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ABSTRACT

Included in this compendium are fifteen documents pertaining to cable television for New York State. Two of the documents deal with the relationships between school districts and the cable operators. The arrangements discussed are from the experiences of the Michigan State School System and the Pasadena, California School District. These reveal the educational considerations that must be accorded to the total planning of the proposed cable system. Three bills submitted to the New York State Legislature show to what extent the wishes and intentions of the communities can be written into state legislature. Testimony before the Federal Communications Commission (FCC) documents discussing the federal-state relationship are also presented. [Reproduced from best available copy] (MC)

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cable television information

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4/73

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The attached materials are sent to you for information purposes only. They include the following:

Statement on "Cable Television: . . ."

The Regents Position Paper on CATV

Testimony by Bernarr Cooper before the State
Legislative Committee

CATV Testimony Before the Federal Communications
Commission

"Some Suggested Wording for CATV Franchises"

A Statement on CATV by the Pasadena Unified School District

A Statement on CATV by the Michigan Department of Education

New York Senate Bill 9823

New York Assembly Bill 1200i-A

New York Assembly Bill 12378

CATV Statement Before the New York State Educational
Communications Association

Federal Communications Commission Rules and Regulations
Governing Cable Television

Means for Providing Reactions to the Federal Communications
Commission, on Cable Television

Letter of Appointment to the Federal Communications
Commission's Committee on Federal-State/local
Relationships

Report of Subcommittee B of the FCC Federal-State/local
Advisory Committee on Cable Television

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Cable Television: Community Antenna Television (CATV) -
Some General Information

There is a growing concern on the part of all educators interested in instructional television. This concern is with community antenna television, cable television, CATV. It is not a new thing. A number of communities, at the present time, are receiving broadcast signals over such CATV systems. Broadcast signals are picked up by better, more costly, more sophisticated antennas or other receiving devices than the homeowner or the school can afford individually.

These community antenna systems are privately owned, charge a fee, and operate under a franchise granted by the local government. The older systems may operate on 3 or 5 channels; the more modern systems operate on 12, 20 or even more channels as the state of the art in electronics and television develops. The potential uses to which CATV may be applied are expanding. The potential of such a multi-channel system holds promise for a more effective and less costly system of electronic distribution than some other systems. The manifold uses to which such a system may be applied can provide students with direct access to a much broader spectrum of learning experience than ever before.

Most CATV system owners and CATV franchise applicants display concern for the public welfare and education. A number of those presently in business carry and distribute instructional television programs through free hook-ups to schools or have connected the system to schools for nominal fees. Others, however, have displayed little or no concern for public service and require fees for minimal channel connections.

CATV systems are not, however, a public utility and are not governed by the controls set up by a public utilities commission. They can be governed only by franchises granted by local governments, city councils, and boards of supervisors.

In the late 1940's and the early 1950's when the Federal Communications Commission allocated approximately 20% of radio and television channels for noncommercial educational use, a precedent for future allocations (priorities) was thus established. It seems reasonable that the franchise granted to a CATV system make provision for educational use of a portion of that system. At least one public access channel should be thus provided for local use. It is recommended that specific attention be given to "paragraph 76.251, Minimum channel capacity, access channels; sub-paragraphs (a), (4), (5), and (6)" of the FCC rules and regulations. These should be required in any local franchise (although the FCC stipulates them only for major television markets). These paragraphs provide: a public access channel for general non-commercial use, an educational access channel specifically designated for use by local educational authorities, and a local government access

channel specifically designated for local governmental use.

In most instances, CATV service can be guaranteed for school or college use only as part of the franchise. Such guarantee must be sought before the franchise is granted or renewed. Your leadership in establishing priorities for the educational use of CATV is most important, especially when franchises are being negotiated.

What should or can you do about CATV?

1. If you want further information and some assistance in taking action, contact:

Your director of instructional materials - or -
Your nearest television coordinator - or -
Your BOCES board - or -
The New York State Education Department
Office of Cultural Education
Bureau of Mass Communications
Dr. Bernarr Cooper, Chief

2. Keep yourself informed about CATV and its potential.
3. Become involved in deliberations about CATV with the local cable company (or companies) to see in what ways you can work together on this matter.
4. Contact your city council members or county board of supervisors and let them know of your desire to be involved in negotiations.
5. Contact your city or county attorney asking him to alert you if any cable company should apply for a franchise.
6. Plan with local government agencies the requirements you want included in the franchise. Make sure the CATV system franchisee provides for educational use.

Your active participation is needed now to assure not only for the present but for the future your fair share of this newest and most valuable distribution service for the purposes of education.

To repeat -- ACT NOW -- or it may be too late to harness this valuable community resource in the service of your schools.

11/20/70

REGENTS POSITION PAPER ON CABLE TELEVISION
AND RELATED ISSUES OF COMMUNICATIONS TECHNOLOGY

Communications technology is on the verge of a revolution so vast and so profound as to influence in an unprecedented way all aspects of man's existence.

The educational ramifications of this revolution will be especially dramatic.

The pending metamorphosis of Community Antenna Television (CATV) into copious systems of multi-channel cable television; the ensuing evolution of cable television into elaborate two-way communications systems involving printed as well as video-screen messages; the proliferation of nation-wide and world-wide communications satellites; the incipient impact of home video cassettes -- all of these engineering wonders are now technically possible and await only the genius of intelligent capitalization and marketing, and, where warranted and necessary, prudent public-interest regulation.

Over the next year the Regents will ask the State Education Department to examine in depth, and to prepare recommendations concerning, the responsibility of various levels of educational government for the financing and preparation of educational program materials that can be distributed through the new technology. This is perhaps the key challenge of the new technical developments.

In the meantime, however, there are short-run issues of franchising, artificial monopolies, and undue commercialism that, in our

estimation, need immediate public and governmental attention if the extraordinary options ahead are in fact to remain open.

With the above in mind, the Regents now recommend the following.

1. There shall be created a State Commission on Cable Television. The Commission shall report to the Governor at regular yearly intervals. The functions of the Commission shall be reviewed every three years with a view to determining the desirability of its continuance, change, or expansion in the light of developments and changes in the field of educational technology.

2. The major objectives of the Commission shall be to provide state level guidelines in such matters as (but not limited to) the following:

- a. Technical standards for equipment and services,
- b. Consumer protection including subscription rate limitations and services;
- c. Minimum channel capacity of Cable Television systems;
- d. The determination of how many channels in each system shall be made available at no cost for educational and public service needs.

3. The Regents shall act as the coordinating body of the Commission on Cable Television for informational and instructional services to the State, and shall articulate over-all New York State Cable Television and Telecommunications policy for transmission to the

Federal Communications Commission.

4. **The Regents shall organize an appropriate state level telecommunications policy group to aid the State Commission on Cable Television and the State in determining the educational communications needs of the State and to make recommendations to the Commission and other appropriate bodies for serving such needs.**

The Regents are concerned that every positive action shall and must be taken on behalf of the immediate and long range interests of the people of this State in relationship to the emerging communications technology. The Regents are particularly concerned that all local governing bodies shall be informed about the following matters related to cable television franchising practices:

1. **Because of rapidly changing communications technology and the need for continuing flexibility, the Regents recommend that no franchises be granted which by their terms are likely to interfere in the future with the full realization of the potential of cable television.**

2. **The granting of franchises for cable television operations is a matter of interest to all the members of a community. Therefore, final decisions on franchises should be made only after all the members of a community have been given an opportunity to express their views at a public hearing.**

3. **Every locality and local governing body concerned with the process of franchising is encouraged to seek information, advice, and**

guidance from the Regents particularly as regards the way in which cable systems' franchises may be formulated to meet a community's needs for educational and public informational materials.

4. Franchises shall be granted for such periods of time as shall make such grants desirable and attractive to the best interests of investors, but at the same time limiting the length of franchises in order to guarantee maximum flexibility for future technological developments.

5. Finally, the Regents are convinced that the full potential of long range developments in the field of communications technology are only just beginning to manifest their more exciting possibilities. With this in mind, the Regents strongly recommend that local governing bodies be zealous in retaining for all of their citizens complete options to flexible future developments of cable television.

11/5/70

Statement by
Bernarr Cooper
before the
Standing Committee on Corporations, Authorities and Commissions
of the New York State Assembly
Concerning Community Antenna Television
September 22, 1970

My name is Bernarr Cooper. I am Chief of the Bureau of Mass Communications in the New York State Education Department. I am also a member of the Federal Communications Commission's national Committee for the Full Development of the Instructional Television Fixed Service and the Northeast Region Chairman for that committee.

The views I will express today are mine as a private citizen and an educator.

When I presented testimony before this Committee last year, I attempted to reflect the major positions of the Joint Council on Educational Telecommunications and that of the National Association of Educational Broadcasters before the Federal Communications Commission on proposed rule-making relating to CATV. That position has not changed. Portions of that position will again be reflected before this committee, today.

In announcing the hearing for today, this committee emphasized two major concerns: one, the need to establish state-level criteria for cable television franchises; and, two, the need to delineate the broad parameters of desirable franchise practices.

Community Antenna Television (CATV) has made significant progress in the State of New York, especially during the last seven years. Presently, more than 2,300 systems are in operation in the United States. Of these, at least 138 systems operate in New York State, alone. More than 299,086 subscribers receive this service in the State of New York, and it has been estimated that there is a conservative potential of some 863,975 households in these existing systems. There are some 7,814,700 households in the State of New York. Of these, it is conservatively estimated that at least sixty percent, or 4,688,820 are potential subscribers to a CATV service at this time.

Therefore, it is the belief of many colleagues in the educational community that education's need for an equitable availability of the channels of any CATV system is best expressed and satisfied at the local level where CATV franchises are sought, and granted. To accomplish this, however, a state level policy must be articulated that gives to every citizen the advantage of educational, instructional and community expression of thought and opinion.

There can be no questioning the need for a flexible and creative state governmental approach to the already apparent and mounting CATV channel need and potential.

The State has an obligation and would, indeed, wish to be responsive to the educational, state government, business, and public service communications needs of all of its citizens. To make possible the articulation of a state level policy that shall aid the fair and equitable development of the use of CATV channels for educational and public service purposes, let me recommend that there should be created an independent CATV Commission. The major purpose of this

Commission shall be to articulate a state level CATV policy. Educationally, such a CATV Commission could at this time provide a mechanism for certain identified and specific needs for the Capital District, alone. There is an identified need for additional educational and instructional opportunity for the handicapped, the aging, the economically disadvantaged and the culturally deprived. Large segments of the underemployed in the Capital District could immediately benefit from a concentrated program in needed work skills.

There is a continuing need to upgrade members of certain professions so that all of this State's citizens may receive the best of professional services. This need for upgraded in-service information is especially apparent in engineering, medicine, nursing, local government administration, and environmental conservation.

But all of these needs are common to other parts of the State as well as the Capital District.

Deliberations related to local government and education issues must be brought to the viewer wherever he may be, so that wise and effective choices may be made.

Broadly, then, what shall be the major concerns of a CATV Commission or a properly delegated authority to provide leadership and viable controls to be exercised at the local level?

First, localities do not always have experience, or the resources necessary to judge the engineering feasibility of a system, fiscal responsibility of a franchise seeker, or the best method for planning eventual interconnection with other CATV systems to build regional networks of CATV cooperation endeavor. Since interconnection and sub-districting for urban and rural systems of this kind are not feasible at the Federal

level, criteria may and could be established at the State level by the proposed commission.

State level criteria are necessary and required in such areas as: establishing minimums of total channel capacity of system; appropriate allocation of channels; standards for pole line attachments or underground installation of cable; technical standards for operational equipment and levels of service; protection of systems' users in the determination of fair rates for installation, subscription and repair.

Second, there should be state level criteria for determining terms of a contract to a franchise requestor; fees which may be charged by localities to CATV system operators; logical but realistic construction schedules once a franchise is granted; and appropriate state level criteria for the importation and dissemination of distant educational television station signals into an area in which there already may be an adequate ETV service.

There must be appropriate information sources about CATV established at the State level so that every locality may have access to information and guidance before franchises are granted.

Third, a State level commission or authority could and should designate a spokesman to articulate the State's point of view vis-a-vis CATV before the Federal Communications Commission. It may be desirable that the State Education Department should represent the State's policy relating to the assignment, designation and use of CATV channels for educational and public service purposes.

A host of services can be provided to a community on a day-to-day basis, employing CATV channels, in whole or in part to perform such

services. Indeed, recent and new technology, when joined to a CATV system makes possible such diversity as selecting, ordering and rendering payment for ordinary provisions necessary to the operation of a household; the fulfillment by electronic examination of many educational requirements; merchandising; business concern links; job and visual literacy training; such public service needs as: communications to ethnic groups, providing a low cost outlet for political candidates, amateur expression by university and community drama groups and musical organizations; and, as noted by the Federal Communications Commission, CATV can meet such further needs as:

"man to computer communications, information retrieval (library and other reference material;). . . computer communications; the furtherance of various governmental programs on a Federal, State and municipal level, e.g. employment services and manpower utilization; . . . for municipal surveillance of public areas for protection against crime, fire detection, control of air pollution and traffic, . . ."

There can be no doubting the need for the trouble-free channels to provide the multiplicity of instructional services already identified by the educational community. Unquestionably, services will be needed in such areas as pre-school education, the elementary and secondary levels, adult and continuing education to the community from high schools and colleges via CATV interconnection, and access to and from learning or community centers. National level telecommunications organizations suggest that at least twenty percent of all channel capability in each CATV system be made available for use by educational and community interests. This position has already been supported by responsible educators around the nation.

Fourth, to achieve the maximum use of CATV channels for educational and informational needs, it is recommended that the CATV Commission or

authority shall direct that drop off points to all buildings of public and private educational institutions shall be provided in communities where CATV systems are franchised. Further, such drop off points should be provided at little or no cost. Where channels are necessary to convey instructional or informational signals from educational institutions to industry, the CATV Commission or authority might direct franchisees to provide such interconnection at cost and at the lowest possible subscriber rate to the industry receiving such cable interconnection.

Fifth, it is recommended that a percentage of gross revenue of each CATV system be set aside to provide for the continuing development and production of materials to be used by all CATV systems of the State at no cost, and that such materials shall be of a general educational and informational nature. Since such percentage of gross revenues may not be sufficient to cause the production of adequate amounts of programming in the foreseeable future, adequate and appropriate matching funds shall be sought from the Legislature and administered by the State Education Department. These funds shall be used to identify and produce needed materials for all levels and educational purposes. There is an apparent and pressing need to use and encourage the use of CATV channels to meet an emerging educational need for institutions of higher learning; to encourage the preservation of private colleges and universities along with the State public system of higher education; to encourage, through CATV, special education in the fields of visual literacy, education of the handicapped, manpower training of the underemployed, and the need to create opportunities of various kinds for the minorities, the aging, the culturally deprived and the economically handicapped.

In summary: let me pledge the aid of all of my colleagues and concerned educators to the educational development of CATV channels and systems, as may be defined by a State CATV Commission or authority. We shall do our utmost to see to the organization of an appropriate group to act as an information disseminating body to local governmental units, and to aid such units in arriving at wise and just decisions for franchising and directing such franchises; to encourage the articulation of the policy of New York in CATV matters to the Federal Communications Commission by an appropriate state organism; and, to support a coordinating body for a state level CATV Commission in performing all informational and instructional services for all CATV systems in the State of New York.

May I thank this committee for the privilege of appearing before it. It has been a pleasure to present some of the educational community's thoughts defining the need for establishing state level criteria for CATV franchising, and to indicate some of the more desirable approaches to establishing the broad parameters for desirable franchise practices.

Statement by
Bernarr Cooper
before the
Federal Communications Commission
Concerning Community Antenna Television
March 26, 1971

I am Bernarr Cooper, Chief of the Bureau of Mass Communications in the New York State Education Department, the University of the State of New York. I am also a member of the Federal Communications Commission's national Committee for the Full Development of the Instructional Television Fixed Service and the Northeast Region Chairman for that Committee.

I am here, today, not only as an educator and a private citizen, but as a representative of the Regents of the State of New York and the Commissioner of Education.

My statement is in support of the hearings of the Commission on Dockets 18397-A, 18891, 18892 and 18894. The major purpose of this statement is threefold: one, to make a matter of record the position of the Regents and the Commissioner of Education on cable television; two, to give information to the Federal Communications Commission on current developments and proposed New York State legislation as it can affect cable television; and, three, to suggest to the members of this Commission the desirability of the creation of a small, informed, and concerned advisory group to aid the Commission in its future deliberations on cable television and related telecommunications developments.

It is already a matter of record before the Commission and in industry published sources that there are more than 2300 cable systems in operation

in the United States. Of these, at least 109 systems are already functioning in New York State. These systems represent more than 265,000 subscribers, outside of the metropolitan New York City area, in more than 254 communities. There are some 7,814,700 households in the State of New York. Of these, it is conservatively estimated that at least sixty percent or 4,688,820 are potential subscribers to a CATV service at this time.

In the State of New York, education had an early and continuing relationship with CATV. The use of community antenna television channels by schools and school systems is not new. As examples: the Corning schools have used the channels of, and been served by the Corning Community TV Company for many years; in Utica, the Central New York Cable Company makes possible an instructional service to the schools; the Elmira school system has used the channels of Elmira Video; the Malone Public Schools are served by New Channels Corporation; the Frankfort and Mohawk School systems use channels from Antenna Vision Incorporated; Ithaca College and the Ithaca Public Schools have used the system operated by Mr. Carrasche; and, in Greene, New York, Greene Cablevision provides an educational service -- to name but a few places in the State where the relationship has existed for some time.

Very recently the Federal Communications Commission has suggested the need for state and local government based direction of cable television developments.

The legislature of the State of New York, and the Regents of the State have responded to this recommendation by the FCC, and are considering the need for a public communications policy. Underscoring this action is the recognized awareness that American education stands at the crossroad of mounting learner opportunity and need, and the lack of increasing available public funds to meet such learning needs. High on the list of the Regents

educational priorities are such recognized elements as the right of every American to an acceptable level of reading competency, and the Commissioner of Education's recognition and encouragement of the establishment of an external degree program.

The right-to-read and the indispensable right-to-know seem paramount. The policies related to telecommunications and to cable transmission, in particular, which will emerge during the next months or years, will determine to a large extent what can be done to aid the education of the citizens of our nation.

Recognizing the seriousness of education's needs, and the great potential of cable television, the Regents adopted an official position on November 20, 1970. In summary, the Regents position made four basic recommendations:

First, that a New York State Commission on Cable Television should be created by the State;

Second, that the Cable Commission should provide guidelines in a number of areas to include technical standards, consumer protection, minimum channel capacity and the availability of channels for public service and educational need;

Third, that the Regents shall act as a coordinating body for the Cable Commission for informational and instructional services to the State, and articulate the over-all New York State Television and Telecommunications policy to the Federal Communications Commission; and,

Fourth, that the Regents would organize an appropriate state level telecommunications policy group to identify educational communications needs of the state and make recommendations to the Cable Commission for

serving such needs.

Vast as the potential of cable television may be, the Regents are wary, as the Federal Communications Commission has been, namely, that there shall be no franchises granted which by their terms are likely to interfere with the full potential of cable television. It is the further position of the Regents that the granting of a franchise is a matter of prime concern to all members of a community. Therefore, every member of a community must be given the opportunity to express his views at a public hearing. Since franchise granting is sometimes a difficult and complicated procedure, every community in the State of New York is encouraged to seek information, advice and guidance from the Regents. Particularly, the Regents recommend that franchises "shall be formulated to meet a community's needs for education and public informational materials."

Most important, the Regents have underscored their official position on cable television by recommending "limiting the length of franchises in order to guarantee maximum flexibility for future technological developments." Finally, because the future of cable television holds untold electronic interconnection possibilities, ". . . the Regents strongly recommend that local governing bodies be zealous in retaining for all of their citizens complete options to flexible future developments of cable television."

Let it be said once more, as the Commission itself has underscored it in the past, the need for cable television to meet citizen uses and needs is manifest. Every thinking educator would hasten to assure this Commission that only a portion of the predictable uses of cable television are educational and instructional. There are a whole host of developing and future services. Some of these new communications' services to communities, homes

and businesses include information retrieval (such as library and other reference materials); computer to computer communications; employment services and manpower utilization information; control of air pollution and traffic; to enable various professional groups such as doctors to keep abreast of new professional developments; and, as the Commission has already pointed out in previous proposed rule-making procedures, "cable television will provide a low cost outlet for political candidates, advertisers . . . and for other moderately funded organizations or persons desiring access to the community or a particular segment of the community." Most important, there is a need to provide every technologically electronic access to the improvement of reading skills for an estimated 20 million Americans whose reading skills are either non-existent or at such a low level of development as to be useless for any considerable application to learning or for general information gathering, or for earning a living and the enjoyment of life in our highly technologically oriented society.

The Federal Communications Commission has encouraged all states to give thought to action which would retain at the local level the major thrust for orderly development of cable television. In the State of New York considerable thought has been given to the regularization of cable television. At this time, two kinds of bills are being considered by the New York Legislature. One of these, would in essence give full jurisdiction of final decision-making related to regulation, to the Public Service Commission.

A second kind of bill, which has the general support of the Regents, is one which would create a state-level Commission on Cable Television.

Thomas Laverne, State Senator from Rochester, and Assemblyman Robert F. Kelly of Brooklyn are the joint proponents of the bill. Only the press of state legislative action and the many problems related to budget planning for the State of New York have prevented them from appearing before you. Each of them has asked me to explain the broad outlines of the bill on their behalf. The bill bears the State Senate number 5589, and the Assembly number 6351. Almost two years of study by legislative staff went into the preparation of the bill. More than thirty hours of public testimony was conducted by Assemblyman Kelly and his legislative colleagues, on five different occasions, and in locations across the State of New York.

The bill creates a Cable Television Commission by amending the executive law of the State of New York. The bill designates a small commission, to ensure that it shall be truly productive and actively concerned.

The wording of the bill is clear and concise as to purpose and need.

This independent commission (is created) . . . to assure the suitability of practices for franchising cable television companies so as to protect the public interest, to set standards for cable television systems, to encourage uniformity of franchise practices and to establish guidelines for municipalities issuing franchises, to assure channel availability for municipal services, educational television, program diversity, local expression and other program and communications content services, to provide consultant services to community organization and municipalities in franchise negotiations and to stimulate the development of diverse instructional, educational, community interest and public affairs programming with full access thereto by cable television companies, educational broadcasters and public and private institutions operating closed circuit television systems and instructional television fixed services.

Early in my testimony I made reference to the suggestion which seems to provide informational focus for the Federal Communications Commission's future deliberations on cable television. Mainly, and on behalf of the public at large and the educational community, in particular, let me suggest for consideration by the Commission the appointment of an Advisory Group to aid the Commission in the many related telecommunications developments which must come to its attention, particularly, as these effect cable television.

Desirably, such a government-industry type of Advisory Group should be created by executive order. It should have no more than five, or at the outside, seven members. It should function only at the expressed request of members of the Commission. It should address itself to those matters on which the Commission wishes information, reaction, philosophical or policy guidance or recommendations for action. The members of the Advisory Group should not be holders of public office; should have no investment or operational involvement in cable systems; should not be owners, members of boards, or have investments in manufacturing, selling or designing equipment used in cable television systems.

This Cable Advisory Group shall have only one major purpose and function: to analyze needs and make recommendations for those rule-making and operational procedures that may serve as guides to the Commission in its deliberations. Such an Advisory Group should be cognizant of and committed to making suggestions that are equitable to both the public and the cable industry. Such a Group may indeed be the prototype and forerunner of telecommunications' ombudsmen of the future.

Not the least of the contributions of such an Advisory Group might well be an initial consideration of regionalization of CATV systems for the many benefits that exchange of vital and needed information can bring about. A whole host of needed services and groups can be identified that would benefit from the availability of local and regionalized cable television services: the culturally disadvantaged, the economically deprived, the many municipal governments, school systems, colleges and universities, civic and cultural organizations, welfare agencies, and such specialized groups as the police, firemen, lawyers, doctors, engineers, nurses and teachers -- to name but a few.

This testimony was not intended to be all-inclusive. It has touched only a small number of the many issues related to cable television that will concern the Federal Communications Commission. The Regents, the Commissioner of Education of New York State, Ewald B. Nyquist, and Senator Laverne and Assemblyman Kelly would wish me to assure this Commission that the State of New York is prepared to assume its responsibilities in planning for the future needs of telecommunications for the State and, where appropriate, for the nation.

I appreciated this opportunity to appear and to make these remarks for the record.

SOME SUGGESTED WORDING FOR CATV FRANCHISES

Wherever the words "school district" or "BOCES board" appear in the following document, a phrase may be added, where appropriate, to include the following: "private school system", or "college, university, library."

Some Suggested Wording for CATV Franchise

Services to Educational Institutions.

(a) Educational Institution Reception. The grantee shall, without charge, install into every public school building, private school building, college and public library within the Town of (), receiving terminal apparatus and cable connections sufficient to enable each said building to receive all programs transmitted and distributed over the grantee's CATV system. Such equipment shall be capable of feeding into the schools normal R.F. distribution systems, and the grantee shall install its receiving terminal apparatus in each building in such a location within each building as is designated by the appropriate school, college or library official as being the location of the building's R.F. distribution systems "head end."

The grantee shall notify, in writing, each school building principal, college and library official, of the educational provisions of this franchise and contract whenever a CATV cable is installed within 1000 feet of the land upon which a school building, college or public library is located. Thence, upon written request from the appropriate school, college or library official, the grantee will install a CATV receiving terminal apparatus and cable connection.

(b) Educational Preemption. The grantee shall allocate, without charge, for educational use, at least one video-audio channel. The channel shall be primarily for the transmission of locally originated educational programming to homes. Any school district lying wholly or partially within the Town of () may preempt the use of this channel for such period of time as is required by such school district, provided such school district

files with the grantee ten days in advance thereof a written notice of preemption. The word school district when used in this section shall be construed to include a BOCES board.

The grantee shall make available for school use a video tape recorder which shall be compatible with the Ampex one inch format. School districts may provide the grantee with pre-recorded video tape programs in the Ampex one inch format which the grantee shall then transmit, without charge, at the requested times and dates. The grantee shall accommodate preemption requests in the order received based on the date of postmark until a coordination and utilization committee of the BOCES or the appropriate authority assumes this function. Furthermore, in recognition of the fact that the educational provisos contained in this franchise establish a national precedent and significantly exceed all such other known provisos, the school districts, private schools, colleges and libraries which shall elect to avail themselves of the benefits which ensue from this franchise, thereby, in principal and in policy do agree to collaborate with the grantee to the greatest extent possible consistent with law, ethics and accepted principles of educational administration. Collaboration shall be for the purposes of sharing with the grantee video tapes owned, produced or acquired by the schools and enabling the grantee access to school functions for the purpose of video taping or live cablecasting. For practical purposes of school management the grantee will negotiate with each educational entity for a mutually acceptable working relationship.

ITFS TIE IN

If a school district, or a BOCES or board of education shall construct an Instructional Television Fixed Service System (2500 MHz system) intended to service schools lying wholly or partly within the Town of (), the

company shall provide during the first five years of its franchise for the reception and transmission of one ITFS channel, during the second five years shall provide a second channel, and during the third five years shall provide a third channel. The ITFS channels shall be received and down converted by the company and transmitted on mid band channels. Mid band channels are defined as channels between Channel 6 and Channel 7 which is between 88MHz and 174MHz. ITFS programs relayed on mid band channels will be up or down converted to standard VHF and/or UHF channels at each school building. ITFS programming relayed on mid band channels will be up or down converted only in schools or public libraries unless prior authorization is granted. The company shall provide ITFS antennas and down converters upon each of its towers in the event that more than one CATV tower shall be constructed in the Town of ().

EDUCATIONAL FACILITIES.

After the grantee has held this franchise for a period of ten (10) years, it shall, without charge, provide to each school district lying wholly or partly in the Town of (), upon request by such school district, a CATV channel which will interconnect:

- (a) The school district media center with the building level media centers of the same district.
- (b) The district media centers of each school district lying within the Town of ().
- (c) The Educational channel of the CATV system in the Town of () with the Educational channel of CATV systems operating in adjacent towns.

LOCAL PRODUCTION FACILITIES.

After the grantee has held this franchise for a period of twelve (12) years, it shall, without charge, provide a local production facility (TV studio) which shall be made available to school districts lying wholly or partly within the Town of () for up to 50% of its operating time which shall be construed to be at least 20 hours per week. Prior to construction, the design of the studio shall be approved by a committee composed of one representative from each school district lying wholly or partially in the Town of (), and the studio shall consist of at least 3 viewfinder cameras, switcher fader controls, audio system, lighting system, film chain, two video recorders and multiplexing unit. All equipment shall be remotely controlled from a master control unit. The studio shall be physically located within the Town of (). Technical operating and graphics personnel shall be provided by the grantee; the producer-director and talent shall be provided by the school district, or BOCES board.

EXPERIMENTAL SERVICES TO LONG TERM INCAPACITATED STUDENTS VIA EDUCATIONAL VIDEO INSTRUCTION.

Immediately upon the granting of the franchise the grantee shall undertake to devise and put into effect an experimental program with a school district in the Town of () so as to permit and enable elementary school students who are bedridden or confined to their home because of a long term incapacitating accident, injury or illness, to receive home instruction via video or "live" programs from the classroom to the student. This program, if successful, shall be made available to all of the school buildings and school students within the Town of () with all deliberate speed, consistent with the orderly progress and construction of the grantee's

cable system. The grantee's obligation hereunder shall be limited to providing a cable connection and the use of its system to provide the hookup between the classroom and the incapacitated student's home and shall not include or require the grantee to provide the necessary "hardware." The use of the channel space shall be given to the school system free of charge.

RELATIONSHIP BETWEEN THE EDUCATIONAL BENEFITS AND THE GROWTH OF THE CATV SYSTEM.

It is the express intent and purpose of the grantee to proceed immediately with the building of the CATV system and while all installation and service contemplated hereunder shall be made by the grantee in accordance with the orderly progress and construction of its cable system, it is the express intent and desire of the grantee to proceed with all deliberate speed to accomplish the objectives set forth herein as soon as possible.

NOTICE, APPROVAL AND CONSENT OF EDUCATIONAL INSTITUTIONS.

Immediately upon the granting of the franchise herein, the grantee shall send to all school districts, private schools, colleges and libraries lying wholly or partially in the Village of (), a copy of the provisions relating to said institutions. Each institution shall indicate in writing its desire to receive the facilities and provisions provided for herein, and shall also indicate agreement and consent to all of the terms and provisions set forth in that section of the franchise titled "SERVICES TO EDUCATIONAL INSTITUTIONS."

Statement by the Pasadena Unified School District

PUBLIC EDUCATION'S STAKE IN
THE PROPOSED COMMUNITY ANTENNA SYSTEM FRANCHISE

The requirements, outlined below, are based on documents which have been prepared as a result of months of study at the local, state, and national levels, and which have involved the National Education Association, the National Association of Educational Broadcasters, the Division of Audio-Visual Instruction of the NEA, the Joint Council on Educational Telecommunications, many local educational groups, and the Federal Communications Commission's National Committee for Instructional Television.

Requirements

It is proposed that a primary condition for the awarding of a CATV franchise in Pasadena be the completion of a contract with the Pasadena Unified School District and other public educational institutions herein identified as "eligible agencies," to provide facilities and services set forth below:

1. Channels to Be Dedicated to Education: Twenty percent (20%) of the CATV cable channel capacity shall be reserved for educational and instructional purposes exclusively and shall be made available free of charge to the public schools and public colleges, and other eligible agencies, identified below, in whole or in part within the Pasadena city limits. However, not less than two channels shall be provided initially of which one shall be reserved for use by the Pasadena Unified School District.
2. Eligible Agencies: Agencies to whom this service shall be provided free of charge include the public schools and public colleges, all public libraries, fire department headquarters and stations, police headquarters, Pasadena Art Museum,

Public Education's Stake in CATV Franchise

the City Hall and city department headquarters, Civil Defense quarters, and the Huntington Memorial Hospital. These shall be indicated hereinafter as eligible agencies.

3. Cable Connections and Terminal Equipment: The company receiving the CATV franchise shall, without charge to the eligible agencies, connect them to the CATV cable, including the necessary terminal equipment to permit said eligible agencies to receive all programming on channels reserved for their educational use as described in paragraph 1 above. Such terminal equipment shall be located as specified by each school and agency.
4. Type of Signal Distribution: Equipment provided shall be capable of feeding into the eligible agencies' normal radio frequency distribution systems.
5. 2500 MegaHertz Signal Reception and Retransmission: The CATV system shall provide its own facilities for receiving and retransmitting the four 2500 MHz frequencies of Channel KQI -29 on channels allotted to the eligible agencies as specified in the contract.
6. Distribution of Program Materials: The CATV shall distribute free of charge throughout the cable system on the channels reserved for the eligible agencies all programs as required by the said eligible agencies within the hours of 7 a.m. and 10 p.m. daily.
7. Exclusive Use: The Pasadena Unified School District shall have available to it for its exclusive use a minimum of one channel initially, except that a minimum of two (2) channels or one half of all available channels for instructional use, whichever is greater, shall be provided the unified district at such time as the

Public Education's Stake in CATV Franchise

cable has a twenty-channel capability. Use of channels in excess of four by the unified district shall be negotiated with other eligible agencies.

8. Quality of TV Signals: Signal quality shall equal or exceed the standard commercial telecast signal specifications as required by the FCC. Signals delivered by the CATV system to the eligible agencies' headend facility shall meet or exceed specifications herein attached. The standards of quality described below shall also apply to all eligible agencies with respect to the signals and/or video tapes delivered to the CATV system. The specifications for quality control are as follows:

a. Video response

\pm 1.5 db at 4.2 MHz

\pm .5 db 60 Hz to 3.6 MHz

Differential gain .5%

Differential phase $.5^{\circ}$

Signal to noise greater than 45 db PP signal to RMS noise

b. Audio response

\pm .5 db 30 to 15 K

c. Total harmonic distortion not greater than 1% 50 Hz to 15 KHz

Noise must be better than 60 db below 100% modulation.

100% modulation shall be defined as \pm 25 KHz deviation

when employing standard FM modulation.

9. Notification: The CATV company shall notify in writing each of the above-named eligible agencies of the educational provisions of this franchise and contact whenever a CATV cable is installed within 1,000 feet of the land upon which a building of an eligible agency is located. Thence, upon written request

Public Education's Stake in CATV Franchise

from an eligible agency, the company shall install CATV receiving terminal apparatus and cable connections as described above in paragraphs 3, 4, and 5.

10. Transmitting Program Materials: The CATV company shall receive via 2500 MHz transmissions from KQI-29 for instantaneous retransmission, video tapes of the two-inch quadrature format compatible with Ampex two-inch video tape machines, and video tapes of the one-inch format compatible with Ampex 7800 VT machines for cable distribution at the times specified by the respective eligible agencies.
11. Collaboration: Eligible agencies which shall elect to avail themselves of the benefits which ensue from this franchise in principle and in policy shall collaborate with the franchise company to the greatest extent possible consistent with law, ethics, and accepted principles of educational administration. Collaboration shall be for the purposes of video taping or live cablecasting of programs originating in the eligible agencies' facilities. For practical purposes of district management the franchise company will negotiate with the eligible agencies for a mutually acceptable working relationship.
12. Additional Educational Facilities: After the company has held this franchise for a period of ten (10) years, it shall, without charge, provide the Pasadena Unified School District, upon request by the district, a CATV channel which will interconnect the school district media center with the building level media centers of the same district.

After twelve (12) years, during which time the grantee has held this franchise, the company shall, without charge, provide a local production facility

Public Education's Stake in CATV Franchise

(TV station) which shall be made available to the eligible agencies for up to fifty percent (50%) of its operating time which shall be construed to be at least twenty (20) hours per week. Prior to construction, the design of the studio shall be approved by a committee composed of one representative from each of the eligible agencies, and the studio shall consist of at least three color viewfinder cameras, switcher-fader controls, audio system, color film chain, two color video recorders, and multiplexing unit. All equipment shall be remotely controlled by a master control unit. The studio shall be physically located within the City of Pasadena. Technical operating and graphics personnel shall be provided by the company; the producer/director and talent shall be provided by the eligible agencies.

13. Experimental Services to Long-Term Incapacitated Students via Educational Video Instruction: In addition to channel requirements set forth above and immediately upon the granting of the franchise the company shall undertake to devise and put into effect an experimental program with the Pasadena Unified School District so as to permit and enable students who are bedridden or confined to their homes because of a long-term incapacitating accident, injury, or illness to receive home instruction via video or "live" programs from the classroom or school studios to the student. This program, if successful, shall be made available to all such students. The company's obligation hereunder shall be limited to providing a cable connection and the use of its system to provide the hookup between the classroom and/or district studios and the incapacitated student's home, and shall not include or require the company to provide the necessary "hardware." The use of the channel space shall be given to the united district free of charge.

Public Education's Stake in CATV Franchise

14. Relationship Between the Educational Benefits and the Growth of the CATV System: It is the express intent and purpose of the company to proceed immediately with the building of the CATV system and, while all installations and service contemplated hereunder shall be made by the company in accordance with the orderly progress and construction of its cable system, it is the express intent and desire of the company to proceed with all deliberate speed to accomplish the objectives set forth herein as soon as possible.
15. Distribution of the Revenue from the CATV System: Beginning with the sixth year of operation under the franchise the company shall return two and one half percent (2 1/2 %) of the net receipts from the CATV cable operation to the eligible public school systems for support of and improvement of their TV instructional programs, reception and production facilities, and staffing requirements.

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SECRET CONTRACT

Agreement between _____ School District and the _____
_____ company relative to terminal television apparatus and
television cable connections.

This is an agreement entered into effective _____, _____ between
the Pasadena Unified School District, hereinafter referred to as the Unified District, and
the franchised company, hereinafter referred to as the company.

The parties hereto mutually agree as follows:

(a) Educational Institution Reception. The company shall, without charge,
install into every public school building, public college, city fire station, city police
station, the City Hall and city departments, Civil Defense headquarters, the public
libraries, the Huntington Memorial Hospital, and the Pasadena Art Museum, hereinafter
referred to as the eligible agencies, in whole or in part within the City of Pasadena,
receiving terminal apparatus and cable connections sufficient to enable each said building
or school to receive all programs distributed over the company's CATV system for use
of the above-named eligible agencies on the channels reserved for those agencies. Such
equipment shall be capable of feeding into the schools' normal RF distribution systems,
and the company shall install its receiving terminal apparatus in each building in such
a location within each building as is designated by the appropriate eligible agency as
being the location of the building's RF distribution system's "headend."

The company shall notify in writing each of the above-named eligible agencies
of the educational provisions of this franchise and contract whenever a CATV cable is
installed within 1,000 feet of the land upon which a building of an eligible agency is

Service Contract

located. Hence, upon written request from the eligible agency, the company will install CATV receiving terminal apparatus and cable connections as described above.

(b) Channels Dedicated to Educational Use. The company shall allocate without charge for educational use twenty percent (20%) of the available channels; however, not less than two channels shall be provided initially, of which one shall be reserved for use by the Pasadena Unified School District. The channels shall be primarily for the transmission of instructional and educational programming. Any eligible agency lying wholly or partially within the City of Pasadena may use these channels for such periods of time subject to agreement among the eligible agencies as is required for its purposes between the hours of 7 a.m. and 10 p.m. daily. One-half of the channels reserved for the eligible agencies shall be reserved for use of the Pasadena Unified School District up to four, after which, use of additional channels for the Unified District shall be negotiated with the other eligible agencies.

The company shall make available for school use a video tape recorder which shall be compatible with the Ampex 7800 one-inch format in addition to the Ampex two-inch quadrature format. The eligible agencies may provide the company with pre-recorded video tape programs in these Ampex one- or two-inch formats which the company shall then transmit, without charge, at the requested times and dates.

The eligible agencies, which shall elect to avail themselves of the benefits which ensue from this franchise, in principle and policy agree to collaborate with the company to the greatest extent possible consistent with law, ethics and accepted principles of educational administration. Collaboration shall be to provide the company access to school functions for the purpose of video taping or live cablecasting. For

Sample Contract

practical purposes of District management the company will negotiate with the eligible agencies for a mutually acceptable working relationship.

CATV TIE-IN

(c) ITFS Tie-In. The company shall provide for the reception and retransmission of the ITFS 2500 MHz channels of the Pasadena Unified School District. The ITFS channels shall be received and down-converted by the company and transmitted on mid-band channels. Mid-band channels are defined as channels between Channel 6 and Channel 7 which is between 88 MHz and 174 MHz. ITFS programs relayed on mid-band channels will be up- or down-converted to standard VHF and/or UHF channels at each school or building as designated by the school district or other eligible agency. Where required, the privacy of certain hospital or other sensitive transmissions shall be preserved.

(d) Quality Control. Signal quality shall equal or exceed the standard commercial telecast signal specifications as required by the FCC. Signals delivered by the CATV system to the eligible agencies' headend facility shall meet or exceed specifications herein attached. The standards of quality described below shall also apply to all eligible agencies with respect to the signals and/or video tapes delivered to the CATV system. The specifications for quality control are as follows:

Received video and audio at each point of reception shall equal or exceed the following:

1. Video response
 - \pm 1.5 db at 4.2 MHz
 - \pm .5 db 60 Hz to 3.6 MHz

Sample Contract

Differential gain .5%

Differential phase .5°

Signal to noise greater than 45 db PP signal to RMS noise

2. Audio response

± .5 db 30 to 15 K

3. Total harmonic distortion not greater than 1% 50 Hz to 15 KHz

Noise must be better than 60 db below 100% modulation.

100% modulation shall be defined as ± 25 KHz deviation when employing standard FM modulation.

(c) Additional Educational Facilities. After the company has held this franchise for a period of ten (10) years, it shall without charge provide Pasadena Unified School District, upon request by the District, a CATV channel which will interconnect the school district media center with the building level media centers of the same district.

After twelve (12) years, during which time the grantee has held this franchise, the company shall, without charge, provide a local production facility (TV studio), which shall be made available to the eligible agencies for up to fifty percent (50%) of its operating time which shall be construed to be at least twenty (20) hours per week. Prior to construction, the design of the studio shall be approved by a committee composed of one representative from each of the eligible agencies, and the studio shall consist of at least three color viewfinder cameras, switcher-fader controls, audio system, lighting system, color film chain, two color video recorders, and multiplexing unit. The studio shall be physically located within the City of Pasadena. Technical operating and graphics personnel shall be provided by the company; the producer/director and

Sample Contract

talent shall be provided by the eligible agencies.

On the franchise be sold, it will be incumbent upon the new franchise owner to assume all the obligations of the previous owner in all respects including the length-of-service provisions of paragraphs (e) and (h).

(f) Experimental Services to Long-Term Incapacitated Students via Educational Video Instruction. In addition to channel requirements set forth above and immediately upon granting of the franchise the company shall undertake to devise and put into effect an experimental program with the Pasadena Unified School District so as to permit and enable students who are bedridden or confined to their homes because of a long-term incapacitating accident, injury, or illness, to receive home instruction via video or "live" programs from the classroom or school studios to the student. This program, if successful shall be made available to all such students. The company's obligation hereunder shall be limited to providing a cable connection and the use of its system to provide the hookup between the classroom and/or district studios and the incapacitated student's home and shall not include or require the company to provide the necessary "software." The use of the channel space shall be given to the Unified District free of charge.

(g) Relationship Between the Educational Benefits and the Growth of the CATV System. It is the express intent and purpose of the company to proceed immediately with the building of the CATV system and, while all installation and service contemplated hereunder shall be made by the company in accordance with the orderly progress and construction of the cable system, it is the express intent and desire of the company to proceed with all deliberate speed to accomplish the objectives set forth herein as soon as

Sample Contract

possible.

(c) Distribution of the Revenue from the CATV System. Beginning with the sixth year of operation under the franchise the company shall return two and one half percent (2 1/2 %) of the net receipts from the CATV cable operation to the eligible public school systems for support of and improvement of the TV instructional programs, reception and production facilities, and staff requirements.

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10/9/89

MICHIGAN DEPARTMENT OF EDUCATION

The following is a list of educational provisos recommended for inclusion in negotiations between local governmental agencies and community antenna television companies applying for franchises.

DEFINITION OF SCHOOL SYSTEM:

"School system" means any public, private or parochial school furnishing elementary, secondary, adult, college or university levels of education or administrative body controlling one or any combination of such schools.

SERVICE TO SCHOOL SYSTEMS

The company shall provide, upon request of the proper educational authorities, cable and program services herein described to all school systems within its coverage area without installation or maintenance charges as long as company holds franchise.

SCHOOL SYSTEM RECEPTION

The company shall, without charge and within three (3) years of date of contract, install into every elementary and secondary public school building and non-profit private school building and public library building within the (city, village) receiving terminal apparatus and cable connection sufficient to enable each building to receive all programs transmitted and distributed over the company's CATV system/s. Such equipment shall be capable of feeding into the building's normal R.F. distribution system, and the company shall install its receiving terminal apparatus in such location within each building as is designated by the school or library official as being the location of the building's R.F. distribution system's "head end."

Without charge, and within three (3) years of date of contract, company shall provide to each college and university campus lying wholly or within part of the

company's service area, reception terminal apparatus at a single location designated by the college or university governing board as being the location of the college or university R.F. distribution system's "head end."

It shall be incumbent upon the CATV company to notify in writing each school system's educational administrative unit and library official within its service area of the educational provisions of this franchise and contract whenever a CATV cable is installed by that company, or its designated installation agency, within two hundred and fifty (250) feet of the land upon which a school building, public library, or college or university "head end" is located. Thence, upon written request from the appropriate school system or library, the company will install the CATV receiving terminal apparatus and cable connection.

EDUCATIONAL CHANNEL DEDICATION

The company shall dedicate to the school system/s lying wholly or partly within the (city, village), without charge for educational use, at least one cable channel. This dedication shall be exclusive of public television channels distributed as a portion of the company's program offerings. The channel shall be primarily for the transmission of educational information in verbal, written, coded or pictorial form.*

The company shall provide at least one video tape recorder for each channel dedicated to educational use. Such recorders shall be of standards comparable to the company's technical equipment standards. School systems may provide the company with prerecorded video taped programs which the company shall then transmit without charge at the requested times and dates. The company shall also provide live program originating equipment of a standard and configuration agreed upon in writing between the franchisee and the educational users. If the company constructs more than one cable system within the (city, village) additional video tape recorders shall be provided by the company for each educational channel in each cable system constructed *

After the company has held this franchise for a period of five (5) years, it shall, without charge, provide to each school system lying wholly or partially

*These paragraphs modified from the original version.

within the (city, village) upon request by such system at that time or any time thereafter, a video channel which will interconnect any or all of the following:

1. Each public and non-profit private elementary and secondary school building within that portion of the school system/s lying within the service area; and
2. Each school system lying wholly or partially within the service area for the purpose of transmitting educational information of their origination between the school systems; and
3. The educational channel/s of the CATV system in the (city, village) with the educational channel/s (exclusive of public TV channels) of CATV systems operating in adjacent towns;
4. Libraries within (city, village) to each school building in (city, village).

INSTRUCTIONAL TELEVISION FIXED SERVICE

If a school system within or adjacent to the (city, village) being served by the company shall construct an ITFS system, the company shall provide to school systems within its service area, upon request of school system/s, the reception of all such ITFS channels. The company shall provide ITFS antennas and down converters on its towers so that all ITFS signals can be made available as input to the school system's/s' allocated channels.

PRODUCTION FACILITIES

If company should construct production facilities for its own live origination of programs, it shall make such facilities available to school system/s for live origination of programs of school system's/s' choosing. School system's/s' requirements shall not exceed five (5) hours per week broadcast time and twenty (20)

hours per week set-up, rehearsal and strike time, for a total of twenty-five (25) hours (a ratio of two hours set-up, rehearsal and strike time for each one-hour hour of broadcast time). After holding this franchise for a period of five (5) years and upon request of the school system/s, at that time or any time thereafter, the company shall provide a production facility (TV studio) without charge for school system's/s' use. This facility shall consist of the required space and complement of physical facilities and equipment needed to sustain a two (2) camera operation. The studio shall be physically located within the (city, village) at a location mutually agreed upon by company and school system/s. Technical operating and maintenance personnel and maintenance of technical equipment shall be provided by the company. Production responsibility shall be that of school system/s and shall include program content, talent, copyright clearances, producer, director, floor personnel, and graphics production.

TV COUNCIL

If more than one school system exists within company's service area, the school systems shall appoint a television council representing all school systems and libraries within company's service area whose purpose will be to arbitrate all mutually exclusive requirements for all facilities and services furnished by the company to school systems and libraries under the terms of this contract. Company shall be represented on such council. The council shall also have represented on it institutions of higher learning of the area, if any. The council by mutual agreement with the franchisee and the franchising authority may aid in the assignment of broadcast time and the production of programming if mutually desired.*

*This paragraph modified from the original.

See p 21

STATE OF NEW YORK *571612*

9823

12001-17

IN SENATE

March 7, 1972

Introduced by Mr. ROLISON—read twice and ordered printed.
and when printed to be committed to the Committee on Finance

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 and the general municipal law, in relation to extending provisions relating to franchising

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 eight, to read as follows:

3 *ARTICLE 28*

4 *COMMISSION ON CABLE TELEVISION*

- 5 *Section 811. Declaration of legislative findings and intent.*

6 *812. Definitions.*

7 *813. Application of article.*

8 *814. Commission created.*

9 *815. Duties of the commission.*

EXPLANATION — Matter in italics is new; matter in brackets [] is old law to be omitted.

- 1 816. Powers of the commission.
- 2 817. Costs and expenses of the commission.
- 3 818. Municipal fees; taxes or charges.
- 4 819. Franchise requirement.
- 5 820. Construction of systems.
- 6 821. Certificate of confirmation.
- 7 822. Transfer, renewal or amendment of franchises and
- 8 transfer of control over franchises and system prop-
- 9 erties.
- 10 823. Interconnection and system coordination.
- 11 824. Requirement for adequate service.
- 12 825. Rates.
- 13 826. Abandonment of service.
- 14 827. Termination of franchises.
- 15 828. Landlord-tenant relationship.
- 16 829. Censorship prohibited.
- 17 830. Liability for obscenity, defamation and invasion of
- 18 privacy.
- 19 831. Invalid provisions.
- 20 § 811. Declaration of legislative findings and intent. Upon inves-
- 21 tigation of the public interest associated with cable television, the
- 22 legislature of the state of New York has determined that while
- 23 cable television serves in part as an extension of interstate broad-
- 24 casting, operations involve public rights-of-way, municipal fran-
- 25 chising, and vital business and community service, and, therefore,
- 26 are of state concern: that while said operations must be subject to
- 27 state oversight, they also must be protected from undue restraint

1 and regulation so as to assure cable systems with optimum tech-
2 nology and maximum penetration in this state as rapidly as eco-
3 nomically and technically feasible; that municipalities and the
4 state would benefit from valuable educational and public services
5 through cable television systems; that the public and the business
6 community would benefit if served by cable channels sufficient to
7 meet the needs of producers and distributors of program and other
8 communication content services; and that the cable television indus-
9 try is in a period of rapid growth and corporate consolidation
10 and should proceed in accord with regional and state-wide service
11 objectives; and, many municipalities lack the necessary resources
12 and expertise to plan for and secure these benefits and to protect
13 subscribers and other parties to the public interest in franchise
14 negotiations.

15 There is, therefore, a need for a state agency to develop a state
16 telecommunications policy; to promote the rapid development of
17 the cable television industry responsive to community and public
18 interest and consonant with policies, regulations and statutes of
19 the federal government; to assure that cable television companies
20 provide adequate, economical and efficient service to their sub-
21 scribers, the municipalities within which they are franchised and
22 other parties to the public interest; and, to encourage the endeavors
23 of public and private institutions, municipalities, associations and
24 organizations in developing programming for the public interest.

25 It is the intent of the legislature in the enactment of this article
26 to vest authority in an independent commission to oversee develop-
27 ment of the cable television industry in New York State in accor-

1 dance with a statewide service plan; to review the suitability of
2 practices for franchising cable television companies to protect the
3 public interest; to set standards for cable television systems and
4 franchise practices; to assure channel availability for municipal
5 services, educational television, program diversity, local expression
6 and other program and communications content services; to pro-
7 vide consultant services to community organization and municipali-
8 ties in franchise negotiations; and, to stimulate the development
9 of diverse instructional, educational, community interest and pub-
10 lic affairs programming with full access thereto by cable television
11 companies, educational broadcasters and public and private insti-
12 tutions operating closed circuit television systems and instructional
13 television fixed services.

14 § 812. Definitions. The words and phrases used in this article
15 shall have the following meanings unless a different meaning clearly
16 appears in the context.

17 (1) "Cable television company" shall mean any person owning,
18 controlling, operating, managing or leasing a cable television sys-
19 tem within the state.

20 (2) "Cable television system" shall mean any system which oper-
21 ates for hire the service of receiving and amplifying programs
22 broadcast by one or more television and/or radio stations and any
23 other programs originated by a cable television company or by
24 another party, and distributing such programs by wire, cable micro-
25 wave or other means, whether such means are owned or leased, to
26 persons who subscribe to such service. Such definition does not
27 include.

1 (a) any system which serves fewer than fifty subscribers; or

2 (b) any master antenna television system.

3 (3) "Commission" shall mean the commission on cable television
4 created by this article.

5 (4) "Franchise" shall mean and include any authorization
6 granted by a municipality in terms of a franchise, privilege, permit,
7 license or other municipal authorization to construct, operate,
8 maintain, or manage a cable television system in any municipality.

9 (5) "Gross annual receipts" shall mean any and all compen-
10 sation received directly or indirectly by a cable television company
11 from its operations within the state, including but not limited to
12 sums received from subscribers or users in payment for programs
13 received and/or transmitted, advertising and carrier service revenue
14 and any other moneys that constitute income in accordance with
15 the system of accounts approved by the commission.

16 Gross annual receipts shall not include any taxes on services
17 furnished by a cable television company imposed directly on any
18 subscriber or user by any municipality, state, or other governmental
19 unit and collected by the company for such governmental unit.

20 (6) "Master antenna television system" shall mean any system
21 which serves only the residents of one or more apartment dwellings
22 under common ownership, control or management and any com-
23 mercial establishment located on the premises of such apartment
24 house and which transmits only signals broadcast over the air
25 by stations which may be normally viewed or heard locally without
26 objectionable interference, and which does not provide any addi-
27 tional service over its facilities.

1 (7) "Municipality" shall mean any village, town, city or county
2 not wholly contained within a city in the state.

3 (8) "State" shall mean the state of New York.

4 (9) "State agency" shall mean any office, department, board,
5 commission, bureau, division, public corporation, agency or instru-
6 mentality of the state.

7 (10) "Person" shall mean any individual, trustee, partnership,
8 association, corporation or other legal entity.

9 (11) "Program" shall mean any broadcast-type program, signal,
10 message, graphics, data, or communication content service.

11 § 813. Application of article. The provisions of this article shall
12 apply to every cable television system and every cable television
13 company as defined in section eight hundred twelve of this article,
14 operating within the state of New York, including a cable television
15 company which constructs, operates and maintains a cable television
16 system in whole or in part through the facilities of a person
17 franchised to offer common or contract carrier services. Persons
18 possessing franchises for any of the purposes contemplated by this
19 article, shall be deemed to be subject to the provisions of this
20 article although no property may have been acquired, business
21 transacted or franchises exercised.

22 § 814. Commission created. 1. A state commission on cable tele-
23 vision is hereby created within the executive department which
24 shall consist of five members none of whom shall hold any other
25 public office and no more than three of whom shall be of the same
26 political party. The members of the commission shall be repre-
27 sentative of the broad range of interests related to telecommun-

1 ication needs and concerns including so far as possible the fields
2 of broadcasting, education television, cable television, communica-
3 tion technology and consumer interests.

4 2. Each member shall be appointed by the governor, by and
5 with the advice and consent of the senate, for five years, provided,
6 however, that of the five members first appointed, one shall be
7 appointed for one year, one for two years, one for three years,
8 one for four years and one for five years, from January first next
9 succeeding their appointment. Their successors shall be appointed
10 for terms of five years each. Members shall continue in office until
11 their successors have been appointed and qualified.

12 3. The governor shall designate one of the members to be chair-
13 man who shall be the chief executive officer of the commission.
14 The members shall elect one of their number as vice chairman of
15 the commission.

16 4. Vacancies in the commission occurring otherwise than by
17 expiration of term shall be filled for the unexpired term in the
18 same manner as original appointments.

19 5. The chairman and the other members of the commission shall
20 receive compensation fixed by the governor within the amounts
21 made available by appropriation therefor. The commission, its
22 members, officers and employees shall be subject to the provisions
23 of sections seventy-three and seventy-four of the public officers law.

24 6. A majority of the members of the commission then in office
25 shall constitute a quorum for the transaction of any business or
26 the exercise of any power or function of the commission. The com-
27 mission may delegate to one or more of its members, or its officers,

1 agents or employees, such powers and duties as it may deem
2 appropriate.

3 7. The commission may appoint a counsel, an executive director
4 and such other officers, employees, agents and consultants as it
5 may deem necessary, prescribe their duties and fix their compensation
6 within the amounts available therefor by appropriation.

7 § 815. Duties of the commission. The commission shall.

8 (1) develop and maintain a statewide plan for development of
9 cable television services, setting forth the objectives which the com-
10 mission deems to be of regional and state concern;

11 (2) to the extent permitted by, and not contrary to applicable
12 federal law, rules and regulations:

13 (a) prescribe standards for procedures and practices which
14 municipalities shall follow in granting franchises, which standards
15 shall provide for (i) the issuance of a public invitation to compete
16 for the franchise; (ii) the filing of all franchise applications and
17 related documents as public records, with reasonable notice to the
18 public that such records are open to inspection and examination
19 during reasonable business hours; (iii) the holding of a public
20 hearing, upon reasonable notice to the public and the commission,
21 at which the applicants and their proposals shall be examined
22 and members of the public and interested parties are afforded a
23 reasonable opportunity to express their views thereon; (iv) the
24 rendition of a written report by the municipality, made available
25 to the public, setting forth the reasons for its decision to grant or
26 the franchise; and (v) such other procedural standards as the com-
27 mission may deem necessary or appropriate to assure maximum

1 public participation and completion and to protect the public
2 interest;

3 (b) prescribe minimum standards for inclusion in franchises,
4 including maximum initial and renewal terms; minimum channel
5 capacity; provisions regarding access to, and facilities to make use
6 of, channels for education and public service programs; a require-
7 ment that no such franchise may be exclusive; and such other stand-
8 ards for inclusion in franchises as the commission shall deem
9 necessary or appropriate to protect the public interest;

10 (c) prescribe standards by which the franchising authority shall
11 determine whether an applicant possesses (i) the technical ability,
12 (ii) the financial ability, (iii) the good character and (iv) other
13 qualifications necessary to operate a cable television system in the
14 public interest;

15 (d) prescribe standards for the construction and operation of
16 cable television systems, which standards shall be designed to pro-
17 mote (i) safe, adequate and reliable service to subscribers, (ii) the
18 construction and operation of systems consistent with the most
19 advanced state of the art, (iii) a construction schedule providing
20 for maximum penetration as rapidly as possible within the limita-
21 tions of economic feasibility, (iv) the construction of systems with
22 the maximum practicable channel capacity, facilities for local pro-
23 gram origination, facilities to provide service in areas conforming
24 to various community interests, facilities with the technical capacity
25 for interconnection with other systems within regions as established
26 in the commission's statewide plan and facilities capable of trans-
27 mitting signals from subscribers to the cable television company

1 or to other points; and (v) the prompt handling of inquiries, com-
2 plaints and requests for repairs;

3 (c) prescribe such standards for the prohibition or limitation of
4 concentration of control over mass media and communication com-
5 panies and facilities and methods of enforcing such standards, as
6 the commission may determine to be necessary or appropriate to
7 protect the public interest.

8 (3) provide advice and technical assistance to municipalities and
9 community organizations in matters relating to cable television
10 franchises and services;

11 (4) establish minimum specifications for equipment, service and
12 safety of cable television systems for use by municipalities;

13 (5) review and act upon applications for certificates of confirma-
14 tion in accordance with such standards and as hereinafter provided;

15 (6) represent the interests of the people of the state before the
16 federal communication commission and make available information
17 on communications developments at the federal level;

18 (7) stimulate and encourage cooperative arrangements among
19 organizations, institutions and municipalities in the development
20 of regional educational, instructional and public affairs program-
21 ming services;

22 (8) cooperate with municipalities to facilitate undertaking of
23 multiple community cable television systems;

24 (9) encourage the creation of public and community groups, to
25 organize, seek chartering when appropriate, and request franchising
26 for the establishment of public, non-profit and not-for-profit cable
27 television operations;

1 (10) maintain liaison with the communications industry and
2 parties both public and private, having an interest therein, other
3 states and agencies of this state to promote the rapid and harmoni-
4 ous development of cable television services as set forth in the legis-
5 lative findings and intent;

6 (11) undertake such studies as may be necessary to meet the
7 responsibilities and objectives of this article.

8 § 816. Powers of the commission. 1. The commission may promul-
9 gate, issue, amend and rescind such orders, rules and regulations
10 as it may find necessary or appropriate to carry out the purposes of
11 this article. Such orders, rules and regulations may classify per-
12 sons and matters within the jurisdiction of the commission and
13 prescribe different requirements for different classes of persons or
14 matters. A copy of any order, rule or regulation promulgated here-
15 under shall be subject to public inspection during reasonable busi-
16 ness hours.

17 2. The commission may require cable television companies to
18 maintain and file such reports, contracts and statements, including
19 but not limited to ownership, accounting, auditing and operating
20 statements, engineering reports and other data as the commission
21 may deem necessary or appropriate to administer the provisions of
22 this article. The commission, including members of its staff, may
23 make reasonable inspections of the records and facilities of any cable
24 television company.

25 3. The commission may examine, under oath, all officers, agents,
26 employees and stockholders of any cable television company, municipi-
27 pal officials and any other persons and compel the production of

1 papers and the attendance of witnesses to obtain the information
2 necessary to administer the provisions of this article.

3 4 The commission may require and receive from any agency of
4 the state or any political subdivision thereof such assistance and
5 data as may be necessary to enable the commission to administer
6 the provisions of this article. The commission may enter into such
7 cooperative arrangements with the public service commission, the
8 board of regents, the council on the arts, other state agencies and
9 municipalities, each of which is hereby authorized to enter into
10 such cooperative arrangements, as shall be necessary or appropriate
11 to assure that there will be maximum utilization of existing exper-
12 tise in communications technology, cable television operations and
13 programming and that the purposes of this article will be effectively
14 accomplished. Upon request of the commission, any state agency
15 may transfer to the commission such officers and employees as the
16 commission may deem necessary from time to time to assist the com-
17 mission in carrying out its functions and duties. Officers and
18 employees so transferred shall not lose their civil service status or
19 rights.

20 5. The commission shall have and may exercise all other powers
21 necessary or appropriate to carry out the purposes of this article.

22 § 817. Costs and expenses of the commission. 1. All costs and
23 expenses of the commission shall be paid pursuant to appropria-
24 tion in the first instance from the state treasury, on the certification
25 of the chairman of the commission and upon the audit and warrant
26 of the comptroller. The state treasury shall be reimbursed therefor

1 *by payments to be made thereto from moneys collected pursuant to*
2 *this article.*

3 2. *On or before December first of each year, the commission shall*
4 *estimate the total costs and expenses, including compensation for*
5 *personal services, necessary to operate and administer the com-*
6 *mission for the next ensuing state fiscal year. The commission*
7 *shall, at such time or times and pursuant to such procedure as it*
8 *shall determine by regulation, bill and collect from each cable*
9 *television company the greater of (i) one hundred dollars or (ii)*
10 *an amount computed by multiplying such total estimated operat-*
11 *ing expenses of the commission by a fraction the numerator of*
12 *which is the gross annual receipts of such cable television com-*
13 *pany during such twelve month period preceding the date of*
14 *computation as the commission shall designate by regulation, and*
15 *the denominator of which is the total gross annual receipts of all*
16 *cable television companies operating in the state during such*
17 *period. A cable television company may elect to make partial*
18 *payments for such costs and expenses on March thirty-first, June*
19 *thirtieth, September thirtieth and December thirty-first of each*
20 *year. In no event shall the amount billed to or collected from*
21 *any cable television company pursuant to this section exceed one*
22 *percent of the gross annual receipts of such company during the*
23 *twelve month period designated by the commission.*

24 § 818. *Municipal fees; taxes or charges. Nothing in this article*
25 *shall be construed to limit the power of any municipality to impose*
26 *upon any cable television company, a fee, tax or charge, provided*
27 *that any such fee, tax or charge when added to the amount pay-*

1 able to the commission pursuant to section eight hundred seven
2 teen does not exceed the maximum amount permitted by applicable
3 federal law, rules or regulations.

4 § 819. Franchise requirement. 1. Notwithstanding any other
5 law, no cable television system, whether or not it is deemed to
6 occupy or use a public thoroughfare, may commence operations or
7 expand the area it serves after April first, nineteen hundred sev-
8 enty-three unless it has been franchised by each municipality in
9 which it proposes to provide or extend service.

10 2. A municipality shall have the power to require a franchise of
11 any cable television system providing service within the municipal-
12 ity, notwithstanding that said cable television system does not
13 occupy, use or in any way traverse a public street. The provision
14 of any municipal charter or other law authorizing a municipality
15 to require and grant franchises is hereby enlarged and expanded,
16 to the extent necessary, to authorize such franchises.

17 3. Nothing in this article shall be construed to prevent franchise
18 requirements in excess of those prescribed by the commission, unless
19 such requirement is inconsistent with this article or any regulation,
20 policy or procedure of the commission.

21 § 820. Construction of systems. Every cable television system
22 constructed after April first, nineteen hundred seventy-three, shall
23 comply with such construction standards as the commission may
24 prescribe pursuant to subdivision two of section eight hundred
25 fifteen.

26 § 821. Certificate of confirmation. 1. Except as provided in
27 subdivision six of this section, after April first, nineteen hundred

1 *seventy-three, no person shall exercise a franchise, and no such*
2 *franchise shall be effective, until the commission has confirmed*
3 *such franchise. A person wishing to exercise a franchise shall*
4 *file with the commission an application for a certificate of con-*
5 *firmation in such form and containing such information and sup-*
6 *portive documentation as the commission may require. The appli-*
7 *cation shall be accompanied by proof of service thereof upon the*
8 *franchisor and by such fee as the commission may set.*

9 2. *The commission may hold a public hearing on any application*
10 *for a certificate of confirmation if it determines that such a hearing*
11 *is in the public interest. The commission shall fix the time and*
12 *place for such a hearing and cause notice thereof to be given to the*
13 *applicant, the chief executive officer of the municipality issuing*
14 *the franchise and such other persons as the commission may deem*
15 *appropriate. Testimony may be taken and evidence received at*
16 *such a hearing pursuant to such rules and procedures as the com-*
17 *mission may establish.*

18 3. *The commission shall issue a certificate of confirmation of*
19 *the franchise unless it finds that (a) the applicant, (b) the pro-*
20 *posed cable television system, or (c) the proposed franchise does*
21 *not conform to the standards embodied in the regulations promul-*
22 *gated by the commission pursuant to subdivision two of section*
23 *eight hundred fifteen, or that operation of the proposed cable*
24 *television system by the applicant under the proposed franchise*
25 *would be in violation of law, any regulation or standard promul-*
26 *gated by the commission or the public interest.*

1 4. The commission may issue a certificate of confirmation con-
2 tingent upon compliance with standards, terms or conditions set
3 by the commission which it determines would not have been met
4 by the applicant, system or franchise as proposed.

5 5. In the event the commission refuses to issue a certificate of
6 confirmation, it shall set forth in writing the reasons for its deci-
7 sion.

8 6. Any cable television company which, pursuant to an exist-
9 ing franchise, (i) was lawfully engaged in actual operations, or
10 (ii) had commenced substantial construction (as such term is
11 defined by the commission) of a cable television system on January
12 first, nineteen hundred seventy-two may continue to exercise said
13 franchise pursuant to the terms thereof, provided such company
14 files with the commission, on or before July first, nineteen hun-
15 dred seventy-three an application in such form and containing
16 such information and supporting documentation as the commission
17 may require. The commission shall issue a certificate of confir-
18 mation to such a cable television company valid for five years with-
19 out further proceedings, which certificate may be renewed by the
20 commission on application for five year terms pursuant to the
21 provisions of section eight hundred twenty-two.

22 7. Notwithstanding any other provision of this article, any fran-
23 chise which has been granted but not exercised as indicated by
24 substantial performance within one year of January first, nineteen
25 hundred seventy-three shall be deemed contrary to the public
26 interest and intent of such franchise and any certificate of con-
27 firmation previously issued by the commission shall be invalidated,

1 unless the cable television company can make an adequate showing
2 that substantial performance was precluded by circumstances
3 beyond the reasonable control of such company. Any subsequent
4 application for a certificate of confirmation shall be determined in
5 accordance with the provisions of this section.

6 8. The commission shall issue a certificate of confirmation, valid
7 for a five year period, to any cable television company engaged in
8 actual and lawful nonfranchised cable television operations on
9 January first, nineteen hundred seventy-two, if application for such
10 a certificate is made to the commission on or before July first, nine-
11 teen hundred seventy-three. Notwithstanding any other provi-
12 sions of this article, any such company which files such an applica-
13 tion may continue to operate within the limits of the area in which
14 it was actually rendering service on April first, nineteen hundred
15 seventy-two, as determined by the commission. Such a certificate
16 of confirmation may be renewed by the commission on application
17 for five year terms pursuant to the provisions of section eight hun-
18 dred twenty-two.

19 9. Nothing in this section shall be deemed to validate a franchise
20 not granted in accordance with law or affect any claims in litiga-
21 tion on the effective date of this article. No confirmation under this
22 section shall preclude invalidation of any franchise illegally
23 obtained.

24 § 822. Transfer, renewal or amendment of franchises and trans-
25 fer of control over franchises and system properties. 1. No trans-
26 fer, renewal or amendment of any franchise, or any transfer of
27 control of a franchise or certificate of confirmation or of facilities

1 constituting a significant part of any cable television system shall
2 be effective without the prior approval of the commission. Such
3 approval shall be required in addition to any municipal approval
4 required under the franchise or by law. For the purpose of this
5 section, a merger or consolidation of two or more cable television
6 companies shall be deemed to be a transfer of the franchises or cer-
7 tificates granted to such companies.

8 2. A person wishing to transfer, renew or amend a franchise,
9 or to transfer control of a franchise or of a substantial part of the
10 facilities thereof shall file with the commission an application for
11 approval of such change, in such form and containing such infor-
12 mation and supporting documents as the commission may require.
13 The application shall be accompanied by proof of service thereof
14 upon the franchise or, if any, and by such fee as the commission
15 may set. The commission may hold a public hearing on any such
16 application as set forth in subdivision two of section eight hundred
17 twenty-one.

18 3. The commission shall approve the application unless it finds
19 that the applicant, or in the case of a transfer application, the pro-
20 posed transferee or the cable television system does not conform to
21 the standards embodied in the regulations promulgated by the com-
22 mission pursuant to section eight hundred fifteen or that approval
23 would be in violation of law, any regulation or standard promul-
24 gated by the commission or the public interest.

25 4. The commission may approve the application contingent
26 upon compliance with standards, terms or conditions set by the

1 commission which it determines would not have been met by the
2 proposed transfer, renewal or amendment.

3 5. In the event the commission refuses to approve the application,
4 it shall set forth in writing the reasons for its decision.

5 6. Approval of a transfer, renewal or amendment under this sec-
6 tion shall not preclude invalidation of a franchise illegally obtained.

7 § 823. Interconnection and system coordination. Whenever the
8 commission finds it to be in the public interest, the commission may,
9 either upon application of an interested party or on its own initia-
10 tive, and after public notice and opportunity for hearing, order the
11 interconnection of cable television systems and facilities or the
12 coordinated operation of such systems and facilities. The com-
13 mission may append to such order such reasonable terms and con-
14 ditions as will best promote the public interest.

15 § 824. Requirement for adequate service. 1. Every cable tele-
16 vision company shall provide safe, adequate and reliable service
17 in accordance with applicable laws, regulations, and franchise
18 requirements.

19 2. Whenever, upon complaint or upon its own motion, and after
20 public notice and opportunity for hearing, the commission finds
21 that, despite its economic feasibility, the construction or operation
22 of a franchised or certificated cable television system has been
23 unreasonably delayed or that the extension of service to any per-
24 sons or area within a cable television company's territory has been
25 unreasonably withheld, it may order such construction, operation
26 or extension on such terms and conditions as it deems reasonable
27 and in the public interest.

1 3. Whenever, upon complaint or upon its own motion, and after
2 public notice and opportunity for hearing, the commission finds
3 that a cable television company is not meeting the service require-
4 ments and obligations imposed by this article, by the regulations
5 promulgated hereunder, or by its franchise, it may order compli-
6 ance therewith on such terms and conditions as it deems reasonable
7 and in the public interest.

8 4. Failure to comply with an order of the commission issued under
9 subdivisions two or three shall be grounds for denial, suspension or
10 revocation of the right to exercise a franchise or to operate persua-
11 ant to a certificate of confirmation.

12 § 825. Rates. 1. Except as otherwise provided in this section, the
13 rates charged by a cable television company shall be those specified
14 in the franchise which may establish, or provide for the establish-
15 ment of reasonable classifications of service and categories of sub-
16 scribers, or charge different rates for differing services or for sub-
17 scribers in different categories.

18 2. Such rates may not be changed except by amendment of the
19 franchise.

20 3. Notwithstanding subdivision one, (a) no rate provision in any
21 franchise shall bind a municipality for more than ten years, and no
22 rate provision in any renewed franchise shall bind a municipality
23 for more than five years. In the event that an existing franchise
24 purports to bind a municipality with respect to rates for a period
25 to expire after January first, nineteen hundred eighty three, such
26 provisions shall have no further force or effect after January first,
27 nineteen hundred eighty-three; and (b) any rate or rates found by

1 the commission, after public notice and opportunity for hearing, to
2 be discriminatory or preferential as between subscribers similarly
3 situated shall thereafter be void. Reduced rates or free service to
4 government, educational or charitable institutions shall not be con-
5 sidered unduly discriminatory or preferential.

6 4. In the event the commission finds that any rate is discrimina-
7 tory or preferential pursuant to paragraph (b) of subdivision three
8 of this section or that any cable television company is in violation
9 of an order issued by the commission pursuant to section eight
10 hundred twenty-four of this article requiring adequate service, it
11 may issue an order requiring the municipality to provide for new
12 rates which are non-discriminatory and non-preferential or reduced
13 to reflect the inadequate service, as the case may be.

14 5. In addition to other powers, the commission may, after public
15 notice and opportunity for hearing, prescribe rates for cable tele-
16 vision service whenever:

17 (a) existing rates have been found discriminatory or preferential
18 and, after reasonable opportunity, the municipality has not pro-
19 vided for new rates which are non-discriminatory or non-preferen-
20 tial, as provided in subdivision four of this section;

21 (b) a cable television company is in violation of an order issued
22 by the commission pursuant to section eight hundred twenty-four
23 of this article requiring adequate service and, after reasonable
24 opportunity, the municipality has not provided for new rates
25 reduced to reflect the inadequate service, in which case the com-
26 mission may require appropriate rate reductions;

1 (c) having reduced rates pursuant to paragraph b, the commis-
2 sion finds that the cable television company has substantially remo-
3 died the deficiencies, in which case the commission shall return the
4 rates to those rates stipulated in the franchise;

5 (d) upon complaint by any interested party and after reason-
6 able opportunity for negotiation between the municipality and
7 the franchisee, it finds that rates are not established by or pur-
8 suant to the terms of the franchise, in which event, the commis-
9 sion shall fix rates at a level comparable to rates fixed in com-
10 parable franchises requiring comparable service for comparable
11 service areas; and

12 (e) upon request by a municipality and cable television company
13 that the commission prescribe applicable rates, made in such man-
14 ner as the commission by regulation may prescribe and certifying
15 that they are unable to agree upon rates to include in any fran-
16 chise or renewal thereof, in which event the commission shall fix
17 rates at a level comparable to rates currently being fixed in cable
18 television franchises for comparable service in comparable service
19 areas; provided that if the municipality and the company there-
20 after agree upon rates, such agreed rates shall become effective.

21 § 826. Abandonment of service. 1. No cable television, not-
22 withstanding any provision in a franchise, may abandon any service
23 or portion thereof without having given six months' prior written
24 notice to the commission and to the franchisor, if any, and to the
25 municipalities it serves.

1 2. When abandonment of any service is prohibited by a fran-
2 chise, no cable television company may abandon such service with-
3 out written consent of the franchisor, if any, and the commission.
4 In granting such consent, the commission may impose such terms,
5 conditions or requirements as in its judgment are necessary to pro-
6 tect the public interest.

7 § 827. Termination of franchises. 1. A franchise shall terminate
8 at the expiration of its term or otherwise in accordance with the
9 provisions thereof, unless, prior thereto, the commission otherwise
10 orders. The commission may so order only if it finds, after public
11 notice and opportunity for a hearing, that the franchisee:

12 a. has committed a material breach of its franchise or any
13 applicable provisions of this article or of the regulations promul-
14 gated hereunder and has failed, without reasonable justification,
15 to cure said breach within sixty days after having received written
16 notice thereof from the commission, or

17 b. has been adjudicated a bankrupt or has filed a voluntary
18 petition for bankruptcy or reorganization or for an order pro-
19 tecting its assets from the claims of creditors and the commission
20 finds that termination of the franchise or certificate of confirma-
21 tion under such conditions is in the best interests of the public.

22 2. Upon termination of a franchise or certificate of confirma-
23 tion, the cable television company shall dispose of its facilities in
24 accordance with the provisions of the franchise or certificate. How-
25 ever, on motion of any interested party or upon its own motion, and
26 after public notice and opportunity for hearing, if the commission
27 finds that the continued presence of the facilities in any public

1 thoroughfare would pose a nuisance to the municipality or its resi-
2 dents, the cable television company shall remove its facilities within
3 such period as the commission shall order. In the absence of any
4 applicable franchise or certificate provision or order by the com-
5 mission to the contrary, the cable television company may abandon
6 its facilities.

7 § 828. Landlord-tenant relationship. 1. No landlord shall a. inter-
8 fere with the installation of cable television facilities upon his
9 property or premises, except that a landlord may require:

10 i. that the installation of cable television facilities conform
11 to such reasonable conditions as are necessary to protect the
12 safety, functioning and appearance of the premises, and the
13 convenience and well-being of other tenants;

14 ii. that the cable television company or the tenant or a
15 combination thereof bear the entire cost of the installation,
16 operation or removal of such facilities; and

17 iii. that the cable television company and the tenant agree
18 to indemnify the landlord for any damage caused by the
19 installation, operation or removal of such facilities.

20 b. demand or accept payment, in any form, in exchange for
21 permitting cable television service on or within his property or
22 premises; or

23 c. discriminate in rental charges, or otherwise, between tenants
24 who receive cable television service and those who do not.

25 2. Rental agreements and leases executed prior to the effective
26 date of this article may be enforced notwithstanding this section.

1 3. No cable television company may enter into any agreement
2 with the owners, lessees or persons controlling or managing build-
3 ings served by a cable television, or do or permit any act, that
4 would have the effect, directly or indirectly of diminishing or
5 interfering with existing rights of any tenant or other occupant
6 of such building to use or avail himself of master or individual
7 antenna equipment.

8 § 829. Censorship prohibited. 1. The commission may not pro-
9 hibit or limit any program or any class or type of program or
10 otherwise censor the communications or signals transmitted by any
11 cable television company or over any cable television system, and
12 may not promulgate any regulation or condition which would inter-
13 fere with the right of free speech by means of cable television.

14 2. No municipality may prohibit or limit any program or class
15 or type of program or impose discriminatory or preferential fran-
16 chise fees in any manner that would tend to encourage or discour-
17 age programming of any particular nature, directly or indirectly.

18 3. No cable television company may prohibit or limit any pro-
19 gram or class or type of program presented over a leased channel
20 or any channel made available for public access or educational
21 purposes.

22 § 830. Liability for obscenity, defamation and invasion of pri-
23 vacy. Neither the cable television company whose facilities are
24 used to transmit a program produced by a person other than such
25 cable television company pursuant to the provisions of this article
26 or of federal law or of applicable regulations, nor the officers, direc-
27 tors or employees of any such cable television company shall be

1 liable for damages arising from any obscene or defamatory state-
2 ments or actions or invasion of privacy occurring during any pro-
3 gram when such company does not originate or produce such pro-
4 gram.

5 § 831. Invalid provisions. If any provision of this article or the
6 application of such provision to any circumstance is held invalid
7 for any reason whatsoever, the remainder of this article or the appli-
8 cation of the provision to other circumstances shall not be affected
9 thereby.

10 § 2. Appropriation. The sum of three hundred fifty thousand
11 dollars (\$350,000), or so much thereof as may be necessary, is hereby
12 appropriated in the first instance to the commission hereby created
13 and made immediately available for its expenses, including per-
14 sonal service, in carrying out the provisions of this act. Such
15 moneys shall be payable out of the state treasury after audit by
16 and on the warrant of the comptroller on vouchers certified or
17 approved by the chairman of the commission or by an officer or
18 employee of the commission designated by the chairman.

19 § 3. Subdivision two of section eighty-eight of the general
20 municipal law, as added by chapter four hundred nineteen of the
21 laws of nineteen hundred seventy-one, is hereby amended to read
22 as follows:

1 2. Notwithstanding any other provisions of law, [for a period
2 of one year from the effective date of this section,] until April
3 first, nineteen hundred seventy-three, no municipal corporation
4 may give, grant or award to any individual, partnership, associa-
5 tion or corporation, upon any terms or conditions whatever, any
6 franchise for the purpose of constructing, erecting, operating or
7 maintaining any catv system in the state.

8 § 4. This act shall take effect January first, nineteen hundred
9 seventy-three.

Chapter # 466

5/24/72

STATE OF NEW YORK



12001—A

IN ASSEMBLY

April 5, 1972

Introduced by COMMITTEE ON RULES—read once and referred to the Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 and the general municipal law, in relation to extending provisions relating to franchising

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-eight, to read as follows:

ARTICLE 28

COMMISSION ON CABLE TELEVISION

- 3
- 4
- 5 Section 811. Declaration of legislative findings and intent.

- 6 812. Definitions.

- 7 813. Application of article.

- 8 814. Commission created.

- 9 815. Duties of the commission.

Explanation of Matter in Question—referred to the Committee on Ways and Means to be omitted.

- 1 816. Powers of the commission.
- 2 817. Costs and expenses of the commission
- 3 818. Municipal fees; taxes or charges.
- 4 819. Franchise requirement.
- 5 820. Construction of systems.
- 6 821. Certificate of confirmation.
- 7 822. Transfer, renewal or amendment of franchises and
- 8 transfer of control over franchises and system prop-
- 9 erties.
- 10 823. Interconnection and system coordination.
- 11 824. Requirement for adequate service.
- 12 825. Rates.
- 13 826. Abandonment of service.
- 14 827. Termination of franchises.
- 15 828. Landlord-tenant relationship.
- 16 829. Censorship prohibited.
- 17 830. Liability for obscenity, defamation and invasion of
- 18 privacy.
- 19 831 Invalid provisions.
- 20 § 811. Declaration of legislative findings and intent. Upon inves-
- 21 tigation of the public interest associated with cable television, the
- 22 legislature of the state of New York has determined that while
- 23 cable television serves in part as an extension of interstate broad-
- 24 casting, operations involve public rights-of-way, municipal fran-
- 25 chising, and vital business and community service, and, therefore,
- 26 are of state concern; that while said operations must be subject to
- 27 state oversight, they also must be protected from undue restraint

1 and regulation so as to assure cable systems with optimum tech-
2 nology and maximum penetration in this state as rapidly as eco-
3 nomically and technically feasible; that municipalities and the
4 state would benefit from valuable educational and public services
5 through cable television systems; that the public and the business
6 community would benefit if served by cable channels sufficient to
7 meet the needs of producers and distributors of program and other
8 communication content services; and that the cable television indus-
9 try is in a period of rapid growth and corporate consolidation
10 and should proceed in accord with regional and state-wide service
11 objectives; and, many municipalities lack the necessary resources
12 and expertise to plan for and secure these benefits and to protect
13 subscribers and other parties to the public interest in franchise
14 negotiations.

15 There is, therefore, a need for a state agency to develop a state
16 telecommunications policy; to promote the rapid development of
17 the cable television industry responsive to community and public
18 interest and consonant with policies, regulations and statutes of
19 the federal government; to assure that cable television companies
20 provide adequate, economical and efficient service to their sub-
21 scribers, the municipalities within which they are franchised and
22 other parties to the public interest; and, to encourage the endeavors
23 of public and private institutions, municipalities, associations and
24 organizations in developing programming for the public interest.

25 It is the intent of the legislature in the enactment of this article
26 to vest authority in an independent commission to oversee develop-
27 ment of the cable television industry in New York State in accor-

1 dance with a statewide service plan; to review the suitability of
2 practices for franchising cable television companies to protect the
3 public interest; to set standards for cable television systems and
4 franchise practices; to assure channel availability for municipal
5 services, educational television, program diversity, local expression
6 and other program and communications content services; to pro-
7 vide consultant services to community organization and municipali-
8 ties in franchise negotiations; and, to stimulate the development
9 of diverse instructional, educational, community interest and pub-
10 lic affairs programming with full access thereto by cable television
11 companies, educational broadcasters and public and private insti-
12 tutions operating closed circuit television systems and instructional
13 television fixed services.

14 § 812. Definitions. The words and phrases used in this article
15 shall have the following meanings unless a different meaning clearly
16 appears in the context.

17 (1) "Cable television company" shall mean any person owning,
18 controlling, operating, managing or leasing a cable television sys-
19 tem within the state.

20 (2) "Cable television system" shall mean any system which oper-
21 ates for hire the service of receiving and amplifying programs
22 broadcast by one or more television and/or radio stations and any
23 other programs originated by a cable television company or by
24 another party, and distributing such programs by wire, cable, micro-
25 wave or other means, whether such means are owned or leased, to
26 persons who subscribe to such service. Such definition does not
27 include:

1 (a) any system which serves fewer than fifty subscribers; or

2 (b) any master antenna television system.

3 (3) "Commission" shall mean the commission on cable television
4 created by this article.

5 (4) "Franchise" shall mean and include any authorization
6 granted by a municipality in terms of a franchise, privilege, permit,
7 license or other municipal authorization to construct, operate,
8 maintain, or manage a cable television system in any municipality.

9 (5) "Gross annual receipts" shall mean any and all compen-
10 sation received directly or indirectly by a cable television company
11 from its operations within the state, including but not limited to
12 sums received from subscribers or users in payment for programs
13 received and/or transmitted, advertising and carrier service revenue
14 and any other moneys that constitute income in accordance with
15 the system of account approved by the commission.

16 Gross annual receipts shall not include any taxes on services
17 furnished by a cable television company imposed directly on any
18 subscriber or user by any municipality, state, or other governmental
19 unit and collected by the company for such governmental unit.

20 (6) "Master antenna television system" shall mean any system
21 which serves only the residents of one or more apartment dwellings
22 under common ownership, control or management and any com-
23 mercial establishment located on the premises of such apartment
24 house and which transmits only signals broadcast over the air
25 by stations which may be normally viewed or heard locally without
26 objectionable interference, and which does not provide any addi-
27 tional service over its facilities.

1 (7) "Municipality" shall mean any village, town, city or county,
2 not wholly contained within a city in the state.

3 (8) "State" shall mean the state of New York.

4 (9) "State agency" shall mean any office, department, board,
5 commission, bureau, division, public corporation, agency or instru-
6 mentality of the state.

7 (10) "Person" shall mean any individual, trustee, partnership,
8 association, corporation or other legal entity.

9 (11) "Program" shall mean any broadcast-type program, signal,
10 message, graphics, data, or communication content service.

11 § 813. Application of article. The provisions of this article shall
12 apply to every cable television system and every cable television
13 company as defined in section eight hundred twelve of this article,
14 operating within the state of New York, including a cable television
15 company which constructs, operates and maintains a cable television
16 system in whole or in part through the facilities of a person
17 franchised to offer common or contract carrier services. Persons
18 possessing franchises for any of the purposes contemplated by this
19 article, shall be deemed to be subject to the provisions of this
20 article although no property may have been acquired, business
21 transacted or franchises exercised.

22 § 814. Commission created. 1. A state commission on cable tele-
23 vision is hereby created within the executive department which
24 shall consist of five members none of whom shall hold any other
25 public office and no more than three of whom shall be of the same
26 political party. The members of the commission shall be repre-
27 sentative of the broad range of interests related to telecommun-

1 ication needs and concerns including so far as possible the fields
2 of broadcasting, education television, cable television, communica-
3 tion technology and consumer interests.

4 2. Each member shall be appointed by the governor, by and
5 with the advice and consent of the senate, for five years, provided,
6 however, that of the five members first appointed, one shall be
7 appointed for one year, one for two years, one for three years,
8 one for four years and one for five years, from January first next
9 succeeding their appointment. Their successors shall be appointed
10 for terms of five years each. Members shall continue in office until
11 their successors have been appointed and qualified.

12 3. The governor shall designate one of the members to be chair-
13 man who shall be the chief executive officer of the commission.
14 The members shall elect one of their number as vice chairman of
15 the commission.

16 4. Vacancies in the commission occurring otherwise than by
17 expiration of term shall be filled for the unexpired term in the
18 same manner as original appointments.

19 5. The chairman and the other members of the commission shall
20 receive compensation fixed by the governor within the amounts
21 made available by appropriation therefor. The commission, its
22 members, officers and employees shall be subject to the provisions
23 of sections seventy-three and seventy-four of the public officers law.

24 6. A majority of the members of the commission then in office
25 shall constitute a quorum for the transaction of any business or
26 the exercise of any power or function of the commission. The com-
27 mission may delegate to one or more of its members, or its officers,

1 agents or employees, such powers and duties as it may deem
2 appropriate.

3 7. The commission may appoint a counsel, an executive director
4 and such other officers, employees, agents and consultants as it
5 may deem necessary, prescribe their duties and fix their compensa-
6 tion within the amounts available therefor by appropriation.

7 § 815 Duties of the commission. The commission shall:

8 (1) develop and maintain a statewide plan for development of
9 cable television services, setting forth the objectives which the com-
10 mission deems to be of regional and state concern;

11 (2) to the extent permitted by, and not contrary to applicable
12 federal law, rules and regulations:

13 (a) prescribe standards for procedures and practices which
14 municipalities shall follow in granting franchises, which standards
15 shall provide for (i) the issuance of a public invitation to compete
16 for the franchise; (ii) the filing of all franchise applications and
17 related documents as public records, with reasonable notice to the
18 public that such records are open to inspection and examination
19 during reasonable business hours; (iii) the holding of a public
20 hearing, upon reasonable notice to the public and the commission,
21 at which the applicants and their proposals shall be examined
22 and members of the public and interested parties are afforded a
23 reasonable opportunity to express their views thereon; (iv) the
24 rendition of a written report by the municipality, made available
25 to the public, setting forth the reasons for its decision in awarding
26 the franchise; and (v) such other procedural standards as the com-
27 mission may deem necessary or appropriate to assure maximum

1 public participation and completion and to protect the public
2 interest;

3 (b) prescribe minimum standards for inclusion in franchises,
4 including maximum initial and renewal terms; minimum channel
5 capacity; provisions regarding access to, and facilities to make use
6 of, channels for education and public service programs; a require-
7 ment that no such franchise may be exclusive; and such other stand-
8 ards for inclusion in franchises as the commission shall deem
9 necessary or appropriate to protect the public interest;

10 (c) prescribe standards by which the franchising authority shall
11 determine whether an applicant possesses (i) the technical ability,
12 (ii) the financial ability, (iii) the good character and (iv) other
13 qualifications necessary to operate a cable television system in the
14 public interest;

15 (d) prescribe standards for the construction and operation of
16 cable television systems, which standards shall be designed to pro-
17 mote (i) safe, adequate and reliable service to subscribers, (ii) the
18 construction and operation of systems consistent with the most
19 advanced state of the art, (iii) a construction schedule providing
20 for maximum penetration as rapidly as possible within the limita-
21 tions of economic feasibility, (iv) the construction of systems with
22 the maximum practicable channel capacity, facilities for local pro-
23 gram origination, facilities to provide service in areas conforming
24 to various community interests, facilities with the technical capacity
25 for interconnection with other systems within regions as established
26 in the commission's statewide plan and facilities capable of trans-
27 mitting signals from subscribers to the cable television company

- 1 or to other points; and (v) the prompt handling of inquiries, com-
2 plaints and requests for repairs;
- 3 (c) prescribe such standards for the prohibition or limitation of
4 concentration of control over mass media and communication com-
5 panies and facilities and methods of enforcing such standards, as
6 the commission may determine to be necessary or appropriate to
7 protect the public interest.
- 8 (3) provide advice and technical assistance to municipalities and
9 community organizations in matters relating to cable television
10 franchises and services;
- 11 (4) establish minimum specifications for equipment, service and
12 safety of cable television systems for use by municipalities;
- 13 (5) review and act upon applications for certificates of confirma-
14 tion in accordance with such standards and as hereinafter provided;
- 15 (6) represent the interests of the people of the state before the
16 federal communication commission and make available information
17 on communications developments at the federal level;
- 18 (7) stimulate and encourage cooperative arrangements among
19 organizations, institutions and municipalities in the development
20 of regional educational, instructional and public affairs program-
21 ming services;
- 22 (8) cooperate with municipalities to facilitate undertaking of
23 multiple community cable television systems;
- 24 (9) encourage the creation of public and community groups, to
25 organize, seek chartering when appropriate, and request franchising
26 for the establishment of public, non-profit and not-for-profit cable
27 television operations;

1 (10) maintain liaison with the communications industry and
2 parties both public and private, having an interest therein, other
3 states and agencies of this state to promote the rapid and harmoni-
4 ous development of cable television services as set forth in the legis-
5 lative findings and intent;

6 (11) undertake such studies as may be necessary to meet the
7 responsibilities and objectives of this article.

8 § 816. Powers of the commission. 1. The commission may promul-
9 gate, issue, amend and rescind such orders, rules and regulations
10 as it may find necessary or appropriate to carry out the purposes of
11 this article. Such orders, rules and regulations may classify per-
12 sons and matters within the jurisdiction of the commission and
13 prescribe different requirements for different classes of persons or
14 matters. A copy of any order, rule or regulation promulgated here-
15 under shall be subject to public inspection during reasonable busi-
16 ness hours.

17 2. The commission may require cable television companies to
18 maintain and file such reports, contracts and statements, including
19 but not limited to ownership, accounting, auditing and operating
20 statements, engineering reports and other data as the commission
21 may deem necessary or appropriate to administer the provisions of
22 this article. The commission, including members of its staff, may
23 make reasonable inspections of the records and facilities of any cable
24 television company.

25 3. The commission may examine, under oath, all officers, agents,
26 employees and stockholders of any cable television company, municipi-
27 pal officials and any other persons and compel the production of

1 papers and the attendance of witnesses to obtain the information
2 necessary to administer the provisions of this article.

3 4. The commission may require and receive from any agency of
4 the state or any political subdivision thereof such assistance and
5 data as may be necessary to enable the commission to administer
6 the provisions of this article. The commission may enter into such
7 cooperative arrangements with the public service commission, the
8 board of regents, the council on the arts, other state agencies and
9 municipalities, each of which is hereby authorized to enter into
10 such cooperative arrangements, as shall be necessary or appropriate
11 to assure that there will be maximum utilization of existing exper-
12 tise in communications technology, cable television operations and
13 programming and that the purposes of this article will be effectively
14 accomplished. Upon request of the commission, any state agency
15 may transfer to the commission such officers and employees as the
16 commission may deem necessary from time to time to assist the com-
17 mission in carrying out its functions and duties. Officers and
18 employees so transferred shall not lose their civil service status or
19 rights.

20 5. The commission shall have and may exercise all other powers
21 necessary or appropriate to carry out the purposes of this article.

22 § 817. Costs and expenses of the commission 1. All costs and
23 expenses of the commission shall be paid pursuant to appropria-
24 tion in the first instance from the state treasury, on the certification
25 of the chairman of the commission and upon the audit and warrant
26 of the comptroller. The state treasury shall be reimbursed therefor

1 by payments to be made thereto from moneys collected pursuant to
2 this article.

3 2. On or before December first of each year, the commission shall
4 estimate the total costs and expenses, including compensation for
5 personal services, necessary to operate and administer the com-
6 mission for the next ensuing state fiscal year. The commission
7 shall, at such time or times and pursuant to such procedure as it
8 shall determine by regulation, bill and collect from each cable
9 television company the greater of (i) one hundred dollars or (ii)
10 an amount computed by multiplying such total estimated operat-
11 ing expenses of the commission by a fraction the numerator of
12 which is the gross annual receipts of such cable television com-
13 pany during such twelve month period preceding the date of
14 computation as the commission shall designate by regulation, and
15 the denominator of which is the total gross annual receipts of all
16 cable television companies operating in the state during such
17 period. A cable television company may elect to make partial
18 payments for such costs and expenses on March thirty-first, June
19 thirtieth, September thirtieth and December thirty-first of each
20 year. In no event shall the amount billed to or collected from
21 any cable television company pursuant to this section exceed one
22 percent of the gross annual receipts of such company during the
23 twelve month period designated by the commission.

24 § 818. Municipal fees; taxes or charges. Nothing in this article
25 shall be construed to limit the power of any municipality to impose
26 upon any cable television company, a fee, tax or charge, provided
27 that any such fee, tax or charge when added to the amount pay-

1 able to the commission pursuant to section eight hundred seven-
2 teen does not exceed the maximum amount permitted by applica-
3 ble federal law, rules or regulations.

4 § 819. Franchise requirement. 1. Notwithstanding any other
5 law, no cable television system, whether or not it is deemed to
6 occupy or use a public thoroughfare, may commence operations or
7 expand the area it serves after April first, nineteen hundred sev-
8 enty-three unless it has been franchised by each municipality in
9 which it proposes to provide or extend service.

10 2. A municipality shall have the power to require a franchise of
11 any cable television system providing service within the municipal-
12 ity, notwithstanding that said cable television system does not
13 occupy, use or in any way traverse a public street. The provision
14 of any municipal charter or other law authorizing a municipality
15 to require and grant franchises is hereby enlarged and expanded,
16 to the extent necessary, to authorize such franchises.

17 3. Nothing in this article shall be construed to prevent franchise
18 requirements in excess of those prescribed by the commission, unless
19 such requirement is inconsistent with this article or any regulation,
20 policy or procedure of the commission.

21 § 820. Construction of systems. Every cable television system
22 constructed after April first, nineteen hundred seventy-three, shall
23 comply with such construction standards as the commission may
24 prescribe pursuant to subdivision two of section eight hundred
25 fifteen.

26 § 821. Certificate of confirmation. 1. Except as provided in
27 subdivision six of this section, after April first, nineteen hundred

1 seventy-three, no person shall exercise a franchise, and no such
2 franchise shall be effective, until the commission has confirmed
3 such franchise. A person wishing to exercise a franchise shall
4 file with the commission an application for a certificate of con-
5 firmation in such form and containing such information and sup-
6 portive documentation as the commission may require. The appli-
7 cation shall be accompanied by proof of service thereof upon the
8 franchisor and by such fee as the commission may set.

9 2. The commission may hold a public hearing on any application
10 for a certificate of confirmation if it determines that such a hearing
11 is in the public interest. The commission shall fix the time and
12 place for such a hearing and cause notice thereof to be given to the
13 applicant, the chief executive officer of the municipality issuing
14 the franchise and such other persons as the commission may deem
15 appropriate. Testimony may be taken and evidence received at
16 such a hearing pursuant to such rules and procedures as the com-
17 mission may establish.

18 3. The commission shall issue a certificate of confirmation of
19 the franchise unless it finds that (a) the applicant, (b) the pro-
20 posed cable television system, or (c) the proposed franchise does
21 not conform to the standards embodied in the regulations promul-
22 gated by the commission pursuant to subdivision two of section
23 eight hundred fifteen, or that operation of the proposed cable
24 television system by the applicant under the proposed franchise
25 would be in violation of law, any regulation or standard promul-
26 gated by the commission or the public interest.

1 4. The commission may issue a certificate of confirmation con-
2 tingent upon compliance with standard, terms or conditions set
3 by the commission which it determines would not have been set
4 by the applicant, system or franchise as proposed.

5 5. In the event the commission refuses to issue a certificate of
6 confirmation, it shall set forth in writing the reasons for its deci-
7 sion.

8 6. Any cable television company which, pursuant to an exist-
9 ing franchise, (i) was lawfully engaged in actual operations, or
10 (ii) had commenced substantial construction (as such term is
11 defined by the commission) of a cable television system on January
12 first, nineteen hundred seventy-two may continue to exercise said
13 franchise pursuant to the terms thereof, provided such company
14 files with the commission, on or before July first, nineteen hun-
15 dred seventy-three an application in such form and containing
16 such information and supporting documentation as the commission
17 may require. The commission shall issue a certificate of confir-
18 mation to such a cable television company valid for five years with-
19 out further proceedings, which certificate may be renewed by the
20 commission on application for five year terms pursuant to the
21 provisions of section eight hundred twenty-two.

22 7. Notwithstanding any other provision of this article, any fran-
23 chise which has been granted but not exercised as indicated by
24 substantial performance within one year of January first, nineteen
25 hundred seventy-three shall be deemed contrary to the public
26 interest and intent of such franchise and any certificate of con-
27 firmation previously issued by the commission shall be invalidated,

1 unless the cable television company can make an adequate showing
2 that substantial performance was precluded by circumstances
3 beyond the reasonable control of such company. Any subsequent
4 application for a certificate of confirmation shall be determined in
5 accordance with the provisions of this section.

6 8. The commission shall issue a certificate of confirmation, valid
7 for a five year period, to any cable television company engaged in
8 actual and lawful nonfranchised cable television operations on
9 January first, nineteen hundred seventy-two, if application for such
10 a certificate is made to the commission on or before July first, nine-
11 teen hundred seventy-three. Notwithstanding any other provi-
12 sions of this article, any such company which files such an applica-
13 tion may continue to operate within the limits of the area in which
14 it was actually rendering service on April first, nineteen hundred
15 seventy-two, as determined by the commission. Such a certificate
16 of confirmation may be renewed by the commission on application
17 for five year terms pursuant to the provisions of section eight hun-
18 dred twenty-two.

19 9. Nothing in this section shall be deemed to validate a franchise
20 not granted in accordance with law or affect any claims in litiga-
21 tion on the effective date of this article. No confirmation under this
22 section shall preclude invalidation of any franchise illegally
23 obtained.

24 § 822. Transfer, renewal or amendment of franchises and trans-
25 fer of control over franchises and system properties. 1. No trans-
26 fer, renewal or amendment of any franchise, or any transfer of
27 control of a franchise or certificate of confirmation or of facilities

1 constituting a significant part of any cable television system shall
2 be effective without the prior approval of the commission. Such
3 approval shall be required in addition to any municipal approval
4 required under the franchise or by law. For the purposes of this
5 section, a merger or consolidation of two or more cable television
6 companies shall be deemed to be a transfer of the franchises or cer-
7 tificates granted to such companies.

8 2. A person wishing to transfer, renew or amend a franchise,
9 or to transfer control of a franchise or of a substantial part of the
10 facilities thereof shall file with the commission an application for
11 approval of such change, in such form and containing such infor-
12 mation and supporting documents as the commission may require.
13 The application shall be accompanied by proof of service thereof
14 upon the franchise or, if any, and by such fee as the commission
15 may set. The commission may hold a public hearing on any such
16 application as set forth in subdivision two of section eight hundred
17 twenty-one.

18 3. The commission shall approve the application unless it finds
19 that the applicant, or in the case of a transfer application, the pro-
20 posed transferee or the cable television system does not conform to
21 the standards embodied in the regulations promulgated by the com-
22 mission pursuant to section eight hundred fifteen or that approval
23 would be in violation of law, any regulation or standard promul-
24 gated by the commission or the public interest.

25 4. The commission may approve the application contingent
26 upon compliance with standards, terms or conditions set by the

1 commission which it determines would not have been met by the
2 proposed transfer, renewal or amendment.

3 5. In the event the commission refuses to approve the application,
4 it shall set forth in writing the reasons for its decision.

5 6. Approval of a transfer, renewal or amendment under this sec-
6 tion shall not preclude invalidation of a franchise illegally obtained.

7 § 823. Interconnection and system coordination. Whenever the
8 commission finds it to be in the public interest, the commission may,
9 either upon application of an interested party or on its own initia-
10 tive, and after public notice and opportunity for hearing, order the
11 interconnection of cable television systems and facilities or the
12 coordinated operation of such systems and facilities. The com-
13 mission may append to such order such reasonable terms and con-
14 ditions as will best promote the public interest.

15 § 824. Requirement for adequate service. 1. Every cable tele-
16 vision company shall provide safe, adequate and reliable service
17 in accordance with applicable laws, regulations, and franchise
18 requirements.

19 2. Whenever, upon complaint or upon its own motion, and after
20 public notice and opportunity for hearing, the commission finds
21 that, despite its economic feasibility, the construction or operation
22 of a franchised or certificated cable television system has been
23 unreasonably delayed or that the extension of service to any per-
24 sons or area within a cable television company's territory has been
25 unreasonably withheld, it may order such construction, operation
26 or extension on such terms and conditions as it deems reasonable
27 and in the public interest.

1 3 Whenever, upon complaint or upon its own motion, and after
2 public notice and opportunity for hearing, the commission finds
3 that a cable television company is not meeting the service require-
4 ments and obligations imposed by this article, by the regulations
5 promulgated hereunder, or by its franchise, it may enter an order
6 once therewith on such terms and conditions as it deems reasonable
7 and in the public interest.

8 4. Failure to comply with an order of the commission as provided in
9 subdivisions two or three shall be grounds for denial, suspension or
10 revocation of the right to exercise a franchise or to operate pursuant
11 to a certificate of confirmation.

12 § 825. Rates. 1. Except as otherwise provided in this section, the
13 rates charged by a cable television company shall be those specified
14 in the franchise which may establish, or provide for the establish-
15 ment of reasonable classifications of service and categories of sub-
16 scribers, or charge different rates for differing services or for sub-
17 scribers in different categories.

18 2. Such rates may not be changed except by amendment of the
19 franchise.

20 3. Notwithstanding subdivision one, (a) no rate provision in any
21 franchise shall bind a municipality for more than ten years and no
22 rate provision in any renewed franchise shall bind a municipality
23 for more than five years. In the event that an existing franchise
24 purports to bind a municipality with respect to rates for a period
25 to expire after January first, nineteen hundred eighty-three, such
26 provisions shall have no further force or effect after January first,
27 nineteen hundred eighty-three; and (b) any rate or rates found by

1 the commission, after public notice and opportunity for hearing, to
2 be discriminatory or preferential as between subscribers similarly
3 situated shall thereafter be void. Reduced rates or free service to
4 governmental, educational or charitable institutions shall not be con-
5 sidered unduly discriminatory or preferential.

6 4 In the event the commission finds that any rate is discrimina-
7 tory or preferential pursuant to paragraph (b) of subdivision three
8 of this section or that any cable television company is in violation
9 of an order issued by the commission pursuant to section eight
10 hundred twenty-four of this article requiring adequate service, it
11 may issue an order requiring the municipality to provide for new
12 rates which are non-discriminatory and non-preferential or reduced
13 to reflect the inadequate service, as the case may be.

14 (c) having reduced rates pursuant to paragraph b, the commis-
15 sion finds that the cable television company has substantially reme-
16 died the deficiencies, in which case the commission shall return the
17 rates to those rates stipulated in the franchise;

18 (d) upon complaint by any interested party and after reason-
19 able opportunity for negotiation between the municipality and
20 the franchisee, it finds that rates are not established by or pur-
21 suant to the terms of the franchise, in which event, the commis-
22 sion shall fix rates at a level comparable to rates fixed in com-
23 parable franchises requiring comparable service for comparable
24 service areas; and

25 (e) upon request by a municipality and cable television company
26 that the commission prescribe applicable rates, made in such man-
27 ner as the commission by regulation may prescribe and certifying

1 that they are unable to agree upon rates to include in any fran-
2 chise or renewal thereof, in which event the commission shall fix
3 rates at a level comparable to rates currently being fixed in cable
4 television franchises for comparable service in comparable service
5 areas; provided that if the municipality and the company there-
6 after agree upon rates, such agreed rates shall become effective.

7 § 826. Abandonment of service. 1. No cable television, not-
8 withstanding any provision in a franchise, may abandon any service
9 or portion thereof without having given six months' prior written
10 notice to the commission and to the franchisor, if any, and to the
11 municipalities it serves.

12 2. When abandonment of any service is prohibited by a fran-
13 chise, no cable television company may abandon such service with-
14 out written consent of the franchisor, if any, and the commission.
15 In granting such consent, the commission may impose such terms,
16 conditions or requirements as in its judgment are necessary to pro-
17 tect the public interest.

18 § 827. Termination of franchises. 1. A franchise shall terminate
19 at the expiration of its term or otherwise in accordance with the
20 provisions thereof, unless, prior thereto, the commission otherwise
21 orders. The commission may so order only if it finds, after public
22 notice and opportunity for a hearing, that the franchisee:

23 a. has committed a material breach of its franchise or any
24 applicable provisions of this article or of the regulations promul-
25 gated hereunder and has failed, without reasonable justification,
26 to cure said breach within sixty days after having received written
27 notice thereof from the commission, or

1 b. has been adjudicated a bankrupt or has filed a voluntary
2 petition for bankruptcy or reorganization or for an order pro-
3 tecting its assets from the claims of creditors and the commission
4 finds that termination of the franchise or certificate of confirma-
5 tion under such conditions is in the best interests of the public.

6 2. Upon termination of a franchise or certificate of confirma-
7 tion, the cable television company shall dispose of its facilities in
8 accordance with the provisions of the franchise or certificate. How-
9 ever, on motion of any interested party or upon its own motion, and
10 after public notice and opportunity for hearing, if the commission
11 finds that the continued presence of the facilities in any public
12 thoroughfare would pose a nuisance to the municipality or its resi-
13 dents, the cable television company shall remove its facilities within
14 such period as the commission shall order. In the absence of any
15 applicable franchise or certificate provision or order by the com-
16 mission to the contrary, the cable television company may abandon
17 its facilities.

18 § 828. Landlord-tenant relationship. 1. No landlord shall a. inter-
19 fere with the installation of cable television facilities upon his
20 property or premises, except that a landlord may require:

21 i. that the installation of cable television facilities conform
22 to such reasonable conditions as are necessary to protect the
23 safety, functioning and appearance of the premises, and the
24 convenience and well-being of other tenants;

25 ii. that the cable television company or the tenant or a
26 combination thereof bear the entire cost of the installation,
27 operation or removal of such facilities; and

1 *ii that the cable television company and the tenant agree*
2 *to indemnify the landlord for any damage caused by the*
3 *installation, operation or removal of such facilities*

4 *b. demand or accept payment, in any form, in exchange for*
5 *permitting cable television service on or within his property or*
6 *premises; or*

7 *c. discriminate in rental charges, or otherwise, between tenants*
8 *who receive cable television service and those who do not.*

9 *2. Rental agreements and leases executed prior to the effective*
10 *date of this article may be enforced notwithstanding this section.*

11 *3. No cable television company may enter into any agreement*
12 *with the owners, lessors or persons controlling or managing build-*
13 *ings served by a cable television, or do or permit any act, that*
14 *would have the effect, directly or indirectly of diminishing or*
15 *interfering with existing rights of any tenant or other occupant*
16 *of such building to use or avail himself of master or individual*
17 *antenna equipment.*

18 *§ 829. Censorship prohibited. 1. The commission may not pro-*
19 *hibit or limit any program or any class or type of program or*
20 *otherwise censor the communications or signal transmitted by any*
21 *cable television company or over any cable television system, and*
22 *may not promulgate any regulation or condition which would inter-*
23 *fere with the right of free speech by means of cable television*

24 *2. No municipality may prohibit or limit any program or class*
25 *or type of program or impose discriminatory or preferential fran-*
26 *chise fees in any manner that would tend to encourage or discour-*
27 *age programming of any particular nature, directly or indirectly.*

1 3. No cable television company may prohibit or limit any pro-
2 gram or class or type of program presented over a leased channel
3 or any channel made available for public access or educational
4 purposes.

5 § 830. Liability for obscenity, defamation and invasion of pri-
6 vacy. Neither the cable television company whose facilities are
7 used to transmit a program produced by a person other than such
8 cable television company pursuant to the provisions of this article
9 or of federal law or of applicable regulations, nor the officers, direc-
10 tors or employees of any such cable television company shall be
11 liable for damages arising from any obscene or defamatory state-
12 ments or actions or invasion of privacy occurring during any pro-
13 gram when such company does not originate or produce such pro-
14 gram.

15 § 831. Invalid provisions. If any provision of this article or the
16 application of such provision to any circumstance is held invalid
17 for any reason whatsoever, the remainder of this article or the appli-
18 cation of the provision to other circumstances shall not be affected
19 thereby.

20 § 2. Appropriation. The sum of three hundred fifty thousand
21 dollars (\$350,000), or so much thereof as may be necessary, is hereby
22 appropriated in the first instance to the commission hereby created
23 and made immediately available for its expenses, including per-
24 sonal service, in carrying out the provisions of this act. Such
25 moneys shall be payable out of the state treasury after audit by
26 and on the warrant of the comptroller on vouchers certified or

1 approved by the chairman of the commission or by an officer or
2 employee of the commission designated by the chairman.

3 § 3. Subdivision two of section eighty-eight of the general
4 municipal law, as added by chapter four hundred nineteen of the
5 laws of nineteen hundred seventy-one, is hereby amended to read
6 as follows:

7 2. Notwithstanding any other provisions of law, [for a period
8 of one year from the effective date of this section,] until April
9 first, nineteen hundred seventy-three, no municipal corporation
10 may give, grant or award to any individual, partnership, associa-
11 tion or corporation, upon any terms or conditions whatever, any
12 franchise for the purpose of constructing, erecting, operating or
13 maintaining any catv system in the state.

14 § 4. This act shall take effect January first, nineteen hundred
15 seventy-three.

Chapter #467

5/24/72

STATE OF NEW YORK



12378

IN ASSEMBLY

May 5, 1972

Introduced by COMMITTEE ON RULES—(at request of Mr. Kelly)—read once and referred to the Committee on Rules

AN ACT

To amend the executive law and a chapter of the laws of nineteen hundred seventy-two, entitled "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 and the general municipal law, in relation to extending provisions relating to franchising", in relation to the regulation of cable television

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Paragraphs (a) and (b) of subdivision two of section
- 2 eight hundred fifteen of the executive law, as added by a chapter
- 3 of the laws of nineteen hundred seventy-two, entitled "An Act
- 4 to amend the executive law, in relation to the creation of a state
- 5 commission on cable television, prescribing its functions, powers
- 6 and duties and making an appropriation for its expenses and the

EXPLANATION — Matter in *italics* is new; matter in brackets [] is old law to be omitted.

1 general municipal law, in relation to extending provisions relating
2 to franchising", are hereby amended to read, respectively, as
3 follows:

4 (a) prescribe standards for procedures and practices which
5 municipalities shall follow in granting franchises, which standards
6 shall provide for (i) the issuance of a public invitation to compete
7 for the franchise; (ii) the filing of all franchise applications and
8 related documents as public records, with reasonable notice to the
9 public that such records are open to inspection and examination
10 during reasonable business hours; (iii) the holding of a public
11 hearing, upon reasonable notice to the public and the commission,
12 at which the applicants and their proposals shall be examined and
13 members of the public and interested parties are afforded a reason-
14 able opportunity to express their views thereon; (iv) the rendition
15 of a written report by the municipality, made available to the
16 public, setting forth the reasons for its decision in awarding the
17 franchise; and (v) such other procedural standards as the com-
18 mission may deem necessary or appropriate to assure maximum
19 public participation and **[completion]** *competition* and to protect
20 the public interest;

21 (b) prescribe minimum standards for inclusion in franchises,
22 including maximum initial and renewal terms; minimum channel
23 capacity; provisions regarding access to, and facilities to make
24 use of, channels for education and public service programs; a
25 requirement that no such franchise may be exclusive; standards
26 necessary or appropriate to protect the interests of viewers of free
27 broadcast television and the public generally, which prohibit or

1 *limit cable television companies from prohibiting or entering into*
2 *agreements prohibiting the sale or other transfer of rights for the*
3 *simultaneous or subsequent transmission over free broadcast tele-*
4 *vision of any program originated or transmitted over cable tele-*
5 *vision; and such other standards for inclusion in franchises as the*
6 *commission shall deem necessary or appropriate to protect the*
7 *public interest;*

8 § 2. Paragraph (e) of subdivision two of section eight hundred
9 fifteen of such law, as added by such chapter, is hereby amended
10 to read as follows:

11 (e) prescribe such standards for the prohibition or limitation
12 of concentration of control over mass media and communication
13 companies and facilities and methods of enforcing such standards,
14 as the commission may determine to be necessary or appropriate
15 to protect the public interest; *provided, however, that nothing*
16 *herein contained shall be construed to authorize the impairment of*
17 *any existing rights of any mass media and communication company*
18 *or any subsidiary thereof.*

19 § 3. Subdivision two of section eight hundred seventeen of such
20 law, as added by such chapter, is hereby amended to read as
21 follows:

22 2. On or before December first of each year, the commission shall
23 estimate the total costs and expenses, including compensation for
24 personal services, necessary to operate and administer the com-
25 mission for the next ensuing state fiscal year, including the repay-
26 ment of any first instance appropriations outstanding on March
27 thirty-first immediately preceding such fiscal year. The commis.

1 sion shall, at such time or times and pursuant to such procedure as
2 it shall determine by regulation, bill and collect from each cable
3 television company the greater of (i) one hundred dollars or (ii)
4 an amount computed by multiplying such total estimated operat-
5 ing expenses of the commission by a fraction the numerator of which
6 is the gross annual receipts of such cable television company during
7 such twelve month period preceding the date of computation as
8 the commission shall designate by regulation, and the denominator
9 of which is the total gross annual receipts of all cable television
10 companies operating in the state during such period. A cable
11 television company may elect to make partial payments for such
12 costs and expenses on March thirty-first, June thirtieth, September
13 thirtieth and December thirty-first of each year. *On or before*
14 *September fifteenth of each year, the commission shall compute*
15 *the actual costs and expenses of the commission for the preceding*
16 *state fiscal year and shall, on or before October fifteenth of such*
17 *year, send to each cable television company a statement setting*
18 *forth the amount due and payable by, or the amount standing to*
19 *the credit of, such cable television company computed on the basis*
20 *of the above stated formula, except that for the purposes of such*
21 *computation the fraction shall be multiplied against the total actual*
22 *operating expenses of the commission for such fiscal year. Any*
23 *amount owing by any cable television company shall be payable*
24 *not later than thirty days following the date of such statement*
25 *.Any amount standing to the credit of any cable television company*
26 *shall be applied as a credit against any succeeding payment due.*
27 In no event shall the amount billed to or collected from any cable

1 television company pursuant to this section exceed one percent of
2 the gross annual receipts of such company during the twelve month
3 period designated by the commission.

4 § 4. Subdivision four of section eight hundred twenty-five of
5 such law, as added by such chapter, is hereby amended to read as
6 follows:

7 4. In the event the commission finds that any rate is discrimina-
8 tory or preferential pursuant to paragraph (b) of subdivision
9 three of this section or that any cable television company is in
10 violation of an order issued by the commission pursuant to sec-
11 tion eight hundred twenty-four of this article requiring adequate
12 service, it may issue an order requiring the municipality *and the*
13 *cable television company* to provide for new rates which are non-
14 discriminatory and non-preferential or reduced to reflect the inade-
15 quate service, as the case may be.

16 § 5. Paragraphs (a) and (b) of subdivision five of section eight
17 hundred twenty-five of such law, as added by such chapter, are
18 hereby amended to read, respectively, as follows:

19 (a) existing rates have been found discriminatory or prefer-
20 ential and, after reasonable opportunity, the municipality [has]
21 *and the cable television company* have not provided for new rates
22 which are non-discriminatory or non-preferential, as provided in
23 subdivision four of this section;

24 (b) a cable television company is in violation of an order issued
25 by the commission pursuant to section eight hundred twenty-four
26 of this article requiring adequate service and, after reasonable
27 opportunity, the municipality [has] *and the cable television com-*

1 *pany* have not provided for new rates reduced to reflect the in-
2 adequate service, in which case the commission may require appro-
3 priate rate reductions;

4 § 6. Subdivision one of section eight hundred twenty six of such
5 law, as added by such chapter, is hereby amended to read as follows:

6 1. No cable television *company*, notwithstanding any provision
7 in a franchise, may abandon any service or portion thereof with-
8 out having given six months' prior written notice to the commis-
9 sion and to the franchisor, if any, and to the municipalities it
10 serves.

11 § 7. Paragraph b of subdivision one of section eight hundred
12 twenty-eight of such law, as added by such chapter, is hereby
13 amended to read as follows:

14 b. demand or accept payment *from any tenant*, in any form,
15 in exchange for permitting cable television service on or within
16 his property or premises, *or from any cable television company in*
17 *exchange therefor in excess of any amount which the commission*
18 *shall, by regulation, determine to be reasonable; or*

19 § 8. Section four of such chapter is hereby renumbered to be
20 section five, and as thus renumbered is hereby amended to read as
21 follows:

22 § 5. This act shall take effect January first, nineteen hundred
23 seventy-three, *except that the provisions of section three of such*
24 *chapter shall take effect immediately.*

25 § 9. Such chapter is hereby amended by adding thereto a new
26 section, to be section four, to read as follows:

1 § 4. Notwithstanding the provisions of subdivision two of sec-
2 tion eight hundred seventeen of the executive law, as added by
3 section one of this act, pertaining to the date on which the estimate
4 of the commission's costs and expenses shall be made, the state
5 commission on cable television may estimate its costs and expenses
6 for the period from January first, nineteen hundred seventy-three
7 to and including March thirty-first, nineteen hundred seventy-four,
8 or any portion thereof, and may bill any cable television company
9 for such costs and expenses at such time or times as it deems
10 appropriate.

11 § 10. This act shall take effect on the same date as a chapter of
12 the laws of nineteen hundred seventy-two, entitled "An Act to
13 amend the executive law, in relation to the creation of a state com-
14 mission on cable television, prescribing its functions, powers and
15 duties and making an appropriation for its expenses and the gen-
16 eral municipal law, in relation to extending provisions relating to
17 franchising", as amended by section eight of this act.

CABLE TELEVISION: ITS POTENTIAL FOR EDUCATIONAL USE

(Presented at the 25th Annual Convocation of the New York State Educational Communications Association)

(by Bernarr Cooper)

In order to discuss Cable Television potentials for use in the instructional/educational/cultural learning construct, it may be helpful at the outset if we take a new look at learning needs and the ways in which various technologies might be used to approach those needs. Cable television, although only one of the many technologies that can be attentive and responsive to those needs, is seen as only one of the many related technologies necessary to the total concept of 'delivery systems' for creating more learning opportunity for the learner -- whatever his age, and wherever he may be located, physically.

The major interests of the State Education Department in the use of technology for instructional systems are best embodied in the following four major concerns:

1. There must be an identification of appropriate technology to meet individual needs and interests of all learners of whatever age or circumstance;
2. Technology must be used to produce a more economical system of instruction for as many persons as possible regardless of the limitations of cultural disenfranchisement;
3. Technology must be used to make the entire system of instructional opportunity both enlarged and cost effective; and,
4. Most important, technology and cable must be used to provide more abundant job training and occupational retraining for adult populations in the home, at work, and in school.

One underlying commitment of the State Education Department is that the creation and use of all technology materials for instructional and cultural needs must proceed from the basis of understanding and a clear concept of the goals for which such instructional materials will be created, an in-depth pre-test of those goals and needs, and of the needs of the group for which those materials are designed, and, last, a post-test of the materials and learning output to insure that the following three major premises have been achieved:

- 1) that learning has taken place;
- 2) that the learning was needed by the individual for an identified goal or objective; and,
- 3) that the process of presenting the material has resulted in effective knowledge gain, retention and cost effectiveness.

It is the position of the Commissioner of Education that an inquiry into the use of cable must result in service to the needs of the citizens of the State of New York.

We all know what the evaluation of statistical evidence can do to every situation of concern and endeavor -- particularly to an evaluation of directions to be pursued and managed for education at all levels, including those of post-secondary need in the United States.

Currently, there are more than 8 million students in post-secondary institutions in the United States. Let us bear in mind that this figure does not include the multiplicity of those who are engaged in some programs known as the 'university without walls,' programs that are direct spin-offs of the effort of the open university of Britain, and

the even more interesting and fruitful efforts of such programs as that of New York State -- namely, the external degree. You may recall, that the Commissioner of Education, Ewald , at his inauguration in September 1970, announced his concept of the 'external degree'. For the first time in higher education history, an individual would have the opportunity to receive a degree by never having to set foot in a classroom, if he so chose. Or, he might combine a learning and living experience with some institutional work, or with library work, or with any combination of effective information and learning gathering techniques he might choose. All that would be required was to demonstrate on examination that competence had been achieved. The first group of 77 such persons achieved the degree this year in a ceremony conducted by the Regents and the Commissioner of Education of the State of New York. The candidates included a broad spectrum of ages -- from the early twenties to the early sixties, from members of the armed forces to retirees. More than fourteen states were represented among the recipients, for the external degree knows no boundaries; and at the next swarding of degrees it seems almost certain that there will be recipients from foreign countries, as well.

Given the potential that the learner will and does receive learning opportunity and information from a variety of non-traditional, non-classroom sources we must regard a recent statistic with some concern. We now have more than 1,100 community colleges in the United States. As I stand here, this statistic is already outmoded because a new community college opens every week. We must seriously ask ourselves, "Why are we building more soon-to-be-outmoded structures for a traditional approach to learning and teaching which may soon demonstrate that other structures

exist for meaningful living and learning and earning a living?"

Obviously, we have become victimized by what has developed and evolved in our complex and over-protected structure of traditional, four-square learning patterns. Already, the open admissions approach to those who are formerly deprived of learning opportunity at the post-secondary level has demonstrated that a large segment of our population has truly been intellectually disenfranchised.

Education and the educational community has a long history of ignoring opportunities presented to it for more broadly disseminating learning opportunities. Our educational colleagues have an equally long track record for having decided to abandon technology after technology which spelled continuing progress in advanced informational, cultural and in-depth knowledge-sharing possibilities. We initially fought for and then denied the possibilities of the use of radio, both FM and AM. Only a relative handful of such broadcast-use opportunities are in existence, today. Not many of them are used to better the needs of the learner -- the homebound, the adult, the handicapped, the isolate on the farm or in the Appalachian region.

When the age of television burst upon the communications' scene we were frantic to be sure that adequate open-circuit channels would be available for the many learning and teaching opportunities we were able to forecast. The attempts were spotty. The conversion of open circuit channels to a number of routinely uninteresting and frequently esoteric presentations, which research tells us are most often observed by those who have rare need of it, is now well known. The fact that the management of such open circuit ETV or public broadcasting channels must continually seek additional funds for a fiscal-starvation type operation

is not at all encouraging. The educational community and the sometimes forward-looking members of that community have gone on to new enthusiasms as new technologies have emerged. The researchers and the manufacturers of the hardware seem to outstrip the best of our well-intentioned effort to create acceptable means of producing the software or courseware, for the 'pearls' of learning technology that are continuously cast before us.

Now we stand at the threshold of one of the most pervasive and exciting of all dissemination system possibilities to date. The initial provisions for education to access the use of that technology have been made available to us. Education has had to struggle least for this opportunity, and yet we find surprisingly little preparatory effort being put into the consideration of cable system use for learning opportunity.

Although I will specifically address the ways in which these opportunities may be seized at the post-secondary level, the same principles may apply to all areas of teaching and learning -- elementary, secondary, and higher institutional, -- private, public and parochial.

Several points of general information must be noted at the outset: The Federal Communications Commission has promulgated certain Rules and Regulations which shall apply to cable television operations for an interim or experimental period of the next five years. In New York State, we have exercised some forethought and regulatory effort at the State level. In January 1973, a Cable Television Commission will come into function. This has been provided by law which was two years in the making and which was promulgated on the basis of testimony which was organized and held under the aegis of the legislative Standing Committee on Corporations, Authorities and Commissions.

One of the significant and educationally important provisions of the FCC Rules and Regulations is that all future systems must provide for three public access channels. What this means is simply that each cable system which comes into existence, as of this year, must provide an initial minimum of 20 channels to the community it serves. Of those 20 channels, three must be dedicated to public use -- one for local governmental use, one for community use and one for educational use. It is this latter channel that provides a definitive way for organizing the educational interests of a community or a region, depending upon the coverage or intended coverage of the cable system.

In the State of New York we have the advantage of several groups of institutions of higher learning being located in regional settings. As an example, one such group is located in Rochester and its vicinity. Another is located here in the capital district. Still another is located in the Buffalo area. These are only examples of some possible locations. Again, for example, in all three areas I have named, franchises for cable system operations have been awarded or are about to be awarded.

One possible configuration of use of the public access channel for education is a coalition or mutual planning activity by the post-secondary institutions of an area. Such coalitions, representing an organized approach to the indicated cable system operator, would have the following positive benefits to achieve:

1. An organized approach to the use of a channel for reaching the homebound, the aged, and the handicapped with organized learning material of significant benefit and use. (Parenthetically, it should be borne in mind that all cable systems have the technical capacity to provide two-way audio channels, also. Thus, opportunity is assured

for asking questions or seeking additional information by the learner from the disseminating source.)

2. Organized consortia, which present a single advisory voice to a channel operator, might also plan joint offerings for inter-institutional recognition or credit, as did a consortia of four institutions in Rochester, this last summer, by use of an Instructional Television Fixed Service interconnection.

3. An organized coalition of advisory persons might logically include the secondary level institutions of its areas and/or the BOCES board operation. This could be done to serve several needs, such as: a) to more closely integrate the preparation of students for a post-secondary experience; b) to provide a vertical kind of articulation in such planned secondary and post-secondary need areas as understandings to prevent drug abuse, coordinated programs in the area of venereal disease, the upgrading of reading literacy, and the dissemination of logical information in the areas of personal and environmental health, and for a coordinated effort in vocational rehabilitation, upgraded training for the employable and career guidance for those who through lack of such guidance are professionally competent but may have become work-disenfranchised.

Recent efforts by the advisory groups to the Federal Communications Commission on possible developing problems related to cable systems, have made several interesting suggestions which help to guarantee to education some additional channels for learning use at the local level. Included in these suggestions has been the one that recommended the following: Where the three public access channels are not in continuous and planned use for their designated needs -- that is for local government

and general community use -- why not make such channels additionally available to the educational community for additional educational opportunity use. Thus, if more than one channel is needed at a given time, and one of the other public channels is not requested or scheduled for use at such time, why not use it for additional learning and cultural opportunity to the community? Local libraries, museums and performing groups with integrated plans for reenforcing learning in specific content areas, or at specific learning levels, could thus bring reenforced and additional learning advantages to the entire community.

One additional positive educational need can also be achieved by consortia which form advisory committees or groups to the channel operators. Coordinated effort in learning-opportunity-planning can achieve the following: mutual planning for similar learning needs can take place between institutions, school systems and even between regional consortia across state lines, if desired.

On November 20, 1970, the Regents promulgated a position paper on cable television for the State of New York with particular emphasis on educational and public service need. In it they said the following:

The Regents are concerned that every positive action must be taken on behalf of the immediate and long-range interests of the people of this State in relationship to the emerging communications technology.

The Regents are particularly concerned that all local governing bodies shall be informed about the following matters related to cable television franchising practices:

The statement then goes on to indicate two major concerns: First, that all members of every community should be given an opportunity to express their views about any given CATV franchise. No grants should be made before this takes place. By the same token, all members of a community should and must be alert to franchising procedures and proposals. Educators must express their views as to what is desired of a franchisee and what must be done to serve the all-over educational needs of a community. Second, the Regents have made themselves available to provide information, advice and guidance to franchise seekers and to communities on how to best formulate franchises to meet the needs for educational and informational opportunity. Most important, the last statement in the Regents position on cable television says the following:

. . . the Regents are convinced that the full potential of long range developments in the field of communications technology are only just beginning to manifest their more exciting possibilities. With this in mind, the Regents strongly recommend that local governing bodies be zealous in retaining for all of their citizens complete options to flexible future developments of cable television.

Much of what still needs to be examined by us in this session will depend upon how fully certain of the provisions of the FCC are understood and exercised, first, by franchise granting authorities; and, second, how quickly both the public interest and educational groups of a community make their desires, outlooks, and identified needs known to the cable operators.

For example, one of the things which the educational community must recognize is that there is a provision in the rules and regulations of the Federal Communications Commission for the importation of Public Broadcasting or ETV Stations' signals. No community of the State need be without such a signal. In some instances such signals do bring to a community the planned instructional and informational offerings of a distant or nearby community with which it may not normally exchange ideas, information or opportunity. Nothing need prevent the organization of activities which may access, develop and distribute such opportunity. Joint effort of communities makes possible extended and varied planned opportunities for adults -- a frequently neglected segment of our community concerns for the adult and senior citizen -- needs that frequently go unsatisfied. Budgets for such activities are notoriously slight in most communities, but a pooling of limited resources and the interconnected uses of CATV systems can frequently broaden such opportunities. When these are coupled with extension opportunities offered by open circuit broadcasting, vastly improved and enlarged programs can and may result. Such extension and continuing education opportunities can be especially useful in rural areas where such programs have been curtailed or almost eliminated.

One of the major provisions in the Federal Rules and Regulations pertaining to cable television is that of program origination facilities. As the rules are now written, the cable system operator is required to have sufficient equipment to originate or provide for the origination of programming to a "considerable extent." Precisely how this is to be defined is not yet clear. What is clear is that such programming is to be provided over channels designated for this purpose. However, nothing

in the present rules and regulations require the cable system operator to provide such equipment or facilities, or the appropriate operating personnel, at no expense to education. Only the provision of the channel is required. It can be argued that if educational interests were to provide pre-recorded material in either video or audio form, the operator of the channel must provide the facilities to air these. It would be well for educators to be alert to the needs of dissemination of material and make their voices felt to the franchising authority before, not after, the franchise is granted. Thus, there would be assurance that both originating equipment and pre-recorded material playback equipment would be available. Most important, it should be remembered that cable systems with less than 3500 subscribers are NOT required to originate programming of any kind for its subscribers. Thus, matters and events of a strictly local nature would have no means for expression in the community being served. Such a provision for a less than 3500 subscriber community might, however, be a part of the requirements of the franchising authority. Certainly an educational advisory group and a group advising on community needs should be alert to the desirability of such a provision. The educational community might well pool its resources with the franchise operator to make sure that such a cable-system-broadcast-possibility comes into being. The community might require that a community owned studio and facilities be provided by the community, with the regulation of such facility to be entirely controlled by the community. Or a joint operational agreement between the community and the franchisee might be part of the franchise granting agreement.

Still another possibility is complete control and operation by the educational community, with joint responsibility for the studio operation to exist between the educational community and the operator of the system. In this way, the operator could schedule the studio use for leased channel operations, and for local commercial recordings when such studio was not in use for the public access channels. Charges for such a facility might be a matter of special corporate arrangement with profits-after-operating-expenses contributing to defraying the cost of educational/cultural programming for the community.

This concludes my prepared remarks. Discussion can lead to further examination of interesting possibilities and responsibilities. Let us agree that the Regents have provided us with the incentive and insights in their position paper on cable television when they said:

"Communications technology is on the verge of a revolution so vast and so profound as to influence in an unprecedented way all aspects of man's existence.

"The pending metamorphosis of Community Antenna Television (CATV) into copious systems of multi-channel cable television; the ensuing evolution of cable television into elaborate two-way communications systems involving printed as well as video-screen messages; the proliferation of nation-wide and world-wide communications satellites; the incipient impact of home video cassettes -- all of these engineering wonders are now technically possible and await only the genius of intelligent capitalization and marketing, and, where warranted and necessary, prudent public interest regulation."

FEDERAL COMMUNICATIONS COMMISSION
RULES AND REGULATIONS GOVERNING CABLE TELEVISION
A Summary Distributed by the State Education Department
Office of Cultural Education
Bureau of Mass Communications

Bernarr Cooper
Chief
Bureau of Mass Communications
May 3, 1972

NEW RULES OF THE FEDERAL COMMUNICATIONS*
COMMISSION GOVERNING CABLE TELEVISION

The following is a summary of the new cable television rules, issued by the Federal Communications Commission, which will become effective on March 31, 1972. The new rules cover four basic areas:

- (1) television broadcast signal carriage;
- (2) access to and use of non-broadcast channels, including minimum channel capacity;
- (3) technical standards; and
- (4) Federal-State/local relationships.

As prepared by the firm of Conn & Marks, Washington, D. C.

I. Television Broadcast Signal Carriage

a. Introduction

The FCC's carriage rules divide all television signals into three main classifications:

(1) Carriage priority one: those television signals that a cable system must carry, upon request, or which may be carried even if there is no carriage request.

(2) Carriage priority two: the television signals that, taking television market size into account, a cable system may carry, at its option, in order to achieve a minimum allowable service.

(3) Carriage priority three (additional service): those television signals that some cable systems may carry, at their option, in addition to those television signals required or permitted to be carried under carriage priorities one and two.

The number and type of television signals which a cable system is permitted or required to carry varies depending upon whether the cable system is located within:

- (a) the top 50 television markets,
- (b) television markets 51-100,
- (c) smaller television markets (below the top 100 markets), or
- (d) outside of all television markets.

The television markets are ranked in size according to the American Research Bureau 1970 prime time household's ranking. The FCC stated that, in order to insure stability, this ranking will not be revised each time new rankings are issued by American Research Bureau. A television market is defined as the area included within a zone of 35 mile radius from a specified reference point in each designated community in which a television station is located.

b. Carriage Regulations

On the next pages (4-8) there is a Table which summarizes the new television carriage rules.

- 4 -

F.C.C. RULES GOVERNING TELEVISION BROADCAST CARRIAGE

<p>A) Carriage Priority One -- TV Stations that <u>must</u> be carried upon request from TV stations, or which may be carried even if there is no carriage request.</p>	<p><u>First 50 TV Markets (1-50) Second 50 TV Markets (51-100)</u></p> <p>(1) All TV stations within 35 miles of cable community. *</p> <p>(2) All TV stations located in other communities that are generally considered within the same TV market (i. e., hyphenated markets as designated in Commission rules), without regard to distance or TV contour coverage over cable community.</p> <p>(3) All Grade B signals of educational stations.</p> <p>(4) All TV translator stations in the cable community with 100 watts or higher power.</p> <p>(5) All TV stations which are "significantly viewed" in cable community, without regard to distance or TV contour coverage over cable community. **</p>	<p><u>Smaller TV Markets (below 100)</u></p> <p>(1) All TV stations within 35 miles of cable community. *</p> <p>(2) All TV stations located in other communities that are generally considered within the same TV market (ARB and Nielsen recognize different communities as being within the same TV market and these characteristics can be relied upon).</p> <p>(3) Grade B signals of educational TV stations.</p> <p>(4) Grade B signals from stations in other smaller markets.</p> <p>(5) All TV translator stations in the cable community with 100 watts or higher power.</p> <p>(6) All TV stations "significantly viewed" in cable community, without regard to distance or TV contour coverage over cable community. **</p>	<p><u>Outside All TV Markets</u></p> <p>(1) All Grade B signals of TV stations.</p> <p>(2) All TV translator stations in the cable community with 100 watts or higher power.</p> <p>(3) All educational TV stations within 35 miles, regardless of TV contour coverage over cable community.</p> <p>(4) All TV stations "significantly viewed" in cable community, without regard to distance or TV contour coverage over cable community. **</p>
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* See note, page 8
** See note, page 8

<p>b) Carriage Priority Two -- TV stations that may be carried at option of cable system.</p>	<p>First 50 TV Markets (1-50)</p> <p>(1) Those additional TV stations, which including those TV signals required to be carried as described in (A) above, would provide the following total of TV signals on the cable system:</p> <p>a) 3 full network TV stations (ABC, CBS, NBC).</p> <p>b) 3 independent stations.</p> <p>(2) Additional educational and one or more non-English language TV stations.</p>	<p>Second 50 TV Markets 51-100</p> <p>(1) Those additional TV stations which, including those TV signals required to be carried as described in (A) above, would provide the following total of TV signals on the cable system.</p> <p>a) 3 full network TV stations (ABC, CBS, NBC).</p> <p>b) 2 independent TV stations.</p> <p>(2) Additional educational and one or more non-English language TV stations.</p>	<p>Smaller TV Markets (below 100)</p> <p>(1) Those additional TV stations which, including those TV signals required to be carried as described in (A) above, would provide the following total of TV signals on the cable system.</p> <p>a) 3 full network TV stations (ABC, CBS, NBC).</p> <p>b) 1 independent TV station.</p> <p>(2) Additional educational and one or more non-English language TV stations.</p>	<p>Outside All TV Markets</p> <p>(1) Any additional TV stations, without restriction.</p>
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<p>C) Carriage Priority Three (Additional Service) -- bonus choices, which may be carried, at option of cable system.</p>	<p><u>First 50 TV Markets (1-50)</u> <u>Second 50 TV Markets (51-100)</u></p> <p>The cable system may carry 2 additional independent TV stations, provided, however, that the number of additional stations permitted under this bonus choice is reduced by the number of TV stations added to the cable system under the carriage priority two, (B) above. Educational and non-English language stations will not be counted in meeting the quota. For example, assume that a cable system in the 37th largest TV market is required to carry under carriage priority one, (A) above, the 3 major networks and 2 independent stations. The cable system can add 1 "out-of-market" independent station under the carriage priority two, (B) above, to attain the minimum service level of 3 full network stations and 3 independent stations. Then, under the bonus choice (C), this cable system could add only 1 more independent station, rather than 2 independent stations, since the 1 "out-of-market" station is counted in meeting the 2 bonus choices.</p>	<p><u>Smaller TV Markets (below 100)</u></p> <p>None.</p>	<p><u>Outside All TV Market:</u></p> <p>Any addition TV stations without restriction.</p>
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D) Leapfrogging
Rules

First 50 TV Markets (1-50) Second 50 TV Markets (51-100) Smaller TV Markets (below 100)

Network Stations: Cable system must afford priority of carriage to the closest such station or, at the option of the cable system, to the closest such station within the same state.

Independent Stations: There are no restrictions as to point of origin or type of signal (UHF or VHF) for the first 2 such stations, except if the cable system elects to carry such stations from among the top 25 TV markets, it must carry the stations from one or both of the two closest top 25 TV markets. Cable systems permitted to carry a third independent station must select a UHF station from within 200 miles of the cable community. In the absence of any such UHF station within this 200 mile area, then cable system must carry a VHF independent from within the 200 mile area or, at the option of the cable system, any UHF independent, regardless of distance.

Note: During these periods when programming on a regularly carried independent station must be deleted by virtue of the program exclusivity rules, the cable system is free to insert unprotected programming from any other stations (VHF or UHF, network or independent) without regard to point of origin and such programming may be continued to its conclusion. In addition, the cable system may also substitute other programming when the material on the regularly carried independent station is a program primarily of local interest to the distant community (e.g., local news or public affairs of unique interest to the distant community but of little or no interest to the cable community).

Outside All TV Markets

There are no leapfrogging restrictions applicable in these areas.

Notes

* In the case of Grade B overlaps, a cable system in a top 100 TV market (within the 35 mile zone of a designated city in a top 100 TV market) would be permitted to carry the Grade B signal of a TV station from another top 100 or smaller TV market, but only if (a) the cable system were located wholly within 35 miles of the latter market, or (b) the signal were found to have "significant" over-the-air viewing, as defined by the FCC, in the cable community (even if the community of the Grade B signal is located in excess of 35 miles of the cable community). The same standards are applicable to the carriage of Grade B signals licensed to top 100 TV markets by cable systems located within 35 miles of smaller TV markets. These standards do not apply in the case of Grade B overlap between two or more smaller markets; i.e., a cable system within a smaller TV market may carry the Grade B signals of TV stations licensed to other smaller markets.

** "Significant viewing" is defined in the FCC Rules for network and independent TV stations as follows:

A network station will be considered as "significantly viewed" if it has a 3% share of the viewing hours and at least a 25% net weekly circulation in the cable community.

An independent station will be considered as "significantly viewed" if it has a 2% share of the viewing hours and at least 5% net weekly circulation in the cable community.

The FCC has prepared a list of stations which are significantly viewed in each county of the U. S. and it indicated that it will accept this county-wide information to establish viewing levels for signals in all communities within these counties. The FCC further indicated that it would accept these figures as conclusive until March 31, 1973, at which time those wishing to make supplemental showings for the purpose of qualifying new signals under the "significant viewing" test may do so by following procedures outlined by the FCC.

c. Grandfathering Rules

Television signals which cable systems were authorized by the FCC to carry or which were lawfully being carried prior to March 31, 1972, are "grandfathered," i.e., the new television carriage rules would not be applied to such signals. Authorized signals include those signals whose carriage has been permitted by specific decision of the FCC and those signals which are authorized by virtue of the fact that the cable system provided notification, in accordance with earlier FCC rules, and no objection to that notification was submitted to the FCC. In this connection, however, the signals listed in the notification must have been consistent with the then existing FCC cable rules in order for such signals to be "grandfathered."

For example, if a cable system in a top 100 market community provided a notification on June 6, 1971, which included the carriage of Grade B signals and also a distant (non-Grade B) signal, and no objections to this notification were filed, the Grade B signals would be authorized and thus "grandfathered" even if the system is not operational by March 31, 1972 (although an FCC certificate of compliance will be needed before the proposal can be implemented, as explained below). The distant signal would not be authorized or "grandfathered" since the FCC's then existing rules barred the carriage of distant signals into top 100 market communities without specific prior written authority of the FCC.

d. Certificate of Compliance

Effective March 31, 1972, no cable system may commence new operations or add a television signal to an existing operation unless it files an application with the FCC for a certificate of compliance and the FCC grants this application.*/ A cable system in operation prior to March 31, 1972 does not have to file an application for certificate of compliance with respect to those signals which it was lawfully carrying prior to March 31, 1972; such a cable system can continue to carry these signals until the end of its current franchise period or March 31, 1977, whichever occurs first, at which time a certificate of compliance is required to permit continued operation with the existing signals. If a cable system files an application for a certificate of compliance within 30 days prior to the date on which its current franchise expires or March 31, 1977, whichever occurs first, it will be permitted to continue to operate with its existing television signals until the FCC acts on the application.

If the carriage of specified television signals by a cable system is authorized (by means of a specific FCC decision or compliance with the notification procedure)

*/ Existing cable systems seeking authority to add new signals after March 31, 1972 will not be required to comply at this time with all the new franchising provisions (see page 30, below).

and if the cable system is not in operation with those signals before March 31, 1972, the cable system is nevertheless required to file and receive FCC approval of the application for certificate of compliance before it can commence operation with the signals in question. In this connection, the advantage of the signals being authorized prior to March 31, 1972 is that the FCC may permit the carriage of such stations even though such carriage is inconsistent with the new cable rules if the signals have been "grandfathered" as described above.

Program Exclusivity

a. Network Program Exclusivity

The previous exclusivity rule was based on a system of priorities that protected a television station of higher priority against having its program duplicated on the same day by cable carriage of a station with a lower priority. There are two significant changes embodied in the new rule. The new rule provides:

(1) only for simultaneous non-duplication protection, rather than same day non-duplication protection, and

(2) it applies only to network programming.

There is no non-duplication protection requirements for any programming other than network programming (e.g., local programs are not entitled to protection), except in the top 100 television markets where syndicated programming is entitled to non-duplication protection, as described below. Syndicated programming is not entitled to non-duplication protection on cable systems in any market below the top 100 markets.

The new rule provides that a cable system must, upon request of a station entitled to receive protection, maintain that station's exclusivity as an outlet for network programming against lower priority, simultaneously broadcast duplicating signals, but not against signals of equal priority, in accordance with the following order

of priorities:

- (1) Television stations within whose principal city contours the cable community is located, in whole or in part.
- (2) Television stations within whose Grade A contours the cable community is located, in whole or in part.
- (3) Television stations within whose Grade B contours the cable community is located, in whole or in part.
- (4) Television translator stations with 100 watts or higher power licensed to the cable community.
- (5) Television stations, which do not fall within categories (1)-(4) above and which are being carried because they are "significantly viewed" in the cable community, are not entitled to network non-duplication protection. There is one exception to this rule: television stations licensed to communities in smaller television markets whose signal is being carried by a cable system located outside of all television markets by virtue of the fact that the signal is "significantly viewed" in the cable community are entitled to receive network non-duplication protection. (Such a station is not entitled to exclusivity protection, however, if it was authorized or lawfully being carried by a cable system prior to March 31, 1972).

b. Syndicated Program Exclusivity

Exclusivity Rules in General

The rules concerning the protection of syndicated programming are applicable only to cable systems in the top 100 television markets, (i.e., cable systems in communities located within 35 miles of designated communities in the top 100 television markets). The new rules provide that, even though a cable system may carry a particular out-of-market television station, it must black out the signal

of the television station when that station is broadcasting a syndicated program which is entitled to exclusivity protection due a top 100 market station.

A syndicated program is defined as any program sold, licensed, distributed or offered to television stations in more than one market within the United States for non-interconnected (i.e., non-network) television broadcast exhibition, but not including live presentations.

Television Markets 1 - 50

Cable systems, in order to provide exclusivity protection, upon receipt of appropriate notification, cannot present protected syndicated programming on a station carried under carriage priorities two and three.

(1) for one year after the date on which the program is first licensed or sold to a television station any place in the United States and

(2) for the life of the exclusive contract under which the program is sold to a local station.

The one year pre-clearance provision means that in a top 50 television market a cable system cannot carry syndicated programming on an out-of-market station for a period of one year from the date on which the program is licensed or sold to a television station any place in the United States, even though the program has not been sold in the market of the cable system. For example, if a particular syndicated program was first in New York

(and this was the first sale in the United States) and, thereafter, it was sold in Baltimore, but has not been sold in Washington, D.C., a Washington D.C. cable system would be precluded from carrying this program through the importation of an out-of-market television signal (e.g., a Baltimore or New York television signal) for a period of one year after it was first sold in New York, even if the program was not purchased or broadcast by a Washington, D.C. station. Assuming that a Washington, D.C. television station now purchases this particular program, the Washington, D.C. cable system would then be precluded from importing this program from an out-of-market signal (e.g., a New York or Baltimore signal) for the additional period of the life of the contract between the syndicator and the Washington, D.C. television station (assuming the proper exclusivity terms are written into the agreements in the case of agreements executed after March 31, 1972).

Television Markets 51-100

Cable systems, in order to provide exclusivity protection, upon receipt of an appropriate notification, cannot present protected syndicated programming on a station carried under carriage priorities two and three where such program is under an exclusive contract to a station licensed to a designated community in the market, except

as follows:

- (1) A cable system may carry any syndicated programming if the program is carried by the cable system in prime time and will not also be broadcast by a commercial market station in prime time during the period for which there is exclusivity for the program.
- (2) For off-network series programs, the cable system may carry the programs (a) prior to the first non-network broadcast in the market of an episode in the series, and (b) after a non-network first run of the series in the market, or after one year from the date of the first non-network broadcast in the market of an episode in the series, whichever ever occurs first.
- (3) For first-run series programs, the cable system may carry the program (a) prior to the first broadcast in the market of an episode in the series, and (b) after two years from the first broadcast in the market of an episode in the series.
- (4) For first-run, non-series programs, a cable system may carry the program (a) prior to the date the program is available for broadcast in the market under the provision of any contract or license of a television broadcast station in the market, and (b) after two years from the date of such first availability.
- (5) For feature films, the cable system may carry the program (a) prior to the date such film was available non-network broadcast in the market under the provision of any contract or license of a television broadcast station in the market, and (b) after two years after the date of such first availability.
- (6) For other programming, the cable system may carry the program one day after the first non-network broadcast in the market or one year after the date of purchase of the program for non-network broadcast in the market, whichever ever occurs first.

Parties Entitled to Exclusivity

The rules provide that appropriate notice must be given to cable systems when exclusivity rights are asserted. The one-year pre-clearance provision for markets 1-50 is designed primarily for the benefit of the copyright holders and therefore the copyright holders have the obligation to notify each cable system in markets 1-50 when a sale has been made and that the pre-clearance period is running. With regard to the exclusivity rights stemming from exclusive contracts of the local market television stations in markets 1-100, the television stations seeking protection have the obligation to notify each cable system of the exclusivity sought.

In order to be entitled to exclusivity for syndicated programming, the television station must have exclusivity rights by contract against over-the-air and cable carriage of the programming within a 35 mile area of all designated communities in the market, as explained more fully below. This exclusivity will not be recognized in a designated community of another top 100 market, unless such community is wholly within 35 miles of the designated community of the station seeking exclusivity.

For example, a Baltimore television station "significantly viewed" in Washington, D.C. would have no right to preclude the carriage of its syndicated program by means of an out-of-market television signal (e.g., from

Philadelphia or New York) carried on the Washington, D.C. cable system. This is the case since Baltimore is a designated city in a top 100 market which does not fall wholly within 35 miles of Washington, D.C., a designated city in another top 100 market. The Washington, D.C. television station, however, could preclude the carriage of a protected program on an out-of-market signal on a Washington cable system and on other cable systems located within 35 miles of Washington, D.C. Assuming that the community of the cable system were located between Washington, D.C. and Baltimore and within 35 miles of both cities, the cable system would not have to protect the Washington, D.C. or Baltimore station against each other (since both are treated as local stations in relation to the cable community), but the cable system would have to protect syndicated programming of the Washington, D.C. and Baltimore television stations against out-of-market signals (e.g., from New York).

In hyphenated top 100 markets (e.g., Kalamazoo-Grand Rapids-Muskegon-Battle Creek, Michigan, the 37th largest market), exclusivity beyond the 35 mile area of the designated community of the television station requesting protection will be recognized only to the extent that the station has contractual exclusivity against the stations in other designated communities in the hyphenated market. In such cases, the television station will be entitled to exclusivity in an area within 35 miles of the other

designated communities in the market. For example, a station in Kalamazoo would be entitled to exclusivity with regard to its syndicated programming on cable systems within a 35 mile area of Grand Rapids (which is in excess of 35 miles from Kalamazoo) only if the Kalamazoo station has a contract providing it with exclusivity against the Grand Rapids station with regard to the programming in question.

All contracts between program suppliers (copyright holders) and television stations in effect prior to March 31, 1972, shall be presumed to be exclusive against over-the-air and cable carriage of the program within 35 miles of all designated communities in the market. Contracts entered into after March 31, 1972, must, at least, specifically provide for:

(1) program exclusivity against other television stations

(a) licensed to the designated community of the station seeking protection or

(b) licensed in other communities which are hyphenated with the community of the station seeking protection, and

(2) program exclusivity against cable dissemination of the program within 35 miles of

(a) the community of the station seeking protection or

(b) communities hyphenated with the community of the station seeking protection.

The new rules provide that those portions of the contracts between copyright holders and television stations, which are relied upon by television stations in asserting exclusivity rights, must be maintained in the public file for the television station and must be made available for public inspection. Cable systems, on the other hand, are required to maintain a log of the out-of-market television signals carried and the programs offered on those signals.

Grandfathering Rules

Cable systems in operation prior to March 31, 1972 are not required to comply with the syndicated program exclusivity rules for signals being carried prior to March 31, 1972. The requirements apply to new signals added after March 31, 1972 or if the cable system extends operations into a new community or beyond a discrete area to which it has been specifically limited by FCC order. All cable systems commencing operations after March 31, 1972 will be subject to the syndicated program exclusivity rules.

II. Access to and Use of Non-Broadcast Channels

The FCC has adopted new rules concerning the use of non-broadcast channels. These rules relate to public access channels, educational access channels, local government access channels, leased access channels, minimum channel capacity, availability of additional channels upon demand, two-way communications and cablecasting (program origination).

Television Markets 1-100

The requirements listed below are applicable only to cable systems located within the top 100 television markets (i.e., to cable systems located, in whole or in part, within 35 mile zones of designated cities in the top 100 television markets). These requirements are applicable to all cable systems within the top 100 markets that commence operation on or after March 31, 1972. Cable systems that commence operations before March 31, 1972 have five years (or until March 31, 1977) within which to comply with the requirements. However, if cable systems begin to provide any of the access services described below earlier than March 31, 1977, they must then comply with the rules governing the use of such channels (i.e., program content control, assessment of costs and operating rules). Cable systems which receive certificates of compliance to add television signals to their operations earlier

than March 31, 1977, must comply with the requirements outlined in items 4-10 below by the time they add the additional signals.

(1) Minimum Channel Capacity: Each cable system must have at least a minimum channel capacity of 20 channels (120 MHz of band width) available for immediate or potential use.

(2) Additional Channels: For each channel utilized to carry television broadcast signals, the cable system must provide a channel (6 MHz in width) suitable for non-broadcast uses. For example, if a cable system has 11 channels on which it carries the signals of television stations, it must then have 11 other channels available for non-broadcast use.

(3) Two-Way Communications: Each cable system must maintain a plant having the technical capacity for non-voice return communication. However, two-way capacity for each subscriber will not be required at this time.

(4) Public Access Channels: Each cable system is required to maintain at least one special designated, non-commercial public access channel available on a first-come, non-discriminatory basis to any member of the public or community group which desires to use it. The cable system is required to maintain and have available for public use at least the minimal equipment and facilities necessary for the

production of programming on this channel. This channel may be used for other purposes when it is not being used as a public access channel, provided that such other uses do not interfere with its function as a public access channel. One public access channel must always be made available without charge, except that production costs may be assessed for live studio presentations exceeding five minutes. To the extent that the cable system has more than one public access channel, charges may be made for the use of such other public access channels. However, these charges, as well as charges for production costs for live studio presentations exceeding five minutes on the first public access channel, must be consistent with the FCC's goal of affording the public a low-cost means of television access.

(5) Educational Access Channels: Each cable system is required to maintain at least one specially designated channel for use by local educational authorities. The cable system is prohibited from imposing any charge for the use of this channel during a period beginning at the commencement of cable television service in the community and lasting until five years after completion of the basic trunk line of the system. The FCC stated that it would consider the question of whether to permit charges on this channel after this initial experimental period has expired.

(6) Local Government Access Channels: Each cable system is required to maintain at least one specially designated channel for local government uses. The prohibition against charges for this use of this channel is the same as that which is applicable to educational access channels, above.

(7) Leased Access Channels: Each cable system is required to offer unused channels and unused portions of the specifically designated access channels (i.e., public access, educational access, and local governmental access channels) for a lease to the public. Any lease of the unused portion of the specifically designated channels must be subject to the understanding that it is subject to displacement if there is a demand to use the channels for their specifically designated purpose. On at least one of the leased channels, priority must be given to part-time users. There are no restrictions on the rates which may be charged for these leased channels, although the Commission may become concerned if such rates are unreasonable.

(8) Expansion of Access Channel Capacity: Cable systems are required to make additional access channels available as the demand arises. The FCC established the following complex formula to determine when a new channel must be operational: whenever all of the channels described in items 4-7 are in use during 80% of the week days, Monday-Friday, for 80% of the time during any consecutive three-hour

period for six consecutive weeks, the cable system will be afforded a six month period within which to make a new channel available for public access.

(9) Program Content Control: Each system is required to refrain from exercising any control over program content on any of the channels described in items 4-7 above. However, this limitation is not intended to prevent the cable system from taking appropriate steps to ensure compliance with the operating rules for these channels as described below.

(10) Operating Rules: In connection with the public access channels, each system is required to establish rules (a) requiring first-come, non-discriminatory access to members of the public; (b) prohibiting the presentation of advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); (c) prohibiting the presentation of lottery information and obscene or indecent material; and (d) permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time; such a record to be retained by the cable system for a period of two years.

In connection with educational access channels, each cable system is required to establish rules which contain the standards described in (b) (c) (d) above for public access channels.

In connection with leased channels, each cable system is required to establish rules (a) requiring first-come, non-discriminatory access; (b) prohibiting the presentation of lottery information and obscene or indecent matter; (c) requiring sponsorship identification; (d) specifying an appropriate rate schedule; and (e) permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time; such a record is required to be retained by the cable system for a period of two years.

The operating rules relating to public access, educational and leased channels are required to be filed with the FCC within ninety days after the cable system first activates any such channels. In addition, the cable system is required to make these operating rules available for public inspection at the office of the system.

The FCC's rules provide that, except where specific authority of the FCC is received, no local or state entity may prescribe any other rules concerning the number or manner of operation of any access channels other than the local government access channel. However, franchise specifications concerning the number of such channels for cable systems in operation prior to March 31, 1972 shall continue in effect.

All Communities Outside of the Top 100 Television Markets

The FCC did not impose any non-broadcast or access channel requirements on cable systems located in communities situated wholly outside of the top 100 television markets. The FCC stated that it would permit local and state franchising authorities in these areas to require cable systems to provide access service. However, the local or state authority cannot require the cable system to exceed the provisions concerning the availability and administration of access channels established by the FCC for cable systems in the top 100 television markets. Moreover, if a cable system located outside of the top 100 markets provides any access programming, it is required to comply with the Commission's Rules concerning the administration of such access channels (i.e., program content control, assessment of costs, and operating rules).

Cablecasting (Program Origination)

The rules of the FCC requiring program origination by cable systems are applicable to all cable systems having 3,500 or more subscribers regardless of the market in which the system operates. This rule is similar to an earlier one adopted by the FCC, the legality of which is at issue in a case pending before the U.S. Supreme Court.

Although the FCC's rules do not specifically deal with the question of how the number of subscribers is computed for purposes of its program origination requirements in the case of system serving multiple communities from a single head-end, it appears that the system in each community would be considered as a separate cable system. Thus, if a cable system, utilizing a single head-end, has 2,000 subscribers in community A, 500 subscribers in community B, 2,500 subscribers in community C and 4,000 subscribers in community D, it would not be required to originate programming in communities A, B and C, but would be required to originate in community D.

The FCC's rules provide that cable systems with 3,500 or more subscribers are required (a) to operate to a "significant extent" as a local outlet by presenting program originations and (b) to have available facilities for local production and presentation of programs other than automated services. The rules further provide that such program origination must be limited to one or more designated channels which may be used for no other purpose.

The FCC rules state that cable systems located outside of the top 100 television markets are prohibited from entering into any contracts, arrangements or leases for the use of its cablecasting facilities which prevents or inhibits the use of such facilities for substantial portions of time (including the time period 6-11 P.M.) for

local programming which is designed to inform the public about controversial issues of public importance. There is no similar prohibition written into the rules applicable to cable systems located within the top 100 television markets, but we believe that, as a matter of policy, the FCC would look with disfavor on an arrangement which inhibits the use of cablecasting facilities in a top 100 market.

All cable systems which engage in program origination (either because they are required to originate by virtue of the fact that they have 3,500 or more subscribers or because they voluntarily engage in originations, i.e., those with fewer than 3,500 subscribers) are required to meet standards established by the FCC in conducting their program origination operations. The FCC has imposed standards in the following areas of program origination; programming involving candidates for public office; the Fairness Doctrine (including personal attacks and political editorials); prohibitions against the dissemination of lottery information and obscene or indecent matter; advertising standards; sponsor identification requirements; and requirements concerning program origination channels for which a per-program or per-channel charges are made. Congress has separately provided that the new Federal Elections Campaign Act of 1971 shall apply to cable systems.

III. Federal-State/Local Regulatory Relationships

The FCC rules provide that, in order for a cable system to obtain a certificate of compliance, it must first have a franchise or other appropriate authorization that contains specific provisions consistent with the franchise requirements established by the FCC. All new cable systems which commence operations after March 31, 1972 are required to have conforming franchises when they seek certificates of compliance to authorize the commencement of service. Cable systems in operation prior to March 31, 1972 will be required to certify within five years (i.e., on or before March 31, 1977) or on the renewal of its franchise, whichever comes first, that their franchises meet the requirements of the FCC rules. Cable systems in operation prior to March 31, 1972 will be afforded this additional time period within which to obtain conforming franchises even if the cable systems file certificates of compliance after March 31, 1972 in order to add a new television signal to an existing operation.

The franchise requirements (i.e., those standards which should be specified in the franchise) imposed by the FCC are as follows:

1. The franchisee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements must be

approved by the franchising authority as part of a full public proceeding. The FCC stated that it would expect franchising authorities to publicly invite applications, that all applications will be placed on public file, that notice of such filings will be given, that where appropriate a public hearing will be held to afford all interested persons an opportunity to testify on the qualifications of the applicants, and that the franchising authority will issue a public report setting forth the basis for its action.

2. The franchisee shall accomplish significant construction within one year after receiving a certificate of compliance from the FCC. Thereafter the franchisee shall equitably and reasonably extend energized trunk cable to a substantial percentage of its franchise area each year. This percentage shall be determined by the franchising authority. The FCC stated, however, that, as a general proposition, it believes that energized trunk cable should be extended to at least 20 percent of the franchise area per year, with this extension to begin within one year after the Commission issues its certificate of compliance. The FCC further stated that this 20 percent figure was not intended as an inflexible figure since local circumstances may vary from community to community.

3. The initial franchise period and new renewal franchise shall be of reasonable duration. Although no specific duration is specified in the FCC's rules, the FCC stated that it believes that in most cases an initial franchise term should not exceed 15 years and that renewal periods be of reasonable duration. The FCC left the ultimate decision on franchise duration to the franchising authority based upon the recognition that what constitutes a reasonable period may vary depending upon particular circumstances in a given community.

4. The franchising authority has specified or approved the initial rates which the franchisee charges subscribers for installation of equipment and regular subscriber service. The FCC states that the appropriate standard for the maintenance of rates is that such rates are fair to the cable system and to the subscribing public -- a matter that will depend upon the facts of each particular case. The rules of the FCC further provide that there shall be no changes in rates charged to subscribers except as authorized by the franchising authority after an appropriate public proceeding in which interested parties have the right to participate.

5. The franchisee shall specify procedures for the investigation and resolution of all complaints relating to the quality of service, equipment malfunctions and similar matters. The franchisee shall maintain a local business office or agent in the community for these purposes.

6. If the Commission amends or modifies its requirements concerning the provisions of franchises, such new requirements shall be incorporated into the franchise within one year of the adoption of the modification or amendment by the FCC or at the time of franchise renewal, whichever occurs first.

7. The FCC rules provide that the franchise fee must be reasonable, e.g., in the range of 3 to 5 percent of the franchisee's gross subscriber revenues per year (including all forms of consideration such as initial lump sum payments). However, if the franchisee fee exceeds 3 percent of such revenues, the FCC will not issue a certificate of compliance to the cable system until the reasonableness of the franchise fee is approved by the FCC upon (a) a showing by the franchisee that the fee in excess of 3 percent will not interfere with the effectuation of the goals established by the FCC for cable systems and (b) a showing by the franchising authority that the fees in excess of 3 percent are appropriate in light of its planned local regulatory program for cable systems. Cable systems which were in operation prior to March 31, 1972 are not required to comply with the requirement concerning reasonable franchise fees until the end of its current franchise period or March 31, 1977, whichever occurs first.

IV. Technical Standards

The FCC has adopted technical standards which apply to CATV systems in all markets, regardless of size. The more important of these requirements are as follows:

1. CATV operators are required to conduct complete performance tests of each system at least once during every calendar year and are required to keep the data resulting from such tests on file at the system's local office for at least five years. The rules do not require that the test data be filed with the FCC, but the data must be made available for inspection by the FCC upon request.
2. The rules establish standards by which the performance tests are to be made; in general terms, the tests are to be made under normal operating conditions -- i.e., with amplifiers operated at normal gains -- and with substitute carriage or pilot signals utilized where necessary to approximate normal operations.
3. The rules establish standards for the frequency boundaries of cable television channels delivered to subscriber terminals; the boundaries are those normally operative within the receiver's capabilities except that, upon a special showing, other channel arrangements such as those provided by rediffusion may be made. Minimum standards for the signal levels of the visual carrier and the aural carrier are also established, as well as relative

4. The rules specify the permissible level of radiation from a CATV system. The levels are as follows:

<u>Frequency</u>	<u>Radiation Limit (MV/M)</u>	<u>Distance (feet)</u>
Up to 54 MHz	15	100
Over 54 up to and including 216 MHz	20	10
Over 216 MHz	15	100

5. If the operation of the CATV system causes harmful interference to the reception of authorized radio stations, the rules require that the operator take whatever steps are necessary to remedy the interference; similarly, the CATV operator is responsible for the suppression of receiver-generated interference distributed by the system when the interfering signals are introduced into the system at the receiver.

6. There is no grandfathering provision with regard to the radiation limits which become effective on March 31, 1972 and will apply to all cable systems. Similarly, the requirement that annual performance tests be made, and the rules governing the making of such tests become effective on March 31, 1972, and will apply to all cable systems. However, systems in operation on March 31, 1972 need not comply with the other technical standards (e.g., requirements concerning signal levels) until March 31, 1977.

Cohn and Marks

March 17, 1972

The following letter provides a measure of direct access to Federal Communications Commission thinking vis-a-vis desirable additions, changes or new directions related to cable television.

Suggestions of this kind should be communicated to:

Dr. Bernarr Cooper
Chief
Bureau of Mass Communications
State Education Department
Albany, New York 12224

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

BUREAU OF MASS
COMMUNICATIONS

JUL 25 1972

July 24, 1972

IN REPLY REFER TO
4000-J

Dr. Bernarr Cooper
Chief, Bureau of Mass Communications
The University of the State of New York
The State Education Dept.
Albany, New York 12224

Dear Dr. Cooper:

I am pleased to advise you that Chairman Burch has appointed you to serve on the Commission's Federal-State/local Advisory Committee. Enclosed is information about the organization of the Committee and your specific Subcommittee assignment.

Thank you for your interest in cable television.

Sincerely yours,



Sol Schildhause
Chief, Cable Television Bureau

Enclosures

CABLE TELEVISION:
The Study Phase of the Regulatory Process

**Report of Subcommittee B
of the FCC Federal-State/Local
Advisory Committee on Cable
Television***

***Only those criteria deemed of immediate concern and interest
are reported here as a partial summary of the entire report
of the Subcommittee.**

Chairman: Donald A. Dunn
Stanford University

Committee Members:

Frank L. Allen
TelePrompTer Corp.

Walter S. Baer
The Rand Corporation

Joseph W. Benes
Coachella Valley Television

Morton Berfield
Cohen and Berfield

Anne W. Branscomb
Attorney-at-Law

Robert A. Brooks
Telcom Engineering, Inc.

Bernarr Cooper
New York State Education Dept.

Edwin Deagle
Cable Television Information Center

William F. Eich
State of Wisconsin Public Service
Commission

Byron D. Jarvis
Metz and Jarvis Associates, Inc.

L. W. Kliever
NVEC-TV

Robert S. Power
Department of Commerce

Norman C. Lerner
Transcomm, Inc.

F. Sherwood Lewis
Control Data Corp.

J. Alan MacKay
Office of Economic Opportunity

Martin Malarkey
Malarkey, Taylor and Associates

Harvey C. Mansfield
Columbia University

Sherrill C. McMillon
U.S. Dept. of Health, Education
and Welfare

Earle K. Moore
Moore, Berson, Hamburg and Bernstein

Michael D. Neben
U.S. Dept. of Health, Education
and Welfare

Larry Perry
Attorney-at-Law

Rev. W. James Richards
United Church of Christ

Michael H. Roberts
State of Minnesota Dept. of Public
Services

Herbert Schulkind
Fly, Shuebruk, Blume and Gaguine

Don Shuler
Cypress Communications Corp.

W. Randolph Tucker
Electra-Communications, Inc.

Fred W. Warden
IBM Corporation

Thomas R. Warner
U.S. Independent Telephone Assn.

Hathaway Watson
RKO General, Inc.

E. Richard Zitzman
Ross Telecommunications Engineering
Corp.

Introduction

Eight major points were considered by Subcommittee B in its report to the FCC. Those eight points included the following:

1. Subscriber rates and prices for auxiliary services and franchise fees;
2. Public access channels, educational access channels and government access channels;
3. Leased access channels;
4. Community need for two-way capability; or, additional access channels beyond FCC requirements;
5. Interconnections;
6. Modernization, system expansion, equipment compatibility; and poll attachments;
7. Ownership of cable systems;
8. Privacy.

The general thrust of Subcommittee B was to take the following position:

- a) That cable television is a local community matter;
- b) The local level is the proper locus for most decisions regarding franchising and use of a CATV system;
- c) Most local communities require sufficient information and a continuous flow of information which can be encouraged or disseminated in several ways, mainly from a state or regional level;

(This, of course, has been the position of the Regents in their position paper of November 1970. It may be recalled that the Regents at that time suggested that the proper authority for disseminating information regarding educational and community service options would be that of the Regents. In this way, the Regents propose to aid the new CATV Commission of New York State.)

- d) It is the function of federal and state governments to provide guidelines for local action and to handle only those aspects of regulation which are difficult or impossible for local communities to handle successfully;
- e) Local level action will frequently require many different local level groups;
- f) General understanding of cable issues and detailed understanding of specific options is necessary for a community;

(It is in disseminating such information to communities and working with them that the Regents propose to serve the needs of the CATV Commission. Much expertise is needed at the local level and communities because they lack this expertise are frequently reluctant to commit funds to adequate uses of CATV and such funds might appropriately be committed from the state level.)

- g) Before franchising a study phase should be initiated and continued throughout the existence of the franchise agreement. The purpose of that study phase is

- 1) to decide on community uses;
- 2) to be equitable in determining franchises;
- 3) to lend direction and adequate controls regarding the technical aspects of the system operation and its extension;
- 4) to make provision in the franchise ordinance for periodic review and renegotiation.
- 5) to provide for open hearings before franchises are made;
- 6) to arrange easy access to documents for the citizenry at large so that these may be discussed adequately at hearings. Consultants should be available to citizen groups in a community to enhance the value of the participation in the franchising authority's decisions.

(The interence here is that no one group of citizens should take over the entire influence and direction of the way in which a franchise shall be granted or what the franchise ordinance shall provide.)

- h) That the function of the local franchising authority be the locus for gathering information and making it available to the community;
- i) Significant alternatives should be available to the local level before franchises are granted and during the process of operation so that intelligent decisions for the benefit of the community can continue to be made. Consultants are needed during the study phase and consultants, of course, require funding. One source of funds for this franchise purpose is the franchise applicants themselves. Another is the state government, and states and federal government can play significant roles in gathering and disseminating information.
- j) Major functions of a state level commission should include the following:
 - 1) alternatives for state action;
 - 2) encouraging intrastate interconnection where appropriate;
 - 3) providing a coordinating function whereby interstate interconnection on a regional basis can be affected;
 - 4) providing a statewide source of information on cable television.

The following conclusions were drawn by Subcommittee B:

1. The appropriate subdivision of CATV labors and areas of concern between the federal, state and local level is still an open-ended consideration. States can contribute to and encourage experimentation in the development of cable television.
2. Technical standards of national uniformity are desirable. However, state-to-state variations may be desirable with respect to such matters as interconnection.
3. In all cases a study phase before and during the operation of a CATV system is necessary and desirable and should involve all three levels of government.

A significant recommendation of Subcommittee B was that the information should be made available to states and from states in relation to the following organizations:

1. The Federal Communications Commission
2. The National Cable Television Association
3. The Cable Television Information Center of the Urban Institute

"Public Access Channels, Educational Access Channels,
and Government Access Channels"

Public access channels fall into the following three categories:

- a. those available to the community;
- b. educational access; and,
- c. local government access.

The present rules of the FCC provide the following:

- . The cable system operator shall allocate time to users of access channels within the rules and regulations established by the Federal Communications Commission;
- . Use of access channels is at no cost, but cost for programming at a very high level of sophisticated presentation can be expensive. The operator of a system is unlikely to use his limited resources to actively develop the use of such channels;
- . Development of the use of access channels would, of course, receive full cooperation from the operator of a system if the programming was attractive;
- . There can be problems for the operator of a channel between competing claimants for the use of any given channel.

Subcommittee B suggests the following innovation to help in the allocation and use of public access channels: The establishment of one or more local boards to take the responsibility for promoting the use of access channels and for allocating time on them. Preferably,

in a large community three boards, each dealing with one of the channels, might be appropriate. There should be coordination between the boards, or they might function as three parts of one large representative board. The functions of the boards might properly be the following:

- a. For the educational channel, representatives of local public school systems, preschool education, private and parochial schools, adult education, vocational education and university or higher institutional education;
 - 1) Some of the funds collected by the franchising authority as a percentage of subscriber revenue might be used to promote the use of these channels.
 - 2) An allover board or a combination of the three kinds of board activities described above could facilitate equitable administration of such funds.
- b. Such board (s) should either be appointed or elected;
- c. Such board (s) would be more favorably disposed toward meeting needs of the community; would also relieve the CATV operator of any thought of being of service only to pressure groups.

The FCC encourages experimentation by local communities. However, provision is not made under the present FCC rules for the governing of such committees. Only the cable system operator is governed.

A waiver might be sought from the FCC by specific franchising authorities. The purpose of that waiver would be to permit a local board to accept jurisdiction and administration of the operation of access channels in the given community.

Mechanisms for settling disputes between the local board, the system operator and the franchising authority should be carefully worked out in advance.

Subcommittee B recommends that the establishment of such local advisory committees or boards would bring potential benefit to the community and the establishment of such boards would be well worth the effort, particularly if these are elected by local communities.

The following should be noted in re the functions that might be exercised by a board in the regulation of a public access channel:

- a. The FCC has a first-come first-served rule which would presumably always be followed;
- b. Board could arrange times of presentations to assist both viewers and presentors;

c. In re the government and education channel:

- 1) The board which aids operator in assigning time and preparing programming for the government channel should be made up of a diversity of governmental unit representation. In a small community such representation not necessary; in a larger community, units from a Department of Transportation, to one of Mental Hygiene, Sanitation, or the like should seek appropriate time to make known the functions of such boards and ways in which changes can affect the community.
- 2) In the case of the educational channel, a board should help in making programming time allocation decisions.

d. An FCC rule change might seek permission to pool the use of all three channels.

(e.g., during certain hours might be best to make more than one access channel available for educational need. Particularly true during daylight and inschool hours when use of more than one channel might be particularly helpful for educational purposes. This same approach could apply when more than one channel might be needed either for community service or for governmental programs. A single board operating to aid the use of these channels might render decisions when it would be difficult for either the franchising authority or the system operator to do so.)

e. Without a rule change innovative thinking can also help. -- Certain public institutions that can be regarded as both governmental and educational.

- 1) These institutions could qualify for the use of more than one public access channel at a given time as these are needed. Examples of this dual qualification might include such institutions as the following: libraries, museums, teaching hospitals, and the like. A neutral board would aid a system operator and protect the community simultaneously.

f. FCC rules and regulations provide that when public access channels are unused they may be leased by the system operator. A board or boards seeing to the adequate use of such channels might be helpful in preventing bias in keeping access channels unused by nonpaying users.

g. Technical standards for the use of public access channels should appropriately be made at the federal level and should include the following:

- 1) Access should be made easy and as low cost as possible;

- 2) High standards for picture and sound should be established so that these are reasonably clear; standards should not be so high as to eliminate, for example, the use of black and white video equipment. Should be kept high enough to eliminate poorly done video tape. Objectives should be as indicated but should be under the regulatory control and by establishment of the Federal Communications Commission.

"Leased Access Channels"

Rules governing leased access channels are in the view of the Subcommittee the most critical part of cable regulation. Subcommittee B recommends the following:

1. Gathering of national data from all existing cable systems on the financing of access channels;
2. Local franchising authorities should establish rate structures which encourage equitable use and wide availability of leased channels.

"Non-discriminatory Rate Structures"

A non-discriminatory two-part rate structure is desirable in the following configurations:

1. A rate for services which are not revenue producing; i.e., for additional channels for educational and other non-profit users (apart from the free access channel);
2. A rate charged in excess of the cost of providing a channel because of high programming costs to the lessee and because of the high rate of income producing that the specific use of the leased channel brings about.

An overriding principle has the following parts to it:

- a. The part proportional to leased time should be adequate to cover the operator's cost plus a reasonable profit;
- b. There should be no disadvantage to the operator of the system to lease channels to educational and other non-profit sources if the recovery is his operating cost plus a very small profit.
- c. Franchising authorities and state level authorities might set regulations which would create a discriminatory pricing structure for the use of leased channels.

- d. Such a pricing structure should have the following parameters:
- . It might grant lower rates to educational non-profit users;
 - . All recommendations related to rate structures, should take place after the current five year period during which the FCC is seeking to avoid any rate regulation whatever.

"Community Need for Two-Way Capability, Additional Capacity In General, or Additional Access Channels Beyond FCC Requirements"

1. The present FCC rules provide that new systems shall be designed for expanding channel capacity and two-way capability;
2. The rules do not prevent advance technical capability and increased capacity beyond present requirements, if a waiver is obtained and specific plans exist for such capabilities.
3. The plan of such capabilities must be detailed in advance.
4. Unlimited system expansion capability is already defined in the present rules and regulations, thus providing for additional access channels as these become used up, as well.

"Interconnection"

The following are points to be regarded in relation to interconnection:

Two types of interconnection are possible:

1. Real time physical interconnection by cable and microwave link or satellite;
 - a. For purposes of exchanging programs of interest to subscribers in adjoining city;
e.g. an educational program originating in a public school in one city of value and interest to children throughout a school district which encompasses two or more cities.
 - b. For statewide microwaving purposes for programs of interest to cable systems throughout a state;
 - c. For multi-state interconnections where adjoining cities with common interests lie in different states;

- d. For regional and national satellite systems such as the Rocky Mountain educational satellites which will clearly be of interest on a multi-state interconnection basis;
- e. For commonality of programming interests where shared programming costs would create programs of high order of general interest;
- f. For interconnection and networking between congressional districts, school districts or other political jurisdictions with a commonality of interest and a desire to exchange social, cultural, educational and political programming;
- g. Networking can create major economies in terms of programming and operation;
- h. Interconnection between systems under a given franchising authority and where a state level authority exists can be regulated by such authorities for the benefit of the subscribers through multiple systems;
- i. Interconnection may be of interest on the following bases:
 - 1) For regional government associations and needs;
 - 2) For statewide cooperative arrangements;
 - 3) For interrelations between franchising authorities;
 - 4) For economic reasons by operators of multiple systems;
 - 5) Regional interconnection is also needed between franchising areas on a large regional basis, on a multi-state basis or for federal needs.

(Interconnection of cable systems is a major concern of the Regents in relation to other telecommunications systems such as:

- . satellite
- . point-to-point microwave
- . VHF and UHF broadcasting
- . ITFS systems)

2. Interconnection by means of pre-recorded video and audio tape, only.

"Ownership of Cable Systems"

The following should be noted regarding ownership of cable systems:

1. There are present federal level regulatory controls on ownership of cable systems by owners of television stations, newspapers or other types of firms such as multiple system operators with "too large a share of the total cable market."
2. Problems arise in relation to firms with inadequate capital or other weaknesses being granted franchises.
3. To adequately judge the capabilities of franchise seekers a format for comparable information on competing franchisees is needed, supplying such information as:
 - . financial information
 - . information on beneficial ownership
 - . information describing compliance with federal rules concerning access channels and technical standards
 - . a uniform periodic reporting format with respect to franchise fees, subscriber rights, revenues, rates for leased channels, percentage of access channels, and the like.

"Privacy"

Several issues regarding privacy are a matter of concern to Subcommittee B. These issues are noted here as being of possible interest to the Regents:

1. The way in which public access channels are used now forbids regulation of the use of those channels by the system operator. He is freed from responsibility for what is broadcast on the public access channels. However, the subscriber to a cable system operation is also due some protection of his privacy. His desire not to receive certain kinds of information in his home or not to have certain channels made available at certain times in his home should perhaps give him the right to install a restrictive device of some kind on his set. The privacy of the user as well as the privacy of the recipient subscriber are both, therefore, in need of protection.
2. A second issue related to privacy concerns the accumulated record of a subscriber's program preferences, or use of services, goods purchased, contributions made, and the like.

User profiles which indicate such kind of preference would be of interest to merchandisers, political organizations, social scientists, government agencies, and the like.

Rules are necessary to limit the collection and use of such information.

Regulation protecting the subscriber must be adopted. A rule is necessary to prevent transfer of this kind of information without a written waiver or some other kind of permission from the subscriber, himself.