

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2716 SLC HB 274

2716

H B

274

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

May 13, 1983

Honorable Richard Eliason
Chairman
Labor and Commerce Committee
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

The department and the Alaska Public Utilities Commission support HB 274 which would permanently continue the exemption of cable television utilities from economic regulation.

The bill further provides (AS 42.05.711(k)) that economic regulation of a cable television utility will be instituted when 25 percent of the subscribers petition the commission for regulation. This is consistent with AS 42.05.711(e) which allows a similar petition on the part of subscribers to exempted electric and telephone utilities.

While HB 274, if passed, carries no fiscal impact, this is not the case in the event the bill is not passed; \$122,500 would be required in FY '84 to provide staff to regulate the currently exempted cable television utilities.

Enclosed are documents from the Alaska Public Utilities Commission regarding that fiscal impact.

Sincerely,



Richard A. Lyon
Commissioner

RAL/cw#2.601
51383

Enclosures

STATE OF ALASKA
FISCAL NOTE

Revision Date March, 1983

I. REQUEST

Bill/Resolution No.: HB 274
 Title: Regulation of public utilities
 Sponsor: Bettisworth
 Requestor: Labor and Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development
 Program Category Affected: Protection
 BRU, Program of Subprogram(s) Affected: Alaska Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Carolyn Guess, Chairman Phone: 273-2107
 Division: Alaska Public Utilities Commission Date: 3/22/83
 Approved by Commissioner: Richard A. Lyon Date: 3/22/83
 Department: Commerce and Economic Development

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

HB 274: FISCAL NOTE ANALYSIS:

In the event that HB 274 is not enacted, \$122,500 will be required in FY '84 to regulate the currently exempted cable television utilities.

ANALYSIS OF HB 274

The Alaska Public Utilities Commission does not have a "problem" with this bill IF it is passed. Current statute, Section 13, Ch. 136, SLA 1980, is a result of legislation previously passed which exempted cable television service from much of the regulation process of the Alaska Public Utilities Commission. That statute, however, included an automatic repeal of the exemption unless legislation was passed extending the exemption.

If this bill is passed, the Alaska Public Utilities Commission will experience no increases in funding requirements.

If this bill is not passed, and the prior exemption is repealed, the Commission will experience an increase in funding requirements because of the additional workload which will be required. Those costs are listed below:

1. Utility Financial Analyst II, Range 19

Justification: The additional requirements for auditing and regulating rates cannot be absorbed by the present staff. Regulation requires people to monitor and provide financial analysis and recommendations.

2. Consumer Protection Information Officer, Range 17

Justification: Consumer complaints generated by the addition of this regulatory activity cannot be absorbed by the present staff, which is already functioning at capacity.

3. Administrative Support Technician II

Justification: Existing administrative support staff is already beyond capacity and would not be able to absorb any of the additional workload generated as a result of the additional regulatory actions.

In FY 1984, the Commission submitted increments to fund each of these positions to provide the support required to handle

of these positions to provide the support required to handle existing regulatory activities. These were denied. The addition of the cable television service activity would only make matters worse.

Attached are Form 13's for each of the positions which would be required.

1.	POSITION TITLE UTILITY FINANCIAL ANALYST II			RANGE/STEP 19a	BARG. UNIT G	FORM 12 PAGE/LINE 1/10	GOV.	UNPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY 6	LOCATION Anchorage	ELECTION DISTRICT 7	LCC.	

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	36,492	
6.	Benefits	5,656	
7.	Supplemental Benefits	2,237	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	47,265
10.	Travel	07	4,000
11.	Contractual	03	
12.	Commodities	04	400
13.	Equipment	05	1,144
14.	Other		
15.	TOTAL COST		52,809

JUSTIFICATION:
 If HB 274 is NOT passed, this position will be required in order to perform audits of cable television services throughout the state.

 We have included an amount to cover travel costs for in-state auditing of those agencies who do not have their books residing in the Anchorage area.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	52,809
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&H USE ONLY
 4A KEY NUMBER _____

13 REQUEST FOR
 NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION
 PROGRAM CONSUMER PROTECTION
 BRU ALASKA PUBLIC UTILITIES COMMISSION
 COMPONENT SAME

FY 84

Page 1 of 3
 Revised Date _____

1.	POSITION TITLE (CONSUMER PROTECTION & INFORMATION OFFICER)				RANGE/STEP 17a	BARG. UNIT G	FORM 12 PAGE/LINE 1/7	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY 2	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	31,668	
6.	Benefits	4,909	
7.	Supplemental Benefits	1,941	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	41,398
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	400
13.	Equipment	05	1,025
14.	Other		
15.	TOTAL COST		42,823

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	42,823
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

JUSTIFICATION:

IF HB 274 is NOT passed, it will be necessary for the Consumer Protection staff to be increased by the addition of another Information Officer to handle the increase in complaints which will be received by the Commission.

The existing Consumer Protection staff is already functioning at capacity and is not able to absorb the additional workload generated by the addition of cable television services to its duties.

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION
 PROGRAM CONSUMER PROTECTION
 BRU ALASKA PUBLIC UTILITIES COMMISSION
 COMPONENT _____

FY 84

Page 2 of 3
Revised Date _____

1.	POSITION TITLE ADMINISTRATIVE SUPPORT TECHNICIAN II				RANGE/STEP 8a	BARS. UNIT G	FORM 12 PAGE/LINE 1/6	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY 16	LOCATION Anchorage	ELECTION DISTRICT 7	LEC.			
3.	CONTINUATION LEVEL				ADDITION						
4.	TYPE OF EXPENDITURE			AMOUNT							
	1		2		3						
	PERSONAL SERVICES										
5.	Salary		17,844								
6.	Benefits		2,766								
7.	Supplemental Benefits		1,094								
8.	Fixed Benefits		2,880								
9.	TOTAL PERSONAL SERVICES		01		24,584						
10.	Travel		02								
11.	Contractual		03								
12.	Commodities		04		400						
13.	Equipment		05		1,932						
14.	Other										
15.	TOTAL COST				26,916						
JUSTIFICATION:											
IF HB 274 is NOT passed, this position will be needed to provide administrative support associated with the regulation of cable television services.											
Existing support staff is unable to provide capacity support for existing functions. The additional of another regulatory area would only increase this already critical problem.											
16.	RECEIPT CODE	FUNDING SOURCE									
17.		Federal Receipts 1002									
18.		G.F. Match 1003									
19.		General Funds 1004		26,916							
20.		I-A Receipts 1005									
21.		Program Receipts 1028									
		Other									
FOR B&M USE ONLY											
4A KEY NUMBER _____											

13 REQUEST FOR
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION
 PROGRAM CONSUMER PROTECTION
 BRU ALASKA PUBLIC UTILITIES COMMISSION
 COMPONENT SAME

FY 84

Page 3 of 3
 Revised Date _____

POSITION PAPER

HB 274 would make permanent the present statutory exemption of cable public utilities from public regulation by the Alaska Public Utilities Commission. The bill also provides for CATV to be exempt from municipal regulation. The bill was enacted in 1980 for a three year experimental period. If no action is taken this session, total regulation by the APUC will begin again on July 1, 1983.

The Department of Administration supports this bill in its present form primarily because the three year experiment had worked and the principle parties involved (APUC and Alaska Cable Television Association) support the continuation of present regulation requirements. This department has no direct involvement and would not be effected in any way.

An amendment to the bill was proposed in the House Labor and Commerce Committee to remove the APUC certification requirements detailed in AS 42.05.221 - 42.05.281. The amendment failed but will probably be re-introduced when the full House considers the bill. If the bill is changed by this amendment, then the department opposes passage. The APUC and the ACTA do not want total deregulation. Cable operators would lose the security of certification and the adjudicatory support of the APUC in fee disputes with municipalities. The APUC would lose its authority to "police" the activities of the cable operators. These activities directly effect consumers as they relate to the discontinuance, suspension and abandonment of service and the ways that a local cable operation can be sold or transferred.

Another possibility, if the State ceases any type of regulation, is the involvement of the Federal government. The Division of Telecommunications Services has requested information and advice from Nick Miller, the State's attorney in Washington, D.C., as to what form this involvement could take and what impact there could be to the State.

Sioux Plummer

Sioux Plummer
 Director
 Division of Telecommunications Services
 Department of Administration

Lisa Ridd

Lisa Ridd
 Commissioner
 Department of Administration

3/29/83

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 10, 1983

SUBJECT: Regulation of public utilities
(HB 274)

TO: Senator Richard I. Eliason
Chair, Senate Labor and Commerce Committee

FROM: Thomas A. Sofo *TAS*
Legislative Counsel

You have asked whether the Alaska Public Utilities Commission will be able to continue the imposition and enforcement of conditions on certificates of public convenience and necessity after the passage of HB 274. The addition of subsection (k) to AS 42.05.711 in Sec. 1 of this bill exempts cable television utilities from regulation of the commission other than regulation under AS 42.05.221 - 42.05.281. The regulation remaining under AS 42.05.221 - 42.05.281 concerns certificates of convenience and necessity. In particular, AS 42.05.241 allows the commission to impose conditions on a certificate of public convenience and necessity. The exemption for cable television contained in HB 274 is an exemption from the economic regulation only, i.e. regulation as to rates. In other words, the exemption in HB 274 is confined to exempting cable television from tariff regulation. The Alaska Public Utilities Commission would have continued authority to impose and enforce conditions on certificates of public convenience and necessity.

TAS:ljb
24/007



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

MEMORANDUM

TO: Billy Berrier, Director
Division of Legal Services

FROM: Sen. Dick Eliason *Dick Eliason*

DATE: June 10, 1983

RE: HB 274, relating to the regulation of public utilities

I would like to request your opinion as to whether the Alaska Public Utilities Commission has the authority under AS 42.05.241 and AS 42.05.271 to impose and enforce conditions on a certificate.

In addition, I would like to know whether you believe the Commission will retain this authority upon passage of HB 274. Commissioner Carolyn Guess maintains that "the status quo we have today will not be changed unless this bill is not passed". The Commission maintains that, following passage of HB 274, they will continue to exercise the authority to impose and enforce conditions on certificates.

HB 274 was calendered for consideration by the Senate today. Because there seemed to be some uncertainty this morning on the part of a few senators with respect to the above-mentioned points, I asked that consideration of the measure be postponed until Monday, June 13. If at all possible, I would appreciate a response before that time.

Thank you for your assistance, and please contact my office if you require any clarification.

LETTER OF INTENT

HOUSE BILL 274

The provisions of House Bill 274 are not intended to diminish the Alaska Public Utilities Commission's regulatory authority over education, government and public access channels.

Bethsworth
said letter of intent

AOK

Jan.

Sorry - I should
have told you
my good

STATE CABLE REGULATION IN ALASKA

Edie Lynch

December 1980

Submitted to Don Augustino, Indiana University

R540

INTRODUCTION

State regulation of cable television by public utility commissions is a limited phenomenon in the United States.

Although many states now engage in specific-issue legislation, only eleven states govern through comprehensive legislation, and only five of those states do so through a state public utility commission.¹ Recently, the Alaska cable industry, which is governed by the Alaska Public Utilities Commission (APUC), had an opportunity to achieve partial or complete deregulation. The industry chose to lobby vigorously to retain certification through the APUC while simultaneously lobbying for economic deregulation. These recent activities gave rise to a number of questions.

1. What circumstances led to the original choice of public utility commission regulation?
2. What form has that regulation taken in the last ten years?
3. What factors enabled the industry to achieve economic deregulation?
4. Finally, what will be the impact of this modified form of regulation in the future?

The data seems to indicate that the pattern of cable television regulation in Alaska results less from national trends than from circumstances in the state which serve as a catalyst for each change in regulation.

CABLE TELEVISION IN ALASKA

Since the regulatory framework in Alaska has evolved based on a specific set of circumstances, it is necessary to review those circumstances before beginning a specific analysis of cable regulation. Cable television in Alaska has developed in stages:²

1. establishment of basic service,
2. ownership changes and technical upgrading, and
3. development of non-broadcast services.

The initial stage, establishment of basic service, could be characterized as cable's infancy. The cable systems developed during this period (1954-1978) concentrated on providing a signal where none had been before, or at best, in supplementing an existing, poorly-received signal with one or more network signals. The programming was provided by bicycling tapes and was two to five weeks old when received.³ When the APUC began regulating cable in 1970, seven cable systems existed, primarily in Southeast Alaska, an area characterized by reception problems. (See Appendix A) Eight additional cable certificates were issued by the APUC, essentially for the same kind of service.⁴

Changes in ownership and technical upgrading mark the second stage. Before 1978 only one multiple system operator (MSO), Merle H. Davis of North Star Communications, operated systems in Southeastern Alaska. Independent systems existed in Barrow, Bethel, Kodiak, and Juneau; the major cities of

Anchorage and Fairbanks did not have cable. In the last two years Howard S. Rock and Associates have purchased the Merle Davis systems and now operate all the Southeastern systems. McCaw Communications, a small MSO from Seattle, has the certificates for Fairbanks, Valdez, and Cordova. ⁵ Mr. Robert Gould, an owner of Multi-Visions, Ltd. (MVL), the certificate holder for Anchorage, comments on this:

I see a trend of ownership and there is a consolidation taking place. It hasn't affected us so much but I think you will wind up with three or four major cable entities as opposed to--there were probably fifteen different systems in the state at one time and they used to be owned by nine different people. I think you'll see that whittled down to three or four major owners. ⁶

The changes in ownership have ^{been} beneficial in terms of service. For the cost of \$25,000 to \$40,000 for an earth station, the cable operators now provide a full complement of broadcast signals similar to those in the "lower forty-eight." The smaller, three-to-four channel systems are being upgraded to twelve channels, in some cases, twenty. ⁷ According to Gould,

the main change in cable over the last five years has been the advent of satellite technology. It opened up new vistas for cable operators any place. It is especially beneficial in Alaska where much of the programming before was done on video-tape delay basis and getting any programming in these communities was a major accomplishment. ⁸

The resulting programming has been adequate-to-good, generally including at least one tier of pay programming, but it doesn't begin to tap cable's potential for non-broadcast services.

The third, and presently embryonic, stage of cable development began when the certificate for Anchorage was issued to Multi-Visions, Ltd. on September 21, 1979. For the first time a successful applicant had proposed some major services besides re-transmission of broadcast signals. In its application MVL proposed not only access channels and local origination facilities, but also a series of institutional loops connecting government, health and educational facilities in the city.⁹ Commissioner Weatherly describes the Commission's response to this new type of applicant.

Older operators are those who really want to take the easiest way out and pick up signals off-air and re-broadcast them without being imaginative in their approach to the network. Networking innovation is the thing we are looking forward to here in Anchorage. The university, the libraries-the institutional users, are prime to our consideration here in Anchorage . . . people have to stop thinking in terms of the past as far as cable is concerned and think in terms of the future. That was what we tried to get across. It was one of the large elements in selecting Multi-Visions.¹⁰

THE CHOICE OF PUBLIC UTILITY REGULATION

The regulation of cable systems by the public utility commission came about indirectly through the reorganization of the Public Services Administration in 1970. The resulting Alaska Public Utilities Act (A.S. 42.05) does not directly define cable television but includes it in its definition of telecommunication services. A.S. 42.05.701 (8) states,

'telecommunications' means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force, variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted to other media within a specific area or between designated points.

Thus the APUC has authority ^{to} regulate as a public utility any corporation "furnishing telecommunication services to the public for compensation." (A.S. 42.05.701(2)(B)) The legal issue of the constitutionality of state statutes regulating cable television through state agencies was resolved that year in TV Pix, Inc. v. Taylor.¹¹ As Ms. Sharon Briley, FCC Cable Bureau, reports:

In its decision, the Supreme Court noted the local character of cable television, undemanding of national uniformity which would preclude state action; and held, furthermore, that in the absence of Congressional pre-emption, states have the right and power to regulate cable television.¹²

What the legislators intended by including cable, or whether they had cable television specifically in mind when drafting the statute, is unclear. It might be useful, however, to examine the common arguments for state regulation in light of the Alaskan experience:¹³

1. lack of local expertise and resources,
2. goal of state-wide telecommunication services,
3. existing problem, or
4. lack of ready solutions at other levels.

Since cable television was in its infancy, providing service within the limits of the technology then available, where service was formerly unavailable, it is doubtful if the motivation for regulation was an existing problem(3) or lack of a ready solution at other levels(4). Nor is it clear that a goal of state-wide telecommunication services influenced the 1970 legislation. Alaska has evidenced an interest in developing state-wide telecommunication services, but these have been in the public sector. Alaska's one venture in quasi-commercial broadcasting, the Satellite Demonstration Project, resulted from RCA's reluctance to develop outside of the urban areas. For that project the Governor's Office of Telecommunications purchased earth stations in order to provide^a single video channel to 29 designated Alaska villages.¹⁴ Admittedly, when a single channel provides instructional programming, entertainment programming and information services, the lines become blurred. Yet recent events reinforce the state's desire to remove itself from commercial entertainment. On July 1, 1980, when Governor Hammond signed S.B. 605 to provide a second instructional television channel in the state, he vetoed all provisions of the bill that would affect entertainment program delivery in the state. He accompanied this action with a letter of intent to that effect.¹⁵

The most logical reason for developing and maintaining state regulation of cable services is the lack of local expertise and resources. It is the most compelling reason why

state certification of cable systems was maintained during the 1980 legislative session. In a state of approximately 400,000 people, where the third largest community is 19,483 people, it would be unusual to find the level of expertise or resources necessary to evaluate applicants for local cable franchises. Even the level of expertise that presently exists at the APUC is subject to a myriad of political forces. Commissioner Weatherly, the Commission's cable expert, is presently being considered for a position on the Federal Communications Commission. Dr. Alex Hills, a member and former chairman of the APUC, may be appointed director of the proposed Division of Telecommunications in a broad reorganization of the Alaska Public Broadcasting Commission.¹⁶ Should they leave, the Commission would be virtually devoid of telecommunications expertise. Further, it goes without saying that the size of most Alaskan communities precludes their hiring adequate technical expertise during a franchising process.

Public interest arguments for state regulation have been raised in various reports and studies. Reduced to their essence, they use the logic that the state can have more influence in controlling cable's natural monopoly and can extract the maximum of services to benefit the consumer.¹⁷ The chief arguments against state regulation of cable are that cable is not a utility in the same sense that electricity, water or telephone is,¹⁸ and that in the event that regulation is needed,

government should only regulate in the absence of adequate marketplace competition.¹⁹ These arguments will be considered in detail on the section on economic deregulation.

STATE REGULATION 1970-1980

Cerfification

As with most states regulating by public utility commission, state regulation by the APUC is less comprehensive than states with independent commissions such as Massachusetts or New York. The APUC exerts authority in three areas: certification, pole attachment, and until 1980, rate regulation.

The APUC issues certificates under the doctrine of "public convenience and necessity." (A.S. 42.05.221) The meaning of this phrase was developed by the courts at the turn of the century. According to Commissioner Weatherly, the courts have said that public convenience means "is it a desirable service to offer to the public?" Necessity means "demand."²⁰ Once public convenience and necessity has been established, the Commission begins an elaborate evaluation process to determine that each applicant is "fit, willing and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public." (A.S. 42.05.241) All applicants who demonstrate this threshold level, i.e. "an elementary capability to provide utility service,"²¹ are then evaluated for external strengths which may make one applicant a better choice than another to serve the public interest. At this point the Commission considers issues of rates and rate

design, track record, demonstrated alertness to consumer needs and desires, consumer preference, impact on other entities, etc., and exerts any influence it may have on the quality and quantity of service to the community.²² According to Commissioner Weatherly, with the possible exception of Anchorage, there have been no definitive decisions. Since 1970 the Commission has grandfathered six cable systems and issued fourteen new certificates. (See Appendix A) Those certificates include the two cities Anchorage and Fairbanks. The case in Fairbanks is typical of the problem of regulation in a smaller state. By the time the Commission issued a certificate, three of the four applicants had stipulated out, forcing the Commission to accept an applicant who offered only bundled rates--something the Commission repeatedly said it would not approve.²³

Anchorage is the exception. Whereas three of the four presented an acceptable broadcast re-transmission approach to service, one applicant, MVL, was visionary. They proposed an institutional loop, four access channels, together with a full range of traditional broadcast services.²⁴ According to Commissioner Weatherly, the Commission had no choice but to pay attention to this difference in services. Since the FCC rules on access and channel capacity have either been struck down by the courts or voluntarily removed by the FCC the responsibility has now fallen to the states to address these issues in the regulatory process.²⁵ As a result when the commission issued

its final order on the application, it stipulated extension of service to Eagle River, a suburban community approximately ten miles north of Anchorage, and the construction of the institutional loops as part of the proposed system.²⁶ While the skeptical may view this as another example of blue sky proposals, the record of the hearings amply indicates that MVL can achieve the goals that it proposed and the Commission accepted.

For its part the cable industry has given the APUC high marks. According to Mr. Gould of MVL,

In Anchorage I won't say that it was totally apolitical, but the merits of the application and the people involved were highly and efficiently scrutinized over a six-month hearing process . . . In my opinion the APUC performed a very worthwhile function in selecting the best applicant even though it is us and even though we obviously think we were the best applicant. But if you went to the others, the point that I was trying to make is that it is as fair a hearing as they would have gotten any place and most of the other applicants have been involved in other proceedings elsewhere around the country.²⁷

The alternative to this form of certification is the highly politicized franchise process through local government. The usual pattern is for the local government agency to hire a consultant who does the research and makes the recommendation. The political group then chooses to accept the recommendation or ignore it. The failures of this system are highly publicized and in some cases have led to state regulation.²⁸ Even when the process is relatively free of these problems, the best franchising plan is fraught with problems.²⁹ Equally important

from the Alaskan point of view, the consultant gets on the plane, and the faces in the local government body change. When faced with the alternative during the 1980 Sunset review of the APUC, where the issue was "should the APUC be retained at all," all of the cable operators supported retention of the certificate process. "Our main effort," said Bob Gould, "was to see the APUC retained." When asked if this was true of the other operators he responded, "I think all of them. And I say that only because we dealt with all of them in terms of our on-going lobbying effort in Juneau last year."³⁰

Pole Attachment

During the past ten years the APUC has regulated pole attachments except where preempted by the FCC. In accordance with the Communications Act Amendments of 1978 the state certified with the FCC its authority over joint use i.e. pole attachments and interconnection of facilities. (A.S. 42.05.311) Most recently its stipulated that any entity exempt from its provisions through AS 42.05.711 is still within its jurisdiction for the purpose of determining joint use and interconnection and related fees. Thus municipally-owned utilities, and cable systems which are economically deregulated under A.S. 42.05.711 will still be subject to Commission jurisdiction in this area. (A.S. 42.05.321(b)) The most pressing problem for the Commission is the promulgation of regulations. Because of the wide range of pole costs in Alaska, \$3.00 to \$12.00, formulas developed in the lower 48 are not appropriate.³¹

Rate Regulation

During the period July 1, 1970 to July 1, 1980 the APUC was responsible for determining appropriate tariffs for each cable system it certified. This was done on a rate base, rate of return formula and was a major function of the APUC until legislative amendment economically deregulated cable systems. The circumstances which led to that amendment and details and impact of the amendment will be discussed in the remaining sections of the paper.

FACTORS LEADING TO ECONOMIC DEREGULATION

Although the cable operators welcome the opportunity to be certified by the APUC, they have never accepted the premise that they are a utility in the same sense as water, electricity and telephone. In place of this view they use the layman's definition of necessity, i.e. "something that cannot be done without,"³² rather than the legal interpretation of the APUC, i.e. "demand." Because cable deals with the discretionary income, because cable operators cannot reasonably be sure every home will have it, they find the rate base, rate of return methodology, potentially detrimental to their industry. Mr. Gould posed the conflict this way:

"Suppose the Commission gave us a rate of return and we didn't meet it. The normal course is for the utility to return to the Commission and have the rates raised. This might be exactly the opposite of what we will want in cable. We might choose to lower our rates in order to attract more subscribers. Since most of our costs after our initial setup are subscriber based this wouldn't harm us."³³

It is doubtful that the industry believes it will ever face a rate increase against its will. But belief in this premise is one of the underpinnings of the 1980 deregulation.

Possibly more influential is the general argument that government should not regulate except in the absence of market-place competition. This argument was ably stated by a commissioner for the Massachusetts Cable Commission in the aftermath of the Revere case,³⁴ and later codified in Massachusetts General Laws. Chapter 249 amends the State law

to allow the Massachusetts Communications Commission, after due hearing and investigation, to suspend regulation of rates and charges for any cable TV system 'upon a finding that adequate competitive alternatives exist to the provision of services offered by cable television systems. In the event of such a suspension, the Commission shall by oversight and surveillance, review periodically any facts or standards employed in determining the presence of said competition.'³⁵

This rationale, the presence or absence of competition, forms the basis for many state statutes, albeit their definitions of competition differ significantly. Competition can, and has been, measured by penetration rate (Hawaii, California), size of system and available services (Hawaii, California, New Jersey), number of subscribers (NJ) and broadcast signal competition, i.e. whether it is within or outside the signal contours of three major networks (New Jersey). An additional measure, unique to Alaska, is whether the system is on a state road or a marine highway. Each state's particular conditions determine what form the law takes. In New Jersey where the issue was not

only marketplace economics but also the cost of regulating rates they developed a law which classifies systems based upon broadcast signal competition, density and channel capacity. In Hawaii the statute differentiates between developing and established systems, providing for a higher rate of return for systems in developing phases. The most complex statute is California's which conditions "the total deregulation of rates on certain competitive characteristics of the system as well as the system's provision of a community services channel program.

A.B. 699 provides:

A cable system may elect to declare exemption from regulation or control if its rates by the city or county if it meets criteria which may be summarized as follows: (1) provision of 20 or more channels; (2) reception of, or plans to receive, signals by satellite earth receive station; (3) penetration rate of less than 70 percent certified by the cable system, subject to review by the franchising authority; (4) location in a country which has available three significantly viewed signals as defined by the FCC, or two significantly viewed and an educational TV station; and, (5) provision of, or agreement to provide, a community services channel program. If the penetration ratio is 70 percent or more, or the system is providing between 12 and 20 channels of television service in a franchise area with fewer than 3,500 subscribers in a community of less than 20,000 (monopoly in a smaller community), but does meet the significantly-viewed signal and community service channel requirements, the system may, by declaration filed with the franchisor, adjust rates up to 75 percent of the percentage increase in the Consumer Price Index since the last previous rate increase, or since December 31, 1975, if rates have not been increased since then. If a system with 12 or fewer channels rebuilds (after January 1, 1980) to 20 or more, the system may raise

rates, within 3 years of completion of the rebuild, up to the statewide average rate for systems having 20 or more channels.³⁶

To date only two systems in California have deregulated under this law. This may be because local deregulation options are available or because of a reluctance to tie deregulation to community service funding.³⁷

Against this backdrop of marketplace philosophy and the industry's doubts about its role as a utility, Alaska's Sunset Law became a significant, if not the chief catalyst, for economic deregulation. It provided that the Alaska Public Utilities Commission expire on June 30, 1980; and that all of its affairs be concluded within one year. After legislative review the Commission could be reestablished for a period "not to exceed four years." (A.S. 44.66.010) The legislative audit of the APUC revealed that the Commission was overworked and recommended prioritizing its activities: either the Commission could expand its staff to handle the workload, or it could divest itself of some regulatory responsibilities.³⁸ Using this information the industry vigorously lobbied for retention of APUC certification and against economic regulation of rates. The result was A.S. 42.05.711 which provides:

Cable television systems are exempt from the provisions of A.S. 42.05, other than the provisions of A.S. 42.05.221-42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption

of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission..

Clearly the industry preferred the open-ended certification process administered by professionals to the 15-year franchise subject to the changing expertise and political climate of the local community. At the same time they wanted marketplace economics to determine rates. There is some disagreement about the importance of the Sunset Law review on economic deregulation. To the Commission it was only one of four influences: national and state trends toward deregulation (discussed above), Sunset Law review, and an extensive lobbying effort by the industry;⁴⁰ To the industry itself it was the chief catalyst. As Mr. Gould mentioned above, "our main effort was to see the APUC retained."⁴¹

IMPACT OF ECONOMIC DEREGULATION

The key to evaluating the Alaska statute and its potential impact lies in evaluating how well it measures competitive circumstances in Alaska. Below is a summary of the Alaskan circumstances for each measure of competition discussed in the previous section, i.e. penetration rate, size of system and available service, number of subscribers, broadcast signal competition, and state roads/marine highways.

Data Summary

A. Penetration Rate. Penetration rate is not a meaningful statistic in Alaska. Prior to the Satellite Demonstration Project in 1978, cable offered the only television service in the majority of communities. Even today, the ten-watt, single-channel mini-TV is hardly competition for a cable system with an earth station.

B. Size of System and Available Service. In Alaska there is great disparity in system size. Only three cable systems serve a population of more than 8800 people.⁴² The Anchorage system, once operational, will almost equal in size the combined systems serving the rest of the state. The service ranges from three-to-four channel systems up to the thirty-six channels proposed in Anchorage.

C. Number of Subscribers. In Alaska cable companies are not classified according to the number of subscribers but rather the size of the community served. Twelve of the twenty cable systems are located in communities of less than 3500 residents.

D. Broadcast Signal Competition. In Alaska only three of the twenty systems face broadcast signal competition of three network signals. In Juneau, the state capital, only two signals are available, one PBS station and one network station. Due to competition from cable, the network affiliate has cut back its hours.

E. State Road/Marine Highway. According to a liberal interpretation of the statute, if a cable system is located

tate road or marine highway, it is exempt. The effect of this provision is that five additional small systems will be deregulated under A.S. 42.05.711, bringing the total deregulated to fourteen out of twenty systems.

Clearly penetration rate is not a meaningful statistic when cable operates as a natural monopoly in most Alaskan communities. If we adopted a classification system, such as New Jersey's, based on size and available services, we would most likely have one-to-two systems per category. Number of subscribers could be considered a meaningful statistic if the intent is to protect the smaller systems which are dependent on cable not only for entertainment, but for virtually all information services. Broadcast signal competition is also relevant to Alaska, where only three of fifteen exempt systems face adequate competition from over-the-air signals. The final category, state road/marine highway, is peculiar to Alaska. five of the fourteen exempt systems qualify under this provision.

Analysis

Under the July 1, 1980 amendment to A.S.42.05.711 cable systems are exempt from economic regulation unless they serve a city or village of less than 3500 residents and that city or village is not located on a state road or marine highway. Analysis reveals the first provision on population is consistent with the effort to protect smaller communities without adequate competition, but the current liberal interpretation by the APUC of the state road/marine highway provision works at cross purposes to that. Lacking a statement of legislative intent, the Commission feels it has no choice but to interpret the

provision that any community, regardless of size, is exempt
43
if it is located on a state road or a marine highway,

The effect on cable systems previously regulated by the APUC
is as follows:

<u>Cable Systems</u> (See Appendix B)	<u>No. Affected</u>
I. Exempt Under Both Provisions	9
II. Exempt Under State Road/Marine Highway	5
III. Exempt By Commission Motion Prior to Legislation	1
IV. Not Exempt	4

Six communities, then, are exempt solely under the state road/
marine highway provision. One plausible basis for the provision
is the assumption that communities in the traffic flow will have
other sources of information. But it is interesting that three
of these systems are owned by Merle H. Davis, an MSO who also
owns three exempt systems in Category I. 45 Another interpretation
would be that the provision allows him to treat all his systems
the same. In other words, this provision may be the result of
the lobbying efforts of one man.

Another aspect of the deregulation which should be monitored
closely, is the deregulation of seven communities in Category I
which do not, in fact, have full broadcast signal competition.
Unless the Legislature wishes to become the consumer affairs
bureau, it needs to recognize that in Alaska, large does not
necessarily mean competitive. The omission of broadcast signal
competition as a criterion may be a serious weakness in the
amendment.

This leads to the issue of consumer awareness and

responsiveness to consumer needs. If the APUC, with the Legislature's blessing, continues with its present interpretation of the statute, what vehicle is available for consumer complaints, especially in the smaller, non-competitive markets represented in Category II. Already the Legislature has been cast in this role by subscribers of the B-C Cable Co. of Juneau, Alaska.⁴⁶

At first glance, then, the amendment appears to be an inadequate measure of competitive circumstances in Alaska, omitting any measure of broadcast signal competition and exempting some the smaller systems on the dubious basis of their location on a state road or marine highway--a condition in Alaska which does not preclude community isolation. Unless the measures of competition are re-examined and fine-tuned, direct consumer pressure on the Legislature will force them to allow the legislation to lapse. This would be unfortunate, because there is no reason why marketplace regulation would not work, assuming competitive conditions are adequately measured.

APPENDIX A

1. Sitka Alaska Television, Inc. (SATV).
2. Ketchikan Alaska Television, Inc. (KATV).
3. B-C Cable Co. (B-C Cable), Juneau, Alaska.
4. Alaska Cablevision, Inc. (ACVI) Merle H. Davis, formerly Cordova Cable Systems, Inc.
5. ACVI, Davis, Wrangel and Petersburg.
6. Capital Cable Visison (CCV), Davis, Haines, Alaska.
7. ACVI, Davis, formerly Nome TV Cable, Inc.
8. ACVI, Davis, formerly KOTV, Inc., Kodiak, Alaska.
9. Skagway Network TV (SNTV), Jack W. Brown.
10. Lynn Canal Cable TV (LCCV) Brown, Lynn Canal.
11. ASRC Communications, Ltd. (ASRC), Barrow, Alaska.
12. ACVI, Davis, Valdez, Alaska.
13. Port Lions General Store, Inc. (Port Lions).
14. ACVI, Davis, formerly Kotzebue TV Cable Co.
15. Bethel Cablevision (BCV).
16. Thorne Bay Community TV, Inc. (Thorne Bay).
17. Frontier Color Cable, Inc. (Frontier), Fairbanks, Alaska.
18. Multi-Visions, Ltd. (MVL), Anchorage, Alaska.
19. Pelicon Utility Co. (PELCO), Pelican, Alaska.
20. M²PDC, Inc. (M²PDC), Fairbanks, Alaska (Eilson AFB).

APPENDIX B

CABLE SYSTEM EXEMPTIONS BASED ON A.S. 42.05.711

I. Exempt Under Both Provisions Population

Anchorage	184,775
Bethel	3,608
Fairbanks	30,462
Juneau	22,105
Ketchikan	8,293
Kodiak	5,754
Kotzebue	2,526
Valdez	4,481
Sitka	8,787

II. Exempt Under State Road/Marine Highway
Provision

Cordova	2,780
Eielson AFB	not available
Haines	1,366
Petersburg	3,197
Skagway	877
Wrangell	3,152

III. Not Exempt

Barrow	2,715
Nome	2,892
Pelican	221
Port Lions	232

*On its own motion, the APUC exempted Thorne Bay Community Television from economic regulation, prior to this legislation. Since there was no information available on Lynn Canal Cable TV, I have not included it in the chart. While six communities are listed under Section II, two of those, Petersburg and Wrangell are combined in one cable system. Since I am not sure if they count as one community, I treated them separately in my statistics, but continue to count that cable system as one exempt system.

FOOTNOTES

1. Sharon A. Briley, "State Regulation of Cable TV--Progress and Problems)," The Cable/Broadband Communications Book 1977-1978, Mary Louise Hollowell, ed. (Washington, D.C.: Communications Press, Inc., 1977), pp. 31-32, "State Involvement in Cable TV and Other Communications Services: A Current Review," The Cable/Broadband Communications Book, Volume 2, 1980-1981, Mary Louise Hollowell, ed. (Washington, D.C.: Communications Press, Inc., 1980), p. 45.
2. Interview with Mr. Robert Gould, an owner of Multi-Visions, Ltd., the certificate holder for Anchorage, Alaska, in Anchorage, Alaska, December 16, 1980.
3. Gould.
4. Briley, 1977-1978, pp. 38-39. See Table II.
5. Gould.
6. Gould.
7. Gould.
8. Gould.
9. Alaska Public Utilities Commission, "Order Affirming Bench Order," Docket No. U-79-21, Order No. 4, December 5, 1979, pp. 51, 101, Exhibits A and B.
10. Interview with Commissioner Marvin Weatherly of the Alaska Public Utilities Commission, in Anchorage, Alaska, December 5, 1980.
11. TV Pix, Inc. v. Taylor, 304 F Supp. 459 (D. Nev. 1968), aff'd per curiam, 396 U.S. 556 (1970).
12. Briley, 1977-1978, pp. 32-33.
13. Briley, 1977-1978, p. 36.
14. Weatherly.
15. These documents are available upon request.
16. Weatherly; Pete Spivey, "Telecommunications," Anchorage Daily News, (Dec. 16, 1980), p. 2, cols. 2 and 3.

17. The Cabinet Committee on Cable Communications, Cable Report to the President, Washington, D.C.: U.S. Government Printing Office, January 14, 1974 and Subcommittee on Communications of the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives, Cable TV: Promise and Regulatory Performance, January 1976, a staff report for the use of the subcommittee; as discussed in Briley, 1977-1978, p. 36.
18. Gould.
19. Briley, Vol. 2, 1980-1981, p. 62.
20. Weatherly.
21. "Order," p. 20.
22. "Order," p. 22.
23. Weatherly.
24. See Footnote No. 9.
25. Weatherly.
26. "Order," pp. 100-101.
27. Gould.
28. Briley, 1977-1978, p. 36.
29. "A Tale of Two Cities: Many's the Slip in Major Franchise Grants," Broadcasting March 31, 1980, p. 48.
30. Gould.
31. Weatherly.
32. "Necessity," Webster's New World Dictionary.
33. Gould.
34. Briley, Vol. 2, 1980-1981, p. 62.
35. Briley, Vol. 2, 1980-1981, p. 62.
36. Briley, Vol. 2, 1980-1981, pp. 58-65.
37. Briley, Vol. 2, 1980-1981, pp. 63-64.

38. Gould.

39. Weatherly.

40. Weatherly.

41. Gould.

42. Weatherly.

BIBLIOGRAPHY

1. Alaska Public Utilities Commission, "Order Affirming Bench Order," Docket No. U-79-21, Order No. 4.
2. Alaska Public Utilities Commission Act and Amendments, Alaska Statutes, AS. 42.05, July 1, 1970 and following.
3. Briley, Sharon A., "State Involvement in Cable TV and Other Communications Services: A Current Review," The Cable/Broadband Communications Book, Volume 2, 1980-1981, Mary Louise Hollowell, ed., Washington, D.C.: Communications Press, Inc., 1980.
4. "State Regulation of Cable TV--progress and Problems," The Cable/Broadband Communications Book 1977-1978, Mary Louise Hollowell, ed., Washington, D.C.: Communications Press, Inc., 1977.
5. Gould, Robert A., an owner of Multi-Visions, Ltd., the certificate holder for Anchorage, Alaska, Interview, Anchorage, Alaska, December 16, 1980.
6. Spivey, Pete, "Telecommunications," Anchorage Daily News, (Dec. 16, 1980), p. 2, cols. 2 and 3.
7. TV Fix, Inc. v. Taylor 304 F Supp. 459 (D. Nev. 1968), aff'd per curiam, 396 U.S. 556 (1970).
8. Weatherly, Commissioner Marvin, Alaska Public Utilities Commission, Interview, Anchorage, Alaska, December 5, 1980; December 17, 1980.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Purpose: To amend the Communications Act of 1934.

IN THE SENATE OF THE UNITED STATES--96th Cong., 1st Sess.

S. 66

To amend the Communications Act of 1934.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. Goldwater

viz:

1 Strike all after the enacting clause and insert in lieu
2 thereof the following:

3 That (a) this Act may be cited as the "Cable
4 Telecommunications Act of 1983".

5 (b) The Communications Act of 1934 is amended by
6 inserting immediately after title V the following new title:

7 "TITLE VI--CABLE TELECOMMUNICATIONS ACT"

8 "FINDINGS

9 "Sec. 661. The Congress hereby finds that--

10 "(1) cable systems are engaged in interstate
11 commerce through the origination, transmission,
12 distribution, and dissemination of broadcast
13 telecommunications services;

14 "(2) the provision of cable telecommunications is of
15 concern to governmental entities; and

16 "(3) a uniform national policy for cable can serve
17 to eliminate and prevent conflicting and counter-
18 productive regulations in order to allow unhampered
19 growth and development of cable as a competitive medium
20 which will be responsive to and serve the needs and
21 interests of the public.

22 "PURPOSES

23 "Sec. 662. The purposes of this title are to--

THIS DOCUMENT HAS NOT BEEN READ FOR TRANSCRIPTION ERRORS

1 “(1) establish a national policy concerning cable
2 telecommunications and to encourage a competitive
3 environment for the growth and development of cable
4 telecommunications;

5 “(2) establish guidelines for the exercise of
6 Federal, State, and local regulatory authority;

7 “(3) allow cable systems to be responsive to the
8 needs and interests of the public on an equal basis
9 without a competitive disadvantage with other providers
10 of telecommunications services; and

11 “(4) eliminate government regulation in order to
12 prevent the imposition of an unnecessary economic burden
13 on cable systems in their provision of service to the
14 public.

15 DEFINITIONS

16 “Sec. 503. For purposes of this title, the term--

17 “(1) ‘basic service’ means the lowest cost tier of
18 service which is available to subscribers for a fee and
19 which includes the provision of retransmission of local
20 broadcast signals, public, educational, and governmental
21 programming and any other programming service as offered by
22 a cable operator as part of the tier, and specified in
23 the franchise agreement as part of basic service, which
24 is distributed by coaxial cable or any other closed
25 transmission medium;

26 “(2) ‘basic telephone service’ means
27 telecommunications service provided through a switched
28 network capable of providing two-way voice grade
29 communications that would be subject to regulation by the
30 Commission of any State if offered by a common carrier
31 subject, in whole or in part, to title II of this Act;

32 “(3) ‘broadband telecommunications’ means any
33 service in transmission of electromagnetic signals,
including basic service, cable service, and

1 telecommunications service, over coaxial cable or any
2 other closed transmission medium, but not basic telephone
3 service;

4 "(4) 'broadcasting' means telecommunications by
5 radio intended to be received by the public, directly or
6 by the intermediary of relay stations;

7 "(5) 'cable channel' or 'channel' means that portion
8 of the electromagnetic frequency spectrum used in a cable
9 system for the propagation of an electromagnetic signal;

10 "(6) 'cable operator' or 'cable system operator'
11 means any person or persons, or an agent or employee
12 thereof, that provides basic service, cable service, or
13 telecommunications service over a cable system, or that
14 directly or indirectly owns a significant interest in any
15 cable system, or that otherwise controls or is
16 responsible for, through any arrangement, the management
17 and operation of such a cable system;

18 "(7) 'cable service' means the provision by a
19 channel programmer of one-way programming on a per channel,
20 per program, or other basis which is distributed by
21 coaxial cable or any other closed transmission medium,
22 but such term shall not include basic service;

23 "(8) 'cable subscriber' means any person who
24 receives or transmits electromagnetic signals distributed
25 over a cable system;

26 "(9) 'cable system' means a facility or combination
27 of facilities under the ownership or control of any
28 person or persons, which consist of a primary control
29 center used to receive and retransmit, or to originate
30 broadband telecommunications service over one or more
31 coaxial cables, or other closed transmission media, from
32 the primary control center to a point of reception at the
33 premises of a cable subscriber, but such term shall not
34 include: (A) a facility or combination of facilities that

1 serves only to retransmit the television signals of
2 television broadcast stations; (B) a facility or
3 combination of facilities that serves only subscribers in
4 one or more multiple unit dwellings under common
5 ownership, control, or management; or (C) a common
6 carrier subject to the provisions of title II of this Act
7 whenever such carrier transmits broadband
8 telecommunications services other than basic service or
9 cable service;

10 '(10) 'channel programmer' or 'programmer' means any
11 person having an agreement to provide basic service or
12 cable service to a cable system operator, or any person
13 who leases, rents, or is otherwise authorized to use the
14 facilities of a cable system for the provision of basic
15 service or cable service, and such term shall include a
16 cable system operator to the extent that such operator,
17 or person or persons under common ownership or control
18 with such operator, is engaged in the provision of such
19 service;

20 '(11) 'closed transmission medium' or 'closed
21 transmission media' means media having the capacity to
22 transmit electromagnetic signals over a common
23 transmission path such as coaxial cable, optical fiber,
24 wire, waveguide, or other such signal conductor or
25 device;

26 '(12) 'franchise' means a permit, license,
27 ordinance, resolution, right-of-way, contract,
28 agreement, or similar authorization issued
29 by a franchising authority which authorizes the provision
30 of basic service, cable service, or telecommunications
31 service by a cable operator;

32 '(13) 'franchising authority' means any State,
33 political subdivision, or agency thereof, or any other
34 governmental entity empowered to grant a franchise;

1 “(14) ‘Grade B contour’ means the field strength of
2 a television broadcast station computed in accordance
3 with regulations promulgated by the Commission;

4 “(15) ‘information’ means knowledge or intelligence
5 represented by any form of writing, signs, signals,
6 pictures, sounds, or other symbols;

7 “(16) ‘law’ means any regulation, rule, order,
8 standard, policy, requirement, procedure, or restriction;

9 “(17) ‘person’ means an individual, partnership,
10 association, joint stock company, trust, corporation or
11 any governmental authority;

12 “(18) ‘telecommunications’ means the transmission of
13 information by electromagnetic means, with or without
14 benefit of any closed transmission system, including all
15 instrumentalities, facilities, apparatus, and services
16 (including the collection, storage, forwarding,
17 switching, and delivery of such information) essential to
18 such transmission;

19 “(19) ‘telecommunications service’ means the
20 offering of telecommunications facilities, or of
21 telecommunications by means of such facilities but such
22 term shall not include basic service, cable service, or
23 basic telephone service; and

24 “(20) ‘United States’ means the several States and
25 territories, the District of Columbia, and the
26 possessions of the United States.

27 “STATEMENT OF AUTHORITY

28 “Sec. 614. The provisions of this title shall apply as
29 follows:

30 “(1) The Commission shall have jurisdiction and
31 exercise authority with respect to broadband
32 services subject to the provisions of
33 this title and any applicable provisions of law.

34 “(2) For purposes of this title shall be construed as

1 prohibiting any State or political subdivision or agency
2 thereof, or franchising authority, from awarding, in
3 accordance with the provisions of this title, one or more
4 cable franchises within its jurisdiction.

5 "(3) (A) Except to the extent provided in paragraph
6 (3), no cable system shall provide basic service or cable
7 service without a cable franchise in compliance with this
8 title.

9 "(3) The provision of paragraph (A) shall not be
10 applicable in the case of any cable system in operation
11 on March 22, 1983.

12 "OWNERSHIP OR CONTROL OF CABLE SYSTEMS

13 "Sec. 635. (a)(1) Except in the case of the antitrust
14 laws of the United States and to the extent otherwise
15 provided in subsections (b) and (c) of this section, no
16 executive agency of the United States, including the
17 Commission, shall have the authority to prohibit, directly or
18 indirectly, the ownership of cable systems by any person by
19 reason of that person's ownership of any other media or other
20 interests, including broadcast, cable, newspaper, programming
21 service, or other printed or electronic information service.
22 For purposes of paragraph (1), the term 'media or other
23 interests' shall not include telephone companies.

24 "(2) No State or political subdivision or agency
25 thereof, or franchising authority, shall have the authority
26 to prohibit, directly or indirectly, the ownership of cable
27 systems by any person by reason of that person's ownership of
28 any other media or other interests, including broadcast,
29 cable, newspaper, programming service, or other printed or
30 electronic information service.

31 "(b) (1) Notwithstanding the provisions of subsection
32 (a) of this section, for the purpose of ensuring fair and
33 equitable treatment of United States cable enterprises
34 seeking access to markets in a foreign country, the

1 Commission shall have authority to conduct inquiries
2 applicable to foreign persons from that country seeking
3 access to domestic markets in the United States in connection
4 with the construction, ownership and operation of cable
5 enterprises as to whether such United States cable
6 enterprises are permitted fair and equitable access to such
7 foreign markets.

8 “(2) The Commission shall submit any information
9 obtained through such inquiries to the United States Trade
10 Representative to assist the Trade Representative in his
11 identification and analysis of acts, policies or practices
12 which constitute significant barriers to, or distortions of,
13 United States exports of services.

14 “(3) For purposes of this subsection, the term ‘foreign
15 persons’ includes any individual who is not a citizen of the
16 United States, any subsidiary (although established under the
17 laws of the United States or any State thereof) of a
18 corporation or other business entity which was established
19 under the laws of a foreign country, any corporation or other
20 business entity established under the laws of a foreign
21 country, or any corporation or other business entity
22 established under the laws of the United States or any State
23 thereof, if 25 percent or more of the capital stock or
24 equivalent ownership is owned or controlled by an individual
25 who is not a citizen of the United States or by a corporation
26 or other business entity established under the laws of a
27 foreign country, or any subsidiary of a corporation or other
28 business entity established under the laws of a foreign
29 country.

30 “(c) (1) Notwithstanding the provisions of subsection
31 (a) of this section, a State or political subdivision or
32 agency thereof, or franchising authority, may not acquire an
33 interest in any cable system pursuant to a buy-back
34 provision of a franchise or require a sale of a cable system

1 to any other person pursuant to a franchise, upon the
 2 expiration of the franchise, unless such State, subdivision,
 3 agency, authority, or person acquires such ownership or
 4 interest at not less than fair market value based upon the
 5 ongoing business value of the system. In the event that the
 6 cable operator and a State or political subdivision or agency
 7 thereof, or franchising authority, are unable to agree upon
 8 any such fair market value, then the matter of determining
 9 fair market value shall be submitted to binding arbitration.
 10 For purposes of arbitration, each of the affected parties
 11 shall select one arbitrator and the two arbitrators so
 12 selected shall choose a third arbitrator.

13 (2) Notwithstanding the provisions of paragraph (1) of
 14 this subsection, in the event of termination for cause of a
 15 franchise due to a material breach, a State or political
 16 subdivision or agency thereof, may acquire an ownership
 17 interest in such cable system but only upon written notice of
 18 the breach, reasonable opportunity to remedy the breach, and
 19 other due process. Any such termination shall be subject to
 20 de novo review by a court of competent jurisdiction.

21 (c) In any case in which any such State, subdivision,
 22 agency, or authority has or acquires any such ownership or
 23 interest, such State, subdivision, agency, or authority
 24 shall, in no case, own or control, directly or indirectly,
 25 the content of any of the programming on such cable system,
 26 except for programming on government access channels, unless
 27 such State or political subdivision or agency thereof, or
 28 franchising authority, establishes an independent board or a
 29 separate management company. Such board or company shall not
 30 include any State or local office holder.

31 ACCESS CHANNELS

32 Sec. 196. (a) A cable system operator may offer in a
 33 State to dedicate or set aside channels for public,
 34 State, local, or other access channels for public.

1 “(b) Until such time as there is demand for each channel
 2 full time for its designated use, public, educational,
 3 governmental, or other channel programming may be combined by
 4 the cable system operator on one or more channels, and to the
 5 extent time is available on such channels, they may be used
 6 by the cable system operator for the provision of other
 7 services.

8 “REGULATION OF RATES AND SERVICES

9 “Sec. 637. (a) Nothing in this title shall be construed
 10 as prohibiting any State or political subdivision or agency
 11 thereof, or franchising authority, from establishing, fixing,
 12 or otherwise restricting the rates charged by cable
 13 operators--

14 “(1) to subscribers for the receipt of basic
 15 service,

16 “(2) to subscribers for equipment necessary for the
 17 receipt of basic service, and

18 “(3) to subscribers for equipment which facilitates
 19 the reception of basic service by hearing impaired
 20 individuals.

21 “(b) (1) Any rate regulated pursuant to this section may
 22 be increased annually at the discretion of the cable operator
 23 by an amount not to exceed five percent of the existing rate
 24 or the regional consumer price index for the preceeding
 25 twelve months, whichever is greater, upon thirty days prior
 26 notice. The ability to affect such increases shall be
 27 cumulative for not more than three successive years.

28 “(2) Notwithstanding the provisions of paragraph (1) of
 29 this subsection, nothing in this title shall be construed as
 30 prohibiting any State or political subdivision or agency
 31 thereof, or franchising authority, from providing that such

32 “Such increases shall not apply to a franchise which is
 33 “in effect on the date of the enactment of the Cable

34 “Act of 1968 and which provides for a fixed

rate for basic service over a specified period.

“(c) Notwithstanding the provisions of subsections (a) and (b) of this section, nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from permitting a cable system operator to automatically increase basic service rates which exceed the basic rates allowed pursuant to subsection (a) or (b) of this section if--

“(1) such operator has requested the increase in rates; and

“(2) the request is not acted on within 90 days following the date of its receipt.

“(d) (1) Notwithstanding the provisions of subsection (a) of this section, the authority to establish, fix, or otherwise restrict the rates charged to subscribers for the provision of basic services set forth in subsection (a) of this section, except to the extent otherwise provided in paragraph (2) of this subsection, shall not be applicable in any case where the cable system is located within the Grade B contour of not less than four television signals of which there shall be one affiliate of each of the three major television networks.

“(2) The provisions of paragraph (1) of this subsection shall not be applicable in the case of any franchise in existence prior to the effective date of the Cable Telecommunications Act of 1983, if the rates charged to subscribers for the provision of basic services are subject to regulation or are restricted by any State or political subdivision or agency thereof, or any franchising authority. The provisions of this paragraph relating to existing rate regulation of basic service shall be applicable for a period

of one year following the date of the enactment of such

Act for a period equal to one-half of the period of the

term of such franchise, as of the date of the

1 enforcement of such Act, whichever is greater. The provisions
 2 of paragraph (1) shall be applicable to any renewal or other
 3 expansion of any such franchise.

4 "(e) No executive agency of the United States, including
 5 the Commission, and no State or political subdivision or
 6 agency thereof, or franchising authority, shall have
 7 authority to regulate or restrict the rates for reconnection,
 8 additional sets to the same subscriber, or sales of
 9 equipment.

10 "(f) No executive agency of the United States, including
 11 the Commission, and no State or political subdivision or
 12 agency thereof, or franchising authority, shall have
 13 authority to regulate or restrict the provision of or nature
 14 of cable services offered over a cable system.

15 "(g) No executive agency of the United States, including
 16 the Commission, and no State or political subdivision or
 17 agency thereof, or franchising authority, shall have
 18 authority to regulate or restrict the provision of or nature
 19 of telecommunications services offered over a cable system,
 20 except with respect to the provision of basic telephone
 21 service.

22 "FRANCHISE FEES

23 "Sec. 639. (a) Cable operators may be required in a
 24 franchise to pay to a State, political subdivision, or agency
 25 thereof, or franchising authority, a franchise fee.

26 "(b) (1) No franchise fee paid by a cable system
 27 operator for the privilege of holding a franchise, shall
 28 exceed an annual aggregate of 5 percent of such cable
 29 operator's gross revenues derived from the operation of the
 30 cable system which is the subject of the franchise.

31 "(2) Nothing in this section shall be construed as
 32 authorizing any fee required by a franchise in effect on the
 33 date of the Cable Telecommunications Act of 1984 to
 34 be levied or indirectly levied on entities established for

1 the purpose of facilitating the use of channels set aside for
2 public, educational, or governmental use.

3 "(c) Nothing in this title shall be construed as
4 prohibiting any cable system operator from passing the cost
5 of any increase in a franchise fee through to subscribers,
6 and from designating the total franchise fee as a separate
7 item on the subscribers' bills.

8 "(d) For the purposes of this section 'franchise fee'
9 shall include any tax, fee or assessment of any kind imposed
10 by a franchising authority on a cable system operator or
11 cable subscriber because of their status as such.

12 "(e) Nothing in this section shall be deemed to require
13 a cable operator to renegotiate the provisions of an existing
14 franchise.

15 RENEWALS AND EXTENSIONS

16 "Sec. 629. (a) In any case in which a cable system
17 operator submits an application to the franchising authority
18 for the renewal or other extension of such operator's
19 franchise authorization, the franchising authority shall not
20 deny such renewal or other extension unless it finds that--

21 "(1) the cable system operator has not substantially
22 complied with the material terms of such franchise and
23 with applicable law;

24 "(2) there has been a material change in the legal,
25 technical, or financial qualifications of the cable
26 system operator that would substantially impair the
27 continued provision of service by such operator;

28 "(3) the facilities to be provided by such operator,
29 including facilities for governmental access, are
30 unreasonable in light of the clearly demonstrated
31 community need for and cost of such facilities;

32 "(4) the signal delivered by the cable system within
33 the control of the cable system operator, has not
34 substantially met technical standards as established by the

1 mission; and

2 "(4) the proposals contained in the renewal
3 application are otherwise unreasonable.

4 "(b) A cable system operator must file for renewal at
5 least 24 months before the expiration of the franchise. The
6 franchising authority--

7 "(1) must consider the renewal within 90 days of
8 submission of the application and conduct any proceedings
9 necessary to adequately consider the application; and

10 "(2) may not request, accept, or consider any other
11 franchise application until the incumbent franchisee
12 application is denied or approved.

13 "(c) A cable system operator with a franchise which
14 shall expire within 24 months after the date of enactment of
15 the Cable Telecommunications Act of 1983, shall be in
16 compliance with subsection (b) if he files an application for
17 renewal within 90 days after such date of enactment.

18 "(d) The franchising authority shall--

19 "(1) negotiate in good faith with any cable system
20 operator regarding franchise renewal within 30 days after
21 the completion of proceedings pursuant to subsection (b);
22 and

23 "(2) make a final decision, based on substantial
24 evidence, on granting or denying renewal within 12 months
25 after receipt of an application;

26 "(3) in the case of denial of an application--

27 "(A) not make the final decision for at least 7
28 months from the date of receipt of the application;
29 and

30 "(B) notify the applicant by written statement,
31 within 7 days after the final decision, of the
32 reasons for the denial.

33 "(e) Any renewal applicant adversely affected or
34 prejudiced by a final decision of a franchising authority shall

1 pursuant to subsection (d), or by a failure of the
2 franchising authority to act in accordance with subsection
3 (d), may obtain a de novo review of such final decision in
4 any court of competent jurisdiction.

5 UNAUTHORIZED RECEPTION

6 Sec. 618. (a) No person or government authority shall
7 intercept or receive broadband telecommunications unless
8 specifically authorized to do so by a cable system operator,
9 channel programmer, or originator of broadband
10 telecommunications or as may otherwise be specifically
11 authorized by Federal law.

12 (b) In order to safeguard the right to privacy and
13 security of broadband telecommunications, such broadband
14 telecommunications shall be deemed to be a 'wire
15 communication' within the meaning of section 2518(1) of title
16 18 of the United States Code.

17 (c) In the event that there may be any difference
18 between the provisions of this section and chapter 119 of
19 title 18 of the United States Code, or any regulations
20 promulgated thereunder, it is the intent of the Congress that
21 such chapter 119 shall be controlling.

22 PROTECTION OF SUBSCRIBER PRIVACY

23 Sec. 611. (a) (1) Except as provided in paragraph (2)
24 of this subsection, no cable operator, channel programmer, or
25 originator of broadband telecommunications may use the cable
26 system to collect personally identifiable information with
27 respect to a cable subscriber, except upon the prior written
28 consent of that subscriber.

29 (2) The provisions of paragraph (1) of this subsection
30 shall not apply to the collection of information solely for
31 billing purposes or to monitor whether there is unauthorized
32 reception of cable telecommunications.

33 (3) A cable operator, channel programmer, or originator

34 shall ensure that any

1 Information is destroyed when the information is no longer
 2 used or to be used for the purposes for which it was
 3 collected.

4 "(b) No cable operator, channel programmer, or originator
 5 of broadband telecommunications shall disclose personally
 6 identifiable information obtained pursuant to subsection (a)
 7 of this section with respect to a cable subscriber, or
 8 personally identifiable information with respect to the
 9 services provided to or received by a particular cable
 10 subscriber by way of a cable system, except upon the prior
 11 written consent of the subscriber, or pursuant to a lawful
 12 court order authorizing such disclosure.

13 "(c) If a court shall authorize or order disclosure, the
 14 cable subscriber shall be notified of such order by the
 15 person to whom such order may be directed, within a
 16 reasonable period of time before the disclosure is made, but
 17 in no event less than 14 calendar days.

18 "(d) Each cable operator shall, at the time of entering
 19 into an agreement to provide cable telecommunications, and
 20 regularly thereafter, inform every subscriber of the rights
 21 of the subscriber under this section. Such information shall
 22 include a description of the nature of the information to be
 23 maintained by the cable operator, channel programmer, or
 24 originator of broadband telecommunications, and the location
 25 and availability of such information.

26 "(e) A cable subscriber shall have access to all
 27 personally identifiable information regarding that subscriber
 28 which is collected and maintained by a cable operator,
 29 channel programmer, or originator of broadband
 30 telecommunications. Such information shall be available to
 31 the subscriber at reasonable times and at a place designated
 32 by the cable operator, channel programmer, or originator of
 33 telecommunications.

34 Any cable subscriber whose privacy is violated in

1 contravention of this section, shall be entitled to recover
2 civil damages as authorized and in the manner set forth in
3 section 2522 of title 18 of the United States Code. This
4 remedy shall be in addition to any other remedy available to
5 such subscriber.

6 "CRIMINAL AND CIVIL LIABILITY

7 "Sec. 612. Nothing in this title shall be deemed to
8 affect the criminal or civil liability of channel programmers
9 pursuant to the law of libel, slander, obscenity, incitement,
10 invasions of privacy, false or misleading advertising, or
11 other similar laws, except that cable operators shall not
12 incur such liability for any program carried on any public,
13 educational, governmental, or other channel referred to in
14 subsection (a) of section 606, or for any program required by
15 law to be carried on any other channel.

15 "RESTRAINTS ON SERVICE

17 "Sec. 613. No executive agency of the United States,
18 including the Commission, and no State or political
19 subdivision or agency thereof, or franchising authority,
20 shall have authority to regulate or restrict a cable system
21 operator from engaging in any other business activity, other
22 than regulations applicable to businesses of the same type in
23 the community.

24 "PROGRAMMING SERVICES AND FACILITIES

25 "Sec. 614. (a) No State or political subdivision or
26 agency thereof, or franchising authority, may require the
27 provision of particular programming or other broadband
28 services, or facilities, equipment, services, or other items
29 of value which are not related to the provision of broadband
30 telecommunications service.

31 "(b) A franchising authority may require, as part of the
32 initial franchise request for proposals--

"(1) channel capacity for governmental access

and

1 “(b) the construction of cable system facilities or
2 provision of other cable-related equipment.

3 “(c) A cable operator may offer, but may not be required
4 to provide, as part of basic service or any other tier of
5 service--

6 “(1) channel capacity for access uses; and

7 “(2) particular video programming services.

8 “(d) The cable operator may replace or remove a
9 particular service specified in the cable franchise as part
10 of the basic service or any other tier of cable service in
11 any case in which there has been a significant change in
12 circumstances since the cable operator's offer to provide
13 such service. The cable operator may not be required to
14 renew a specified service in any particular category of
15 service other than basic service.

16 “(e) Except as provided in subsection (c) of this
17 section, a franchising authority may, in accordance with the
18 provisions of this section, enforce any offer to provide
19 particular basic service set forth in subsection (c) or
20 particular cable services or cable system facilities or
21 cable-related equipment offered by a cable operator provided
22 that the provision of such services, facilities, or equipment
23 is specifically required by the franchise agreement.

24 “NO STATUS AS COMMON CARRIER

25 “Sec. 515. No executive agency of the United States,
26 including the Commission, and no State or political
27 subdivision or agency thereof, or franchising authority,
28 shall have authority to impose on a cable system regulation
29 as a common carrier or a utility to the extent that such
30 cable system provides broadband telecommunications
31 service.”.

32 EXCLUSIVE JURISDICTION

33 “Sec. 3. (a) Except to the extent otherwise specifically
34 provided in title VI of the Communications Act of 1934, as

1 added by the first section of this Act and provided in
2 section 607 of such title, the Federal Government shall have
3 exclusive jurisdiction over broadband telecommunications
4 regarding matters covered by such title.

5 (b) Any law of any State or political subdivision or
6 agency thereof, or franchising authority, in effect on the
7 effective date of title VI of the Communications Act of 1934,
8 as added by the first section of this Act, which is in
9 conflict with the provision of subsection (a) of this section
10 relating to the exclusive jurisdiction of the Federal
11 Government, shall be deemed superseded, as of the effective
12 date of such title, and shall thereafter be null and void and
13 of no effect.

14 (c) Nothing in this Act or any amendment made thereby,
15 shall be construed as prohibiting any State or political
16 subdivision or agency thereof, or franchising authority, from
17 exercising jurisdiction over matters which are of strictly
18 local concern and which are necessary for reasons of public
19 health, safety, and welfare.

20 NEW AND ADDITIONAL SERVICES

21 Sec. 3. Title I of the Communications Act of 1934 is
22 amended by inserting after section 6 the following new
23 section:

24 "NEW AND ADDITIONAL SERVICES

25 "Sec. 7. (a) Consistent with sound spectrum management,
26 the Commission shall, to the maximum feasible extent,
27 encourage the introduction of new and additional services by
28 new applicants, existing licensees, or other persons. In any
29 proceeding in which new or additional services are proposed,
30 such services shall be presumed to be in the public interest
31 whenever the Commission finds that such services are
32 technically feasible without causing significant technical
33 degradation to or interference with radio transmissions by
34 other licensees.

1 “(b) Any person may file with the Commission a petition
2 to establish or an application to offer a new or additional
3 service.

4 “(c) The Commission must determine whether the new or
5 additional service proposed in a petition or application is
6 in the public interest within one year after such petition or
7 application is filed. If the Commission initiates its own
8 proceeding for a new or additional service, such proceeding
9 must be completed within twelve months after it is
10 initiated.”.

11 EFFECTIVE DATE

12 Sec. 4. The provisions of this Act and the amendments
13 made thereby shall take effect six months from the date of
14 the enactment of this Act, except that, in the case of any
15 franchise agreement in effect prior to the effective date of
16 this Act, the parties thereto shall have the twelve-month
17 period following such date of enactment within which to bring
18 such agreement into compliance with the provisions of this
19 Act and the amendments made thereby.

20 REDESIGNATION

21 Sec. 5. The existing title VI of the Communications Act
22 of 1934 is redesignated as title VII, and sections 601
23 through 609 are redesignated as sections 701 through 709,
24 respectively.



Mayor Tom Bradley gives testimony. Photo by Bill Wilson

GRS scores big gain but obstacles lie ahead

by Frank Shaforth

Cities emerged from the first round of Congressional consideration of General Revenue Sharing with a major victory—but with a warning of how difficult final success will be.

The House subcommittee on intergovernmental relations and human resources agreed last Wednesday on a 5-year reenactment of revenue sharing with a 16 percent increase for local governments (HR 1930). Rep. Ted Weiss (D-N.Y.) chairs the subcommittee. The early subcommittee agreement augured well for the tentative full House Government Operations consideration of GRS reenactment on Tuesday, May 3rd.

While the subcommittee mark-up amounts to a critical victory for cities, the bill did not emerge with bipartisan support. Thus there are hints of major obstacles which confront GRS in the full committee.

Both ranking minority subcommittee member Robert Walker (R-Pa.) and Government Operations Committee Chairman Jack Brooks (D-Tex.) expressed reservations about Weiss's proposed increase in the local share. Likening local revenue sharing to liquor or marijuana,

Brooks described the program as "addictive" and an "insidious cancer." It "might be wise," he said, "to consider limiting [the] increase in light of the federal deficit, cuts in social spending, and cuts in the defense increase."

See p. 7, col. 1

Revised cable TV bill reflects NLC, NCTA agreement

by Cynthia Pols

The Senate Commerce Committee last week approved cable television legislation that reflects all essential aspects of the agreement between NLC and the National Cable Television Association (NCTA). The bill (S. 66), a completely revised version of Sen. Barry Goldwater's cable bill, was approved by a 15 to 2 vote; it is expected to go to the floor of the Senate in the next few weeks.

The revised bill reflects changes made last week after NLC president Mayor Charles Royer of Seattle asked NCTA to clarify the agreement between the two groups.

NLC Executive Director Alan Beals commended Sen. Goldwater (R-Ariz.)

free of pressing infrastructure problems at this time," Bradley said. "Some state and federal assistance is required if some important infrastructure needs are to be met."

Bradley also pointed out that most cities, when asked to identify their top infrastructure needs and the amount of money needed for them, responded that most individual projects could be done for an amount less than \$5 million and started in less than six months.

"This is a truly modest amount of money that is needed for the essential work," said Bradley. "While the task is great, we need not be petrified by the

See p. 4, col. 1

Federal Cable Legislation Update

and his staff for their strong support of a bill that provides "clear protections for the interests of cities, the cable industry, and consumers." Beals said he believes the legislation "will preserve virtually all essential aspects of local control over cable systems," and that the league looks forward to "playing an active role in the refinement of this legislation as it moves through the legislative process."

The major provisions of S. 66, as approved by the committee, are:

§ Facilities (Sec. 613). A franchising authority may require the construction of particular cable system facilities and cable related equipment as a condition of the franchise. This means that a city has authority to establish minimum channel requirements for subscriber networks

See p. 6, col. 1

Nation's Cities Weekly - April 5, 1983

nts intended to coordinate
ants going to a given area—
ieve recently. The effective
peal and replacement with
oluntary process in each
inally set for April 30, has
ged to June 30.

imes dropped 4 percent in
ording to the Federal Bureau
gation, and the reason was
le were keeping their eyes
FBI attributed the first major
reported crimes since 1977 to
neighborhood crime
n programs.

Reagan signed the Social
amendments of 1983 into law
Garden ceremony at the
ouse on Wednesday, April 20.
major issues impacting on
luded in the law are
on of the provision permitting
local Government to
from the system, effective
tely; and the inclusion of
rom tax free municipal bonds
aining taxable income for
s of Social Security. Municipal
ents, regardless of whether
e filed notice of intent to
e that are not now out of the
re precluded from getting out.

IDE . . .

gas decontrol, p. 2

policy shift clouds funding, p. 6

Moving out of obscurity

Editor's note: Proliferating local cable systems are and will be providing new distribution outlets for all kinds of video programming. This month VIDEO USER begins covering the issues and opportunities inherent in local cable programming with a regular column by Sue Miller Buske, executive director of the National Federation of Local Cable Programmers (NFLCP).

by Sue Buske

Local community programming on cable systems is moving out of obscurity and into the limelight. For years local programming has existed on scattered cable systems across the country in communities such as East Lansing, MI, Bloomington, IN, Austin TX, and Madison, WI. But only since cable franchising processes in major cities have made national headlines have people become aware of the wide range of programming opportunities available on local cable channels.

This local programming can be categorized into three broad areas: access, local origination, and leased channels.

Local Origination

Local origination (L/O) is the cable company's own local programming. Traditionally, L/O has included both programs produced locally and programs that were purchased. The L/O programming focus in recent years has varied considerably among cable companies depending on the operator's particular philosophy of local programming.

Typically, L/O channels are at least partially advertising supported. In many of the recently granted franchises the cable system marketing staff must also deal with ad sales and strategies. In addition, the L/O production staff often has responsibility for production of ads that will be inserted on local availability time designated by satellite services. The local time availabilities are a new area of responsibility for L/O production and sales staffs and are just beginning to be developed by many cable systems.

Access Programming

Access Programming

Access programming on local cable systems can be divided into three areas: public access, educational access, and governmental access. In contrast to local origination, access emphasizes the demystification of television and stresses citizen-produced programming.

The concept of access and demystification of television parallels access to the print media. On a day-to-day basis, a large variety of print materials passes through our offices and homes. We do not judge those print items against each other but rather select and read them based upon our interest in their content. The writers vary from the highly skilled to the average citizen. Yet, as we view television we may have certain format and quality expectations which are often quite confining and difficult to achieve.

The educational system has taught and encouraged us to use the tools of print. Cable access channels provide the public with the opportunity to express a broad range of ideas and interest with electronic media. The facilitating and teaching mechanism for the citizen is often called an access center. (We will discuss the management and operation of these centers in future articles.)

The primary category of access is called public access. Public access programming is typically representative of a broad range of community interests and activities. The day-to-day management of a public access channel or access center can be handled either by the cable company or by a nonprofit community corporation. The number of hours of programming on public access channels varies considerably from one cable system to another based, at least in part, upon channel time availability designated for access and upon the channel capacity of the cable system. Other factors that determine the number of hours of programming include availability of video trainers, video equipment and community animators (organizers). Content can vary from programming produced by local children to a chess tournament to a Little League baseball game. All programming is produced by local citizens and community organizations.

Educational access programming is usually generated from a local school or university. In more and more communities we are seeing educational consortiums evolving to coordinate the educational programming. The amount of programming generated varies considerably and, as with public access, is based on community interest and availability of video trainers, equipment, and channel time. Educational access programming can include traditional instructional programming as well as live school activities. Local educators are looking to the use of educational access channels to:

- Provide a link between school and parent
- Bring regular school board meetings to the public
- Promote a better understanding of school administration
- Deliver instructional programs
- Play a vital public relations role.

Local government units across the country have been using cable as a mechanism to communicate with citizens for at least five years. Seven years ago, Madison, WI became one of the first cities to activate a local cable channel for governmental programming. Now governmental access programming in cities varies from textual (character generated) information to documentaries about local issues. Live gavel-to-gavel coverage of city council meetings has been a regular offering on a number of local systems. Cities are also looking to cable for a variety of data and digital applications ranging from energy management to traffic signalization, and all with an

Video User
May 1982

Cable's Image

- How Does Your Office Look?
- Cable's Role in Local Affairs
- Daniels' Showcase



**Plus:
Who Needs an Affiliates Board?**

How to Get in Step With Local Affairs

With only a minimum capital investment, some operators have become important forces in their community through support of local activities. A look at what it takes.

By Jill Marks
TVC East Coast Correspondent

Nearly everyone will agree that image-building is important to win a franchise — witness the \$3 million spent on advertising and promotion by three Denver bidders — and even more crucial to a renewal. But advertising, mall displays and open houses — while adding public contact to the marketing mix — are somewhat passive devices which make no direct contribution to the community.

"We're going to be taking millions of dollars out of these communities," one manager confides. "We think you've got to put something back into them." That "something" will always include money in the conventional

form of franchise fees. It can also include LO cablecasts of high school football games, a fundraising drive for Muscular Dystrophy, or a workshop.

Usually the extent of local commitments depend on both the system owner's operating philosophy and the energy and interest levels of key system personnel. There are exceptions: a public-spirited system manager can contribute his or her own time to local causes and inspire other employees to do the same without ever seeing a nickel from corporate headquarters. Conversely, the well-heeled corporate parent can make large cash donations to local charities while system employees

devote themselves strictly to selling cable services from nine to five. In most firms, though, image building is a joint effort, especially where local origination programming is concerned.

To find out the extent and variety of operators' public affairs projects, we looked at systems in various stages of maturity. The studies start with a recently completed system, since those under construction haven't had much time to produce a track record. For more information on how to pace marketing plans with build schedules, see "Building a Market While Building a System." *TVC* April 15, 1981, pp. 76-82.



Update in Kansas City: ATC unit sponsored music to mark opening of system.

Ronald McDonald House: Blackhawk Cable Communications

Parent company: American Family Corp. (CBS plans to purchase system in spring)

Communities served: Hurst, Haltom City, North Richland Hills, Keller (northern sector); Mansfield, Midlothian, Everman, Waxachie (southern sector), Texas.

First franchise awarded: 1979

Channel capacity: 52 (35 in use, including 4 pay tiers)

Homes passed: 50,000

Subscribers: 18,000 (36 percent)

System manager: Harry Bickmann

Basic lift was the objective of several promotions implemented last year in the northern sector of this system by Blackhawk Vice President Joe Hipple. In April he sent a letter to current subscribers offering a \$20 check or one month's service credit to those who got a neighbor to sign up for cable service. "We received 600 responses," says Hipple, "including one from the promotion manager of a local McDonald's restaurant, who wanted to do a promotion with us." They experimented with bill stuffers: a "buy one, get one free" coupon made Chicken McNuggets so popular "they ran out of McNuggets several times," notes Hipple. The effort resulted in a 40 percent increase in sales of the new product.

Hipple then teamed up with Chicago marketing consultant Zannie Mitchell for an even bigger joint promotion with McDonald's — its Ronald McDonald Houses across the country which provide a temporary home for parents of hospitalized children. While fundraising drives for the houses are sponsored by the restaurant chain, the homes are completely dependent on local donors for construction and operating funds. The house under construction in Ft. Worth needed additional funding, so Blackhawk became involved.

The system offered to donate \$5 toward the house for every new order received — basic, pay or both — and reduced installation from \$15 to \$10. Blackhawk installed a television set in the McDonald's in Hurst along with a sign promoting cable service and the fundraising drive. A salesperson manned a booth there two days a week to sell services, while an application form on tray liners and bag-stuffers

worked on weekdays. "The tray liners were indispensable: we were getting 25,000 impressions a month," Hipple remarks. The promotion culminated in a five-day telethon hosted by HBO's Les Read at a local shopping mall. A later telethon featuring a national and local celebrities introduced The Movie Channel and an expanded basic package with CBS Cable, MTV and WOR. Blackhawk has added 818 expanded basic subs to date, and the response from the Ronald McDonald House promotion has been excellent. In a three-month period, 8,000 new pay

units and 1,500 basic subs were added: since April, Blackhawk has added 3,000 basics and 11,000 pay units throughout the system.

The drive raised \$20,000 for the Ronald McDonald House, enabling it to open two months ahead of schedule. Hipple gives high marks to pay suppliers, Mitchell and Associates, and McDonald's for their superb cooperation in the venture. "McDonald's is very interested in the Ronald McDonald Houses," he says, "I think they would be interested in working with any operator on the project."



Getting a break: McDonald's officials receive check from Blackhawk's Joe Hipple

That's Entertainment: Warner Amex of Canton/N. Canton

Parent company: Warner Amex
Communities served: Canton and N. Canton, Ohio
First franchise awarded: 1966 (Warner purchased in 1974)
Channel capacity: 35 (25 in use, including one LO channel, 2 pay tiers)
Homes passed: 81,000
Subscribers: 47,000 (58 percent)
System manager: Michael Rector

Tom Beppler might well be described as cable's answer to Bob Hope. The promotions he's orchestrated for Warner Amex of Canton are not only entertaining but manage to serve the public interest and his system's revenue stream at the same time. Now director of public affairs for Warner's Ohio region, Beppler remains involved with the Canton system, where he was director of marketing.

He masquerades as Santa Claus each year and takes his employee elves to distribute toys at an orphanage, Head Start centers and the Molly Stark Hospital for children, where the system provides free cable service. The company aids senior citizens groups in the area by producing and promoting variety shows (Beppler does a creditable W.C. Fields), then offering cable installation discounts and other prizes to those who attend.

The local Mental Health Association, Toys for Tots, the American Cancer Society and a host of other groups have benefited from Warner's promotional drives, which usually offer installation discounts to donors. Last year the system offered half price installation to anyone who would donate \$5 to the Cancer Society and helped raise over \$5,000. All this adds up to basic lift. "Eight hundred additional customers over and beyond our regular business could be directly attributed to the Toys for Tots campaign in 1981," Beppler reports.

Local merchants and other media can get on the bandwagon, too. "Make Me Snicker," a joint production of WINW Radio and Warner Amex, brought Canton's amateur talent out of the woodwork. Contestants in the mall show — which later aired on LO —

competed for prizes of Atari video games and a television set donated by a local dealer. System employees passed out 10,000 Snickers candy bars to those who filled out registration cards at the show. They also signed up 250 new basic customers and passed on sales leads to the TV dealer.

Sometimes the spotlight focuses on professional talent. Beppler invited the Cleveland Browns' Lyle Alzado to one mall event where he spent the day signing over 1,200 autographs. Customer service reps signed 289 orders.

But the *coup de grace* of Warner's public service projects came, strangely enough, from the firm's rescue of a potential competitor in the entertain-

ment arena. The Palace Theater is a Canton landmark built in 1920. Once a showplace featuring live performances, it had suffered heavy losses as a movie theater and was about to be demolished when a group of concerned civic leaders appealed to Warner for help. The system's request for corporate assistance (a rare one) resulted in a \$10,000 donation from Warner Amex. The Theater Association is now putting together shows which will speed the Palace's revival.

"I know it's viewed as a competitive medium," Beppler admits. "But this crosses the boundaries of competition."

Well, that's entertainment.



Christmas in Canton. Beppler's staff handing out toys to children

High Spirits vs. Hard Times: United Cable of Mid-Michigan

Parent company: United Cable Television

Communities served: East Lansing, Meridian Township

First franchise awarded: 1968

Channel capacity: 36 (public access channels, four pay tiers, interconnect, with Continental system in Lansing)

Homes passed: 24,000

Subscribers: 12,700 (53 percent)

System manager: Chuck Pumphrey

The recession, coupled with the downturn in Michigan's automobile industry, has socked this franchise area with high unemployment and bleak prospects for local institutions and charities as well. Thus United Cable of Mid-Michigan is seeing a greater need for entertainment and public service commitments than ever before.

Sales and Marketing Manager John Reinhart has found that public access programming goes a long way to involve the system in the community and vice versa. New subscribers are greeted with marketing materials which include a letter from the Meridian Township Cable Commission calling attention to the public, educational and government access time and facilities available at United. The cable system further encourages their use by promoting its video workshops four times a year.

"We also have an ongoing internship program with Michigan State University," notes Lyle Leland, public access coordinator. "Two people have gone through it now and are employed in our marketing group." United is currently working with the Boy Scouts to establish an Explorer Post in television communications for 14- to 20-year-olds. A medical link between the Michigan State University Medical School and area hospitals is under consideration, and last November United lent its technical expertise and an uplink for an MSU program on the Michigan taxation system.

United's ties to MSU are important as the system passes 2,500 units on the university campus; carriage of MSU sporting events has proved popular with off-campus subscribers, too. "We took a survey two years ago and 15 percent of cable subscribers said

they were watching MSU hockey on a regular basis," Reinhart reports.

The schools and city governments have their own studios and produce their own programming, but United doesn't let its remote van and Portapak equipment go to waste. Under Leland's direction, local origination projects are ambitious to say the least.

Last November the system carried a live transmission of a 10,000-meter run involving six locations, and just completed a live remote from a local jazz club which was simulcast by the city's public radio station.

United's corporate marketing group encourages systems nationwide to support the Toys for Tots campaign each Christmas. Mid-Michigan collects about \$3,000 in money and toys each year in conjunction with the U.S. Marines. United employees also contribute their time to other public services: the "Holiday Project," (a Christmas charity

for needy families), a Halloween Open House for subscribers, and Easter basket distribution to hospital and nursing home patients are a few of the causes they support.

Reinhart is especially proud of United's relationship with handicapped groups, which he engages for extra help in direct mail envelope stuffing and mailing. "During a recent Cizemax launch we were able to coordinate the entire mailing effort with a local organization known as 'Deaf Friends,' a group of volunteers and hearing-impaired children between the ages of 10 and 16," he recalls. "We enjoy this type of relationship because it provides them with an occasional means of income for their field trips, but what I like is that this type of community involvement has the potential for developing long-term friendships and interaction between our employees and the 'Deaf Friends' members."



UCT's site in East Lansing: Local programming key area

Operation Scrapbook: Vision Cable of Pinellas County

Parent company: Newhouse Group, Inc.

Communities served: Clearwater, Pinellas Park, Kenneth City, Belleair, Fla.

First franchise awarded: 1980

Channel capacity: 54 (32 basic, including 4 access channels and 5 pay tiers),
with institutional loop (33 upstream, 30 downstream)

Homes passed: 65,000

Subscribers: 36,500 (56 percent)

System manager: Chuck Bohart

Despite the fact that this system offers nearly all satellite services currently available and introduced the new Dow Jones interactive service just last month, Vision is relying on local origination activities to keep the system in the public eye.

"We're very firm believers in building a positive public image," says Michael Willner, vice president of marketing for the MSO. "The best way to gain publicity is through a competent and complete LO operation." Vision's vehicle is Operation Scrapbook, a "video archive" of the community which is begun before the franchise has been awarded and stays with the city, according to Willner, "whether we win or lose."

System Manager Chuck Bohart says Operation Scrapbook is a "tremendous image-maker" although the concept is fairly simple. "We took our studio equipment and personnel and looked around the neighborhood for something of general interest, then zeroed in on it." Targets have included everything from kiddie pageants to city council meetings. Some 50 tapes are now on file and used for screenings, duplication and LO programs.

Still photos were taken during the taping sessions and forwarded to Vision's local ad agency, Chenoweth, Ellis and Faulkner. The agency used the photos in a newspaper ad campaign which stressed Vision's fulfillment of franchise promises. The campaign has run for over a year now and will continue indefinitely.

Some operators would call the approach heavy-handed in light of Vision's franchising activities in the rest of Pinellas County, where the firm faces stiff competition. But Michael Willner insists the ads serve a number of purposes, which includes urging the

public to become involved with access productions and make use of the system's two studio facilities.

"We've spent twice as much on local origination as we promised in the franchise proposal," he says. "We promised a \$250,000 facility which came to \$500,000 in actuality. . . in all we've spent over \$1 million for our office and studio."

The company's local reputation does not rest on access alone, however. Last fall Vision's parent, Newhouse, helped bail out of a financial crisis the community's Performing Arts Center and Theater by agreeing to a \$1.5

million construction loan guarantee when a nearby town threatened to pull its guarantee. The Newhouse action drew favorable comment from city and county administrators, and prompted an effusive editorial in the St. Petersburg *Times* which called it "a public relations coup." While Pinellas County officials say the loan guarantee will have no bearing on the franchise award, Vision's Clearwater performance is being closely monitored.

As Willner points out, "As good as your PR may be, if you don't back it up with sound operations you're going to lose out."



Laure Capitini came to the Pinellas Small World Kiddie Pageant... and proved a Star is Born, not made.

Putting Pinellas County in focus.



Newspaper ad promoting baby pageant. More than 50 historical tapes finished.

People Make the Difference: Birmingham Cable Communications, Inc.

Parent company: ATC (80 percent); local investors (20 percent)
Communities served: City of Birmingham, Irondale, Ala.
First franchise awarded: 1973
Channel capacity: 30 (23 in use, including LO channel, 2 pay tiers)
Homes passed: 99,250
Subscribers: 41,000 (41 percent)
System manager: Sidney Burgess

ATC sponsored a special national project last year to encourage community involvement in its 126 cable systems. The systems were asked to come up with proposals for charitable contributions to a local nonprofit organization which would benefit from a grant of \$500 to \$2,500. One of the 15 winners in the competition was Birmingham Cable Communications, which selected the Birmingham Festival Theater as its beneficiary. The experimental group got \$2,500 to aid its "Save-the-Theater" campaign for which it had already raised \$15,000. "Last year this group had fallen on hard times due to mismanagement and needed the money badly," explains Sid Burgess, BCC general manager. "They produce original works and are a real asset to the community." The group is now back on the boards producing new plays which will be videotaped for the system's LO channel.

BCC has weathered rough times caused by construction delays on the part of a failing utility company in Birmingham, and Burgess is grateful to patient city officials who have helped smooth community relations. But he also believes the system's employees are responsible for their company's public image. "All of our department heads, with the exception of our chief engineer who is from northern Alabama, were recruited from this market," he says. "I think having local people helps. We're all conscious of carpetbaggers down here, but when subscribers call up the cable system and can talk to someone with a local accent, we seem less like carpetbaggers."

The system has met its affirmative action employment goals in this predominantly black community, and en-

courages use of its LO channel by community groups of every description. BCC provides studio facilities, personnel and air time, and a workshop in video production is held every Wednesday night. Three part-time interns from the University of Alabama-Birmingham and a full-time studio director teach groups the tricks of the trade and keep channels booked.

The recession has brought high unemployment and corresponding payment problems to this heavily industrial market. About half of the 40,000 bills are paid in person, which affords the system a tremendous amount of public contact. That factor, coupled with the impressions each of the system's 100 employees make when they talk about cable with their "family, friends and neighbors," make internal communications top priority at BCC, according to Burgess. He holds a weekly employee meeting in

which all department heads provide information on new equipment, services, programming and promotions.

"Nobody wants to look like they're not in the know," he says, and that extends to staffers' families. "The father of one of our maintenance technicians works in an industrial plant, and he is the plant's source of cable-related information," Burgess explains. "Now we have a fellow out there who — at no additional cost to us — knows what's new at our cable system because he sees the news bulletin and can tell everyone what's going on."

While crediting his local employees with establishing BCC's positive public image, Burgess thinks ATC's corporate office should also take a bow. "One of the advantages we've had in dealing with the community is that the city has always known that behind us was a company whose national reputation is excellent," he says.



BCC and schools. System aired show produced by students

WHAT IS CITY CHANNEL L? City Channel L is one of 4 channels allocated to the City of New York through the 1970 cable television franchise agreements in the Borough of Manhattan. On Channel L four categories of users, or program producers, have been designated: Community Boards, elected officials, government agencies, and nonprofit civic and cultural organizations.

WHAT IS THE CHANNEL L WORKING GROUP, INC.? The CLWG is a nonprofit, tax-exempt corporation which provides City Channel L's eligible users with technical assistance to develop, fund, schedule, produce, and promote their television programs. The channel users are responsible for the content and participants on the programs. The CLWG simply makes them happen, live. Since May, 1977 the CLWG has produced 3½ hours of live, phone-in programming each week or over 480 hours of original programming in four years. Programs that are not time-dated are repeated at various intervals, thus maximizing their impact.

WHO FUNDS THE CLWG? At the present time the staff, administrative and production expenses for the programming on the channel are supported by Manhattan Cable TV and Teleprompter Manhattan Cable TV, the two operating companies in the borough. These contributions are voluntary. In addition the CLWG receives occasional corporate and foundation grants and is actively fundraising for additional projects.

WHAT DOES THE CLWG LOOK LIKE? As the CLWG produces programming for cable TV, its history is characterized by low budgets and volunteer assistance. Cable TV, particularly public service programming, has never been perceived as having the market base to justify large, well-financed production staffs. The CLWG is composed of three full-time staff members and 15 to 18 volunteer interns who primarily come from New York City area colleges. Overseeing the CLWG is a Board of Directors composed of 13 people representing the media, cable subscribers, public administration, local corporations, and specific constituencies in Manhattan.

FOR FURTHER INFORMATION: Write the Channel L Working Group, Inc., 51 Chambers Street, Room 532, New York City 10007, or phone (212) 964-2960.



CAMPAIGN FOR MEDIA LITERACY

Cable TV is not broadcast TV.

Broadcast TV is mass media. Programming which serves a mass market is all that most American TV viewers ever get to see.

Communities are local and do not serve a mass market. Cable is local and with its multitude of channels offers space for communities to use for local information.

If you represent a nonprofit community-based social-service or arts organization, the Channel L Working Group wants to help you get your message on the cable television systems in Manhattan.

You can join the campaign to become "literate" in community television...



CHANNEL L WORKING GROUP

(OVER)

We all watch it. Some of us can't get enough of it. And we all depend on it for everything from news to entertainment. But how does the world we see on TV connect with our own lives? How many TV characters have problems making their rent, getting hot water, or holding a job?

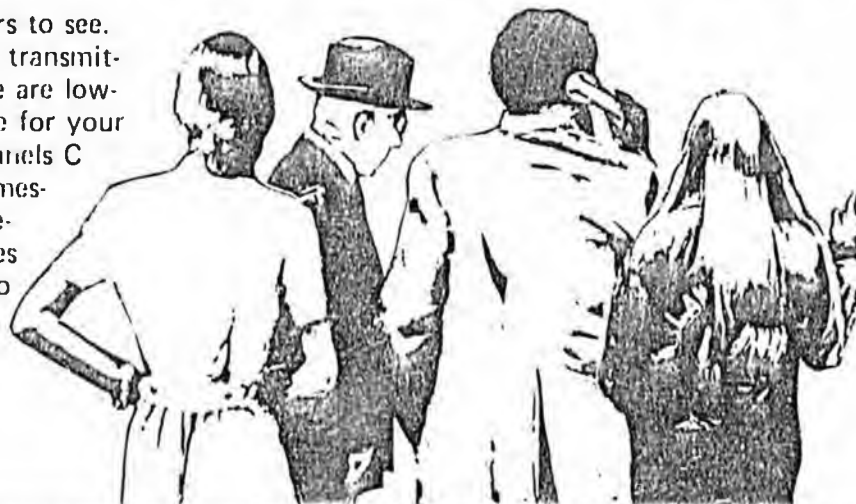
COMMUNITY TV

On City Channel L we believe that through community, art and church groups, people can learn to make their own TV--- about whatever is important to them.

Since 1977 we have produced live programming on community issues each Wednesday night on City Channel L. These live, call-in talk shows offer viewers the unique experience of facing a Community Board representative, City Council member, or the Mayor himself for a discussion of civic issues over the phone. Programs on everything from battered women to housing renovation to park preservation have managed to draw hundreds of phone calls--- and the response is growing.

CABLE TV IN COMMUNITIES

Cable TV is a physical system occupying a public space, and it is a legal agreement making possible the use of public space for private gain. As a community resident you have a stake in cable TV. You have a right to put programs on access channels for your neighbors to see. Whatever you wish to say can be transmitted throughout the system. There are low-cost production facilities available for your TV production ideas. While channels C and D are available for personal messages of all types, Channel L is reserved for public officials, agencies and organized nonprofit groups to interact with the public at large.



THE CAMPAIGN FOR MEDIA LITERACY

Channel L is about to increase its weekly programming output through a new project called the CAMPAIGN FOR MEDIA LITERACY. Through this project we will reach out to hundreds of community and arts groups around Manhattan. We offer assistance in the form of equipment and trained personnel for any nonprofit group with an issue or activity which conforms to a Channel L format.

PURPOSE

The purpose of our campaign is to enable the millions of us who don't get on television, whose stories rarely get told, to finally to be seen and heard. We think it's time to serve different ends, to reflect our problems, examine solutions, and give us hope by showing us what other people are doing to expose the conditions in their communities. We think the time for community television is long overdue.

POLITY/CULTURE

These new programming ideas will be cooperatively developed for our POLITY/CULTURE series on Monday nights. Anything that grows out of the "body politic" or the island's diverse cultures can become City Channel L programming. Everything from programs on mass transit problems to festivals of poetry, dance, and drama--- almost anything you can imagine or are willing to develop.

COMMUNITY PROFILES

CLWG is producing a PSA series for local service organizations. Priority areas: youth, seniors, housing/energy conservation. Call us!

Human Resources Dept.
Municipality of Anchorage
Pouch 6-650
Anchorage, AK.
99502-650

May 12, 1983

Sheila,

Though the Mayor has yet to make an official statement on this bill (Cable TV Deregulation - HB274) I would like to mention to you our concerns:

- 1) This bill would grant a ~~new~~ monopoly to existing cable TV operators (who use public right-of-ways) while removing them from ~~any other~~ A.P.U.C. or local government regulation meant to protect the tens of thousands of consumers.
- 2) This bill eliminates the ability of the A.P.U.C. to enforce the conditions of the original certificate. These conditions may include public, governmental, and educational access channels.

Clearly this is a bill which eliminates competition to existing operators.

Enclosed is some general background information as well as material about public access channels in other systems.

Thanks,

Mark

MSG 93-00618325 PRT 1 05/17/93 13:35:51 ORIG: LA08 IN= 0010 OUT= 0002
FROM: CANDY ANCHORAGE TO: TOM
TARGET: LUNA SUPP. OF LABOR AND COMMERCE ON HB 274

DMPT # 1

6. STEVEN AUFCHTYMUR, C AND WAAGE, DEPT OF HUMAN RESOURCES

~~DEPT WAGE~~

7. MARK BUFLER/MUR, OF ANCHORAGE, DEPT OF HUMAN RESOURCES

MSG 93-00618329 PRT 1 05/17/93 13:40:17 ORIG: LA08 IN= 0011 OUT= 0003
FROM: CANDY ANCHORAGE TO: TOM
TARGET: LUNA SUPP. OF LABOR AND COMMERCE ON HB 274

DMPT # 2

~~TO SPEAK~~

7. CHARLES SCHUMAN ✓

MSG 93-00018311 PPTX 1 05/17/93 13:26:33 ORIG: LA08 IN= 0009 OUT= 0001
FROM: CANDY/ANCHORAGE TO: TOM
TARGET: LJH6 SUBJ: S. LABOR & COMMERCE T/C ON HB 274

OMNI # 1

TO SPEAK

1. MS. EDIE LYNCH/ANCHORAGE COMMUNITY COLLEGE
2. COMMISSIONER CAROLYN GUESS
3. COMMISSIONER MARV WEATHERLY

***** THE TWO COMMISSIONERS DID WANT ME TO LET YOU KNOW THAT THEY WERE INVITED BY THE COMMITTEE, AND THAT THEY WOULD LIKE TO SPEAK AT THE SAME TIME (I HAVE PUT OUT AN EXTRA MIC SO THAT THEY MAY DO SO, IF THAT IS ALRIGHT.)*****

4. ROBERT E. HERON ✓
5. ROBERT J. GOULD ✓

OBSERVERS:

1. PAT FLATLEY/ALASKA CABLE SYSTEMS ***** MR. FLATLEY MAY VERY WELL DECIDE TO SPEAK -- HE IS AWAITING ANOTHER ARRIVAL TO DETERMINE THIS. I'LL KEEP YOU POSTED.

MultiVisions shows cable capabilities

By **CHUCK KLEESCHULTE**
Daily News business reporter

Anchorage's cable television firm Monday celebrated the first anniversary of its starting to install the area's new \$50 million cable system with a dazzling display of modern telecommunication technology.

During a session before the Anchorage Chamber of Commerce, MultiVisions showed off its high-tech abilities by switching from a live Washington, D.C., television call-in program featuring Alaska Sen. Ted Stevens — the Anchorage audience actually getting to ask Stevens a question or two over the Congressional C-SPAN network — to a live television interview with Gov. Bill Sheffield from Juneau.

"We just wanted everyone to know the ease of communication that Anchorage now enjoys as a result of its new cable system. The technology of telecommunication is in place now and it's getting easier to utilize every day," said MultiVisions President Bob Uchitel.



Bob Uchitel

MultiVisions last summer began installing 700 miles of cable in the Anchorage and Eagle River areas to provide area residents with up to 54 channels of programming.

Seth Davis, vice president of engineering and permitting for the system, said 160 miles of the system have been installed to date.

He said cable is now available to 27,000 households in the city. Installation is scheduled to take place in Eagle River in 1984 and in the remainder of sparsely populated parts of the municipality by 1985.

Chris Outlaw, the firm's vice president for finance and administration, said 10,000 subscribers so far have paid between \$16.95 and \$69.95 a month for the service which offers channels devoted exclusively to movies, sports, special interest programming and music, as well as governmental, religious and children's programming.

Bob Gould, another MultiVisions official, said that Alaska will be unique among the 50 states within two years. When installation is finished in Anchorage, and a companion system is done in the Kenai-Soldotna areas, 90 percent of state households will have cable television available to them.

Uchitel said that residents should be excited about cable, not because of the satellite technology involved with the system, but because it will give them a greater ability to influence the political process.

"The coming of cable will not change the world; it will be the same old world. But cable can help us solve our problems by being better informed about the workings of government; about the things we need to know to change things," Uchitel said.

Sheffield, during his appearance from Juneau, said the capabilities of the new cable system, added to legislative teleconferencing and the workings of the state's satellite project, makes it possible for all Alaskans to be informed about what is going on in government.

"There really is no excuse for people not to be knowledgeable about government. Communication is very important. Alaska currently is in the vanguard in the communications' industry and we hopefully will remain there," the governor said.

Cities warned to fight cable TV deregulation

By **CHUCK KLEESCHULTE**
Daily News business reporter

Cities and municipalities need to become active to work against a federal bill which would deny local government the ability to regulate cable television, says the executive director of the United States Conference of Mayors.

During a visit to Anchorage Monday, John J. Gunther, director of the mayors group,

warned that cities and states will be barred from regulating the cable industry should Congress approve a pending bill deregulating the industry at the national level.

"Right now we don't know of many abuses of cable around the nation, but that might be because any franchise which does a bad job can be ordered out. If local government is barred from regulating cable then the whole future of local pro-

gramming is turned solely over to the monopoly of the owners," said Gunther.

Members of the U.S. Conference of Mayors, at their annual meeting in Denver next month, will be considering a resolution opposing congressional action to deregulate cable television. Gunther was in town to brief Anchorage Mayor Tony Knowles on the resolution.

Gunther said municipal control gives local government some measure of control over the quality of programming. "If Congress no longer

wants to control cable then fine, it should get out of the business. But local government has to have some protection given the confusion which competing cable franchises can cause and the problems which unregulated monopolies can cause," Gunther said.

He said the problem could be worsened in Alaska where a state cable television deregulation bill is scheduled for debate today in a House committee. "As I understand it, between the federal and state bills there would be absolutely no control over cable television as an industry in this state should they both pass," Gunther said.

May 20, 1983

Labor and Commerce Committee staff recieved a call at 10:30 am today from Edie Lynch with Anchorage Community College in Anchorage. Due to schedule conflicts, Edie Lynch was unable to stay at the teleconference hearing long enough to present her remarks, but she was assured her comments would be presented to committee members prior to action being taken on HB 274 today.

1) Will APUC have the authority to enforce other conditions of the certificate once rate-deregulation has occurred? This is especially applicable to such things as access channels. Edie Lynch states that there are some conflicts of legal opinion about this matter and asks the committee to hold action on the bill until an AG's opinion has been obtained on the subject, or until language has been put in the bill stating that APUC will have the ability to enforce other conditions of the certificate following rate deregulation.

2) Cable systems should not be deregulated until they are complete, and have fulfilled other conditions of the certificate. Don't allow deregulation of unfinished or incomplete systems.

Thank you for your consideration. Edie Lynch's phone number is 786-1626.

Carolyn Guess feels this answers
concern. If during hearing procedure
access channels are desired, APUC can
make it a condition of granting
certificate.

AS42.05.241 DOCUMENT# 42.05
CHAPTER = 42.05
SECTION = 42.05.241
TITLE = 42
HEADINGS TITLE 42
Public Utilities and Carriers
CHAPTER 05.
Mesa Public Utilities Commission Act.
ARTICLE 3.
Certificate of Public Convenience and Necessity.
CITATION Sec. 42.05.241.
CATCH # 13
CONDITIONS OF ISSUANCE.
TEXT
to certificate may be issued unless the commission finds that the
applicant is fit, willing and able to provide the utility
services applied for and that the services are required for the
convenience and necessity of the public. The commission may
issue a certificate granting an application in whole or in part
and attach to the great of it the terms and conditions it
considers necessary to protect and promote the public interest
including the condition that the applicant may or shall serve an
area or provide a necessary service not contemplated by the
applicant. The commission may, for good cause, deny an
application with or without prejudice.
HISTORY (Sec. 6 ch 113 SLA 1970)
* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.
R0601

A SUMMARY OF HOUSE BILL 274

The purpose of the bill is to extend economic deregulation which was granted to the cable operators of the State of Alaska by Chapter 136, SLA 1980. This came about as a recommendation of Legislative Audit in their sunset review of the Public Utilities Commission. The Tenth Legislature provided for a three year experimental period of deregulation of the cable industry. That experiment has proved satisfactory as indicated by the letter from Carolyn Guess, Chairman of the Public Utilities Commission (copy attached) and the recommendations of the Commission to extend that deregulation.

It has been suggested that a total deregulation of the cable industry be considered. This is not practical at the moment due to pending legislation in the U.S. Congress (Senate Bill 66 - copy attached) and a litigation that is pending in federal courts.

The absence of some form of regulation by the A.P.U.C. would seriously inhibit the growth of cable as a telecommunications media form.

1. Certification - The Public Utilities Commission currently holds hearings to determine the technical, financial, and willingness of an operator to provide service. After these hearings are concluded, an administrative law judge issues an opinion to the Public Utilities Commission and the Commission decides who the P.C. & N. (Certificate of Public Convenience Necessity) is awarded to. Lacking this review of an operator's capability and capacity, less than quality service could be introduced into the marketplace.
2. The Ability to Review Applications for Transfer of Certificate - The Public Utilities Commission also reviews all applications for transfer using the same criteria as described above.
3. Arbitration - The Public Utilities Commission acts as arbitrator in cases involving right-of-way, interconnect, and pole attachments. The decision of the Public Utilities Commission is held to be final in any disputes that may arise.
4. Municipal/Federal regulation - Should the Public Utilities Commission not hold the power of certification, Federal Communications Commission would usurp control and/or a municipality might attempt to control of the regulatory functions over the cable operator. As witnessed

in the Lower 48 states that allow municipal franchise, it is evident that this is imperfect and has caused many serious problems. Alaskans might well understand the problem with federal regulation of basically an intrastate industry.

5. Financial Considerations - Most financial institutions would not lend money to an operator without the Certificate of Public Convenience and Necessity. This would tend to the monopolization of the cable industry by those companies with large financial assets. This would also tend to provide for "skimming" in the marketplace.

House Bill 274 provides for both regulation and deregulation of the cable industry to enhance the growth of telecommunications in the state. In striking a balance between the regulatory agency's ability to control and the individual operator's ability to set his own rates and tariffs. Since cable could not be considered a "vital" utility and the public is well served by enactment of House Bill 274.

The consumer is protected in House Bill 274 by the provision of the 25% provision and/or "trigger" mechanism in the bill. Should 25% of the subscribers to a cable operator service petition the Public Utilities Commission, they once again would be regulated. This safeguard feature, along with public choice, guarantees that the cable operator be responsive to the people of the community and his subscribers.

Continuation of Cable Television
Economic Deregulation

The proposed legislation would make permanent and clarify the present statutory exemption of cable television (CATV) public utilities from economic regulation by the Alaska Public Utilities Commission.

The existing statutory exemption of CATV systems was enacted by the Legislature in 1980 and extends only through June 30, 1983; it was intended to be a three-year experimental deregulation program. As originally enacted, Ch. 136, SLA 1980, added subsection (i) to AS 42.05.711, but later was revised by the Revisor of Statutes as Sec. 13 of that chapter which reads:

Cable television systems are exempt from the provisions of AS 42.05, other than the provisions of AS 42.05.221 - 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date, and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission.

The proposed legislation would permanently deregulate CATV services with respect to rates and charges for those services, the quality of that service, management practices and customer complaints, but would retain the Commission's authority with respect to the issuance of a certificate of public convenience and necessity to a CATV public utility (AS 42.05.221 - 42.05.281) under which the Commission determines if an applicant CATV company is fit, willing, and able to furnish CATV service and whether the public convenience and necessity requires that CATV service be provided to the proposed service area. (Under existing AS 42.05.321(b), CATV utilities also still are subject to Commission jurisdiction with respect to joint use and interconnection of utility facilities.)