Act, the franchise holder has engaged in substantial construction of its system (subject to the same/ caveats as operating systems).

As to the issuance of new franchises, it is recommended that the choice be left to the municipality to be served, subject to the following limitations:

(a) The applicant shall meet such minimum qualifications as to technical, financial and character fitness as the Commission may by regulation prescribe.

(b) The system proposed by the applicant shall meet such minimum requirements as to construction and operation as the Commission may by regulation prescribe, including any aspects that might bear on the environment.

(c) The applicant shall file, simultaneously with the municipality and the Commission, such information as the municipality and the Commission require. The Commission shall by regulation prescribe the information it requires relating to (i) the system proposed to be constructed by the applicant; (ii) the applicant's proposed mode of operation; and (iii) the technical, financial and character qualifications of the applicant to construct and operate the system proposed. The Commission may, by specific order, require the submission of supplemental information.

(d) No municipal franchise shall become effective unless it has been approved by the Commission. However, the bases upon which the Commission may disapprove a franchise shall be limited to the following: (i) the applicant does not conform to the minimum financial, technical and character qualifications prescribed by the Commission; (ii) the system proposed does not meet the minimum requirements of the Commission as to either construction or operation; (iii) the grant of the application would violate a regulation or policy of the Commission in an area of CATV operations which the Commission, by statute, has been specifically empowered to adopt (see discussions under specific headings, infra).

The result of this proposal is that the Commission is given full authority to assure that CATV operators and their systems meet minimum standards (which may be related to the size of the community to be served), but that, where there is more than one qualified applicant, the choice among them is left to the municipality. The reasons for this approach are as follows:

(1) As long as minimum criteria are satisfied, and no express Commission regulation or policy is contravened, it is extremely

difficult to make a choice among qualified applicants--particularly from a distance. The FCC's sufferings under the burden of comparative television proceedings amply demonstrates the morass into which an agency can sink in attempting to make such choices.

(2) In an emerging industry, the terms of the franchise are likely to be a matter of bargaining between the municipality on the one hand, and the various applicants on the other. As long as minimum criteria are met, and no express Commission regulation or policy is contravened, the local governing body would appear to be the most appropriate agency for determining which "package" of arrangements is most beneficial to the particular community.

(3) To be sure, local agencies may be corrupt or may show favoritism to an applicant based on extraneous considerations (e.g., political affiliations). But state agencies are not immune from these vices, and probably it is less damaging to the State if the officials of some town or city behave improperly in a single case than if a State agency does so in a whole series of cases (as the FCC did in the fifties in respect of television licenses). Moreover, assuming compliance with all Commission criteria, regulations and policies, it is very doubtful (a) that it will make much difference who obtains the franchise, or (b) if it does make a difference in a particular case, that the Commission will be able to predict the difference in advance. One possible exception is where the contestants are a business firm on the one hand, and some form of nonprofit organization on the other. But this kind of choice--which goes directly to the "package" of benefits to be derived--seems like one the municipality should be able to make for itself.

There is one situation in which the Public Service Commission should have power to certificate a CATV system directly. Where it appears that a viable CATV system requires a franchise from more than one community, and the communities involved are unable to coordinate their franchising functions and agree upon a common form of franchise for a single operator, the Public Service Commission should have power to resolve the impasse by directly certificating a CATV operator and specifying the terms and conditions of its operations. But the initial authority would continue to rest with the municipalities.

In addition to the foregoing powers, the Commission should have an advisory role in the franchising field: (a) preparing model franchises for use by municipalities of different sizes; and (b) providing consultation services for municipalities seeking guidance. This may be particularly valuable where the desirable boundaries for a CATV system do not coincide with political boundaries.

The role described above is a limited one, but one that is considered necessary. Municipalities are not experienced in this area, and franchising of CATV systems will not recur with sufficient frequency to permit the development of municipal expertise. Unguided municipal franchising of other utility services in the past generally has proved to be disastrous. And, as a practical matter, if the State does not intervene here, the FCC will preempt the field by licensing all CATV systems and prescribing its own standards. From the point of view of both speed of decision, and sensitivity to local problems, it is believed that the Public Service Commission would be preferable to the FCC. (In the area of intercity bus licenses, for example, where approval by both the Public Service Commission and the municipalities concerned is required, the Commission's

decision almost always precedes the various municipalities' decisions.) Finally, there appears to be no alternative where viable CATV boundaries do not coincide with municipal boundaries.

The question of multiple franchises for the same area will be discussed in several subsequent contexts. For the reasons there indicated, it is not recommended that the Commission have authority to preclude multiple operations in the same community. However, Commission approval should be required in the case of a transfer, renewal or amendment of a franchise.

No mention has been made of regulatory restrictions pertaining to franchise term, franchise exclusivity, or the procedures for obtaining franchises. Minimum requirements covering these points might well be added, although probably they would be superfluous.

Franchises are now required by State law to be non-exclusive.

State law requires that the award of franchises be preceded by notice and public hearing (and State advisory services are recommended herein).

And, as indicated in subsequent discussions, objectionable franchise provisions can be overridden by State regulatory measures. However, a limit of 20 years on any franchise term would not be unreasonable.

#### B. Rates.

It is recommended that the Commission not undertake general rate regulation of CATV systems at the present time. It is recommended that the Commission limit its rate actions to the following areas:



(1) Where a CATV franchise stipulates the rate to be charged, the Commission shall assist the municipality in assuring that the rate stipulation is respected.

(2) Where a CATV franchise does not stipulate the rate to be charged, either generally or in a particular context, the Commission shall fix a rate equal to the rate generally being stipulated in similar franchises issued at about the same time in the same area.

(3) Whether or not required by the franchise, discrimination among subscribers similarly situated shall be prohibited. Any provision to the contrary in any franchise, existing or newly issued, shall be declared void as against public policy. However, free or reduced rates to governmental, educational or charitable institutions shall not be considered to be unjustly discriminatory.

(4) No provision in any franchise relating to rates shall be binding upon a municipality for an initial period longer than ten years or a subsequent period longer than five years. If a CATV 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 CATV operator are unable to come to agreement on rates prior to the expiration of the initial ten-year period or subsequent five-year period, the Commission, on petition of the municipality, shall order the CATV operator to present its financial records in conformity with the Commission's system of accounts, and shall adjust the CATV operator's rates, based on these records, to meet the operator's revenue requirements--all in accordance with normal public utility ratemaking standards.

(5) In the event of conversion of a CATV operator to a "communications common carrier" (see infra), the Commission shall have authority to regulate the CATV operator's rates in the same manner as any other common carrier.

(6) In the event the CATV system fails to meet any statutory or franchise obligation, the Commission may order an appropriate reduction in rates (see infra). In the event service improvements are directed, rates may be revised upward (see infra).

Rate regulatory authority is circumscribed, in the manner described above, because:

(a) At the moment, there appears to be no pressing consumer demand for rate regulation, and a firm's ability to earn "excess profits" during the promotional phase of an industry is a desirable stimulant to industry development.

(b) Franchise rates often are part of a bargain, and, to the extent other overriding considerations are not involved, it would be unfair to tamper with but one aspect of the bargain.

(c) The exceptions to this proposition are intended to cover franchises lacking rate provisions (point (2)); possible instances of rate discrimination (point (3)); situations where a municipality has acted improvidently in binding itself to particular rates for too long a period of time (point (4)); situations, to be discussed later, where the nature of the CATV system's operations are radically changed (point (5)); and situations where the CATV operator has failed to meet its obligations or is unable to meet new community needs (point (6)).

(d) Fixing rates for CATV operations in accordance with normal utility techniques would be extremely difficult at this time

because of the large number of CATV systems in New York (presently 452 operating, franchised, or being franchised in the State); the small size of many of the State's CATV systems (the majority of operating systems have less than 1,000 subscribers); and the variations in system operations depending on community size and nature and extent of original programming. Hopefully, most rate questions will be decided in franchise negotiations or renegotiations and Commission intervention will not be required except in extreme situations.

Yet the situations described above do appear to be appropriate for Commission intervention, and, through proper procedures, the interests of all parties can be protected. Additional areas for Commission intervention may become apparent in the future if municipalities do not adequately protect the interests of all their residents.

#### C. Service: General Quality of Existing Service

The most serious deficiency in present franchise terms is in the area of service; service requirements are highly variable and most clauses are vague and general. While there does not appear to be great discontent among subscribers on this score at present, many of the discordant notes come under this heading. With respect to service, it is proposed to supplant franchise regulation in a number of areas.

(1) Where construction or operation of a CATV system is unreasonably delayed, or extension of CATV service to all areas within the system's franchised territory is unreasonably withheld, the Commission may either (a) vacate the franchise for non-use, or (b) order the construction and operation needed to remove the unreasonable delay or withholding of service. In determining whether delay or

withholding of service is unreasonable, economic feasibility shall be the principal criterion.

(2) All CATV systems shall be constructed and operated in accordance with technical standards as the FCC and the Public Service Commission shall promulgate to assure high quality of service. This Commission should urge the FCC that, whatever stance it ultimately takes on technical standards, the determination should not be preemptive of supplemental State standards (at least in the absence of an FCC determination that the supplemental standards conflict with federal standards).

(3) All CATV systems shall maintain local offices or local telephone connections in the communities they serve; all deficiencies in service shall be promptly remedied; and the municipality and the Commission shall be notified, not less often than every three months, of the complaints of subscribers received during the reporting period and the manner in which they have been met (including the time required to make any necessary repairs or adjustments).

(4) The responsibility for assuring a high level of service shall be exercised jointly by the Commission and the municipality involved. Either may act on a subscriber complaint, but the primary responsibility for day-to-day surveillance should continue to rest with the municipality. The Commission should act only if (i) it receives complaints directly from subscribers; or (ii) the municipality requests its assistance; or (iii) it is apparent, after a review of the CATV's reports and consultations with municipal officials, that Commission action is required in order to assure adequate service.

If good CATV service is to be assured, it is essential that standards more definite than those included in most franchises

be articulated at the State level, keeping in mind the possible need for different standards for communities of different size. Most communities have not negotiated franchise service provisions sufficiently protective of the interests of their residents. Most communities lack the manpower and technical expertise needed to formulate and implement meaningful service standards. And, finally, most franchises do not provide sufficiently effective remedies for dealing with service problems. Provisions for rate reductions are rare or non-existent. Provisions for bonds for faithful performance, or security deposits, are present in some instances; but the amounts stipulated are grossly inadequate. Provisions for cancellation are common, but the ambiguity of the service requirement of the franchise, the Draconian nature of the remedy, and the possible unavailability of a substitute cable system, make cancellation an incomplete solution to the service problem. The Commission would be in a position to articulate definite service standards; revise them as necessary in light of the state of the art; police them with experienced personnel where called upon to do so; and enforce them, where necessary, with rate reductions or other appropriate measures.

It is not intended to exclude municipalities from the service area. Any service requirements in the franchise, not inconsistent with federal or state requirements, should be preserved. 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). And the initial responsibility for enforcing service standards (point(4) above) is left to municipalities for

the most part. The service area is one in which the cooperative endeavors of both the Commission and the municipality involved could be usefully employed for the benefit of subscribers.

Nor are the imposition of service obligations unfair to existing CATV operators. Surely they will not maintain that they bargained for opportunity to unreasonably withhold or circumscribe service, or to render service of inferior quality; or to fail to remedy service deficiencies promptly. Any such bargain would be unconscionable and unenforceable by a firm occupying a monopoly position. The provisions for requiring adequate service merely articulate, and make more enforceable, an aspect of the franchise that should be implicit in any bargain concluded in good faith, and is made explicit in many franchises--albeit in highly general terms.

#### D. Service: Major Changes in Existing Service

The preceding discussion was concerned with maintaining adequate levels of service of the type envisaged when the franchise was granted. As the state of the art advances, or community needs expand, it may be desirable to 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. Some such requirements may be imposed by the FCC. It is probable that the State also will be able to act in this area as long as federal standards are not contravened.

In the granting of new franchises, no problem would be presented. The franchise would have to conform to FCC and State regulations as of the time it was executed, and such regulations

could encompass all requirements thought essential at the time. For example, where school district boundaries do not conform to municipal boundaries, a requirement of common operation or interconnection of CATV systems could be imposed to facilitate programming by the school district. Where, however, extensions or improvements in service are to be imposed on existing CATV systems, a serious problem may be presented in creating an imbalance in the franchise bargain. The franchise rates may not suffice to cover the costs of providing additional services. Accordingly, it is recommended:

(1) That the Public Service Commission 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.

(2) That in the event such changes are ordered, the Public Service Commission shall consider the magnitude of the costs involved and, if the costs are substantial, permit the CATV systems to increase their rates to recoup the additional costs. If the change is made to enable new service offerings, the costs may be recouped by rates charged for the new service offerings.

(3) That in the case of changes which are not required by the FCC, and are matters primarily of local rather than Statewide concern, the Commission may order a CATV system operator to canvass its subscribers as to their wishes, indicating the changes proposed and the additional rates required (if any) to implement the changes. If a majority of the subscribers responding approve the proposed

changes, the Commission shall order their implementation and authorize the additional rates (if any) needed to implement the changes.

The fluidity of CATV technology, and the potential of CATV to serve diverse needs, require a mechanism more flexible than that afforded by the typical franchise. States will have to yield to the FCC on such matters, and the municipalities will have to yield to the State. But considerable discretion should remain at both the State and municipal level.

This is an area where the future is particularly difficult to predict. The recommendations set forth above are intended to accommodate discretionary action at both the State and municipal levels, to meet changes in technology and community needs, and, at the same time, protect CATV systems against unfair impositions which vary markedly from the requirements of their franchises.

#### E. Interconnection and System Coordination

Subject to the requirements of the preceding section, the Commission should have authority to require the interconnection of CATV systems subject to its jurisdiction. The matter is not covered by most franchises, nor by any FCC regulation. While the FCC may impose some requirements in this area, preemption is not inevitable. The matter is particularly critical where school district boundaries do not coincide with municipal boundaries, thereby possibly impeding programming by the school district over the CATV systems involved.

The Commission also should determine, from time to time, whether some minimum size is necessary to afford satisfactory CATV service. If such inquiry results in affirmative conclusions,



the conclusions should be embodied in a regulation or statement of policy, which would be applicable to initial franchises, renewals or amendments of franchises, and transfers of franchises.

Again, this is a problem which cannot be resolved definitively at this time because of the changing nature of technology and community needs. But a mechanism must be afforded to assure interconnection of different systems, and the development of systems of appropriate size and capability. Franchises obviously do not afford a satisfactory answer to this problem.

#### F. Common Carrier Operations

No uniform requirements can be adopted for all CATV systems: their size, and the areas they serve, are too diverse. However, it would be desirable, both from the vantage point of effective regulation and from the vantage point of access to the mass media, to transform CATV operators into common carriers at the earliest possible date. This is an area in which the FCC is likely to be active and its concurrence or acquiescence should be sought.

It is proposed that, when any single system, operated substantially as a coordinated whole, reaches a certain size (say 50,000 subscribers), the Public Service Commission shall have authority to direct that the system be converted into a "communications common carrier." The effect of the conversion would be:

(1) The system no longer would be authorized to provide programs over any of its channels. Program production operations would have to be vested in a separate corporation; but the corporation could continue to be affiliated with the communications common carrier, and use one or more of its channels, although it would be

treated as just another customer for tariff purposes (if program origination proved to be unprofitable, so that common carrier support of the affiliate would be required, this would be some indication that "conversion" was premature).

(2) All program channels required to be furnished by the communications common carrier to the municipality or to others, at reduced rates or without charge, would continue to be so furnished in accordance with the franchise requirement for the duration of the franchise.

(3) As to all channels other than these channels and those used for retransmitting over-the-air broadcast signals, the communications common carrier would be required to charge just and reasonable rates, in accordance with a tariff filed by the carrier, for access to its channels (such charges being payable by any origination affiliate).

Under such an arrangement it would be more practicable to regulate the rates of the system, because the system would then be providing solely a communications function--to the exclusion of any programming function. It would still be necessary to divide the burden of the system's revenue requirements between the system's subscribers and its channel users; but the assurance of equitable access for different users would be made easier, since such users could not be charged more than the system's origination affiliate. The origination affiliate should suffice to satisfy the FCC's origination requirement, if the FCC deems it necessary to continue such a requirement after a system has been converted to common carrier status. Also, this proposal would continue to afford CATVs the

opportunity to originate--which may be needed for some time in order to promote penetration of CATVs in particular markets.

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 Commission should have authority to direct such changes.

CATV systems also should 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. In the event such common carrier operations become a substantial part of the CATV's business, general conversion to common carrier status would seem appropriate.

Under the circumstances described above, the usual considerations supporting the regulation of monopoly rates become fully applicable, and the countervailing circumstances, previously noted, cease to carry significant weight.

#### G. Franchise Fees, Free Channels and Support for Education

It is not recommended that the Public Service Commission be empowered to regulate franchise fees, free channels for public purposes, and various methods of providing support for educational efforts. For the present, it is believed that these matters are best left to the various municipalities to obtain as part of the "package" of benefits in bargaining with franchise applicants. The needs of municipalities, and their respective educational systems,

vary widely throughout the State, and no general rule, or series of rules, is likely to prove satisfactory.

However, some general observations are in order. If the immediate objective of government involvement with CATV is the advancement and enlargement of the medium, high franchise fees are counter-productive. Even in the case of a monopoly, any increase in variable costs (such as a gross receipts tax) will result in an increase in price (or a reduction in service) and exert a retarding effect on development of the industry. And until the industry develops, it is of no use to anyone.

Thus, one of the worst methods of selecting the CATV operator for a particular municipality is to auction off the privilege to the system willing to pay the highest percentage of gross revenues to the municipality. This is a clear invitation to slow and limited development. While the needs of some municipalities for revenues may lead to approaches like this, and it is not recommended that such approaches be prohibited, the Commission should seek to advise municipalities wherein their long-term interests lie. The wealth of a municipality is likely to be augmented more substantially, both directly and indirectly, by a vigorous, growing CATV system paying a relatively low franchise fee (say 2% of gross revenues) than by a stagnant, limited CATV system paying a relatively high franchise fee (above 5% of gross revenues).

By contrast, the community can gain much, without retarding CATV development, by bargaining for access to CATV channels on a free basis. The incremental cost of additional channels is low, and the very nature of the requirement is such as to make the system

expand its capacity. The cost, moreover, tends to be a fixed one once the channels are installed, so the retarding effect of high variable costs is not present. The Commission should be in a position to advise 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 CATV franchise applicants.

For the reasons stated above, it is not recommended that CATV systems pay any portion of their revenues to, or share their profits with, State or local educational institutions. Such a requirement would have a significant negative impact on CATV. For the same reasons, it is recommended that the Public Service Commission and the State oppose the FCC's proposal to require CATV systems to pay 5% of gross revenues to the Corporation for Public Broadcasting. And in order to afford municipalities maximum flexibility in bargaining with CATV applicants, it is recommended that the Commission oppose the FCC's proposal to limit municipal franchise fees to 2% of gross revenues--although such a limitation probably would be in the best interests of both CATV development generally and the long-term interests of the communities involved.

The only points at which the Commission should intervene in this area are: (1) when CATV systems are converted to common carrier status, or (2) when significant interconnection of CATV systems becomes feasible. On conversion of a system to common carrier status, franchise requirements for free or reduced rates for municipal and educational purposes would be continued, where required by franchise, for the duration of the franchise. Where no such requirements are included in the franchise, or upon expiration of the

franchise, the Commission should have authority to impose some such requirements in order to achieve a measure of parity among the various common carrier systems in meeting public needs, and to make feasible, if the occasion should arise, Statewide access to CATV systems for educational networking. If significant interconnection occurs in the absence of conversion to common carrier status, the Commission should have authority to require such channel access as might be required to permit educational or other public CATV transmissions designed for Statewide use.

#### H. The Role of the Telephone Company

At the present time, telephone companies are placed in an anomalous position in relation to CATV. On the one hand, the FCC has ruled that telephone companies may not provide new CATV services on their own behalf (except under special circumstances), and must divest themselves of presently owned CATV operations. On the other hand, there is no federal prohibition against telephone companies providing channel service for the CATV operations of others (although FCC approval is required under Sec. 214); and, under New York law, if CATV service is provided over the lines of a telephone company, no municipal franchise is required. This means that the government body most involved, the municipality, is in no position to bargain for franchise terms with a CATV system choosing to use the lines of a telephone company; and the ultimate decision is left to an agency-- the FCC--which could not be further removed from the scene and has but a peripheral interest in the outcome of the proceedings (since CATV service to the community must in any case comply with those FCC regulations applicable to CATV operators not using telephone

facilities). Accordingly, it is recommended:

(1) That the State law be amended to require municipal permission for local CATV operations whether the CATV operator is going to use its own lines or those of the telephone company.

(2) That the FCC be urged to disclaim jurisdiction over telephone services designed to accommodate unaffiliated CATV operators having the necessary municipal consent. (The appropriateness of the telephone company's tariff to the CATV operator can be evaluated by the state commission in the same way that any other tariff provision is evaluated). Given compliance with the FCC's general CATV regulations, the problem essentially is a local one. As pointed out in the recent Comtel litigation, the investment required by the New York Telephone Company to provide channel facilities for Comtel's CATV service amounted to all of 0.01% of New York Telephone's rate base.

(3) That the prohibition against telephone operations in the CATV area not be expanded further, so that such companies are in a position to provide channel service to CATV systems and to engage directly in those communications services (including one-way and two-way video originations) which do not involve the retransmission of television broadcast signals. With the uncertainties prevalent about technological developments, it may well be that telephone companies, some years hence, will be in the best position to render some of the services now predicted for CATV systems, and, indeed, they may be in the best position to perform the CATV transmission function as well (through leased channels).

In order to permit communities to benefit from technological advance, as well as to protect themselves from poor service,

it is recommended that municipalities 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. The history of state and federal certification practice is punctuated with illustrations of foreclosure of technological progress. Although the history is easily forgotten, it was not too long ago that electric street car lines were held up to protect railroads, and then bus lines were held up to protect street car lines, and trucking firms were barred or constricted to protect railroads. At the federal level, satellite technology and specialized intercity microwave are present-day victims of the same practice. CATV has sufficient problems without having certification procedures employed to bar technological innovation--particularly since, in any case, municipal permission will have to be obtained, and state and federal regulations will have to be met.

#### I. Landlord-Tenant Problems

State legislation should make clear that landlords have no standing to impede the delivery of CATV services to their tenants. Landlords may insist that the CATV operator (or tenant) bear the entire cost of the installation; that the installation conform to such reasonable requirements as the landlord may impose to protect the safety, operation or appearance of his building; and that the CATV operator (or tenant) agree to indemnify the landlord for any damage incurred by the installation. Beyond this, the landlord has no legitimate interest. The tenant, on the other hand, has as much interest in receiving CATV service as he has in receiving mail, telephone communications, or over-the-air television signals. And landlord impediment to the extension of CATV service is disadvantageous



not only to the personal interests of tenants, but to the development of the CATV industry. Accordingly, it is recommended that legislation be enacted to prohibit landlords 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 CATV operators or from tenants, in exchange for permitting CATV service in his building.

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

The effect of the last requirement, inter alia, would be to eliminate the \$2 monthly surcharge permitted by New York City rent control administration. To supplement these restrictions, CATV operators should be prohibited from making payments to landlords to obtain access to their buildings and from discriminating in charges between tenants and home-owners otherwise similarly situated.

This proposal involves some intrusion upon the property interest of the landlord. But the interest intruded upon is a wholly abstract one--given the conditions specified, the landlord's interest consists entirely of insisting that some negligible unoccupied space remain unoccupied. The tenant's interest clearly is more substantial, consisting of a right to receive (and perhaps send) communications from/ to the outside world. In the electronic age, the landlord should not be able to preclude a tenant from obtaining CATV service (or to exact a surcharge for allowing the service) any more than he could preclude a tenant from receiving mail or telegrams directed to him.

## J. Concentration of Control

The FCC already has taken some steps in the area of concentration of control. Others are under consideration. It is recommended:

(a) That 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 by the FCC that the local or state requirement conflicts with federal policy.

(b) That the Public Service Commission be empowered to enact regulations prescribing minimum standards on concentration of control of mass media and communications facilities, including:

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

(2) A ceiling on the percentage of the New York State population that may be served by a single, or several affiliated, CATV systems.

(3) Affiliations between CATV 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 affiliations between CATV systems and television stations, networks and translators).

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

It is not intimated that any particular answers should be reached on any of these issues, although each obviously poses

2. Inspections and reports. The franchises generally are very unsatisfactory in this area. State law should assure that both state and local officials have access to the information they require to perform their functions effectively. The Public Service Commission 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. The latter two requirements should differentiate between systems in accordance with their size, and consultation among federal, state and local officials should seek to avoid the imposition of multiple burdens on CATV operators, particularly small systems.

3. Transfers, amendments and renewals. Public Service Commission control over transfers, amendments and renewals is essential to protect the same interests involved in initial franchising: compliance with minimum financial, character and technical qualifications, and conformity with Commission regulations and policies. These also afford particularly suitable occasions to bring obsolete minimum criteria pertaining to system construction and operation into line with developments since the issuance of the initial franchise. In the case of transfers, it should be made clear--in contrast to most franchise provisions--that any transfer of control of either the franchise or the system property, requires Commission approval.

4. Abandonments. With a rapidly changing industry, to which considerable risk is attached, it probably is inadvisable to

prescribe an absolute prohibition against unapproved abandonments. It would seem to suffice to stipulate:

(a) In the absence of any franchise provision to the contrary, no CATV operator may abandon service, without municipal and Public Service Commission approval, prior to the expiration of the franchise or in contravention of its terms.

(b) Where not precluded by a franchise, because a franchise term permits abandonment or the franchise has expired or is about to expire, service may not be abandoned without providing at least six months prior notice to the municipality and the Public Service Commission.

The first requirement simply enforces the bargain between the CATV operator and the municipality, and may serve to alert both to the dangers of overly long franchises.

The second requirement, which is independent of any bargain, is intended to afford some time for governmental authorities to work out substitute arrangements if desired.

#### L. Representation Before the Federal Communications Commission

The development of CATV in New York is vitally dependent upon the actions of the FCC in a variety of areas. Yet New York State generally has not been represented in proceedings before the FCC. It is recommended that the Public Service Commission take an active role (not necessarily to the exclusion of other State agencies) in seeking to advance the interests of the State 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 arguably should be controlled by no government.

For example, the FCC's distant signal policy clearly is retarding the development of CATV in most sections of New York State. The policy has as a major foundation the desire to protect independent (unaffiliated) UHF and VHF stations. Yet, as nearly as can be determined, there is no independent UHF or VHF station operating in New York State (apart from the New York City independents, which no one has suggested require protection). Nor does the broadcast signal of any out-of-state independent UHF or VHF station reach New York State (as nearly as can be determined). Perhaps the Public Service Commission should consider whether the FCC's distant signal policy makes sense in the context of New York State television broadcasting.

Another example is programming. No recommendations have been made herein about programming, except insofar as channel access requirements are approved in municipal franchises and enforced upon common carrier conversion. Questions might well be posed as to whether this area should be kept free of government constraints as much as possible: How is compulsory origination by CATV systems "reasonably ancillary" to the FCC's interest in over-the-air television broadcasting? Why should the "equal time", "fairness", "lottery" and "sponsor identification" requirements of broadcasting be carried over to CATV? Are not these matters--as well as the quantum of educational and other public service programming--which properly are matters for local concern?

Whatever the views on the merits of the above issues, it seems clear that the State of New York requires a strong representative before the FCC.

## M. Selection of a State Agency

All of the above recommendations urge that the Public Service Commission be given regulatory authority over CATV. The reasons for the selection of this agency should be explored:

(1) No other existing state agency has even the slightest competence to assert and protect the State's interests in these areas. There are state agencies concerned with education, local government and taxation, but all of these are non-regulatory agencies and all would be concerned with but a fragment of the total problem.

(2) The creation of a new state agency would be both time-consuming and wasteful. FCC policies have slowed CATV growth temporarily, but this is an area likely to develop rapidly. The time required to create and staff a new agency may not be available. And wholly apart from the additional funds required by a new agency, it is generally recognized that competent and dedicated civil servants are in short supply.

(3) The Public Service Commission would have to develop competence in a new area (mass media dissemination), but it presently has the expertise to handle many aspects of the problems of CATV systems: communications engineers with a capacity to deal with, or learn to deal with, the technical aspects of CATV operations and to plan for problems engendered by technological innovation; accountants familiar with the problems of securing the accurate and complete financial statements needed for effective regulation; and lawyers and administrators familiar with the legal and practical problems of franchising, supervision of service, rate regulation, common carrier operations, control over transfers of authority, inspections and

reports, and representation of the State's interests before federal regulatory agencies, including the FCC.

(4) Finally, it appears likely that CATV operations and telephone operations--already intertwined in the manner previously described--will converge in additional areas--if not immediately, then in the future. Data transmission and two-way video conversations are two areas frequently mentioned. It would be disadvantageous to have separate state agencies regulating essentially the same function simply because in one instance the function was performed by a CATV system, and in the other by a telephone company. Unified state regulatory control over communications is clearly a desirable objective.

#### N. Federal-State Relations

Although the point has been covered in a variety of prior contexts, it may be useful to review the diverse relations which may exist between state and federal regulation.

1. Federal primacy. There are several areas where the federal interest is paramount, and the state role clearly is limited to that of an advocate. Such areas include:

(1) Control of electronic emissions from CATV systems, which might cause interference with the use of the radio spectrum by others.

(2) Requirements designed to protect the operations of television broadcasting stations, such as

- (a) Carriage of local television signals;
- (b) Same-day exclusivity for local television programs;
- (c) Restrictions on importation of distant signals;

(d) Restrictions on CATV programming (particularly programs for which a per-program charge is exacted) which may have a diversionary effect on program procurement by television broadcast stations.

(3) Resolution of issues pertaining to copyright liability (although this issue probably will not be resolved by the FCC);

(4) Arguably control over certain programming practices, such as CATV originations, equal time, fairness doctrine requirements, sponsorship identification, and lottery information prohibition. (A contrary position will be advocated below.)

2. Joint federal-state concern. Because of the inter-relation of federal and state interests in CATV, there are certain areas where action by both federal and state agencies would seem appropriate. These include:

(1) Establishment of technical standards relating to picture quality. Some programs transmitted by the CATV will be stations received in lieu of over-the-air transmissions, and the federal interest here is analogous to its requirement that the local station be carried in the first instance. With respect, however, to distant signal importations and local originations, the federal interest is not so clear. These signals were not present in the community until a wholly local entity made them available to local subscribers. However, electronic equipment is manufactured and sold in a national market, and this would argue in favor of national technical standards, purely as a pragmatic matter. It is recommended, therefore, that the FCC adopt technical standards pertaining to signal quality after consultation with state and local officials, but afford sufficient latitude to state authorities to modify and adapt the standards to local conditions where appropriate, and to insist on higher standards where such are not inconsistent with any federal policy.



(2) Interconnection of facilities. There is a federal interest in the interstate flow of communications and a state interest in the intrastate flow of communications. Interconnection should be encouraged both by federal and state authorities; the best mode of interconnection should be decided upon by mutual consultation; and both entities should be empowered to require interconnection of CATV systems when in the public interest (the State being limited, of course, to systems within its borders).

(3) Conversion to common carrier status. Since the CATV system will be carrying transmissions of both an interstate and intrastate nature, its status as a common carrier is of interest to both federal and state authorities. State authorities should be permitted to insist on conversion as long as no federal policy is contravened (obviously the federal government 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) Concentration of control. Here there is obviously an intermingling of state and federal interests. In the case of anti-competitive practices, the spheres of influence probably can be delineated on a pragmatic basis. Program producers and electronic equipment suppliers clearly operate in national markets for the most part, and uniform FCC regulation would seem to be most appropriate. Television salesmen and repairmen, by contrast, operate in local markets, and here the FCC clearly should defer to state and local judgments. Data transmission users are difficult to classify, and here perhaps joint consideration by federal and state authorities is appropriate (although the problem is not an immediate one for CATV systems).

In the case of undue influence over public opinion, the problem is complicated by the fact that both the opinions being influenced and the media achieving the influence have federal and state aspects. It is recommended that the FCC continue to act in those areas where the federal interest appears to require action, but that it not preclude additional state measures in the absence of some compelling contrary federal interest. Thus, the FCC might decide not to bar affiliations between CATV systems and local newspapers, or between CATV systems and local radio stations, or between CATV systems in different parts of the same state. This should not preclude a state from limiting local CATV-newspaper combinations or local CATV-radio combinations or restricting the proportion of the State's population that might be served by a single CATV system or an affiliated group of systems.

3. Local primacy. Although there is a federal interest in having local television signals carried on CATV systems in a proper manner, it is submitted that, for both practical and theoretical reasons, the following areas be left to state and local control:

(1) CATV service generally. It would be impossible for the FCC to police all of the CATV systems in the country. And state and local authorities would have more interest and enthusiasm in enforcing their own standards than standards emanating from the FCC, which might be wholly unrelated to local concerns.

(2) Franchising of CATV operators. For the reasons indicated above, franchising of operators should be left to local authorities, operating within state guidelines and subject to state supervision. Again, it would be impossible for the FCC to undertake

the franchising of local operators. The same considerations apply to the amendment, transfer or renewal of CATV franchises.

(3) Rates for CATV service. General rate regulation of CATV operators probably is inexpedient and undesirable at the present time. With the exceptions noted above, rate determinations should be left to the local negotiations incident to franchising. Neither the federal nor the state government could regulate CATV rates in a wise and meaningful manner at the present time.

(4) Franchise fees and public service offerings. These, too, can best be left to the franchise negotiating process, at least for the time being. The needs and interests of different localities are diverse, and, in the absence of further experience, it probably would be unwise to attempt to set forth definitive guidelines. However, state encouragement/<sup>to municipalities</sup> to achieve greater access for educational and public service offerings, and to place less emphasis on high franchise fees, seems appropriate.

(5) Landlord-tenant relations. This clearly is a problem primarily of local concern, although the effect upon receipt of television broadcast signals is not negligible.

(6) Telephone company operations. While the FCC's authority over telephone company CATV operations has been judicially affirmed, and there is no opposition to the FCC's policy determination to exclude telephone companies from CATV operations, it seems most unwise, as noted above, to treat the provision of telephone channels to independent CATV operators as an appropriate occasion for federal action. As long as state and local control of the CATV operator is assured, a wholly unnecessary step is inserted by

requiring federal certification of telephone channels needed for CATV service; among other things, the requirement creates a serious imbalance between applicants proposing to use their own lines and competing applicants proposing to use channels to be furnished by the telephone company. State surveillance of telephone tariff offerings would appear to suffice.

(7) Program regulation. This is perhaps the most controversial point. Notwithstanding FCC determinations to the contrary, it is submitted that the FCC has no legitimate interest in CATV programming except insofar as (1) the local station's signal is being carried, or (2) the viability of the local station is threatened. Congressional concern about the equitable distribution of broadcast facilities was a concern that some areas might have too few facilities, not that some areas might receive a large number of signals under circumstances not prejudicial to other areas. Similarly, control of CATV originations seems to have nothing whatever to do with broadcast regulation, except insofar as injury to the local station might result or concentration of control with broadcast media might ensue. Compulsory CATV originations and restrictions relative to equal time, fairness doctrine, sponsor identification, and lotteries, would appear to have no relation to protecting the local station and should be left to state and local control. Recognizing the controversial nature of this point, it should be emphasized that it is independent of all the others.

(8) General. As to the above items, it is recommended that the FCC defer to state and local regulation and not undertake regulation at the federal level. If some assurance of minimum

standards is required, the FCC should not attempt to formulate minimum standards of its own. Instead, it 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 those states lacking any standards whatever, while declining to exercise jurisdiction over CATV systems in states with an effective system of state control or combined state and local control.

APPENDIX A

§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.

§74.1151 Performance tests and certification.

- (a) 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.

#### §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  $1.25 \text{ MHz} \pm 25 \text{ kHz}$  above the lower boundary of the cable television channel.

(3) The frequency of the aural carrier shall be  $4.5 \text{ MHz} \pm 1 \text{ kHz}$  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  $\pm 2$  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 ( $\mu\text{V}/\text{m}$ )	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.

#### §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, whose 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.

**§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.

**§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.

APRIL 1968 BSTATE COMMUNITY ANTENNA TELEVISION SYSTEMS ACT

An Act to provide for the comprehensive regulation of persons and organizations owning, controlling, operating and managing community antenna television systems . . . . (The title should be completed in such detail as will satisfy the legal requirements of the state involved.)

BE IT ENACTED BY THE LEGISLATURE OF THIS STATE:

Section 1. Short title. -- This Act shall be known, and may be cited, as the "State Community Antenna Television System Act."

Section 2. Definitions. -- The following words, when used in this Act, shall have the following meanings, unless otherwise clearly apparent from the context:

(a) The word "Commission" shall mean the Public Service Commission of this State;

(b) The words "community antenna television company" or "CATV company" shall mean any person or organization which owns, controls, operates or manages a community antenna television system; except that such definition shall not include (i) a telephone, telegraph or electric utility regulated by the Commission in a case where it merely leases or rents to a CATV company wires or cables for the redistribution of television signals to or toward subscribers of such CATV company, or (ii) a telephone or telegraph utility regulated by

the Commission in a case where it merely provides communication channel service under published tariffs filed with the Commission to a CATV company for the redistribution of television signals to or toward subscribers of such CATV company;

(c) The words "community antenna television system" or "CATV system" shall mean any facility within this State which is constructed in whole or in part in, on, under or over any highway or other public place and which is operated to perform for hire the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable or other means to members of the public who subscribe to such service; except that such definition shall not include (i) any system which serves fewer than fifty subscribers, or (ii) any system 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 dwellings;

(d) The word "facility" shall include all real property, antennae, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a CATV company in providing service to its subscribers; and

(e) The word "highway" shall include every street, road, alley, thoroughfare, way or place of any kind used by

the public or open to the use of the public as a matter of right for the purpose of vehicular traffic.

Section 3. Declaration of public policy.-- Upon investigation, the Legislature of this State has determined that the rates, services and operations of community antenna television companies are affected with a public interest and it is hereby declared to be the policy of this State to provide fair regulation of CATV companies in the interest of the public, to promote adequate, economical and efficient CATV system service to citizens and residents of this State, to provide just and reasonable rates and charges for CATV system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, to encourage and promote harmony between CATV companies and their subscribers, to cooperate with other states and with the federal government in promoting and coordinating efforts to effectively regulate CATV companies in the public interest, and to these ends, to vest authority in the Commission to regulate CATV companies generally and their rates, services and operations, in the manner and in accordance with the policies set forth in this Act.

Section 4. Certificate of public convenience and necessity; proviso; application; notice; hearings; issuance. --

(a) No person or organization shall hereafter begin the construction, extension or operation of a CATV system or

acquire ownership or control thereof without first obtaining from the Commission a certificate that the present or future public convenience and necessity require or will require such construction, extension, operation or acquisition; provided, however, that the Commission may by rule and regulation exempt a CATV company from the above certificate requirement in a case where (i) its temporary acts or operations do not require the issuance of a certificate in the public interest, or (ii) its extensions or additions to its CATV system are within its certificated territory or an adjacent uncertificated territory and such extensions or additions will promote the prompt availability of such service to prospective subscribers and at the same time prevent unnecessary and uneconomic duplication of CATV facilities as between two or more persons or organizations.

(b) The application for such a certificate of public convenience and necessity shall be in writing, shall include a description of the territory in which the CATV system is proposed to be constructed, extended, operated or acquired, shall contain such other information as the Commission may prescribe from time to time by rules and regulations or orders, and shall be accompanied by a fee of fifty dollars (\$50.00).

(c) Upon the filing of such an application and the payment of the fee prescribed, the Commission shall fix the time

and place for a hearing thereon and shall cause notice thereof to be given to the chief executive officer of any municipality and to any telephone or telegraph utility or CATV company in the affected territory and to such other parties in interest as the Commission may deem necessary. The Commission shall also cause notice of the application to be published at least fourteen days prior to the hearing in some newspaper of general circulation in the affected territory.

(d) After such hearing, the Commission may issue to the applicant a certificate of public convenience and necessity in a form to be prescribed by it or may refuse to issue the same or may issue it for only partial exercise of the privilege sought, or may attach to the exercise of the right granted by the certificate such terms, limitations and conditions which it deems the public interest may require. The certificate shall include a description of the territory in which the CATV system is to be constructed, extended, operated or acquired.

(e) In determining whether a certificate shall be issued, the Commission shall take into consideration, among other things, the public need for the proposed service or acquisition, the suitability of the applicant, the financial responsibility of the applicant, and the ability of the applicant to perform efficiently the service for which authority is requested.



Section 5. Certification of CATV companies operating on effective date of Act. -- The Commission shall ~~issue~~ a certificate of public convenience and necessity to ~~any~~ CATV company lawfully engaged in the construction, ~~extension~~ or operation of its CATV system on the effective ~~date~~ of this Act, for the construction, extension or operation ~~then~~ being conducted, without requiring proof that public ~~convenience~~ and necessity will be served by such construction, ~~extension~~ or operation and without further proceedings, ~~if application~~ for such certificate is filed with the ~~Commission~~ within ninety days after such date. The application ~~shall~~ contain the information and shall be accompanied by ~~the~~ fee prescribed in the preceding Section. The ~~construction~~, extension or operation of such a CATV system may ~~be~~ lawfully continued pending the filing of such an application ~~and the~~ determination of same unless the Commission ~~orders~~ otherwise. An application for such a certificate which ~~is~~ ~~not~~ timely shall be determined in accordance with the procedure ~~prescribed~~ in the preceding Section and such certificate ~~shall~~ be issued or refused accordingly.

Section 6. Transfer of certificate. -- No such certificate of public convenience and necessity may be transferred, assigned or encumbered unless such transaction ~~is~~ first approved by the Commission.

Section 7. Revocation or change of certificate. --

e Commission may, after affording the holder ~~an~~ opportunity

to be heard, revoke, suspend or alter any such certificate of public convenience and necessity for the willful violation of any provision of this Act or the rules and regulations or orders of the Commission made under the authority of this Act, or for other reasonable cause.

Section 8. General jurisdiction of Commission. --

(a) The Commission shall have the power and jurisdiction to supervise and regulate every CATV company operating within this State and its property, easements, property rights, equipment, facilities, contracts, certificates and franchises so far as may be necessary to carry out the purposes of this Act, and to do all things whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction. Without limiting the generality of the foregoing, the Commission is authorized to adopt and enforce such reasonable rules and regulations and orders as it may deem necessary with respect to rates, charges and classifications, issuance of certificates, territory of operation, abandonment or suspension of service, adequacy of service, prevention or elimination of unjust discrimination between subscribers, financial responsibility, insurance covering personal injury and property damage, uniform system of accounts, records, reports, safety of operation and equipment, and to otherwise accomplish the purposes of this Act and to implement its provisions.

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

(c) The Commission shall from time to time visit the places of business and other premises and examine the records and facilities of all CATV companies to ascertain if all rules and regulations and orders of the Commission have been complied with, and shall have the power to examine all officers, agents and employees of such CATV companies, and all other persons, under oath, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for administering the provisions of this Act.

(d) The Commission shall have the power and authority to institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce the provisions of this Act or of the rules, regulations and orders adopted thereunder, or to otherwise accomplish the purposes of this Act.

(e) The Commission or other aggrieved party shall have the right to institute, or to intervene as a party in, any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of this Act or of any rule, regulation or order

adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

Section 9. Rates. -- The Commission shall prescribe just and reasonable rates, charges and classifications for the services rendered by a CATV company to subscribers, and the tariffs therefor shall be in such form and shall be filed and published in such manner and on such notice as the Commission may prescribe, and shall be subject to change on such notice and in such manner as the Commission may prescribe. The Commission, in the exercise of its power to prescribe such just and reasonable rates, charges and classifications, may use such standards, formulae, criteria or methods as the Commission may determine in order to enable the CATV company, under honest, economic and efficient management, to render the service and derive a reasonable profit therefrom.

Section 10. Duties of CATV companies. --

(a) Each CATV company (and other person and organization providing any service, equipment or facilities thereto) shall provide safe and adequate service, equipment and facilities for the operation of its CATV system.

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

(c) All rates, charges and classifications for the service rendered by a CATV company shall be just and reasonable, and any such rate, charge or classification that is unjust or unreasonable is hereby declared to be unlawful. No CATV company shall make any unjust or unreasonable discrimination in rates, charges, classifications, practices, regulations, facilities or services for or in connection with like service, directly or indirectly, by any means or device, or make or give any undue or unreasonable preference or advantage to any particular person, class of persons or locality, or subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(d) Every CATV company and other person and organization shall obey and comply with every rule and regulation and order adopted by the Commission under the provisions of this Act.

Section 11. Abandonment. -- No CATV company shall abandon all or any part of its system or other property necessary or useful in the performance of its duties to the public, or discontinue or temporarily suspend all or any part of the service which it is rendering to the public by the use of same, without first obtaining the approval of the Commission. In granting such approval, the Commission may impose such terms, conditions or requirements as in its judgement are necessary to protect the public interest.

Section 12. Eminent domain; highway use; pole attachments; Commission approval. --

(a) Upon obtaining the prior approval of the Commission, a CATV company shall be vested with the power to acquire through eminent domain proceedings the lands, property and rights of any character whatsoever necessary to construct, extend, improve, alter, maintain or operate its CATV system. Under such circumstances, the CATV company shall be entitled to pursue the same eminent domain procedure which is available for use by the telephone, telegraph or electric public utilities which are subject to the jurisdiction of the Commission.

(b) Upon obtaining the prior approval of the Commission, a CATV company may construct and maintain the wires and cables necessary to its business upon, under or over any highway and may erect and maintain the necessary fixtures, including poles and posts, for sustaining such wires and cables; provided, however, that such wires, cables and fixtures shall not be so placed or constructed as to unreasonably inconvenience present or future public travel on the highway or use thereof by public utilities or other persons or organizations having rights therein.

(c) Whenever the Commission shall find that public convenience and necessity require the use by a public utility of the wires, cables, conduits, poles or other equipment, or any part thereof, on, over or under any highway belonging to

another public utility and that such use will not result in irreparable injury to the owner or other users of such equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the Commission may order that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is ordered, the public utility to whom the use is permitted shall be liable to the owner or other users of such equipment for such damage as may result therefrom to the property of such owner or other users thereof. The words "public utility" as used in this Subsection shall include a CATV company and any public utility subject to the jurisdiction of the Commission.

Section 13. Lease or rental of certain CATV facilities or provision of channel service. -- Upon the prior approval of the Commission, any person or organization may contract to lease or rent facilities to a CATV company or to provide it with communication channel service for the redistribution of television signals to or toward the subscribers of such CATV company. Any such contract which is in effect on the effective date of this Act and which will be in effect for a period of more than ninety days thereafter shall be submitted to the Commission for approval within ninety days after the effective date of this Act, and if such contract is disapproved it shall thereupon become void.

Section 14. Approval of securities. --

(a) No CATV company shall issue any stock, bond, note or other evidence of debt payable more than twelve months after issuance without first obtaining the approval of the Commission. In determining whether a proposed issuance of securities shall be approved, the Commission shall take into consideration whether the issuance is reasonably required for the acquisition of property or the construction, extension or improvement of the applicant's CATV system, or for the improvement or maintenance of its service, or for the discharge or refunding of its obligations, or for other purposes consistent with the public interest. Commission approval, when granted, shall be evidenced by a written order authorizing such issue, the principal amount thereof and the purpose and use for which the issue is authorized.

(b) If an agency is empowered by another state or jurisdiction to regulate and control the amount and character of such securities to be issued by a CATV company operating a CATV system both in this state and in such other state or jurisdiction, then the Commission shall have the power to agree with such agency of such other state or jurisdiction on the issue of such securities by such CATV company and shall have the power to approve such issue jointly with such agency.

Section 15. Approval of mergers. -- No CATV company operating or managing a CATV system shall combine, merge or



consolidate with, or acquire control of, another organization without first obtaining the approval of the Commission, which shall be granted only after an investigation and finding that such proposed combination, merger, consolidation or acquisition is in the public interest.

Section 16. Judicial review. -- Within thirty days after the service of an order or decision reflecting any action of the Commission which is ripe for judicial review, any party aggrieved thereby may appeal to a court of competent jurisdiction for the purpose of having the reasonableness or lawfulness of such action inquired into and determined. Such appeal shall be tried according to the rules governing other civil cases to the extent practicable.

Section 17. Penalty. -- Any person or the officer, agent or employee of any organization who wilfully violates any provision of this Act or of any rule, regulation or order adopted thereunder, or who willfully procures, aids or abets any violation of such a provision shall be guilty of a misdemeanor.

Section 18. Severability. -- If any provision of this Act or the application of such provision to any circumstance is held invalid for any reason whatsoever, the remainder of this Act or the application of the provision to other circumstances, shall not be affected thereby.

Section 19. Repeal. -- All laws and parts of laws in conflict with this Act are hereby repealed.

Note on Municipal Franchises

When the state legislature desires to require a CATV company to obtain a municipal franchise prior to using the streets for the erection of CATV transmission facilities, it is recommended that the following Subsection be added at the end of Section 4 of the above Act:

"(f) Notwithstanding any provision herein to the contrary, in any case where a CATV company operates or proposes to operate in a municipality where the use of highways and other public places are essential to such operation, no certificate of public convenience and necessity shall be issued for such operation without a franchise being first granted therefor by the municipality. Such franchise shall not contain any provision conflicting with or repugnant to the exclusive jurisdiction of the Commission to regulate the rates, services and other matters concerning CATV companies as herein provided. In the event a municipality shall arbitrarily refuse to grant such a franchise to a CATV company within ninety days after application for same is made, then the CATV company may avoid the necessity of first obtaining the franchise by showing to the satisfaction of the Commission that the franchise is being arbitrarily withheld."

## APPENDIX C

MODEL STATE CATV REGULATORY SURVEILLANCE ACT

An Act to provide for the regulation of persons and organizations owning, controlling, operating and managing community antenna television systems .... (The title should be completed in such detail as will satisfy the legal requirements of the state involved.)

BE IT ENACTED BY THE LEGISLATURE OF THIS STATE:

Section 1. Short title. -- This Act shall be known, and may be cited, as the "State CATV Regulatory Surveillance Act."

Section 2. Definitions. -- The following words, when used in this Act, shall have the following meanings, unless otherwise clearly apparent from the context:

(a) The word "Commission" shall mean the Public Service Commission of this State;

(b) The words "community antenna television company" or "CATV company" shall mean any person or organization, whether private or governmental, which owns, controls, operates or manages a community antenna television system; except that such definition shall not include (i) a telephone, telegraph or electric utility regulated by the Commission in a case where it merely leases or rents to a CATV company wires or cables for the redistribution of television signals to subscribers of such CATV company, or (ii) a telephone or telegraph utility regulated by the Commission in a case where it merely provides communication channel service under published tariffs

filed with the Commission to a CATV company for the redistribution of television signals to subscribers of such CATV company; and

(c) The words "community antenna television system" or "CATV system" shall mean any facility within this State which is constructed in whole or in part in, on, under or over any highway, road, street or other public place and which is operated to perform the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable or other means to members of the public who subscribe to such service; except that such definition shall not include (i) any system which serves fewer than fifty subscribers, or (ii) any system 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 dwellings.

Section 3. Declaration of public policy. -- Upon investigation, the Legislature of this State has determined that certain aspects of the services and operations of CATV companies should be regulated in the public interest, although CATV companies are not public utilities and hence should not be subject to regulation as to their rates, and, accordingly, it is hereby declared to be the policy of this State to provide fair regulation of CATV companies in the interest of the public, to promote adequate, economical and efficient V system service to citizens and residents of this State,

to provide for the furnishing of CATV system services without unjust discrimination, undue preferences or advantages, to encourage and promote harmony between CATV companies and their subscribers, to cooperate with other States and with the Federal Government in promoting and coordinating efforts to effectively regulate CATV companies in the public interest, and to these ends, to vest authority in the Commission to regulate CATV companies in the matter and in accordance with the policies set forth in this Act. Nothing in this Act shall be construed to prevent a CATV company from furnishing any other lawful service or engaging in any other lawful business.

Section 4. Certificate of public convenience; proviso; application; notice; hearings; issuance. -- (a) No person or organization shall hereafter begin the construction, extension or operation of a CATV system or acquire ownership or control thereof without first obtaining from the Commission a certificate that the present or future public convenience requires or will require such construction, extension, operation or acquisition; provided, however, that the Commission may by rule and regulation exempt a CATV company from the above certificate requirement in a case where its extensions of or additions to its CATV system are within its certificated territory or an adjacent uncertificated territory and such extensions or additions will promote the prompt availability of such service to prospective subscribers and at the same time prevent unnecessary and uneconomical duplication of CATV facilities as between two or more

persons or organizations.

(b) The application for such a certificate of public convenience shall be in writing, shall include a description of the territory in which the CATV system is proposed to be constructed, extended, operated or acquired, shall contain such other information as the Commission may prescribe from time to time by rules and regulations or orders, and shall be accompanied by a fee of \_\_\_\_\_ dollars.

(c) Upon the filing of such an application and the payment of the fee prescribed, the Commission shall fix the time and place for a hearing thereon and shall cause notice thereof to be given to the chief executive officer of any municipality, county or other unit of local government and to any CATV company in the affected territory and to such other parties in interest as the Commission may deem necessary.

(d) After such hearing, the Commission may issue to the applicant a certificate of public convenience in a form to be prescribed by it or may refuse to issue the same. The certificate shall include a description of the territory in which the CATV system is to be constructed, extended, operated or acquired.

(e) In determining whether a certificate shall be issued, the Commission shall take into consideration, among other things, the public need for the proposed service or acquisition, the suitability of the applicant, the financial responsibility of the applicant, and the ability of the applicant to perform

efficiently the service for which authority is requested.

Section 5. Certification of CATV companies operating on effective date of Act. -- The Commission shall issue a certificate of public convenience to any CATV company engaged in the construction, extension or operation of its CATV system on the effective date of this Act, for the construction, extension or operation then being conducted, without requiring proof that public convenience will be served by such construction, extension or operation and without further proceedings, if application for such certificate is filed with the Commission within ninety days after such date. The application shall contain the information and shall be accompanied by the fee prescribed in the preceding Section. The construction, extension or operation of such a CATV system may be lawfully continued pending the filing of such an application and the determination of same unless the Commission orders otherwise. An application for such a certificate which is untimely shall be determined in accordance with the procedure prescribed in the preceding Section and such certificate shall be issued or refused accordingly.

Section 6. Transfer of certificate. -- No such certificate of public convenience may be transferred or assigned unless such transaction is first approved by the Commission.

Section 7. Revocation or change of certificate. -- The Commission may, after affording the holder an opportunity to be heard, revoke, suspend or alter any such certificate

of public convenience for the willful violation of any provision of this Act or the rules and regulations or orders of the Commission made under the authority of this Act, or for other reasonable cause.

Section 8. Jurisdiction of Commission. -- (a) The Commission shall have the power and jurisdiction to supervise and regulate every CATV company operating within this State so far as may be necessary to carry out the purposes of this Act. The Commission is authorized to adopt and enforce such reasonable rules and regulations and orders as it may deem necessary with respect to issuance of certificates, territory of operation, abandonment or suspension of service, adequacy of service, prevention or elimination of unjust discrimination between subscribers, financial responsibility, insurance covering personal injury and property damage, records, reports, safety of operation and equipment, and to otherwise accomplish the purposes of this Act and to implement its provisions.

(b) The Commission may, after affording an opportunity for hearing, order a CATV company to make any reasonable repair or improvement of or addition to such system.

(c) The Commission may visit the places of business and other premises and examine the records and facilities of all CATV companies to ascertain if all rules and regulations and orders of the Commission have been complied with, and shall have the power to examine all officers, agents and employees of such CATV companies, and all other persons, under oath, and to compel the production of papers and the attendance of



witnesses to obtain the information necessary for administering the provisions of this Act.

(d) The Commission shall have the power and authority to institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce the provisions of this Act or of the rules, regulations and orders adopted thereunder, or to otherwise accomplish the purposes of this Act.

(e) The Commission or other aggrieved party shall have the right to institute, or to intervene as a party in, any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of this Act or of any rule, regulation or order adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

Section 9. Municipal fees, taxes or charges. -- No municipality, county or other local unit of government shall, in any annual period, impose upon a CATV company any fees, taxes or charges which in the aggregate exceed \_\_\_\_\_ per centum of the money actually received by such CATV company for the furnishing of its services within the boundaries of such local unit of government during such annual period; Provided that such fees, taxes or charges shall not be construed to include any ad valorem taxes imposed upon the property of such CATV company.

Section 10. Duties of CATV companies. -- (a) Each CATV company (and other person and organization providing any service, equipment or facilities thereto) shall provide safe and adequate service, equipment and facilities for the operation of its CATV system.

(b) No CATV company shall demand or receive a greater or less or different compensation for providing CATV service than the rates and charges specified in the current statement thereof in effect at the time and on record with the Commission.

(c) No CATV company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for or in connection with like service.

(d) Every CATV company and other person and organization shall obey and comply with every rule and regulation and order adopted by the Commission under the provisions of this Act.

Section 11. Abandonment. -- No CATV company shall abandon all or any part of its system or other property necessary or useful in the performance of its duties to the public, or discontinue or temporarily suspend all or any part of the service which it is rendering to the public by the use of same, without first obtaining the approval of the Commission.

In granting such approval, the Commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest.

Section 12. Highway use; pole attachments; Commission approval. -- (a) Upon obtaining the prior approval of the Commission, a CATV company may construct and maintain the wires and cables necessary to its business upon, under or over any highway, road, street or other public place and may erect and maintain the necessary fixtures, including poles and posts, for sustaining such wires and cables; provided, however, that such wires, cables and fixtures shall not be so placed or constructed as to unreasonably inconvenience present or future public travel on the highway, road, street or other public place or use thereof by public utilities or other persons or organizations having rights therein.

(b) Whenever the Commission shall find that public convenience requires the use by a CATV company of the wires, cables, conduits, poles or other equipment, or any part thereof, on, over or under any highway, road, street, or other public place belonging to a public utility and that such use will not result in irreparable injury to the owner or other users of such equipment or in any substantial detriment to the service, and that such CATV company and public utility have failed to agree upon such use or the terms and conditions or compensation for the same, the Commission may order that such use be permitted, and prescribe a reasonable compensation and

reasonable terms and conditions for the joint use. If such use is ordered, the CATV company to whom the use is permitted shall be liable to the owner or other users of such equipment for such damage as may result therefrom to the property of such owner or other users thereof.

#### Note on Local Franchises

When the State legislature desires to require a CATV company to obtain a local franchise prior to using the streets for the erection of CATV transmission facilities, it is recommended that the following Subsection be added at the end of Section 4 of the above Act:

"(f) Notwithstanding any provision herein to the contrary, in any case where a CATV company operates or proposes to operate in a municipality, county or other local unit of government where the use of highways, roads, streets or other public places are essential to such operation, no certificate of public convenience shall be issued for such operation without a franchise being first granted therefor by such local unit of government. Such franchise shall not contain any provision conflicting with or repugnant to the exclusive jurisdiction of the Commission to regulate the matters concerning CATV companies as herein provided. In the event such local unit of government shall arbitrarily refuse to grant such a franchise to a CATV company within ninety days after application for same is made, then the CATV company may avoid the necessity of first obtaining the franchise by showing to the satisfaction of the Commission that the franchise is being arbitrarily withheld.

APPENDIX D

The "Kelly Bill," Assembly 6700-A, April 13, 1970, as amended by Assembly 6783, April 15, 1970.

## AN ACT

To amend the executive law, in relation to the creation of a state commission on cable television, prescribing its functions, powers and duties and making an appropriation for its expenses

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

- 1 Section 1. The executive law is hereby amended by adding  
2 thereto a new article, to be article twenty-five, to read as follows:

### ARTICLE 25

#### COMMISSION ON CABLE TELEVISION

- 5 *Section 660. Declaration of legislative findings and intent.*  
6 *661. Definitions.*  
7 *662. Application of article.*  
8 *663. Commission created.*  
9 *664. Duties of commission.*

EXPLANATION -- Matter in italics is new; matter in brackets [ ] is old law to be omitted.

1       655. Powers of the commission.

2       666. Fees.

3       667. Certificate of approval.

4       668. Certificate of approval for cable television companies  
5               operating on the effective date of chapter.

6       669. Approval of mergers and consolidations by cable tele-  
7               vision commission.

8       670. Lease, rental of certain cable television facilities or  
9               provisions of channel service.

10      671. Duties and operations of cable television companies.

11      672. Penalties.

12      § 660. Declaration of legislative findings and intent. Upon  
13 investigation of the potential public interest associated with cable  
14 television, the legislature of the state of New York has determined  
15 that cable television operations are essentially intra-state services  
16 involving public rights-of-way, municipal franchising, and com-  
17 munity service, and, therefore, are of state concern, that said  
18 operations must be protected from undue restraint and regulation so  
19 as to assure the maximum penetration of cable television services  
20 to homes in this state as rapidly as economically feasible, that  
21 municipalities could benefit from valuable educational and public  
22 services through cable television systems, and that the cable tele-  
23 vision industry is in a period of rapid growth and corporate cor-  
24 solidation and many municipalities lack the resources to protect  
25 subscriber and public interest in franchise negotiations.

26      There is, therefore, a need for a state agency to develop a state  
27 telecommunications policy, to assure the rapid development of the

1 cable television industry consonant with policies, regulations and  
2 statutes of the federal government and to assure that cable tele-  
3 vision companies serve their subscribers, the municipalities within  
4 which they are franchised and the public interest generally.

5 It is the intent of the legislature in the enactment of this chapter  
6 to vest authority in an independent commission to review and  
7 evaluate the suitability of practices for franchising cable television  
8 companies, to promote uniformity of franchise practices, to estab-  
9 lish guidelines for municipalities issuing franchises, to promote the  
10 development of the cable television industry in New York state, to  
11 encourage channel availability for municipal services, educational  
12 television, program diversity and local expression, and to assure the  
13 availability of consultant services to municipalities in franchise  
14 negotiations.

15 § 661. Definitions. The words and phrases used in this article  
16 shall have the following meanings unless a different meaning clearly  
17 appears in the context.

18 (a) "Cable television company" shall mean any person, associa-  
19 tion or corporation, foreign or domestic, which owns, controls,  
20 operates, manages or leases a cable television system.

21 (b) "Cable television system" shall mean any facility which  
22 operates for hire the service of receiving and amplifying the signals  
23 broadcast by one or more television stations and redistributing such  
24 signals by wire, cable or other means, whether such facility is owned  
25 or leased, to members of the public who subscribe to such service. It  
26 shall include any such facility which also operates for hire the  
27 service of distributing other signals originated by a cable television

1 company or by another party, authorized by such cable television  
2 company to transmit signals, by wire, cable or other means whether  
3 such facility is owned or leased. Such definition does not include:

4 (1) Any system which serves fewer than two hundred fifty  
5 subscribers;

6 (2) Any system which serves only the residents of one or more  
7 apartment dwellings under common ownership, control or manage-  
8 ment, and commercial establishments located on the premises of  
9 such dwellings.

10 (c) "Commission" shall mean the commission on cable television  
11 created by this article.

12 (d) "Facility" shall mean all real property, antennae, poles,  
13 wires, cables conduits, amplifiers, instruments, appliances, fixtures  
14 and other personal property used by a cable television company in  
15 providing service to its subscribers including that constructed in  
16 whole or in part in, on, under or over any highway or other public  
17 place.

18 (e) "Franchise" shall mean and include any authorization  
19 granted by a municipality in terms of a franchise, privilege, permit,  
20 license or otherwise to construct, operate, maintain, or manage a  
21 cable television system in any municipality.

22 (f) "Gross annual receipts" shall mean any and all compensa-  
23 tion received directly or indirectly by a cable television company  
24 from subscribers or users in payment for television or FM radio  
25 signals or services received and any other moneys that may be con-  
26 sidered income including but not limited to advertising and carrier  
27 service revenue.



1 Gross annual receipts shall not include any taxes on services  
2 furnished by the cable television company imposed directly on any  
3 subscriber or user by any city, state, or other governmental unit  
4 and collected by the grantee for such governmental units.

5 (g) "Highway" shall mean every street, road, alley, thorough-  
6 fare, way or place of any kind used by the public or open to the  
7 use of the public as a matter of right for the purpose of vehicular  
8 traffic.

9 (h) "Municipality" shall mean any village, town or city incor-  
10 porated within the state of New York.

11 § 662. Application of article. 1. The provisions of this article  
12 shall apply to every cable television system and every cable tele-  
13 vision company as defined in section six hundred sixty-one of this  
14 article, operating within the state of New York, including a cable  
15 television company which constructs, operates and maintains a  
16 cable television system exclusively through telephone company  
17 facilities constructed, operated and maintained pursuant to a public  
18 service commission granted telephone franchise.

19 2. Corporations formed to acquire property or to transact busi-  
20 ness which would be subject to the provisions of this chapter, and  
21 corporations possessing franchises for any of the purposes contem-  
22 plated by this chapter, shall be deemed to be subject to the pro-  
23 visions of this chapter although no property may have been  
24 acquired, business transacted, or franchises exercised.

25 § 663. Commission created. 1. A state commission on cable tele-  
26 vision is hereby created within the executive department which shall  
27 consist of the chairman, vice-chairman and five other members who  
28 are not holders of any other state public office.

1    2. Each member, including the chairman and vice-chairman, shall  
2 be appointed by the governor, by and with the advice and consent  
3 of the senate for five years, provided, however, that of the seven  
4 members first appointed, one shall be appointed for one year, one  
5 for two years, one for three years, two for four years and two for  
6 five years, from July first, nineteen hundred seventy-one. Their  
7 successors shall be appointed for terms of five years. The chairman  
8 shall be the chief executive officer of the commission except during  
9 his absence or disability, the vice-chairman shall have powers of  
10 the chairman.

11    3. The chairman, the vice-chairman and the members shall receive  
12 compensation fixed by the governor within the amount made avail-  
13 able by appropriation therefor. The members of the board shall be  
14 representative of the broad range of interests and disciplines  
15 related to telecommunication needs and concerns including so far  
16 as possible, the fields of broadcasting, educational television, cable  
17 television, communication system regulation and communication  
18 electronics and at least two members shall represent consumer  
19 interests.

20    4. Vacancies in the commission occurring otherwise than by  
21 expiration of term, shall be filled for the unexpired term in the same  
22 manner as original appointments.

23    5. There shall be a counsel and executive secretary to the com-  
24 mission who shall be appointed by and serve at the pleasure of the  
25 commission. The executive secretary may appoint such officers,  
26 employees, agents and consultants as he may deem necessary, pre-

1 scribe their duties, fix their compensation within the amounts avail-  
2 able therefor by appropriation.

3 § 664. Duties of the commission. The commission shall:

4 (a) establish standards for franchising procedures and practices  
5 of municipalities;

6 (b) establish standards for provisions to be included in cable  
7 television franchises;

8 (c) establish guidelines for equipment, service and safety of  
9 cable television systems for use by municipalities;

10 (d) provide advisory assistance to municipalities in matters  
11 relating to cable television;

12 (e) review and act upon applications for certificates of approval  
13 in accordance with such standards and as hereinafter provided;

14 (f) represent the interests of the people of the state before the  
15 federal communication commission and inform municipalities of  
16 developments at the federal level;

17 (g) consult with the cable television industry, other states and  
18 agencies of this state to promote the rapid and harmonious develop-  
19 ment of cable television services as set forth in the legislative find-  
20 ings and intent;

21 (h) undertake such studies as may be necessary to meet the  
22 responsibilities and objectives of this chapter.

23 § 665. Powers of the commission. 1. The commission may pro-  
24 mulgate rules and regulations in furtherance of the purposes of  
25 this article.

26 2. Prior to the issuance of a certificate of approval as hereinafter  
27 provided, the commissioner may fix the time and place for a hearing

1 thereon and cause notice thereof to be given to the chief executive  
2 officer of any municipality in the affected territory and to such  
3 other parties in interest as the commission may deem necessary.  
4 The applicant shall give notice of such filing in the territory speci-  
5 fied in the application in the manner which the commission shall,  
6 by rule and regulation, prescribe and the cost of such notice shall  
7 be borne by the applicant.

8 3. The commission shall have the power and authority to require  
9 all cable television companies to file such reports, contracts and  
10 statements as the commission deems necessary for administering  
11 the provisions of this article and in the public interest. The com-  
12 mission shall have the power and authority to prescribe the form of  
13 such reports and statements, the character of information to be con-  
14 tained therein, the frequency of such filings, and may, from time  
15 to time, make such changes and additions in regard to the form and  
16 contents thereof as it may deem proper.

17 4. The commission shall have the power to examine all officers,  
18 agents and employees of such cable television companies, and all  
19 other persons, under oath, and to compel the production of papers  
20 and the attendance of witnesses to obtain the information necessary  
21 for administering the provisions of this article.

22 5. The commission may require and receive from any depart-  
23 ment, division, board, bureau, commission, or other agency of the  
24 state or any political subdivision thereof or any public authority  
25 such assistance and data that may be necessary to enable the com-  
26 mission to carry on its responsibility under this chapter.

1 § 666. P'ces. 1. Every cable television company shall pay to the  
 2 commission annually, during the life of any franchise, a sum equal  
 3 to two per centum of the gross annual receipts of such cable tele-  
 4 vision company.

5 2. In any year, or portion thereof, following the first full year  
 6 that any franchise has been in effect, the minimum amount any  
 7 cable television company shall pay to the commission shall be accord-  
 8 ing to the following schedule:

9	Cities having a population of 125,000 or more....	\$5,000
10	Villages and cities having a population of 25,000	
11	or more but less than 125,000.....	1,000
12	Villages and cities having a population of 10,000	
13	or more but less than 25,000.....	500
14	Villages and cities having a population of less	
15	than 10,000 .....	250
16	Towns having a population outside of villages of	
17	25,000 or more.....	500
18	Towns having a population outside of villages	
19	of 10,000 or more but less than 25,000.....	250
20	Towns having a population outside of villages	
21	of less than 10,000 .....	125

22 3. Such payments shall be made annually in a manner to be  
 23 prescribed by the commission and shall be deposited in a separate  
 24 bank account or accounts and credited to the revolving fund; the  
 25 balance of said money shall be paid into the state treasury and  
 26 credited to the general fund. The said sum of fifty thousand  
 27 dollars herein appropriated and all subsequent credits to said

1 revolving funds shall be paid on the audit and warrant of the comp-  
2 troller upon vouchers approved by the chairman of the commission.

3 § 667. Certificate of approval. 1. Before any municipal fran-  
4 chise for a cable television system may be executed, amended,  
5 extended or transferred, the cable television company shall first  
6 obtain a certificate of approval from the commission. The issuance  
7 of such certificate shall authorize the holder thereof to occupy  
8 public highways to the extent required to provide cable television  
9 service as approved by the municipality.

10 2. The application for such certificate of approval shall be in  
11 writing, shall include a description of the territory in which the  
12 cable television system is operating or is proposed to be constructed,  
13 operated or acquired, shall contain such other information as the  
14 commission may prescribe from time to time by rules and regu-  
15 lations, shall be accompanied by a copy of the franchise proposed  
16 to be executed, amended, extended, or transferred, and shall be  
17 accompanied by a fee of one hundred dollars. (\$100).

18 3. The commission may issue to the applicant a certificate of  
19 approval in a form to be prescribed by it or may refuse to issue  
20 the same or may issue the same contingent upon compliance with  
21 standards set by the commission.

22 4. In determining whether a certificate of approval should be  
23 issued to a cable television company, the commission shall take  
24 into consideration, among other things, the public interest, the  
25 suitability of the applicant, the financial responsibility of the appli-  
26 cant, the ability of the applicant to perform efficiently the service  
27 for which authority is requested and the substantial conformity  
28 of franchise provisions with standards set by the commission.

1 § 668. *Certificate of approval for cable television companies*  
2 *operating on the effective date of chapter. 1. Application for cer-*  
3 *tificate of approval shall be made to the commission within ninety*  
4 *days after the effective date of this chapter. The commission shall*  
5 *issue a certificate of approval to any cable television company*  
6 *lawfully engaged in the construction, extension or operation of its*  
7 *cable television system on the effective date of this chapter for*  
8 *the construction, extension or operation then being conducted*  
9 *without requiring proof of public interest served by such construc-*  
10 *tion, extension or operation or suitability of the cable television*  
11 *company and without further proceedings.*

12 2. *The construction, extension or operation of such a cable tele-*  
13 *vision system may be lawfully continued pending the filing of an*  
14 *application and its disposition.*

15 3. *An application for such a certificate which is untimely shall*  
16 *be determined in accordance with the procedure described in the*  
17 *preceding section and such certificate shall be issued or refused*  
18 *accordingly.*

19 4. *Notwithstanding the provisions of subdivision one of this sec-*  
20 *tion, prior to the transfer, extension or amendment of a franchise*  
21 *or franchise agreement of a cable television company operating*  
22 *on the effective date of this chapter or revision of any term or*  
23 *terms thereof including but not limited to franchise fees, rates*  
24 *and charges, period of franchise and provisions for public service*  
25 *channels, municipal service channels and educational television*  
26 *channels, a certificate of approval must be obtained as provided*  
27 *for in the preceding section.*

1 5. Notwithstanding the provision of subdivision one of this sec-  
2 tion, any franchise which has been granted but not exercised as indi-  
3 cated by substantial performance within one year of the effective  
4 date of this chapter shall be deemed contrary to the public interest  
5 and intent of such franchise and any certificate of approval previ-  
6 ously issued by the commission shall be invalidated. Any subsequent  
7 application for a certificate of approval shall be determined in  
8 accordance with the preceding section.

9 § 669. Approval of mergers and consolidations by cable television  
10 commission. No cable television company operating or managing  
11 a cable television system may combine, merge or consolidate with,  
12 or acquire control of, another organization without first obtaining  
13 a certificate of approval of the commission which shall be granted  
14 only after an investigation and finding that such proposed com-  
15 bination, merger, consolidation or acquisition is in the public inter-  
16 est as provided for in section six hundred sixty-seven.

17 § 670. Lease, rental of certain cable television facilities or pro-  
18 visions of channel service. Upon the prior approval of the com-  
19 mission, any person or organization may contract to lease or rent  
20 cable television facilities to a cable television company or to pro-  
21 vide it with communication channel service for the redistribution  
22 of television signals to or toward the subscribers of such cable  
23 television company. Any such contract which is in effect on the  
24 effective date of this chapter shall be submitted to the commission  
25 for approval within ninety days after the effective date of this  
26 article, and shall be considered in accordance with section six  
27 hundred sixty-eight.



1 § 671. Duties and operations of cable television companies. 1.

2 Except as to cable television companies lawfully operating on the

3 effective date of this chapter, no person, association or corporation

4 may engage in the business of constructing, operating, owning

5 or managing a cable television system in any municipality of the

6 state unless such municipality has granted a franchise for such

7 system.

8 2. No cable television company shall engage in the business of

9 manufacturing, selling, renting, installing or servicing carrier

10 equipment and materials and terminal attachments including but

11 not limited to television sets, input and output tubes, fixtures,

12 speakers and computer terminals. Any cable television company

13 already engaged in such business shall divest itself of interest

14 therein or in the cable television company not later than January

15 first, nineteen hundred seventy-four.

16 3. No initial franchise may be granted and no franchise may be

17 transferred or sold after the effective date of this chapter to any

18 company engaged in the business of newspaper publication, public

19 utilities, radio or television broadcasting or production of program

20 materials for interstate distribution including movies, entertain-

21 ment and sports.

22 4. No cable television company may make any unjust or unrea-

23 sonable discrimination in rates, charges, classifications, practices,

24 regulations, cable television facilities or services for or in connection

25 with like service, directly or indirectly, by any means or device,

26 or make or give any undue or unreasonable preference or advantage

27 to any particular person, class of persons or locality, or subject

1 any particular person, class of persons, or locality to any undue  
2 or unreasonable prejudice or disadvantage; provided, however,  
3 that a cable television company shall not be required to provide  
4 service to any subscriber who does not pay the applicable connec-  
5 tion fee or monthly service charge.

6 5. No cable television company may enter into any contract  
7 with the owners, lessees or persons controlling or managing build-  
8 ings that may be wired to the antenna system, that would have  
9 the effect, directly or indirectly, of diminishing or interfering with  
10 existing rights of any tenant or other occupant of such building  
11 to use or avail himself of master or individual antenna equipment.

12 6. Every cable television company and every person and organi-  
13 zation providing any service, equipment or cable television facilities  
14 thereto shall provide safe and adequate service, equipment and  
15 cable television facilities for the operation of its cable television  
16 system. The cable television system shall be installed and main-  
17 tained in accordance with the highest and best accepted standards  
18 of the industry to the effect that subscribers shall receive the high-  
19 est possible service.

20 7. Each cable television company shall undertake the obligation  
21 to maintain and service its coaxial cables, devices and equipment.  
22 Such companies are further required to maintain an office at a  
23 location which subscribers may call without incurring added mes-  
24 sage or toll charges so that maintenance service shall be promptly  
25 available to subscribers.

26 8. No cable television company shall abandon all or any part  
27 of its cable television system or other property necessary or useful

1 in the performance of its duties to the public, or discontinue  
2 or temporarily suspend all or any part of the service which it is  
3 rendering to the public by the use of same, without first obtaining  
4 the approval of the commission. In granting such approval the  
5 commission may impose such terms, conditions or requirements  
6 as in its judgment are necessary to protect the public interest.

7 § 672. Penalties. Any person, whether in his individual capacity  
8 or as an agent, employee or officer of any organization who violates  
9 any provision of this article or any rule or regulation promulgated  
10 thereunder, is guilty of a misdemeanor.

11 § 2. If any provision of this chapter or the application of such  
12 provision to any circumstances is held invalid for any reason what-  
13 soever, the remainder of this article or the application of the  
14 provision to other circumstances shall not be affected thereby.

15 § 3. The sum of fifty thousand dollars (\$50,000), or so much  
16 thereof as may be necessary, is hereby appropriated to the com-  
17 mission hereby created and made immediately available for its  
18 expenses, including personal service, in carrying out the provisions  
19 of this act. Such monies shall be payable out of the state treasury  
20 after audit by and on the warrant of the comptroller on vouchers  
21 certified or approved by the chairman or vice-chairman of the  
22 commission or by an officer or employee of the commission desig-  
23 nated by the chairman.

24 § 4. This act shall take effect on September first, nineteen hundred  
25 seventy, except that sections six hundred sixty-six through six  
26 hundred seventy-one of article twenty-five as added by this act,  
27 shall take effect April first, nineteen hundred seventy-one.

AMENDMENTS

Sec. 664-a. Supervision and regulation. The commission shall supervise and regulate every cable antennae television corporation operating within this state and its property, easements, property rights, equipment, facilities, contracts and franchises so far as may be necessary to carry out the purposes of this article as defined herein. The commission may consult with the department of transportation on all matters relating to safety standards and procedures for maintenance, installation and operation of all equipment and facilities of cable antennae television corporations and systems as herein defined.

Sec. 671-a. Services and charges. 1. Every cable antennae television corporation shall furnish and provide with respect to its business such instrumentalities, facilities and services as shall be safe and adequate in accordance with safety standards promulgated by any municipality or local authority. All charges made or demanded by any cable antennae television corporation for any services rendered or to be rendered in connection, therewith, shall be in accordance with schedules fixed by law or by order of the commission or by agreement of any municipality and local authority.

2. No cable antennae television corporation shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect

or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to transmitting signals except as authorized by law or by order of the commission or by agreement of any municipality and local authority.

3. Nothing in this article shall be construed to prevent any cable antennae television corporation from continuing to furnish the service of transmitting signals to paid subscribers under any franchises in force at the date this article takes effect.

Sec. 2. This act shall take effect July first, nineteen hundred seventy.

## Appendix E

### Technical Specifications of Corning Franchise

Unless otherwise specified, any reference to the measurement of a signal at the receiver is defined as the measurement of that signal across a 300 OHM load at the receiver location. Main feeder lines are defined as lines terminated on both ends by line amplifiers.

1. Reception will be snow free on a set in good working order.
2. Signal level for channels 2-6 will be 2,550 uv (microvolts). Channels 7-13 will be 3,550 uv.
3. The main feeder will not be used for individual subscriber taps. Instead separate distribution lines will be provided between amplifiers so that the main feeder line will be undisturbed when providing customer service taps.
4. The signal to noise ratio will be 44 db or greater.
5. Cross signal intermodulation will be no greater than 51 db.
6. The signal level between the adjacent signals should not vary more than 4 db among frequency adjacent signals.
7. The conversion of signal frequencies should be stable to the degree that the center channel frequency will not drift more than 2 kc from the broadcasters transmitted center frequency.
8. The hum modulation of the picture signal observed at any point throughout the system will be less than 5%.
9. The voltage standing wave ratio of all equipment used in the system will be less than 1.4 to 1 except in the case of customer tap offs.
10. Electromagnetic radiation from distribution equipment should be controlled in accordance with F.C.C. and Bell System requirements.
11. Ghost and echo on the same channel will be 40 db below the main channel signal at any customer service tap off as determined by a ghost free generator which signal is fed in at the first amplifier.
12. Any given channel signal may not vary more than 1.5 db from the sound carrier frequency to the video carrier frequency at the customer receiver. This signal will be defined as a constant amplitude test signal across any 6 mc frequency segment (for any channel) generated at the input to the first amplifier at the antenna sight.
13. The generation of fm signals will be received at the customer fm tuner at frequencies equal to (+0.5 mc) the broadcasters transmitted frequency.

APPENDIX FNEW YORK CITY FRANCHISE TO TELEPROMPTER

Now, therefore, The parties hereto do hereby mutually covenant and agree as follows:

## SECTION 1. DEFINED TERMS

Unless the context clearly indicates that a different meaning is intended:

- (a) "Comptroller" means the Comptroller of the City.
- (b) "Director of Communications" means the Director of Communications Service of the City.
- (c) "Director of Franchises" means the Director of the Bureau of Franchises of the Board.
- (d) "Streets" means streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, and public grounds or waters within or belonging to the City.
- (e) "Person" means person, firm, corporation or association, and any other legally recognized entity.
- (f) "District" means that area within the Borough of Manhattan from the North side of East 86th Street and the North side of West 79th Street (Fifth Avenue dividing East from West) to the Harlem River and between the Hudson River and the East River, excluding Welfare Island.
- (g) "Gross Receipts" means all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parents, and any person in which the Company has a financial interest, from or in connection with the operation of the System pursuant to this contract, excluding, however, revenues derived from provision of a separate service which uses the System for transmission but including an amount equivalent to what an outside party would have paid for such transmission.
- (h) "Residential Subscriber" means a purchaser of any service delivered over the System to an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.
- (i) "System" means the broadband communications facility which is to be constructed, operated and maintained by the Company pursuant to this contract.

APPENDIX F (Cont'd)

- (j) "Basic Service" means the simultaneous delivery by the Company to television receivers (or any other suitable type of audio-video communication receivers), of all subscribers in the District of all signals of over-the-air television broadcasters required by the Federal Communications Commission (hereafter "F.C.C.") to be carried by a community antenna television system as defined by the F.C.C.; the Company Channel; City Channels except as may be designated for special purposes by the Director of Communications; Public Channels; and Additional Channels at the option of the Company.
- (k) "Additional Service" means any communications service other than Basic Service, provided over its System by the Company directly or as a carrier for its subsidiaries, affiliates or any other person engaged in communications services including, by way of example but not limited to, burglar alarm, data or other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.
- (l) "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations.
- (m) "Channel" means a band of frequencies 6 megahertz wide in the electromagnetic spectrum which is capable of carrying either one audio-video television signal and a number of non-video signals, or several thousand non-video signals.
- (n) "City Channels" means channels on the System which are reserved by this contract for use by the City.
- (o) "Public Channels" means channels on the System which are reserved by this contract for carriage of program material provided by persons who lease channel time and, if necessary, studio facilities, from the Company for the presentation of programs in accordance with Section 4(e) of this contract.
- (p) "Company Channel" means the channel on the System which is reserved by this contract for the carriage of program material originated by the Company or by another person in accordance with the F.C.C.'s cablecasting rules and regulations.
- (q) "Additional Channels" means the channels on the System so designated in this contract which the Company may use for such purposes as automated programming, Additional Service, over-the-air television broadcasts authorized but not required by the F.C.C. to be carried on the Company's System, or other video and/or audio programming but excluding Pay Television except as it may be authorized in the future pursuant to Section 4(1).



APPENDIX F (Cont'd)

- (r) "Pay Television" means the delivery over the System of video signals in intelligible form to Residential Subscribers for a fee or charge (over and above the charge for Basic Service) on a per program, per channel or other subscription basis.

## SECTION 2. GRANT

- (a) The City hereby grants the Company a franchise for the occupation or use of the streets within the District for the construction, operation and maintenance of a System.
- (b) The franchise shall commence on the effective date of this contract and continue for a period of twenty (20) years, unless sooner terminated as herein provided. However, at any one time after ten (10) years from the effective date, the Board may, upon a review of all the circumstances then affecting broad band communications in the District, notify the Company of its determination that any of the terms and conditions contained herein (except the duration hereof) should be renegotiated, and the Company shall negotiate in good faith with the Board's representatives as to all such terms and conditions. In the event that all such terms and conditions are not renegotiated to the satisfaction of the Board within six (6) months of its notification to renegotiate, the Board may submit any such unresolved matters to arbitration pursuant to Section 20 for a determination consistent with both the public interest and fairness to the Company. The Board's right to initiate renegotiation pursuant to this subdivision shall be cumulative and shall be in addition to and not in derogation of all other rights reserved to the City, the Board and all agencies and officials of the City under other provisions of this contract.
- (c) Nothing in this contract shall affect the right of the City to grant to any other person a franchise or right to occupy and use the streets or any part thereof for the construction, operation, and maintenance of a broadband communications facility within the District or elsewhere, and the Company shall not take a legal position contesting the Board's right to authorize such use of the streets or any part thereof; provided, however, that nothing contained in this subdivision shall prohibit the Company from appearing before the Board and being heard on any application for the grant of such right.

APPENDIX F (Cont'd)

- (d) Nothing in this contract shall be in preference or hinderance to the right of the City or any board, authority, commission or public benefit corporation to perform or carry on any public works or public improvements of any description, including all work authorized by the New York State Rapid Transit Law, and should the System in any way interfere with the construction, maintenance, or repair of such public works or public improvements, the Company shall, at its own cost and expense, protect or relocate its System, or part thereof, as reasonably directed by the City officials, board, authority, commission or public benefit corporation.
- (e) Nothing in this contract shall be construed as a waiver of the City's right to require any person utilizing the System to secure a franchise, consent or other appropriate permission authorizing such use.

SECTION 3. CONSTRUCTION AND  
INSTALLATION OF SYSTEM

- (a) The Company shall immediately make arrangements so that its System transmits at least seventeen (17) channels for delivery to Residential Subscribers as soon as possible but no later than July 1, 1971. Within three (3) years from the effective date of this contract, the System shall be capable of transmitting at least twenty-four (24) channels for delivery to Residential Subscribers.
- (b) The Company shall provide all new Residential Subscribers to Basic Service with a converter for each outlet having a capacity of at least twenty-four (24) channels, and, no later than December 31, 1971, shall have provided such a converter for all outlets of Residential Subscribers to Basic Service who have no converter or a converter of lesser capacity. If the Company should fail to comply with this subdivision, the Director of Franchises and the Director of Communications, as soon as is practical after December 31, 1971, shall recommend to the Board such action as they deem appropriate to secure rapid and complete compliance. The Board may thereupon impose whatever rate reductions for Residential Subscribers and/or whatever other measures it determines, in its sole judgment, will assure such rapid and complete compliance. In any presentation the Company may address to the Board in mitigation of its non-compliance, the Company shall have the burden of establishing that non-compliance resulted from factors beyond its control.

APPENDIX F (Cont'd)

- (c) The Company shall extend the installation of cables, amplifiers and related equipment throughout the District as rapidly as is practicable. Within four (4) years from the effective date of this contract, the Company's trunk line installations of cable, amplifiers and related equipment shall be capable of providing Basic Service to every block within the District. Thereafter, the Board may impose such further construction obligations as are necessary to bring Basic Service to any building within the District.
- (d) For the purpose of permitting the transmission of signals throughout the City the Company shall interconnect its System with any other broadband communications facility authorized by the Board to operate in an adjacent district. Such interconnection shall be made within sixty (60) days from the effective date of this contract with the System presently operated in the southern portion of Manhattan by Sterling Information Services, Ltd. Within four (4) years the Company's System shall be capable of interconnection with any broadband communications facility authorized by the Board in an adjacent district and with any adjacent community antenna television system (as defined by the F.C.C.) outside the City; actual interconnection may be ordered by the Director of Franchises upon reasonable terms and conditions.
- (e) For the purpose of permitting the simultaneous transmission into any one or more subdistricts of isolated, discrete signals of City Channels, Public Channels, and the Company Channel, the Company shall within four (4) years from the effective date of this contract have arranged the System so that it is capable of such transmission to no less than ten (10) subdistricts, each containing approximately the same number of dwelling units. Furthermore, the Company shall immediately undertake the development of a plan to divide the District into the greatest number of subdistricts possible, which subdistricts may be variously combined so as to constitute neighborhood communities, school districts, Congressional districts, State Senate and Assembly districts, and the like, for the simultaneous transmission into any one or more of such subdistricts of such isolated, discrete signals. Such plan shall be submitted to the Director of Franchises within a reasonable time after the effective date of this contract. The Director shall approve or modify such plan giving due regard to economic, technological and engineering considerations. Within a reasonable time thereafter, such plan shall be implemented and the System be capable of simultaneous

APPENDIX F (Cont'd)

transmission of such isolated signals. It is the intention of the parties under this subdivision that the System be capable of simultaneous delivery of different programming to each subdistrict at the same dial locations.

- (f) Without charge to the City, the Company shall provide all facilities necessary to pick up the signals of City Channels and transmit them throughout the System from a studio whose location in the District shall be designated by the Director of Communications after consultation with the Company.
- (g) For the installation of its System in the streets, the Company shall utilize the underground facilities of Empire City Subway Company, Ltd. However, (and without prejudice to either the Company's or the City's rights to require provision of such facilities), in the event that such facilities are not made available within a reasonable time, as determined by the Company in light of the time frames established by this contract, and such event is not occasioned by the fault or neglect of the Company, the Company may install its System in any other manner, subject, however, to the prior approval of the governmental agencies having jurisdiction over such other manner of installation.
- (h) Company shall undertake any construction and installation as may be necessary to keep pace with the latest developments in the state of the art, whether with respect to increasing channel capacity, furnishing improved converters, instituting two-way services, or otherwise.

## SECTION 4. OPERATION

- (a) Upon the reasonable request for service by any person located within the District, the Company shall promptly furnish the requested service to such person. A request for service shall be unreasonable, for the purpose of this subdivision, if occurring within four (4) years from the effective date of this contract and no trunk line installation capable of servicing that person's block has as yet been installed, or, if occurring at any time and direct access cannot be obtained to such person's premises and all other means of access are highly impracticable.
- (b) AS soon as possible, but in no event later than July 1, 1971, the Company shall transmit over the System the signals of at least seventeen (17) channels at the following dial locations:

APPENDIX F (Cont'd)

- 2-WCBS
- 3-WNYC
- 4-WNBC
- 5-WNEW
- 6-WNYE
- 7-WABC
- 8-WNJU
- 9-WOR
- 10-Company Channel
- 11-WPIX
- 12-WXTV
- 13-WNDT
- A-City Channel
- B-City Channel
- C-Public Channel
- D-Public Channel
- E-Additional Channel

- (c) As the channel capacity of the System is increased beyond seventeen (17) channels new channels shall be allocated in the following sequence: one (1) City Channel, two (2) Public Channels and three (3) Additional Channels. The Director of Communications shall designate dial locations as he deems appropriate for all new channels.
- (d) The Company shall transmit and deliver over City Channels the signals designated therefor by the Director of Communications either as part of Basic Service or for such other purpose, and to such locations, as he designates.
- (e) For the presentation of programming on Public Channels the Company shall lease time and, if necessary, adequate studio facilities to members of the public at rates filed pursuant to Section 6 of this contract and pursuant to rules and regulations promulgated by the Director of Franchises. Appropriate technical assistance shall also be furnished by the Company. Time shall be leased on a first-come, first-served basis, except that the Company shall endeavor to lease such channel time to as many different persons as is practical, it being the intent of the parties that such Public Channels serve as a significant source of diversified expression. In order that there be a maximum opportunity for freedom of expression by members of the public, such programming shall be free from any control by the Company as to program content, except as is required to protect the Company from liability under applicable law. The Director of Franchises may direct that the Company discontinue, or not deliver, a program on the Public Channels which he finds to be essentially promotional or otherwise related primarily to the conduct of a

APPENDIX F (Cont'd)

business, trade, or profession; provided, however, that this provision shall not be construed as a prohibition of advertiser-supported programming on Public Channels. Such a direction shall not prejudice any person's right to utilize any other transmission service offered by the Company.

Priority on Additional Channels shall be given to the use of the System's transmission capability by persons other than the Company, its subsidiaries and affiliates, to provide auxiliary communications services of kinds different from those provided over the other types of Channels specified herein. There shall be open, non-discriminatory access to such Channels within the limits of available capacity. However, to the extent such channels are not so used, they may be used for audio-video programming by others who lease time segments thereon or for auxiliary services rendered by the Company, its subsidiaries or affiliates.

When any of such channels are used for audio-video programming, the Company may determine the reasonable length of time segments to be leased, impose reasonable limitations on the general type of programs for which such segments are made available, and itself use segments which it is unable to lease to other persons. If at any time after five years from the effective date of this contract the Board determines, following a public hearing on notice, that rendition of any auxiliary service by the Company or a subsidiary or affiliate has tended to create a monopoly or to restrain trade, the Board may issue such direction relating thereto as it deems appropriate to protect the public interest, including an order to discontinue one or more particular services or to divest any financial interest in the entity operating such service or services within a reasonable time.

The Company shall provide Basic Service to one outlet on each floor of all prisons, reformatories, detention centers, hospitals, police and fire stations, day care centers and public schools located in the District, without any charge therefor (irrespective of any existing agreement between the Company and such institution).

At those daily time segments during which no signals are transmitted over Public Channels or City Channels, the Company may utilize such channels for any purpose consistent with the provisions of this contract.

Upon request of the Company, the Director of Communications shall notify the Company as far in advance as is practical of any contemplated fallow on City channels.

APPENDIX F (Cont'd)

- (i) In the event of an emergency situation, as determined by the Director of Communications, the City may interrupt signals otherwise being distributed by the Company for the delivery of signals necessitated by such emergency.
- (j) In the operation of its System, the Company shall not interfere in any way with the signals of any electrical system located in buildings which house any part of the System, and shall not deprive an inhabitant of any building, by contract or otherwise, of any existing right he may have to utilize an individual or master antenna for the purpose of receiving television signals. In addition, the Company shall not utilize any existing master antenna distribution system for distribution of its signals unless permitted by concurrence of the Director of Franchises and the Director of Communications.
- (k) The Company shall furnish to its subscribers and customers for all services the best possible signals available under the circumstances existing at the time, to the satisfaction of the Director of Communications, and shall provide quality reception of its Basic Service to each subscriber so that both sound and picture are produced free from visible and audible distortion and ghost images on standard television receivers in good repair.
- (l) The Company shall not engage in Pay Television, nor shall it deliver signals of any person engaged in Pay Television, unless and until affirmatively authorized by the F.C.C. It is understood by the parties that the failure of the F.C.C. to prohibit Pay Television, as is presently the case, shall not constitute such an affirmative authorization. When and if so authorized, the Company shall not engage in, nor deliver the signals of any person engaged in, Pay Television until the amount of compensation payable to the City by the Company or other person engaged in Pay Television has been fixed by the Board. Such compensation shall not exceed twenty-five (25) percent of the Gross Receipts attributable to such Pay Television. The Director of Communications shall thereafter designate a dial location therefor.
- (m) In the operation of the Company Channel, the Company shall provide, on a non-discriminatory basis, a reasonable amount of free time to legally qualified candidates for public office.

## APPENDIX \_\_\_\_\_ (Cont'd)

## SECTION 5. MAINTENANCE

- (a) The Company shall put, keep and maintain all parts of the System in good condition throughout the term of this contract.
- (b) The Company shall respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible, but in all events within forty-eight (48) hours after notice thereof. For that purpose, the Company shall maintain a competent staff of employees sufficient to provide adequate and prompt service to its subscribers.
- (c) Except where there exists an emergency situation necessitating a more expedited procedure, the Company may interrupt service, for the purpose of repair or upgrading of the System, only during periods of minimum use, and only after forty-eight (48) hours minimum notice to its subscribers.
- (d) The Company shall not repair residential television receivers.

## SECTION 6. RATES

- (a) Rates for Basic Service to Residential Subscribers shall not exceed the following amounts:
  - 1. For service, \$5 a month for the first outlet and \$1 a month for each additional outlet.
  - 2. For each converter, \$1 a month.
  - 3. For installation of each outlet, \$9.95 and for moving and reconnecting an outlet, \$9.95.
- (b) Rates for FM radio service to Residential Subscribers shall not exceed the following amounts:
  - 1. For service, \$5 a month for the first outlet, \$1 a month for each additional outlet. The first outlet shall be considered, for the purpose of rates, an additional outlet if the subscriber receives Basic Service.
  - 2. For installation of each outlet, \$9.95 and for moving and reconnecting an outlet, \$9.95. The rate for any device similar to a converter shall be subject to the approval of the Director of Franchises, who shall not unreasonably withhold such approval.
- (c) The Company shall file with the Director of Franchises schedules which shall describe all services offered, all rates and charges of any kind, and all terms or conditions relating thereto. No rates or charges shall be made except as they appear on a schedule so filed.
- (d) All rates, charges, and terms or conditions relating thereto shall be non-discriminatory.



- (e) The Board may at any time increase or decrease any rate, require discontinuance of any scheduled service, or revise or delete any term or condition applicable thereto upon a determination, made after a public hearing following notice to the Company, that a particular rate, service or term or condition (1) explicitly or implicitly violates this contract or (2) has the effect of unreasonably restricting the use of Public Channels.
- (f) The Board may reduce rates for Basic Service at any time after five (5) years from the effective date of this contract and rates for Additional Service after eight (8) years from the effective date of this contract upon a determination, made after a public hearing following notice to the Company, that such rates or a particular rate can be reduced without impairing the ability of the Company to render service and derive a reasonable profit therefrom.
- (g) Unless the Board otherwise provides, all changes made pursuant to subdivisions (e) and (f) of this Section shall be effective for a minimum of three (3) years.
- (h) No charge shall be made to the City for its use of City Channels or for the construction or operation of a means for getting signals from the studio designated pursuant to Section 3 (f) into the System.
- (i) The charge for Basic Service to any board, bureau or department of the City, or other governmental body, or any public benefit corporation for Basic Service in addition to any such service provided free of charge shall be seventy-five percent (75%) of the charge for Basic Service to Residential Subscribers.
- (j) The Company shall provide the City with Additional Service at a charge to the City not to exceed sixty-six and two-thirds percent (66 2/3%) of the tariff charge for similar service offered by the appropriate communications common carrier operating within the District.

#### SECTION 7. COMPENSATION

- (a) As compensation for this franchise the Company shall pay the City amounts equal to the following:
  - (i) Five percent (5%) of its Gross Receipts from provision of Basic Service to Residential Subscribers, starting on the effective date of this contract, but not less than the following minimums for the calendar years specified:

APPENDIX F (Cont'd)

1971 .....	\$ 75,000
1972 .....	100,000
1973 .....	125,000
1974 .....	150,000
1975 .....	175,000
1976 .....	200,000
1977 .....	250,000
1978 .....	300,000
1979-1989.....	350,000
1990 .....	350,000 pro-

rated from January 1 to the twentieth anniversary of this contract; and

- (ii) Ten percent (10%) of all its other Gross Receipts; and
  - (iii) When and if Pay Television is authorized, the percentage of the Gross Receipts therefrom, or other compensation, determined pursuant to Section 4 (1).
- (b) The Company shall pay the minimum amounts set forth in subdivision (a) (i) of this Section before January 1 of each year.
- (c) The Company shall report, in such detail as the Comptroller may require, before the twentieth (20th) day of each January, April, July and October its Gross Receipts for the preceding calendar quarter and shall remit therewith:
- (i) the amount by which the five percent (5%) referred to in subdivision (a) (i) of this Section for the calendar year, through such calendar quarter, exceeds the applicable minimum;
  - (ii) the amount due under subdivision (a) (ii) of this Section; and
  - (iii) any amounts due under subdivision (a) (iii) of this Section.
- (d) Within thirty (30) days from the effective date of this contract, the Company shall pay the City all monies due and owing to the City under the provisions of a resolution adopted by the Board on December 2, 1965 (Cal. No. 128), as amended.
- (e) In the event that any payment is not made on or before the applicable date fixed in subdivisions (b), (c) and (d), interest on such payment shall apply from such date at two percent (2%) above the then prime rate of interest.
- (f) All payments due the City shall be made to the Department of Finance of the City and delivered to the office designated therefor by such Department.

- (g) In the event the Company continues the operation of any part or all of the System beyond the cancellation or expiration of this contract, it shall pay to the City the compensation as set forth in this contract at the rate in effect at the time of such cancellation or expiration, and in the manner set forth in this contract, together with all taxes it would have been required to pay had its operations been duly authorized.
- (h) Payments of compensation made by the Company to the City pursuant to the provisions of this contract shall not be considered in the nature of a tax, but shall be in addition to any and all taxes which are now or hereafter required to be paid by any law of the State of New York, the City, or the United States.

#### SECTION 8. SUPERVISION BY THE CITY

- (a) The Company shall construct, operate and maintain the System subject to the supervision of all of the authorities of the City who have jurisdiction in such matters, and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the System.
- (b) The System, and all parts thereof, shall be subject to the right of periodic inspection by the City.
- (c) No construction, reconstruction or relocation of the System, or any part thereof, within the streets shall be commenced until written permits have been obtained from the proper City officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures in the streets and for the proper restoration of such streets and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.
- (d) The Director of Franchises, after consultation with the Director of Communications, may, from time to time, issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of this contract.

APPENDIX F (Cont'd)

- (e) After consultation with the Director of Communications, if the Director of Franchises determines, giving due regard to technological limitations, that any part or all of the System should be improved or upgraded (including, without limitation, the increasing of channel capacity, the furnishing of improved converters, and the institution of two-way transmission), he may order such improvement or upgrading of the System, to be effected by the Company within a reasonable time thereafter. If the Company disputes any such determination or the reasonable time within which it is to be implemented, it may, within twenty (20) days after the issuance of such order, demand that the matter be arbitrated pursuant to Section 20 of this contract.
- (f) If at any time the powers of the Board, or any agency or official of the City or the Board are transferred by law to any other board, authority, agency, or official, then such other board, authority, agency, or official shall have the powers, rights and duties previously vested under this contract or by law in the Board, or any agency or official of the City or the Board.

## SECTION 9. CITY PROPERTY

- (a) Should the grades or lines of the streets which the Company is hereby authorized to use and occupy be changed at any time during the term of this contract, the Company shall, if necessary, at its own cost and expense, relocate or change its System so as to conform with such new grades or lines.
- (b) Any alteration to the water mains, sewerage or drainage system or to any other municipal structures in the streets required on account of the presence of the System in the streets shall be made at the sole cost and expense of the Company. During any work of constructing, operating or maintaining of the System, the Company shall also, at its own cost and expense, protect any and all existing structures belonging to the City. All work performed by the Company pursuant to this subdivision shall be done in the manner prescribed by the City officials having jurisdiction therein.

## SECTION 10. REPORTS

- (a) Within six (6) months from the effective date of this contract, the Company shall submit to the Bureau of Franchises a plan of the entire District indicating the date on which the Company expects the installation of the System will be completed and available for service to subscribers in the various areas of the District.
- (b) The Company shall furnish the Bureau of Franchises with progress reports indicating in detail the area of construction of the System. Such periodic reports shall be furnished at six (6) month intervals, the first report to be made one (1) year from the effective date of this contract.
- (c) On or before each of the dates on which payments pursuant to this contract are to be made, and within sixty (60) days after the expiration or cancellation of this franchise, and at such other times as the Comptroller shall designate, the Company shall furnish and deliver to the Comptroller verified or certified reports of its business and operations hereunder and gross receipts derived therefrom in such form and in such detail as the Comptroller may prescribe.
- (d) Within five (5) days after the Company, its affiliates and/or subsidiaries have filed a report, petition, or communication with any City, State or Federal agency pertaining to any aspect of operations hereunder or the financial arrangements therefor, it shall file a copy of such report, petition or communication with the Board.
- (e) The Company shall submit a certified annual report to the Board not later than May 1 in each year, for the annual fiscal period ending December 31 of the preceding year. At any other time, upon request of the Board, the Company shall submit any further information in regard to the business of the Company as may be required by the Board.
- (f) For the purpose of the City's evaluation of the operation of the Additional Channels, the Company shall file monthly with the Board a report or log describing the use being made, and the users, of such channels.
- (g) On November 30, 1971 the Company shall file with the Director of Franchises a certified report setting forth those Residential Subscribers, if any, who have not received a converter having a capacity of at least twenty-four (24) channels, and the reason why such converters have not been so provided, and the date on which such converters will be so provided.

APPENDIX  F  (Cont'd)

## SECTION 11.

## BOOKS AND RECORDS OF THE COMPANY

- (a) The Company shall maintain an office in the District for so long as it continues to operate the System or any portion thereof and hereby designates such office as the place where all notices, directions, orders, and requests may be served or delivered under this contract. The Board shall be notified of the location of such office or any change thereof.
- (b) The Company shall keep complete and accurate books of account and records of its business and operations under and in connection with this franchise.
- (c) The Board and the Comptroller, or their representatives, shall have access to all books of account and records of the Company for the purpose of ascertaining the correctness of any and all reports and may examine its officers and employees under oath in respect thereto.
- (d) Any false entry in the books of account or records of the Company, or false statement in the reports to the Board or the Comptroller as to a material fact, knowingly made by the Company, shall constitute the breach of a material provision of this contract.

## SECTION 12. LIABILITY FOR DAMAGES

- (a) Except for any liability which may accrue to the City with regard to its programming on any City Channels, the Company shall indemnify and hold the City harmless from all liability, damage, cost or expense (including reasonable attorneys' fees) arising from claims for injury to persons or damage to property occasioned by reason of any conduct undertaken by reason of this franchise, irrespective of any negligence or fault of the City, its agents or employees. It is a condition of this franchise that the City shall not and does not by reason of this franchise assume any liability of the Company whatsoever for injury to persons or damage to property.
- (b) Within five (5) days after the effective date of this contract, the Company shall file with the Comptroller and maintain on file throughout the term of this franchise a liability insurance policy issued by a company duly authorized to do business in this State, insuring the City and the Company, with respect to the installation, operation and maintenance of the System.

APPENDIX F (Cont'd)

1. For bodily injury, including death, in:
  - (i) the minimum amount of \$500,000 for any one person, and
  - (ii) the minimum amount of \$2,000,000 for any one accident, and
2. For property damage in the minimum amount of \$300,000, and
3. For damages resulting from any liability of any nature that may arise from or be occasioned by any matter contained in or resulting from the transmission of any communication over the System, excepting City programming on City Channel's in the minimum amount of \$2,500,000. The Board reserves the right to increase the amount of insurance coverage herein at any time. Nothing herein is intended as a limitation on the extent of any legal liability of the Company.

## SECTION 13. SECURITY FUND

- (a) Within ten (10) days after the effective date of this contract, the Company shall deposit with the Comptroller, and maintain on deposit through the term of this contract, the sum of Two Hundred Fifty Thousand (\$250,000) dollars in monies or securities, as security for the faithful performance by it of all the provisions of this contract, and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under this contract, and the payment by the Company of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the System.
- (b) Within ten (10) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to subdivision (a) of this Section, the Company shall pay to, or deposit with, the Comptroller a sum of money or securities sufficient to restore such security fund to the original amount of Two Hundred Fifty Thousand (\$250,000) dollars.
- (c) If the Company fails to pay to the City any compensation within the time fixed herein; or, fails, after ten (10) days notice to pay to the City any taxes due and unpaid; or, fails to repay to the City, within such ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Company in connection with this franchise; or, fails, after three (3) days notice of

APPENDIX F (Cont'd)

such failure by the Director of Franchises, to comply with any provision of this contract which the Director of Franchises reasonably determines can be remedied by an expenditure of the security, the Comptroller may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Comptroller shall notify the Company of the amount and date thereof.

- (d) The security fund deposited pursuant to this Section shall become the property of the City in the event that this contract is cancelled by reason of the default of the Company. The Company, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit with the Comptroller at the expiration of the term of this contract, provided that there is then no outstanding default on the part of the Company.
- (e) The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this contract or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.



APPENDIX F (Cont'd)SECTION 14.  
EMPLOYMENT REGULATIONS

- (a) The Company shall recognize the right of its employees to bargain collectively through representatives of their own choosing, and at all times shall recognize and deal with the representatives duly designated or selected by the majority of its employees as the sole bargaining agents of such employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall not dominate, interfere with or participate in the management or control of or give financial support to any union or association of its employees.
- (b) The Company will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

## SECTION 15. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Company shall notify the Board of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of Section 17 (c) of this contract, governing the consent of the Board to such change in control of the Company, shall apply.

## SECTION 16. RECEIVERSHIP

The Board shall have the right to cancel this franchise one hundred and twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

1. within one hundred and twenty (120) days after his election or appointment, such receiver or

APPENDIX   B   (Cont'd)

trustee shall have fully complied with all the provisions of this contract and remedied all defaults thereunder; and,

2. such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this contract.

SECTION 17. RESTRICTIONS AGAINST  
ASSIGNMENT

- (a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by the act of the Company or by operation of law, without the consent of the Board. The granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent or consents.
- (b) The consent or approval of the Board to any assignment, lease, transfer, sublease, or mortgage of this franchise shall not constitute a waiver or release of the rights of the City in and to the streets.
- (c) The Company shall promptly notify the Board of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company. The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Company shall make this franchise subject to cancellation unless and until the Board shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Board may inquire into the qualifications of the prospective controlling party, and the Company shall assist the Board in any such inquiry. If the Board does not schedule a hearing on the matter within sixty (60) days after notice of the change or proposed change and the filing of a petition requesting its consent, it shall be deemed to have consented. In the event that the Board adopts a resolution denying its consent and such change, transfer or acquisition

APPENDIX F (Cont'd)

- of control has been effected, the Board may cancel this franchise unless control of the Company is restored to its status prior to the change, or to a status acceptable to the Board.
- (d) Nothing in this Section shall be deemed to prohibit a mortgage or pledge of the System, or any part thereof, or the leasing by the Company from another person of said System, or part thereof, for financing purposes or otherwise. Any such mortgage, pledge or lease shall be subject and subordinate to the rights of the City under this contract or applicable law.

SECTION 18.  
RESTRICTIONS ON THE COMPANY,  
ITS OFFICERS AND DIRECTORS

Neither the Company nor any officer or director of the Company shall hold, directly or indirectly, any stock or other beneficial ownership interest in any other company owning or operating: a System within the City; and radio or television broadcast station whose signals are carried on the System on a regular basis; any television broadcast network other than a network consisting entirely or substantially of community antenna television systems; or any newspaper or magazine whose principal circulation market is New York City, except that ownership by an officer or director of less than one percent (1%) of the outstanding stock of any company whose securities are listed or admitted to trading on a national securities exchange shall not be deemed a violation of this Section. No officer or director of the Company shall be an officer or director of any company owning or operating businesses of the types heretofore mentioned.

SECTION 19.  
CANCELLATION AND EXPIRATION

- (a) The Board shall have the right to cancel this franchise if the Company fails to comply with any material and substantial provision of this contract, or any reasonable order, direction or permit issued by any City agency pursuant to such material and substantial provision, or any rule or regulation promulgated by the Director of Franchises which is reasonable in light of, and

APPENDIX F (Cont'd)

consistent with any provision of this contract; or if the Company consistently fails to comply with any provision of this contract, or any reasonable order, direction or permit issued by any City agency pursuant to any provision of this contract. Such cancellation shall be by resolution of the Board duly adopted in accordance with the following procedures:

1. The Director of Franchises shall notify the Company of the alleged failure or persistent failure of compliance and give the Company a reasonable opportunity to correct such failure or persistent failure or to present facts and argument in refutation of the alleged failure or persistent failure.

2. If the Director of Franchises then concludes that there is a basis for cancellation of the franchise pursuant to this subdivision (a), he shall notify the Company thereof.

3. If within a reasonable time the Company does not remedy and/or put an end to the alleged failure or persistent failure the Board, after a public hearing on notice, may cancel the franchise if it determines that such action is warranted under this subdivision (a).

- (b) If for ten (10) consecutive days the System, or any part thereof, is inoperative, or if the same is inoperative for thirty (30) days out of any consecutive twelve (12) months, the Board may cancel this franchise.
- (c) The Company shall not be declared in default or be subject to any sanction, under any provision of this contract in any case in which the performance of any such provision is prevented for reasons beyond its control.
- (d) If all or any part of the streets within the District are closed or discontinued as provided by statute, then this franchise, and all rights and privileges hereunder with respect to said streets or any part thereof so closed or discontinued, shall cease and determine upon the date of the adoption of the map closing and discontinuing such streets, and the Company shall not be entitled to damages from the City due to the closing or discontinuance of such streets or for injury to any part of the System in the streets or for the removal or relocation of the same.

APPENDIX F (Cont'd)

- (e) If the System is taken or condemned pursuant to law, this franchise shall, at the option of the Board, cease and determine on the date of the vesting title pursuant to such taking or condemnation, and any award to the Company in connection with such taking or condemnation shall not include any valuation based on this franchise.
- (f) Upon cancellation or expiration of this franchise, the City shall have the right to purchase the System in accordance with subdivision (g) of this Section, and the Board may direct the Company to cease operation of the System. If the City elects to purchase the System, the Company shall promptly execute all appropriate documents to transfer title to the City, and shall assign all other contracts, leases, licenses, permits and any other rights necessary to maintain continuity of service to the public. The Company shall cooperate with the City, or with another person authorized or directed by the Board to operate the System for a temporary period, in maintaining continuity of service. Nothing herein is intended as a waiver of any other rights the City may have.
- (g) If this franchise:
- (i) is cancelled by the Board by reason of the Company's default, that part of the System located in the streets shall, at the election of the City, become the property of the City without any charge therefor; that part of the System not located in the streets shall, at the election of the City become the property of the City at a cost not to exceed its then book value (i.e. cost less accumulated depreciation) according to generally accepted accounting principles, with a reduction for any damages incurred by the City in connection with such cancellation. Such book value if not agreed upon, shall be determined by arbitration pursuant to Section 20 of this contract, but shall not include any valuation based upon this franchise. Damages incurred by the City shall include, without limitation, any payments made by the City pursuant to a resolution of the Board authorizing or directing another person to operate the System for a temporary period until a franchise therefor is granted.
  - (ii) terminates by expiration of its term, the purchase price to the City for the System shall be

APPENDIX F (Cont'd)

its then fair value as determined by arbitration held pursuant to Section 20 of this contract. Beginning within two years prior to expiration and whether or not the City has then elected to purchase the System, either the City or the Company may demand an arbitration pursuant to Section 20 of this contract, for the purpose of determining fair value of the System on the date arbitration was demanded, which determination shall be subject to correction or adjustment by the arbitrators to reflect the fair value on date of expiration, to be paid by the City if it elects to purchase the System. Such fair value shall be the fair value of all tangible and intangible property forming part of the System but shall not include any valuation based upon this franchise. If the City does not purchase the System, the Company shall remove that part of the System located in the streets and restore the streets to a condition satisfactory to the Commissioner of Highways.

- (h) Upon the cancellation by the Board, or upon the expiration, of any other franchise to construct, maintain and operate a broadband communications facility, the Board may, by resolution, direct the Company to operate the same for the account of the City for a period of six (6) months and the Company agrees to comply with such direction. The City shall pay the Company all reasonable and necessary costs incurred by it in operating such broadband communication facility.

## SECTION 20. ARBITRATION

Matters which are expressly made arbitrable under provisions of this contract shall be determined by a panel of three arbitrators appointed by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department. The fees of the arbitrators shall be fixed by the said Presiding Justice. The expenses of the arbitration, including the fees of the arbitrators, shall be borne by the parties in such manner as the arbitrators provide in their award, but in no event will the City be obligated for more than half the expenses. The determination of a majority of the arbitrators shall be binding on the parties. In the event that an arbitrable matter arises contemporaneously under another franchise, involving the same issue as that

## APPENDIX \_\_\_\_\_ (Cont'd)

to be arbitrated under this franchise, the Company will not claim or assert that it is prejudiced by, or otherwise seek to prevent or hinder, the presentation of the arbitrable matter under such other franchise for determination by a single panel.

## SECTION 21. MATCHING

- It is the understanding of the parties that the City intends to award franchise contracts for the construction, operation and maintenance of broadband communication facilities in other parts of the City pursuant to a competitive bidding procedure, and that such contracts may contain provisions imposing greater obligations on the grantees thereof than are imposed by the provisions of this contract. It is further agreed that this contract may be modified so as to impose such greater obligations by requiring that its provisions be matched to those contained in any one such contract (hereinafter referred to as the "contract to be matched") awarded elsewhere in the City, and that such modification shall be effected as hereinafter provided.
- (b) The Company agrees to abide by the terms of a resolution duly adopted by the Board which modifies the amount of compensation payable to the City under this contract so as to match the amount of compensation payable to the City under the contract to be matched. Such modification shall be made in conformity with a formula to be agreed upon by the parties which shall take into account only the number of residential dwelling units in the District as compared to the number of residential dwelling units in the district covered by the contract to be matched and the comparative costs of constructing a system in the two districts.
- (c) The Company agrees to abide by the terms of a resolution duly adopted by the Board which modifies the terms of this contract so as to match, as nearly as feasible, any of the terms of a contract to be matched requiring any of the following:
- (i) lower ceilings on charges for Basic Service to residential subscribers;
  - (ii) subdistricts encompassing fewer residential dwelling units;
  - (iii) greater channel capacity;
  - (iv) two-way transmission capability;
  - (v) greater discount to City for Additional Service;
  - (vi) greater discount to governmental agencies and public benefit corporations for Basic Service.

APPENDIX F (Cont'd)

The maximum extent to which any terms may be matched under this subdivision shall depend upon the degree of comparability of this contract with the contract to be matched, taking into account factors that may include, without limitation, performance demonstrating the operational feasibility of the provision(s) to be matched; differences in construction costs; technological advances made after substantial construction under this contract and the adaptability of such advances to existing plant; marketability of the services authorized, and such other factors and considerations as may be relevant to an inquiry into the overall economic comparability of the two contracts.

d) If the Company takes the position that any such modification imposed by the Board exceeds the maximum permissible extent of matching described in subdivision (c), it shall so notify the Board in writing within thirty (30) days after adoption of the modification resolution, specifying the grounds upon which its position is based, and further specifying the maximum permissible extent to which such modification may, in its view, be imposed.

(i) If the Board agrees with such position taken by the Company, it shall adopt a resolution of modification in accordance therewith and the Company shall accept same.

(ii) If the Board is not in agreement, it shall so notify the Company promptly and such term shall be modified to the maximum extent permissible under subdivision (c) of this Section, as determined by arbitration held pursuant to Section 20.

e) If necessary or appropriate, the Company shall be given a reasonable period of time within which to adhere to the terms of any modification adopted hereunder. If the terms of any modification are determined by arbitration, the reasonable period of time for adherence thereto shall be fixed by the arbitrators.

f) The Board shall select the contract to be matched and shall adopt modification resolutions as herein provided within ten (10) years from the effective date of this contract, and after at least four (4) years from the effective date of the contract to be matched.



## APPENDIX \_\_\_\_\_ (Cont'd)

SECTION 22. SUBSEQUENT ACTION BY  
THE STATE OR FEDERAL AUTHORITIES

- (a) Should the State of New York or the F.C.C. require the Company to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any of the provisions of this contract, the Company shall so notify the Board and the Board shall thereupon, if it determines that a material provision herein is affected, have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.
- (b) In the event the Company is required by the F.C.C. to deliver signals in addition to those for which dial locations are provided in Section 4(b) of this contract, the dial locations to be used for such signals shall be fixed by the Director of Communications.
- (c) In the event the Company is authorized but not required, by the F.C.C. to deliver signals in addition to those for which dial locations are provided, or for which channels are available, the Company shall apply to the Director of Communications for additional use and dial locations and the Director shall have discretion to grant such application on such terms as he deems reasonable.

## SECTION 23. SUNDRY PROVISIONS

- (a) Every direction, notice, or order to be served upon the Company shall be sent to its office located in the District. Every notice to be served upon the City or the Board shall be delivered, or sent by certified mail (postage prepaid), to the Mayor and the Secretary of the Board at the City Hall. The delivery or mailing of such notice, direction, or order shall be equivalent to direct personal notice, direction, or order, and shall be deemed to have been given at the time of delivery.
- (b) Within five (5) days of receipt thereof, the Company shall mail to those subscribers designated by the Director of Communications, a copy of a questionnaire to be provided to the Company by the Director of Communications. Such questionnaire shall elicit responses of subscribers as to their appraisal of the service they receive, and

## APPENDIX \_\_\_\_\_ (Cont'd)

shall be accompanied by an envelope (postage prepaid by the Company) addressed to the Director of Communications.

- (c) No provision of this contract shall be modified except by a resolution of the Board adopted pursuant to Chapter 14 of the New York City Charter.
  - (d) All the provisions of this contract shall apply to the Company, its successors, and assigns.
  - (e) The rights and remedies reserved to the parties by this contract are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of this contract, and a waiver thereof at any time shall not affect any other time.
  - (f) If, after competitive bidding, no franchise is awarded by the City for the construction, operation and maintenance of a broadband communications facility in any particular area of the City the Board may direct the Company to construct, operate and maintain the System in such area, upon the same terms and conditions as are contained in this franchise, except that the annual minimum amounts of compensation for such area shall be adjusted to reflect the ratio of the number of residential dwelling units in such area to the number in the District covered by this contract. The annual minimum amounts, as so adjusted, shall apply on an escalating scale in a manner similar to that set forth in Section 7(a)(i), so that for the first year after the effective date of such direction the minimum amount of compensation shall be the adjusted equivalent of the amount required hereunder for the calendar year 1971, for the second such year the adjusted equivalent of the amount required hereunder for the calendar year 1972, and so on.
  - (g) The City hereby reserves to itself, and the Company hereby grants to the City, the right to intervene in any suit, action or proceeding involving any provision in this contract.
  - (h) If any provision of this contract, on the particular application thereof, shall be held invalid, the remaining provisions, and their application, shall not be affected thereby.
  - (i) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.
- This contract shall take effect on the date of the execution thereof by the Mayor, referred to herein from time to time as the "effective date".

Appendix G

Relation of Accrued Depreciation and Return  
of New York CATV Systems

	<u>Ratio of net investment to gross investment</u>	<u>Return on net investment plus working capital</u>
1.	0	624.55
2.	9.74	44.87
3.	10.58	95.03
4.	13.33	104.26
5.	13.84	1.04
6.	15.41	119.16
7.	15.53	55.78
8.	15.74	34.35
9.	16.71	10.84
10.	17.24	2.97
11.	17.61	139.06
12.	18.68	79.47
13.	19.57	29.43
14.	19.97	10.05
15.	20.83	39.73
16.	21.81	187.43
17.	22.16	87.16
18.	24.05	(26.70)
19.	24.53	56.58
20.	25.60	49.88
21.	25.91	19.58
22.	27.25	(2.25)
23.	27.80	(3.83)
24.	28.00	(4.25)
25.	30.39	16.48
26.	31.77	43.13
27.	33.50	12.96
28.	36.95	(12.71)
29.	37.43	(.001)
30.	40.06	196.77
31.	40.07	4.53
32.	40.25	14.96
33.	40.81	19.21
34.	41.23	36.00
35.	43.71	(28.32)

	<u>Ratio of net investment to gross investment</u>	<u>Return on net investment plus working capital</u>
36.	43.89	34.02
37.	47.69	12.48
38.	48.72	22.23
39.	48.96	19.88
40.	49.29	9.12
41.	50.41	(0.40)
42.	51.42	38.63
43.	54.43	6.28
44.	57.37	(18.42)
45.	57.57	2.61
46.	58.69	74.66
47.	59.57	1.48
48.	62.31	(12.34)
49.	63.09	22.50
50.	63.92	(6.54)
51.	64.01	7.06
52.	64.30	11.30
53.	65.60	(.005)
54.	65.89	5.16
55.	67.03	14.92
56.	67.87	23.64
57.	69.21	25.33
58.	70.57	9.93
59.	70.98	5.05
60.	71.89	14.48
61.	72.62	13.91
62.	72.68	2.44
63.	73.49	13.72
64.	73.52	76.01
65.	73.89	(4.19)
66.	75.74	(0.33)
67.	76.43	4.87
68.	76.84	20.56
69.	76.80	6.51
70.	78.37	(5.65)

	<u>Ratio of net investment to gross investment</u>	<u>Return on net investment plus working capital</u>
71.	80.18	21.83
72.	80.70	1.91
73.	81.32	8.27
74.	82.67	(16.37)
75.	83.55	34.95
76.		
77.	83.88	(20.19)
78.	84.22	8.00
79.	84.69	25.57
80.	85.19	10.68
	85.70	(2.79)
81.		
82.	86.13	(5.94)
83.	86.59	(1.87)
84.	86.67	6.97
85.	90.00	18.35
86.	92.74	16.23
	95.45	(4.06)