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CABLE TELEVISION IN THE COMMONWEALTH OF PENNSYLVANIA:
ANALYSIS AND RECOMMENDATIONS

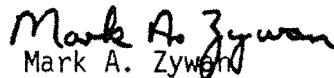
November, 1979

The findings and recommendations in this study are a result of research conducted by the authors and do not reflect the opinions of the Members of the Local Government Commission or the Pennsylvania General Assembly. The research for this report has covered a period of approximately one year and the information presented is as current as possible in view of the constant modification in Federal regulations.

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FORWARD

Much has been said and written in the past about the role of the Commonwealth in the regulation of the cable television industry. Presently, Pennsylvania takes the traditional laissez faire approach of keeping hands off this subject while leaving regulation and franchising to the Federal Communication Commission and various local governments. Increasingly, however, the FCC appears to be withdrawing from this partnership with local government and if present situations continue, a vacuum will be created where by local government alone will be left with the task of exercising control. In this light, the problem appears to be a very complicated one in which we must determine what role Pennsylvania, if any, should take in keeping the cable television industry under some regulatory authority while at the same time insuring that the industry enjoys rights and privileges under the free enterprise system. On this same question, we must also determine what role local government should continue to play in franchising CATV in individual municipalities. Most importantly, however, we must insure that protection is given the public in terms of interest it has in the development of cable television in their communities.

Regarding the CATV industry itself, a policy must be developed which will insure that future technical development and expansion will not be hindered by governmental controls which might be too restrictive. Our duty should be to provide a balance between consumer and commercial demands in attempting to provide some degree of mutuality between the two.

CHAPTER 1 - INTRODUCTION

Characteristics of Television Signals and Cable Television

Television signals, whether broadcast over the air or through cable are essentially the same. The broadcast medium (air or cable) affects the signal in mainly one respect, attenuation.* The signal weakens much more quickly when broadcast through cable than over the air.

The normal home television signal uses about 6 megahertz of bandwidth.** This is quite a large portion of the broadcast spectrum. The entire FM band broadcast spectrum is only 20 megahertz.

When television signals are broadcast through the cable medium, the signals are so weakened that they must be amplified at intervals. The amplifiers are placed along a cable system in cascade.*** The normal number of amplifiers in cascade is 32. This is not the number of amplifiers in a system, rather it is the number of amplifiers a TV signal passes through before reaching a particular television set. Each time the signal is amplified a certain amount of noise and distortion which cannot be filtered is inserted into the signal. This appears on the home set as 'snow'. Thirty-two amplifications is about the maximum number possible before the reception becomes unacceptable to a subscriber.

The amplifiers are set in the system as far apart as possible to permit the optimum gain from amplification. A system often has a spider web-like network of cascades in a particular service area extending to limits of satisfactory service. Once this limit is reached, a new headend must be installed to again receive and transmit the signals.

Signals transmitted at high frequencies will weaken sooner than those transmitted at low frequencies given the same amount of power. UHF stations (Channels 14 and above) operate in the 470 to 890 megahertz band and are

* Attenuation - the reduction of the strength of the signal.

** Bandwidth - a measure of spectrum (frequency) use or capacity.

*** Cascade - refers to a connection of apparatus (amplifiers in a series).

authorized to operate at higher power than VHF stations (Channels 2 to 13) which operate below 216 megahertz. Power cannot be increased when higher frequency signals are added to the cable system, and amplifiers would have to be moved closer together to boost the higher frequency signals. Many cable operators convert the higher UHF signal to the lower unused VHF channels on a cable system.

New developments in cable technology have introduced higher frequency amplifiers but this often requires the rebuilding of an older system to replace and relocate the amplifiers.

Description of a Cable Television System

A cable television system consists of a headend to receive and process television signals and a plant to distribute them. The headend is a building with an antenna tower next to it. The antennas, one for each station, pick up the signals of television stations that the cable system carries. The television signals are received and then transmitted through the cable.

Some systems may also use Cable Television Relay Service (CARS) to receive distant television signals and Theta Con Amplitude Modulation Links (AMC) to distribute the signals in areas in which cable is either too expensive or not easily accessible.

The CARS microwave system is a narrow band of broadcasting operating in frequencies higher than UHF frequencies. The operation involves the reception of television signals amplifying them and retransmitting them in a direct beam to other microwave receivers some distance away. (An analogy of the normal television-microwave signal relation is a light bulb's illumination-TV signal to a pencil flashlight-microwave signal.)

The one significant difference between microwave signals and the normal television signals received off-the-air in the home is that microwave signals use a wider bandwidth. The normal off-the-air television signal

consists of two separate signals, a video signal and an audio signal transmitted on a "subcarrier channel." The microwave channel has four "subcarrier channels," one for the audio, leaving three available for other data transmissions.

AMC is a multi-channel microwave service; it can transmit several television signals simultaneously to a number of locations. This system can be useful in areas which present line extension difficulties or cascade problems; for example, "dead runs;" where there are few or no homes behind the cable. The number of receiver points is limited by the aggregate distance of all receiver points from the transmitter and the location of each. Also, AMC cannot be used for microwave relay and does not possess the unused "subcarrier" channels of CARS.

The normal cable television system, as its name implies, transmits television signals through cables. The cable network (plant) is a coaxial cable generally hung from utility poles (electric power or telephone). Various electrical and governmental codes generally specify the distance between, and the location of, cable systems attached to poles and the ground clearance (distance between the lowest cable system and the ground). Normally, electric power lines are placed at the top of the pole and telephone wires at the lowest point above the required ground clearance. The space between these two is what is available to cable operators. CATV cables are not attached directly to the poles, rather a messenger strand or messenger cable is attached to the poles. The actual transmission cable is then lashed to the messenger strand. The trunk cable is strung from the headend to and from the main routes of the system. Distribution or feeder cables run from the trunk lines into subscriber areas. A drop line is tapped into the feeder cable and brings the service into the subscriber's home. Splitters are used to provide service in different outlets in a particular subscriber's home. A converter or channel selector may often replace the television set tuner. The signal amplifiers are placed on the trunk of the feeder lines along these above ground systems.

The plant may also be placed underground. Cables can be placed directly into the ground or drawn through conduit. Signal amplifiers are placed above ground in pedestals (a pipelike metal container), if the cable is merely laid

underground. If the cable is pulled through a conduit, the amplifiers are placed in vaults and covered over. ¹

History of CATV in Pennsylvania

The cable television industry had its origin in Pennsylvania in 1948 when John Walson founded the first CATV system in Mahanoy City, Schuylkill County. His plan was to place an antenna at the top of a mountain and attach a heavy duty cable from that tower to his appliance store and connect it with a television. As a result, he was able to receive pictures from three stations in Philadelphia.² From this innovative action, the CATV industry today has the capabilities to transform numerous television signals into a nationwide telecommunications system.

In Pennsylvania, the cable television industry is regulated by the federal and local governments while neighboring states such as New York and New Jersey provide technical and legal standards by which CATV operators are legally bound. Cable television systems are also both privately and municipally owned in the Commonwealth, with some motivated by profit while others are not.

Local regulation has been in the form of franchising cable companies by municipalities since Walson founded his first system. The authority to regulate for both boroughs and cities is derived from their respective municipal codes which grant the power to regulate installation of wires which cross over municipal streets. Questions of the legality of this interpretation have arisen in the past; however, if a community should adopt a home rule charter, there can be little question of a local government's authority since Pennsylvania does not regulate cable television.³

Most local governments in Pennsylvania regulate by the use of a franchise which is a contract that allows the cable industry to use public property. Other municipalities may grant a license which legalizes the operation of a business for a set time or impose a fee which will cover the costs of regulation. According to the Pennsylvania League of Cities, franchise fees charged by communities vary from zero to ten percent of the gross revenues. Other communities base the fee on the income from monthly rates. Franchise fees in some cases actually become a tax on the subscriber rather than the operator.⁴

The Extent of CATV in Pennsylvania

In 1976, a report by Barbara Lukens, a consultant to the House Minority Staff, indicated that only California had more subscribers per total household than Pennsylvania. In that year, an estimated 27 percent of the 3.9 million homes in the Commonwealth subscribed to cable TV service. The percentage of homes which use cable TV varied from region to region. For example, in the Johnstown/Altoona area, 54 percent of the households used cable; in the Wilkes-Barre/Scranton area, 47 percent; in the Harrisburg/Lancaster/Lebanon/York area, 38 percent; in the Erie area, 29 percent; in the Pittsburgh area, 27 percent; and in the Philadelphia area, 16 percent.⁵

Also in 1976, the Federal Communication Commission reported that 54 city cable television systems were operated in 48 Pennsylvania cities in which approximately 300,000 households were served. Each city was part of a larger system conglomerate made up of a number of municipalities. For instance, in Westmoreland County, Greensburg and Jeanette were in the same system which had a total of 15,700 subscribers while the New Kensington, Arnold, and Lower Burrell area had 18,500 subscribers. In the Allentown/Bethlehem area, one 31,500 subscriber system was owned by Service Electric; and the other system, which also included both cities and municipalities, was owned by the Twin-County Trans-Video Corporation and had 48,800 home subscribers.⁶

Overall, Pennsylvania had more municipalities served by cable than any other state in the nation. Of the approximate 2,500 cities, boroughs, and townships in the state, over 1200 were served by cable television systems. Furthermore, in 1976, it was estimated that one-fourth of the TV homes in Pennsylvania bought cable TV service and that nearly 74 percent of the total state population had cable systems operating within their municipal boundaries, or had granted franchises to permit cable system construction. There were 301 cable conglomerates and 1,048,000 subscribers in Pennsylvania by September, 1975.⁷

Data collected in the Lukens' survey also revealed that of the Commonwealth's 963 boroughs, FCC records indicated that 608 boroughs had cable television.

Of this number, 46 boroughs had multiple operations. Similarly, this data also showed that cable system operations and/or franchises were recorded for 554 of the state's 1,558 townships. These townships had a smaller proportion operating with CATV systems (35 percent) when compared with boroughs (63 percent) and cities (94 percent), but Lukens attributed this to cable economics, "i.e., the density of homes within a municipality is a factor in estimating the cost of the distribution system. The more homes per mile of cable, the more available the subscribers. High density decreases the cable firm's cost per subscriber."⁸

The latest figures available show that in the Commonwealth, there exists 328 cable television systems which serve 1,550 communities. Additionally, 105 franchises were granted but not yet in service and 21 had applications pending with the FCC.* The total population in Pennsylvania that was served by CATV in their homes was estimated at 1,210,250 in 1978.⁹

Out of the total 328 CATV companies in Pennsylvania, the number that was under either municipal ownership, non-profit corporations, or subscriber-owned systems was approximately twenty. In some cases, ownership of a CATV system was not identifiable and we could not assume that the ownership of such systems was not private (see accompanying list). Analyzation of the CATV systems not under private control show that public ownership is predominant in the rural areas of the Commonwealth. Our assumption is that private ownership in these areas does not appear to be feasible because of the unwillingness of the operators to invest in a geographical area where a substantial return could not be earned after expenses. In this light, some rural areas have constructed and operated their own systems. However, because of lack of capital and expertise, the quality of their CATV system is generally inferior to those operated by the larger, private enterprises.

*On October 20, 1978, the FCC no longer required that CATV companies complete the certificate of compliance that was previously required by FCC regulations. Therefore, CATV applications only have to comply with the FCC rule that a municipality may only receive the 3-5 percent gross receipts as indicated in their franchise agreements with CATV companies. Also, the FCC will no longer scrutinize franchise agreements since they have abandoned all but the one standard mentioned previously.

These non-profit systems generally offer their customers less on-the-air stations, have fewer channel capacities, and higher installation fees. The higher installation fees are usually offset by lower monthly subscriber fees.¹⁰

One final characteristic of the cable television industry in Pennsylvania is that the ownership of the private companies is often group ownership. What this means is that owners of CATV systems in Pennsylvania also may have additional CATV systems in other areas of the Commonwealth or may also have some affiliation with CATV consulting firms. In other words, the ownership of cable television is very often monopolistic, as the FCC and others have indicated. Therefore, "the incentive of the cable systems operators is to restrict the supply of its product in order to maximize profits."¹¹ The way to achieve maximization of profits, is to invest only in areas where there is greatest demand for the CATV service.

COMMUNITIES SERVED BY CATV NOT UNDER PRIVATE OWNERSHIP

Legend

mo-municipal ownership so-subscriber owned & operated np-non-profit organization

np-so Beaver Springs, PA (Snyder Co.), served by Beaver Springs Mutual TV Association.
mo-np Blossburg, PA (Tioga Co.), served by Williamson Rd. TV Company.
so Brockway, PA (Jefferson Co.), served by Brockway TV, Inc.
so Buck Hill Falls, PA (Monroe Co.), served by Buck Hill Falls, Company.
so Clarendon, PA (Warren Co.), served by Clarendon TV Association.
so Clarendon Hts, PA (Warren Co.), same as above.
so Herndon, PA (Northumberland Co.), served by Pikes Peak Cable TV, Company.
np-so Johnsonburg, PA (Elk Co.), served by Johnsonburg Community TV, Inc.
so Millheim, PA (Centre Co.), Millheim TV Transmission Company.
mo Pitcairn, PA (Allegheny Co.), Pitcairn Community Transmission Company.
np Port Clinton, PA (Schuylkill Co.), served by Port Clinton TV Cable.
mo-np Rouseville, PA (Venango Co.), Rouseville TV Club, Inc.
so Sheffield, PA (Warren Co.), served by Sheffield West Side TV Association.
np-coop Sheffield, PA (Warren Co.), served by Southside TV Association.
so South Renovo, PA (Clinton Co.), served by South Renovo TV Associaton.
np-so Warren, PA (Warren Co.), served by West-wide TV Corporation.
so Warren, PA (Warren Co.), served by Roundtop TV Association.
np Westfield, PA (Tioga Co.), served by Westfield Community Antenna Association, Inc.
mo Wilcox, PA (Elk Co.), served by Wilcox Community TV.
mo-np Youngsville, PA (Warren Co.), served by Youngsville TV Corporation.

*coop-cooperative

Legislative Attempts in Pennsylvania to Regulate CATV

Numerous attempts have been made in the past to provide for the regulation of cable television in Pennsylvania. Since 1969, approximately 33 bills have been introduced in the General Assembly which would have affected the operation of CATV in the Commonwealth. Some would have regulated the industry by placing them within the jurisdiction of the Public Utility Commission or a separate regulatory agency while others would have simply identified the CATV industry as a public utility and given municipalities the right to set rates and operation procedures. Briefly then, here is a basic outline of prior bills and what they would have accomplished:

Session of 1969-1970

House Bill 226, PN 260, introduced by F.M. Allen, Manbeck, Westerberg, and O'Connell.

--This bill would have defined cable television operations as a public utility. The assumption is that if later legislation would be introduced to regulate the industry, the industry (in a companion bill) would be placed under the jurisdiction of the PUC.

House Bill 460, PN 531, introduced by Renwick, Piper, Bennett, and Anderson.

--Similar to HB 226.

House Resolution 75, PN 1007, introduced by Lawson.

--This resolution urged Congress to rescind the interim rules of the FCC from freezing the construction of new CATV stations in 1969.

Session of 1971-1972

House Bill 565, PN 617, introduced by Renwick, Bennett, Yahner, Shuman, and Shelhamer.

--Known as the "State Community Antenna Television System Act"; it defined and identified CATV as a utility and comprehensively regulated the CATV industry in Pennsylvania by placing it within the jurisdiction of the PUC.

House Bill 1112, PN 1237, introduced by J.H. Hamilton and others.

--Would have defined CATV operations as a public utility.

Senate Bill 736, PN 793, W.E. Fleming, Howard, Coppersmith, and Mazzei.

--Essentially, same as the previous bill.

Senate Bill 1249, PN 1529, introduced by Murphy, Ammerman, and Frame.

--Same as HB 565, PN 617.

Session 1973-1974

Senate Bill 1190, PN 1398, introduced by Hankins, Orlando, McCreesh, Rovner, Arlene, and Murphy.

--Would have established a state commission (providing for staff and expenses) on CATV to regulate the industry and to provide technical assistance to municipalities. The bill also outlined municipal franchise requirements and provided penalties for non-compliance.

Senate Bill 1191, PN 1399, introduced by Hankins, Orlando, McCreesh, Rovner, Arlene, and Murphy.

--Would have allowed CATV companies to use public roads for the purpose of installing and maintaining their cables so long as the cables did not interfere with the safety and conveniences of travel along the road. The company constructing or using the cable system must abide by regulations imposed by political subdivisions. If the cable was placed on a state highway, the Secretary of Transportation would have promulgated rules and regulations by which the companies were to abide. This was a companion bill to the previous bill.

Senate Bill 1500, PN 1874, introduced by Murphy and Ammerman.

--Similar to Senate Bill 1249, PN 529 of Session 1971-1972.

House Bill 1072, PN 1289, introduced by Geisey, Lehr, Noye, and others.

--Would have defined cable television operations as a public utility and given municipalities the right to approve CATV service in their communities.

House Bill 1081, PN 1304, introduced by Tayoun, Myers, Sullivan, Lederer, Rieges, Blackwell, and others.

--Similar to SB 1190, PN 1398.

House Bill 1181, PN 1453, introduced by Tayoun, Myers, Vacca, and others.

--Would have authorized CATV companies to use and maintain public roads for business purposes providing public safety is not hindered. CATV companies would be subject to the franchise agreement of municipalities and be regulated by municipal ordinance and state law. The Secretary of Transportation would have been given the power to prescribe and enforce rules with reference of the placement of CATV lines.

House Bill 1448, PN 1839, introduced by Geisey, A.K. Hutchinson, and others.

--Known as the "Cable Television Act," this bill would have provided for the comprehensive regulation of the CATV industry in Pennsylvania and to vest the Public Utility Commission with the authority to oversee the development of the industry, review practices of franchising, set standards and limit cross ownership in the field of communications to protect the public interest.

House Bill 1771, PN 2327, introduced by Renwick, Eckensberger, Fryer, Zeller, and others.

--Known as the "State Community Antenna Television System Act," this bill would have regulated the CATV industry and given the PUC power to regulate through prescribed procedures.

House Bill 1772, PN 2328, introduced by Renwick, Eckensberger, Fryer, Zeller, and others.

--Would have defined the cable television industry as a public utility. A companion bill to the previous bill.

Session of 1975-1976

House Bill 1872, PN 2401, introduced by Reed, Zord, and Davies.

--Would have made it unlawful for persons to alter their TV sets for purposes of obtaining CATV reception.

House Bill 2323, PN 3093, introduced by Stapleton, Abraham, Trello, and others.

--Known as the "Television Cable Communication Commission Act," this bill would have vested authority in an independent commission to oversee development of the CATV industry, to review franchise agreements and set standards, and to assure cable availability for municipal service.

House Bill 2401, PN 3241, introduced by Scirica and Stapleton.

--Would have created a Pennsylvania Telecommunications Commission authorized to regulate and oversee the statewide development and delivery of telecommunications. The PUC would provide assistance and standards for local municipalities who would retain their present franchising power. However, the bill would also have removed from the PUC all its regulatory authority over telegraph and telephone companies and transferred authority to the Pennsylvania Telecommunications Commission.

House Bill 2690, PN 3810, introduced by Pratt.

--Known as the "Cable Television Regulation Act," this bill would have given municipalities regulatory control over CATV companies. Municipalities would have the right to set procedural standards, prescribe operation and construction standards, and give municipalities the right to control rates.

Senate Bill 18, PN 18, introduced by Bell.

--Known as the "Community Television System Act," this bill was similar to HB 1771, PN 2327 of session 1973-1974.

Session of 1977-1978

Senate Bill 855, PN 925, introduced by Nolan, Cianfrani, Smith, and Romanelli.

--Would have given boroughs, under their general powers, the right to establish municipally owned CATV systems.

House Bill 106, PN 119, introduced by Pratt and others, AND

House Bill 411, PN 450, introduced by Abraham and others.

--Both were similar and would have given franchise power to municipalities by including certain minimum franchise standards. No assistance would have been given by the state. Each bill required that local government franchise standards promote "with other systems within regions as established in the commission's statewide plan . . ." The commission was not identified, therefore, the state role was not determined. The bills also gave powers to local governments which have been pre-empted by the FCC.

House Bill 785, PN 876, introduced by Stapleton and others, AND

House Bill 1006, PN 1177, introduced by Stapleton and others.

--Bills were the same. Each created an independent commission outside the PUC with certain powers and duties. Local municipalities would have retained power to grant franchises in accordance with standards set by the commission. The commission would have provided assistance to local officials, grant certificates of confirmation, and prepare a statewide plan for cable TV communication development in accordance with regional and statewide objectives.

House Resolution 97, PN 1291, introduced by Butera and others.

--This resolution called for the creation of a select committee to hold public hearings on CATV and recommend appropriate action to the General Assembly.

Senate Resolution 104, introduced by Fumo.

--This resolution appointed a special committee to investigate all aspects of CATV in Philadelphia (see pages 86 through 93).

Senate Bill 728, PN 2149, introduced by Kelley and McKinney.

--The bill dealt with theft of services and was not specifically addressed to CATV, but it would cover theft of CATV services. It is now Act 321 of 1978.

Senate Bill 1046, PN 1953, introduced by Lewis and Schaefer.

--This bill would have amended the Second Class Township Code to prohibit franchises for CATV unless they were granted by ordinance and filed with the PUC. This bill also would have prohibited townships from regulating and controlling operations of any permittee.

House Bill 1385, PN 1647, introduced by Pratt.

--This bill would have amended the Athletic Code to define "Promoter" to include corporations exhibiting programs on closed circuit or subscription TV.

Session of 1979-1980

House Bill 833, PN 906, introduced by Wilson.

--Provides for the regulation of pole attachments by the PUC whenever a cable company and public utility are unable to agree upon rates, terms and conditions for agreements.

House Bill 1020, PN 1137, introduced by Taddonio, McVerry and Miller.

--Provides for the regulation and rate-making authority over CATV operations by a borough council. Also allows boroughs to own and operate cable television services for its residents.

Senate Bill 945, PN 1095, introduced by Tilghman, Hess, Loeper, and Stauffer.

--Amends the Second Class Township Code to authorize townships of the second class to grant or revoke cable TV franchises, to regulate such systems, and provide for permits for cable television lines.

House Bill 1420, PN 1628, introduced by D.R. Wright and Petrarca.

--Defines cable television systems as public utilities thereby placing them under the jurisdiction of the PUC. Cable television systems with fewer than 50 subscribers and those defined as master antenna systems would be excluded.

Summary

Until the last session of the General Assembly, the Legislature showed little interest in the operation of CATV systems in the state. Prior to 1977,

most bills died in committee with no formal action being taken by either House. However, the Session of 1977-1978 appears to be the turning point in the sense that both the Senate and the House of Representatives have been willing to consider bills affecting CATV. It is interesting to note that these bills do not differ greatly in content from previous ones. More legislative interest may be explained by the fact that the CATV industry is growing rapidly and is beginning to become a highly technical and complex commercial enterprise. To pay for the development of this industry, the cost is passed on to the customer in the form of monthly rates. This leads to several problems dealing with rate regulation in the sense that neither the FCC nor the Commonwealth interject themselves in this area of the industry. In most instances, rate regulation is a matter between the industry and the municipality. In some cases, it is left entirely up to the industry. This topic will be examined in more depth later on in this study.

Finally, one last examination of prior legislation in the General Assembly dealing with CATV shows that most bills introduced in the last ten years place the industry under the jurisdiction of the PUC or an independent commission for the purposes of regulation. The legislative intent of these bills was to insure that municipalities receive the best possible franchise agreements with cable television companies and, in turn, that the CATV industry receive an acceptable return for its investment.

CHAPTER II - FEDERAL COMMUNICATIONS COMMISSION REGULATIONS ON CATV

Federal Regulation

Congressional authority over interstate commerce is the basis of the Communications Act of 1934, which establishes and grants responsibility to the Federal Communications Commission. Section One of the Communications Act, 48 Stat. 1064, as amended, 47 U.S.C. Section 151, states:

For the purpose of regulating interstate and foreign commerce in communications by wire and radio so as to make available so far as possible, to all people of the United States a rapid, efficient nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the 'Federal Communication Commission' which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.¹²

The courts have generally upheld the FCC's role in regulating interstate communication, radio and television broadcasting and later, cable television. In FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1939), the U.S. Supreme Court held that the FCC has broad powers under the 1934 Act, and could consider construction permit applications of broadcast companies. Several years later in National Broadcasting Company, Inc. v. United States, 319 U.S. 190 (1943), the court ruled that FCC regulatory powers are not limited to the technical aspects of radio communications. The court held that the commission had the authority to deny broadcast licenses in cases where network affiliated stations entered into contracts which restricted their freedom to broadcast programs of other networks.

In 1969, the court upheld the constitutionality of the fairness doctrine, an FCC regulation requiring fair coverage of controversial issues, presented on broadcast stations, which are of public importance (Red Lion Broadcasting System v. FCC, 935 U.S. 367 (1969)). In Columbia Broadcasting System v. Democratic

National Committee, 36 LE 2d 772, 93 S.Ct. 2080 (1973), the Supreme Court reversed its decision in Business Executive's Move for Vietnam Peace v. FCC, 450 F. 2d 642 D.C. Cir. (1971), in which the fairness doctrine was upheld by the court in its conclusion that the doctrine provides an orderly procedure for covering controversial issues.

Although cable television was developed in the latter part of the 1940's, the FCC did not assert jurisdiction over it until the early 1960's. The Commission's jurisdiction over microwave systems was upheld in Carter Mountain Transmission Corporation v. FCC, 32 FCC 459, aff'd. 321 F 2d 359 (D.C. Dir. 1962), cert. denied 375 U.S. 951 (1963). The court ruled the FCC could consider the economic impact of a microwave system on local stations as part of its regulatory responsibility.¹³

The Federal Communications Commission established regulations for all cable systems in 1966 (Second Report and Order in Docket 14895, FCC 2d 725, 1966). These early rules required cable systems to carry local TV stations, prohibited some duplications of program, and prohibited the import of distant signals into the 100 major television markets without a hearing on the probable effect.¹⁴

These regulations and the FCC's rulemaking authority under the Communications Act of 1934 were upheld by several Supreme Court decisions. The Court has characterized cable television as a form of wire communication which changes the signal range of broadcasters.

In 1968 the Supreme Court in U.S. v. Southwestern Cable Co., 392 U.S. 157 (1968), rejected any restrictive construction of the Act, and ruled that Congress conferred broad authority upon the Commission. The Commission could regulate cable television and issue cease and desist orders. "Thus, 'underlying the whole Communications Act is recognition of the rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that the administrative process requires sufficient flexibility to adjust itself to these factors.'" The Supreme Court, in U.S. v. Southwestern Cable Co., (392 U.S. 157, 172) quoting FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1939)

stated, "The court determined that the recognition of the Commission's authority to regulate cable was restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting" And that for those purposes, the Commission might issue 'such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law' as 'public convenience, interest, or necessity requires.' 47 U.S.C. Sec. 303(r)." Using this guideline the court upheld the FCC rules regulating signal carriage and nonduplication of programming. Black Hills Video Corp. v. FCC, 399 F 2d 65 (8th Cir. 1968).¹⁵

The most comprehensive compilation of regulations were adopted by the FCC February 2, 1972, and took effect March 21, 1972. The rules have been amended numerous times, but the four broad subject areas have remained the same. The categories are federal-state/local regulatory relationships; signal carriage; nonbroadcast or cablecasting services; and technical standards.

Originally, cable system operators were required to obtain a "Certificate of Compliance" (CAC) from the Commission prior to commencing operations or adding broadcast signals to existing systems. The certificate indicates that the cable operator has complied with FCC regulations. Any cable operator serving 1,000 or more customers on a headend must obtain a certificate.

While there was no standard application form developed, the requirements for a complete application were outlined in the FCC regulations. The requirements included:

- (1) The name, mailing address and telephone number of the cable operator, the community to be served, the television signals to be carried, the date of commencement of operations, and the expiration date of the franchise.
- (2) A copy of the FCC form 325, "Annual Report of Cable Television Systems."
- (3) A copy of the franchise, certificate or other authorization granted by the local authority.

- (4) Justification for the carriage of any signals that would otherwise be inconsistent with FCC rules.
- (5) A statement of the number of usable channels.
- (6) A certificate indicating all interested parties, i.e. local TV licenses and permittees, translator stations, franchising authorities, schools, and local and state television authorities received the information in (1) above.
- (7) A statement that a copy of the application has been served on the local franchising authority, and that a copy of said application is available for public inspection in the community.
- (8) A statement of the proposed system's general employment opportunity program, if the system has five or more full time employees.
- (9) A statement that the filing fee is attached; however, this rule was suspended in December, 1976, and will remain so until further FCC action.

Once an application is filed, the FCC must give public notice and may not issue a certificate for 30 days from the date of the notice. This 30-day period is to allow any interested party to file objections to the certification.

Systems serving less than 1,000 subscribers are not required to obtain a certificate of compliance and are exempt from most FCC rules. Such systems need only provide the Commission with the legal name and type of company, the company's assumed name, mailing address, the date the system first provided service, the name of each community served, and the broadcast signals carried. Systems with less than 50 subscribers are exempt from all regulations.¹⁶

Since 1973 the Commission has allowed additions to existing systems without obtaining a certificate if the operator notifies the Commission, the local franchiser, and other interested parties at least thirty days prior to adding the broadcast signal. If the Commission has recorded no objections from

the interested parties within thirty days of said notices, the operator may proceed.¹⁷

As of October 20, 1978, the entire certificates of compliance process has been eliminated. It has been replaced by the filing of a simple registration statement identifying the cable system and stations to be carried. A system is now able to begin operation immediately upon filing the statement, and challenges will be handled after service has begun.

The FCC will no longer examine franchises for compliance with federal guidelines or pre-emptions. The Commission believes these guidelines and pre-emptions are self-enforcing and further believes that they are not indicative of a lack of federal concern in the CATV franchising process.¹⁸

Federal/State-Local Regulatory Relationships

Federal licensing of each local cable system would be an unmanageable task. Since the cable industry deals with individual communities, the Commission has set up a regulatory plan allowing local or state authorities to select a cable franchise and establish guidelines on subjects not pre-empted by federal regulations. These subjects include: franchising, basic subscriber rates, theft and service, taxation, pole attachments, and in certain cases, technical standards.

The FCC does regulate the franchise fee a community can charge a franchisee (cable operator). The limit is three percent of the franchisee's gross revenues. The Commission, however, will approve a franchise fee of up to five percent if the franchising municipality can show the additional two percent is necessary to finance the local regulatory program. In certain other cases, where the system was franchised or commenced operation before March 31, 1972, a grandfather provision permits higher fees until 15 years from the initial franchise or until the end of the current franchise period, whichever occurs first.

The franchise standards are recommended, rather than mandated. These standards include: that franchises should only be granted or renewed after a

public hearing, that franchise periods, initial or renewed, should not exceed 15 years, and that construction be accomplished within one year.

Signal Carriage - Non-Duplication Regulations

Television signal carriage rules originally set up standards that varied with market size and the geographical location in relation to TV markets of the community to be served. The test was whether a community was located wholly or partially within a 35 mile radius (specified zone) or a commercial TV station licensed to a television market.

Cable systems were required to carry broadcast signals if requested by a local station. In addition, systems had to carry (1) all television stations licensed to communities within 35 miles of the cable system; (2) certain non-commercial educational stations; (3) commercial and non-commercial translator stations with certain power wattage; (4) other significantly viewed stations in a community; and (5) in some cases, certain signals from other small markets.

Cable systems in communities located outside all markets were required to (1) carry signals from all stations within the Grade B contour; (2) commercial and non-commercial stations with certain power wattage; and (3) all educational stations licensed to communities within 35 miles of the system community.

Cable systems serving less than 1,000 subscribers per headend may carry any additional signals, while community units serving 1,000 or more subscribers were permitted to carry a prescribed complement of signals. For example, in the first 50 major TV markets, there are three full network stations and two independent stations. In the smaller TV markets, there are three full network stations and one independent station. Systems in areas beyond all television markets had no restrictions as to number or type of television signals.

Regulation of signal complement did not reflect more program diversity for the public in various communities. Rather, the Commission's television station allocation was economically based on the number of stations any given area

could support with advertising revenues.¹⁹

The FCC reviewed its signal carriage regulations and on April 25, 1979, concluded ". . . that the elimination of all restrictions on the kind and number of distant signals cable television may carry will not significantly harm any viewer of over-the-air television." (Docket 21284).²⁰

The FCC pointed out that, in broadcasting, consumers do not directly pay for programs. It is difficult to determine the economic value, since there is no natural way to infer the economic value consumers place on programming. Cable television subscribers do pay for programming; thus, a principle source of information can be the history of cable television and pay cable. It has been a history of growth in the number of subscribers.

The main benefit from cable television is that it allows more program services to the consumer. The existing regulations which may inhibit the growth of cable systems and the number of services available may, in fact, be detrimental to current or potential subscribers. The regulations to some extent protect off-air viewers from losing service (those who would not or could not subscribe to cable).

In conclusion, the Commission said ". . . the benefits of our current rules are small and these benefits go mainly to broadcasters whose incomes thereby rise faster than they otherwise would." Furthermore, the Commission said ". . . the current regulations cost potential and existing cable subscribers in terms of denial of an increase in freedom of choice," and that ". . . the costs of the existing regulation also fall on society as a whole to the extent they inadvertently stifle some participants in the system of freedom of expression." (For full text see FCC 79-241).²¹

The FCC had issued other regulations pertaining to (1) educational stations in certain areas; (2) late-night programming (midnight to 6:00 a.m.) of otherwise unauthorized stations; (3) network news programs at times when no local station is broadcasting a news program; (4) specialty station definitions; (5) local sports program broadcasts; and (6) network nonduplication protection for local stations and syndicated program protection.²² 20

In November, 1976, the FCC began an inquiry to re-evaluate the syndicated exclusivity rules (Docket 20188). The preliminary report on findings revealed that the rules affected only cable systems with 1,000 or more subscribers commencing operation after 1972. These rules afforded local broadcasters in the top 100 markets a protection against duplication of their syndicated program on cable systems which serve communities in their markets. A cable system was required to delete the syndicated programs carried on a distant station if a local station that has contracted for the same programs requests the protection. FCC found no justification to retain cable TV syndicated program exclusivity rules (Report No. 14920, April 25, 1979).

The Commission received over 60 sets of comments in response to the notice of inquiry on the matter. Broadcast interests almost unanimously urged that the present exclusivity protection be substantially expanded, while cable television and public interests argued for abandonment of exclusivity protection.

The study found that the potential of the syndicated exclusivity could impose significant burdens. One adversity is a direct loss of programming even though almost all programs deleted under the rules would appear at some time on local stations. A second ill effect of exclusivity regulations is such regulations may inhibit the growth of cable systems by reducing the demand for cable television. This could restrict the availability of cable television benefits and exclude certain areas from cable television service.

The analysis revealed that the exclusivity rules did not appear to enable local broadcasters to serve the viewing public better. The elimination of the rules would reduce local TV station audiences by no more than about one percent.

The FCC said that the results of the study suggested that non-cable viewers would not be disadvantaged by the elimination of the exclusivity rules, nor had any evidence been presented to show any significant adverse impact on broadcasters or on the supply of programming. "As a result, the Commission

said, 'assessing the facts developed in this report against our criteria for ascertaining the public interest points unambiguously toward the elimination of the rules.'" (For full text see FCC 79-242).²³

According to the 1972 regulation, the FCC required new cable systems with 3,500 or more subscribers to provide a minimum capacity of 20 television broadcast channels. They were also required to provide a technical capability for nonvoice return, i.e., two-way communications. Older systems with 20 channel capacity were not required to rebuild to provide the two-way capability.

Systems with more than 3,500 subscribers that were in operation as of March 31, 1972, but with less than 20 channel capacity were required to rebuild to provide this capability by June 21, 1986. Aside from the capacity requirement, the FCC did not regulate two-way, point to point, intrastate nonvideo cable transmissions, as a result of a 1976 court decision (National Association of Regulatory Utility Commissioners v. FCC, 533 F. 2d. 601).

Along with channel capacity, the FCC required all systems with more than 3,500 subscribers to provide up to four access channels: public, education, government and leased channels only if there was a demand for full time use and the channel capacity to provide the channels. If the demand was not sufficient, cable operators were required to provide at least one access channel for combined use. No system was required to rebuild or add converters to provide access channels.

In addition to the access channels, cable operators were required to have equipment available for public use in the production of local programs. They also had to develop rules for the public use and leased channels on a first-come non-discriminatory basis. Although only public access channels had to be available for use without charge, operators could set reasonable charges for production and equipment expenses for videotaped programs of more than five minutes. The channels for education and government must be provided free of charge for five years after the date of availability.

The Commission's channel capacity and access rules were challenged as being beyond the FCC's jurisdiction in Midwest Video Corporation v. FCC, 567 F 2d

1025, 8th Cir. (1978). The U.S. Court of Appeals for the Eighth Circuit decided that channel capacity and public access rules were beyond the FCC's jurisdiction.²⁴ The decision was appealed to the Supreme Court, certiorari granted _____ 1978, affirmed on April 2, 1979.

The Court's opinion, in part, stated, "The court was of the view that the regulations were not reasonably ancillary to the Commission's jurisdiction over broadcasting, a jurisdictional condition established by past decisions of this Court."²⁵ The rules amounted to an attempt to impose common-carrier obligations on cable operators, the court said, and this ran counter to the statutory command that broadcasters themselves may not be treated as common carriers. Furthermore, the court stated its belief that the regulations presented grave first amendment problems and therefore affirmed the appeals court decision.

While the FCC can no longer impose its channel capacity and access channel requirements upon cable systems, the court noted that "less intensive access regulations" might be acceptable. The Court also pointed out that in United States v. Midwest Video Corporation, 406 U.S. 649 (1972), the Commission's authority to require local program origination was upheld. However, the FCC repealed its mandatory origination rules in December, 1974 (Report and Order in Docket No. 19988, 49 FCC, 2d 1090, 1105-1106, 1974).

The decision appears to leave state and local governments free to impose access requirements as part of franchise agreements, since the FCC previously pre-empted the entire area of access channeling. If there are no first amendment abridgments to access channel requirements, in general, a question that was not answered in the Midwest Video Corporation v. FCC decision, state and local governments may now begin promulgating their own access requirements.

The FCC's pay cable rules were overturned in Home Box Office Inc. v. FCC, 567 F. 2d 9 (1977), by the Federal Circuit Court of the District of Columbia. Thus, the FCC does not now regulate pay cable programming. The Commission's pre-emption of regulating pay cable rates, however, still stands as a result of

Brookhaven Cable TV, Inc. v. Kelly, 573 F 2d 765 (1978).²⁶

Cable operators are required to maintain certain prescribed records on file, most of which involve data prescribed by the certificate of compliance requirements. (Note: the certificate of compliance provisions were replaced by a registration process in 1978). Reports to the Commission concerning ownership, operational status, and communities served by cable operators must still be filed by cable firms.

The Commission prohibits the ownership of cable operations by common carriers (i.e. telephone companies), national television networks and television stations within the same market area. The FCC does not prohibit the ownership of cable systems by newspapers or radio stations at this time.²⁷

Technical Standards

The FCC has established rules regarding technical performance requirements. The regulations do not apply to nonbroadcast service, cable television receivers, frequency allocations within a cable network, "ghosting" and carriage of AM and FM programs. In general the rules require cable operators to conduct annual performance tests. The technical standards involve standards for signal leakage, frequency channeling, and standards for cable compatible receivers.

Although the FCC pre-empts state or local regulation of technical performance requirements to prevent the establishment of nonuniform requirements that might hinder system interconnectability and impede the development of new cable services, the standards are not comprehensive, and do not necessarily preclude more restrictive requirements by local governments.²⁸

In addition to performance standards, system safety and reliability standards may be established by local or state regulations, as well as the procedures for testing a system for compliance and record-keeping requirements.

*Ghosting is shadow images received on the television program picture.

The Cable Television Information Center at the Urban Institute has recommended several elements that should be included in a regulatory program:

(1) Construction standards to insure a safe and reliable cable system. The construction of a cable system involves several municipal responsibilities like highways (for rights of way) and planning/zoning (for placement of facilities). Utilities (pole attachments) and engineering (electrical standards) may involve state or local or both levels of government. Federal agencies are concerned when antennas and systems are located near airports and air traffic patterns.

Regulating state or local governments may wish to insure reliability once cable systems are operational. Regulations can be passed mandating construction standards for the erection of antennas, grounding of systems, installing specifications, housing of equipment, lashing of cables, cable equipment materials, and provisions for buying of cables underground.

(2) Technical standards for the reception of broadcast television signals received either off-the-air or by microwave.

High performance standards in the system may not necessarily assure good picture for subscribers. Poor picture quality may be the result of problems in the antenna such as installation, location, and design of the antenna. Other functions which may produce poor picture quality are defective signals broadcast from the television station and interference from environmental factors. The audio quality may also be reduced by industrial noise, cosmic, thermal and other interference. While these environmental factors cannot be controlled by a cable operator, the effects may be minimized through proper placement of the antenna.

Two other items for which standards may be established are signal echo and luminance vs. chrominance amplitude response. The former relates to reflections of the original signals, while the latter affects the brightness and contrast, and color signals that determine the color intensity and hue. Improper balance in these factors will result in poor picture quality for subscribers.

Technical standards imposed on microwave systems generally involve two areas, system reliability and picture quality. While system reliability may be affected by the strength of the signal broadcasted and weather conditions, proper design, layout and construction of the antennas and receivers can reduce system failures. Standards requiring a specific amount of system operating time may be established to assure a certain degree of reliability.

Picture quality may be even more difficult to control, thus rigid standards may not be feasible. However, the guiding factors of signal quality for cable systems may also be applied to microwave systems.²⁹

A third consideration is the health effects of exposure to microwave radiation. Several studies have reported that exposure to microwaves may have adverse effects on living beings. While not enough information on this matter is available, there may be legitimate reasons for prohibiting microwave transmission in densely populated areas.

Finally, standards in conformance and conjunction with the FCC's technical standards may be incorporated into a franchise agreement between a municipality and a cable operator. The criteria should establish some predetermined subscriber viewing standards and outline methods of testing and recording performance.³⁰

Pole Attachments

As mentioned earlier, the most common method of signal distribution is through coaxial cable attached to utility poles (telephone or electric) or poles the cable operator sets. The term "pole attachment" refers to the use of facilities, poles or underground conduct, or the use of the utility's right-of-way.

The Communications Act Amendments of 1978 (PL 95-234) authorized the FCC to regulate the rates, terms and conditions of pole attachment agreements between cable operators and utility companies. A state may regulate pole attachments if it can certify to the Commission that it has the authority to consider such rates, terms and conditions and does consider the interests of all parties

involved. Several states, including Alaska, Connecticut, Hawaii, New Jersey and Puerto Rico have certified their jurisdiction over pole attachments to the FCC.³¹

The Pennsylvania Public Utility Commission is currently considering asserting jurisdiction over pole attachments. Hearings were held in April and May, 1979, to allow interested and effected parties to testify. At the time of the writing of this report, no decision has been reached.

In addition to this administrative action on the part of the PUC, a bill was introduced in the Pennsylvania House of Representatives relating to this matter. The bill (HB 833), would amend Title 66 of the Pennsylvania Consolidated Statutes (Public Utilities) to specifically and statutorily grant the PUC authorization to settle disputed pole attachment agreements if petitioned by either the cable operator or the utility company.

This same Act (PL 95-234) also granted the FCC stronger enforcement authority. The Commission may now impose monetary forfeitures on cable systems. Systems found to be in violation of Commission regulation, term or conditions of a certificate or license, or any Commission order or any provision of the Communication's Act. After due process, following certain preconditions, including a citation of violation, the opportunity for the violator to be interviewed and subsequent continued violative conduct described in the original citation a fine may be imposed. The maximum fine per day is \$2,000 for each separate offense, with the total fine not exceeding \$20,000 for each notice of liability or hearing. The notice of offense must be issued within one year of the offense.³²

Copyright Law

The Act for General Revision of the Copyright Law (PL 94-553, Title 17 U.C.S.) requires cable operators, to pay copyright fees for the retransmission of broadcast signals, retransmit radio and TV broadcast signals. The fee is based on a system's gross revenues received from the carriage of broadcast signals and the number of distant signal equivalents. These distant signal equivalents are

non-network programs from distant television stations that are carried by the cable system.

A cable operator must file semi-annually a statement of accounts which includes information about the system revenues and signal carriage, as well as the royalty fee payments. The royalty fee is paid to a Copyright Royalty Commission, composed of five members, which is established under the law. The Commission then distributes the fees to copyright owners.

The Copyright Royalty Commission is also authorized to settle disputes among copyright owners and review the fee schedule, and revise the rates whenever the FCC amends its carriage rules to expand provisions for carriage additional programming from distant stations. A revision of rates should reflect changes that affect a copyright owner's property value.

CHAPTER III - LEGAL ISSUES AND THE PUBLIC INTEREST

The Legal Issues Involved with Cable Television

With the Federal Communications Commission decision to abandon most of its regulations dealing with cable television, the current status of franchising rights of municipalities in the Commonwealth is at best, very unclear. The FCC has been removed from regulation, both voluntarily and by judicial decree. Home Box Office v. FCC, 567 F 2d (1977), National Association of Regulatory Utility Commissions v. FCC, 537 F 2d (1976), and Midwest Video Corporation v. FCC, 567 F 2d 1025, 8th Cir. (1978). All three cases have limited the FCC's ability to regulate, with the latter case ruling that the FCC has exceeded its jurisdictional authority under the "reasonably ancillary" clause to broadcasting regulation standard set by the Supreme Court in 1972, U.S. v. Midwest Video Corp., 406 U.S. 649 (1972). Midwest Video challenged 1976 FCC regulations "as adequately supported by the record, beyond FCC jurisdiction and unconstitutional under the free speech clause of the First Amendment and the due process clause of the Fifth Amendment."³³ Indeed, the FCC role is so diminished that Jerald Jacobs of the agency has stated that it is important for local governments to look toward the future themselves.³⁴ The FCC will no longer scrutinize franchise agreements between local municipalities and cable television operators to insure they meet federal standards. Most disputes arising from these agreements will in the future be litigated in local courts.

With this in mind, the question arises, what is the current status of judicial decisions dealing with the regulation of cable television franchise agreements in Pennsylvania? As stated before, the picture presently is very unclear. In Pennsylvania, boroughs have the right to regulate corporations which own and operate conduits and wires within borough boundaries (Article XIII, Borough Code). In Borough of Scottsdale v. National Cable TV Corporation, Pennsylvania Commonwealth, 368 A 2d 1323 (1977), 28 Comm. Ct. 387 (1977), the Commonwealth Court held that sections of the Borough Code provided sufficient

authority for a borough to regulate by ordinance the use of its streets by a cable television company, (53 PS § 45101 et seq.). The Third Class City Code, 53 PS § 36057, specifically authorizes cities, by ordinance, to issue franchises for the use of public streets. This section of the Third Class City Code was upheld in Farrell v. Altoona Cable Television Corporation, 419 Pa. 391, 214 A 2d 231 (1965). Therefore, both boroughs and cities of the third class have been recognized as possessing the right to issue franchise agreements for the operation of cable television systems within their municipal boundaries.

The situation in the most numerous type of municipality in the state, townships of the second class, is not as definite. In Lower Nazareth Township v. Service Electric Cable TV, Inc., 350 October Term, 1975, the Court of Common Pleas of Northampton County held that townships of the second class do not have any implied or expressed statutory authority to grant franchises for cable television systems because the Second Class Township Code specifically limits their authority over permittees. Furthermore, in Turchanik v. Plymouth Township, 5 D&C 3d 381 (1977), the Court of Common Pleas in Luzerne County decreed that a second class township not only has no power to enact an ordinance granting an exclusive cable television franchise to a given applicant, but any individual or organization is free to install and maintain cable television wiring suspended between utility poles with permission of the owners of such poles without the necessity of obtaining a prior permit from the township.

To further confuse the legal problems dealing with the granting of franchises by municipalities, the Supreme Court indicated in the Borough of Scottsdale v. National Cable Television Corporation, 476 Pa. 47 (1977), that unless there is a valid pre-emptive control over disagreements dealing with rate increases between a municipality and a cable television company by the Federal Government or by the Commonwealth, Pennsylvania municipalities have the legal authority to control the charges made by a cable television company. By legal definition, a township of the second class is considered a municipality. A question that arises here is, how can second class townships regulate rates when

according to past prior judicial decision, they do not have the power to grant franchise agreements? The stating of the word "municipality" instead of "borough" should not be construed to mean that townships of the second class have the right to regulate cable television rates. The legal problems illustrated above plus lack of clarity in the wording of the Supreme Court decision in Scottsdale v. National Cable Television Corporation, can only be simplified by the Legislature.

The Public Interest in the Development of CATV

Public interest is one of those socio-political words everyone uses but no one really defines. We hear organizations from all sectors of the body politic claim that any benefit derived for the good of society is done with the public interest in mind. It seems then, that in the operation of CATV, the public interest would be identified as providing the best possible reception for customers at the lowest possible price in benefiting both the cable TV operator and the subscriber. One could argue, however, that television is not a necessity and, therefore, those who want CATV in their homes should pay for it. However, Herbert Dodick wrote in The Roles Available to States in the Development of Cable Communications, "But, when it is reported that more than 50 percent of the public depends primarily on television for news and information and that over 60 percent consider television a more credible source than all other media, importance of adequate coverage is necessary."³⁵ Television is an important source for keeping the public informed and educated on the events surrounding them. When most residents of the more rural geographical areas in Pennsylvania cannot receive TV signals without cable, then providing residents in these areas with adequate coverage at costs which will not be prohibitive should be important in defining local and state government roles in the operation of cable TV.

Furthermore, the cable television industry depends on (in boroughs and cities) public property for its livelihood and it requires substantial subscriber investment (by monthly rate payments) to support its transmitted operations.³⁶ When this is the case, the municipal government has an obligation to its residents that the service provided should be safe, adequate and available to all citizens

who want the service. The industry in turn has the right to earn a reasonable return on investment and the right to be protected from competition by an enterprise offering the same service in the same area.³⁷ The industry, however, neither is interested nor obligated to provide cable television to the rural, isolated areas of the Commonwealth where it is not a profitable business investment. Residents of these areas have, in the past, either gone without cable television or have organized and constructed municipally or subscriber-owned CATV systems. In most cases their motive is not profit oriented but rather it is to serve the citizenry in their communities. In the cable TV industry itself, municipally or subscriber-owned CATV systems tend to raise serious questions as to whether such publically owned operations are an infringement on private enterprise. Indeed, the National Cable Television Association argues that municipalities should stay out of the business because CATV is not a utility and should not be regulated as such. Furthermore, municipalities cannot incur the large capital cost required to operate sophisticated cable systems and they also lack the expertise to keep the CATV systems in constant operation.³⁸

Those who favor subscriber or municipally owned systems counter that public owned services provide an alternative to the constant contesting of frequent rate adjustments between a municipality and a private operator. They argue that running your own system can become a source of revenue for local government in the future. Large capital investment that is needed to construct a system can be provided for by floating general obligation bonds. In many cases, local governments can maintain ownership by their implied or home rule powers. They also argue that municipalities can satisfy the First Amendment right of freedom of speech and the public's right to know without the corporate influence often present in cable TV systems operated by private enterprise.³⁹

The issues raised here should be reinforced with the fact that CATV is not a public utility nor can it be considered a quasi-public utility or be regulated as such. However, this should not be construed to prevent local governments from granting franchises to privately owned CATV systems because these systems

rely upon the use of public property and rights of way in municipalities. Furthermore, it is apparent that when private CATV companies choose not to operate in areas of low population density, it is a prerogative of the people of that area and their elected officials to determine what is in their best interest in regard to the operation of cable television systems within the entire community.

CHAPTER IV - CABLE TELEVISION IN OTHER STATES**

Regulation of Cable in Selected States

Since the FCC has been encouraging regulation of CATV at the state and local level, more states are adopting laws in areas such as franchising, theft of service, taxation, rate regulation, and pole attachments. According to a 1977 report authored by Sharon Briley of the FCC, a total of 11 states regulate CATV on a comprehensive basis through a state agency and 41 states have enacted legislation that affects cable television in some way. Others, including Pennsylvania, have state highway or transportation departments involved in granting rights of way permitting CATV operators access to public streets in stringing cables to public utility poles.

Only five states have complete power to regulate and have pre-empted local franchising of cable systems. They are: Connecticut, Rhode Island, Vermont, Hawaii, and Alaska. Five others, Nevada, Massachusetts, New Jersey, New York, and Minnesota have regulatory plans that have either established or not pre-empted local franchising authority. Delaware has limited powers to grant franchises and to regulate cable television through a state agency. (See Tables I and II.)⁴⁰

Regulation of the CATV industry presents jurisdictional problems in that states must decide what level of government, if any, should regulate aspects of the industry. Four considerations which have influence on this problem, according to Briley, have been: (1) the FCC role in CATV regulation, (2) the question of necessity of regulation in, as she called it, "issue areas," (3) Congressional activity, and (4) court actions.⁴¹

In 1973, the FCC recommended that federal, state and local regulations should not be duplicative. Additionally, the 1974 Report of the Cabinet Committee on Cable Communications recommended that federal legislation be enacted to prevent overlapping of local, state, and federal jurisdiction and to assure compatibility

** Part of this section is derived from excerpts of "State Regulation of Cable TV - Progress and Problems," The Cable/Broadband Communications Book 1977/1978, by Sharon A. Briley.

of non-federal regulation with national policy. Therefore, as early as 1973, there existed the principle that the regulation of CATV should not be duplicative and overburdening in the eyes of the Federal Government. With this in mind, plus the knowledge as indicated previously in this study that the FCC is vacating its own jurisdiction over the industry, then the jurisdictional question of regulation is now in the hands of state and local governments. As early as 1970, in TV Pix, Inc. v. Taylor, 396 U.S. 556 (1970), the U.S. Supreme Court upheld the rights of a state to grant regulatory authority to its Public Service Commission on the issue of CATV. In Pix v. Taylor, the court held, "the local character of cable television, undermanding of national uniformity which would preclude state action; that in the absence of Congressional pre-emption, states have the right and power to regulate cable television."⁴²

To counteract the apparent governmental insistence on CATV regulation regardless of which level of government was involved, the cable TV industry became generally opposed to regulation, particularly those appearing to be duplicative or conflicting. However, in 1977 the National Cable Television Association (NCTA) modified their stand and recommended that any revision of the Communications Act of 1934 should have the following five point program:

- (1) establish that all levels of government regulation of cable be eliminated whenever possible.
- (2) preclude certain areas from non-federal regulation, i.e., carriage of broadcast signals, channel use, technical standards, services, etc.
- (3) allow a single non-federal government authority to regulate in certain specific areas only if federal standards have been adopted (i.e., subscriber rates in monopoly situations, line extensions, franchise renewals, and enforcement of technical standards).
- (4) allow a single non-federal government authority to extract from cable only reasonable and nondiscriminatory franchise fees and/or taxes and require compensatory services in the local franchise.

- (5) allow a single non-federal government authority to regulate in all other areas such as franchises unless such regulation would be inconsistent with federal regulation.

The modified stance taken by the industry was repudiated in October, 1978, by Thomas Henderickson of the NCTA. He stated that cable television is not a utility and not a necessity, and therefore it should not be regulated as a utility. He further reiterated that not only should local governments, particularly cities, be prohibited from regulating cable rates, but that they should also be discouraged from developing and operating their own cable systems. He mentioned that cities lack both the expertise to get involved in such projects and the large capital investment to finance municipally owned CATV systems. He expressed the general attitude of the industry that "too much regulation . . . weakens cable systems financially which may result in poorer service for the consumer."⁴³

The need for regulation at the state and local level is no longer a question of duplicating federal statutes. Since 1977, the FCC, as mentioned previously, is no longer asserting its jurisdiction over CATV. We will consider in this section the issues involved in checking how the need for state-level regulation is determined. Following is a profile of how 11 other states have decided to comprehensively regulate CATV.

ALASKA

In 1970, the state legislature adopted the Alaska Public Utilities Commission Act which incorporated CATV under the act by defining it as a public utility. The Alaskan PUC has drafted, but never adopted, regulations specifically for cable television. The PUC is the only authority which has jurisdiction over franchising and has issued certificates of public convenience and necessity to 14 cable systems in the state. The PUC has the option of conducting investigations of complaints, tariffs, and service quality and as a result can levy fines if its investigations find justification.

CONNECTICUT

The PUC in Connecticut was granted sole franchising authority by Public Act 425 of 1963. The PUC also has jurisdiction over most aspects of CATV, because it is included in the definition of public service companies. The PUC adopted rules of practice and regulations including construction standards and terms and conditions of operations. It has also adopted requirements on renewals and transfers of stock. In April of 1974, the PUC required that advisory councils be established in each community having CATV in operation. In 1975, the PUC was changed to the Public Utilities Control Authority (PUCA) and in 1976 it was recommended that tax incentives be given to cable companies, easing regulations for new systems to allow for their expansion and relaxing rates on new systems just under construction. Presently, there is pending rulemaking on line extensions, and legislation to (1) create a separate cable office in the PUCA, (2) to return to municipalities a portion of the eight percent state gross earnings tax and, (3) to provide tax breaks for construction and operation of future systems.

DELAWARE

Cable television is not defined as a public utility in Delaware and, as a result, the State Public Service Commission has authority to franchise only in unincorporated areas. The PSC reviews and may modify municipal franchises but does not grant certificates to municipal franchises. The law setting up the PSC required the agency, within 180 days, to make rules and regulations on the filing of applications and complaints. The statute did not impose rate regulation except to require that cable systems obtain approval from the PSC for increases exceeding five percent in any one year.

HAWAII

In 1970, the State Attorney General concluded that the State PUC could regulate cable TV and as a result, the legislature granted franchising authority

to the Department of Regulatory Agencies (DRA), which created a cable TV division within the DRA. The Department of Regulatory Agencies in 1971 promulgated rules and regulations governing CATV as well as extending jurisdiction over corporate practices and procedures. Also under consideration was the state legislative auditor's recommendations to place cable television operation under PUC control and further that the PUC should establish rate-setting complaint and ownership policies. The staff includes an administrator, program specialist, engineer, auditor/investigator, and secretary.

MASSACHUSETTS

In 1971, the state legislature formed the Community Antenna Television Commission which is unique among various state regulatory agencies. Municipalities grant licenses for franchises while the CATV Commission serves only as an appellate hearing board. In 1973, the Commission promulgated rules for hearings, licensing, and amendment and transfer of licenses. Licensing procedures include the establishment of local advisory committees in each cable municipality.

In 1974, the Commission assumed jurisdiction over subscriber rates and charges. Under current regulations, the Commission either (1) reviews all rates agreed to by the local authority and issues a certificate of verification upon approval, or (2) upon petition of a licensee, it is required to conduct a hearing. The Commission also examines rates on a consolidated rather than per-community basis.

The Commission operates with seven part-time commissioners and nine staff members.

MINNESOTA

In 1973, the state legislature established a seven member board to develop a state cable communications policy and to promote the growth and development of cable communications. Franchising authority was fixed at the municipal

level, but the board was empowered to promulgate rules concerning franchising and standards of practice and operation. The board does not regulate rates; these are set and adjusted by the municipalities and are contained in the franchise issued. The cable company applies to the board for a certificate of confirmation of the franchise.

Current rules and regulations include access channel capacity, the provision of equipment, interconnection of cable, and alternative franchising procedures for small municipalities. These regulations coupled with past rule-making concerning pole, duct, and conduct agreements, as well as rules concerning technical changes in the cable service territory rules, have made Minnesota one of the few states which places a high priority on the operation of cable television.

The Board consists of an executive director, cable communications specialists, and other administrative staff. The seven board members are appointed by the Governor.

NEVADA

In 1969, the Nevada Public Service Commission (PSC) published standards for system construction, maintenance, and pole attachments, and issued a financial reporting form for cable companies. Furthermore, a cable company cannot construct or operate a system without first obtaining a certificate of public convenience and necessity from the PSC. Local authorities may not regulate cable although they may grant franchises for use of streets and ways. General improvement districts (political subdivisions which deal with public utility service) may own or franchise a cable system without a PSC certificate.

The PSC also has authority to order cable operators to extend their services into marginally profitable areas and to improve their quality of service. However, according to Briley, "subscribers must bear any cost in excess of the sum the operator is willing to invest in a line extension."⁴⁴

NEW JERSEY

In 1973, the state established an office of cable television within the Public Utilities Commission which has tended to integrate local and state regulatory responsibilities. State concerns include franchising, rate regulation, relationship between utility and cable companies, standards of service, regionalization, and development of an intrastate cable policy.

In the franchising process, the municipalities grant local "consents" and the PUC grants certificates to acceptable applicants selected by the municipalities. Rate setting powers are now a state concern instead of the prior policy which involved municipalities setting rates. Pole attachments are now under investigation to determine the reasonability of the rates charged in all agreements between utilities and cable companies. In 1976, the Office of Cable Television issued policy statements concerning who would be permitted to obtain free service from a cable company and a company's obligation to a subscriber when the subscriber has a pre-paid contract.

Under the Municipal Advisory Program, staff members meet with cable television advisory committees in municipalities during the franchising process to advise them on state and federal regulations. Staff also (1) inspects CATV operators for technical and administrative compliance with state and federal regulation; (2) investigate subscriber complaints; and (3) testifies in rate cases on quality of service questions. The office has a director and a deputy director, hearing examiners, accountants, planning coordinator, planning specialist, engineers, investigators and secretaries.

NEW YORK

New York's Commission on Cable Television (CCT) was created in 1969 and "has more to regulate than any other state regulator" since cable was well developed prior to regulation.⁴⁵ The CCT issues orders granting certificates of confirmation to approve applicants following local government franchising. Rate

regulation is mostly a local matter with the state playing only a review and assistance role. Briley, in November of 1977, had reported that the CCT never denied a rate increase but it has reduced the amount of a proposed increase.⁴⁶

Administrative rulemaking has concentrated on franchising and technical standards and the CCT has applied its jurisdiction over pay cable but it was the subject of litigation, Brookhaven v. Kelly, 573 F 2d 765 (1978), in which the U.S. District Court upheld FCC jurisdiction over it.

The CCT is organized into the Executive Office, the Counsels' Office, the Division of Municipal Assistance and Policy Development, the Accounting and Financial Analysis Division, the Division of Telecommunications, and the Administrative Services and Financial Development Division. The staff includes five commissioners, an executive director, an executive assistant, four attorneys, five engineers, three accountants, five municipal and policy consultants.

RHODE ISLAND

In 1969, the legislature defined cable television as a communications carrier and granted sole franchising but not rate setting authority to the Division of Public Utilities and carriers within the PUC. The state is divided into nine franchise areas with each area having specified criteria regarding certificates of public convenience which operators must meet.

VERMONT

In 1970, the Public Service Board gained statutory authority to regulate cable television as a public utility. Cable television is a monopoly by statutory definition and cable operators must annually apply for a certificate of public good. The legislative intent was to insure the public accountability of CATV operators.

Most of the Board's jurisdiction is over rate regulations in which the Board, after a 30 day notice, may or may not hold a rate hearing. If no decision

is reached after six months, the company can institute new rates. In turn, the Board may order a rate change if investigation proves it necessary. The staff includes three commissioners, one electrical and nuclear engineer, two attorneys, one accountant, two complaint officers and a clerk.

Table 1 - STATE LAWS ON CABLE TELEVISION

Subject	Year Adopted*					1973	Pre-1973
	1977	1976	1975	1974			
1. Abandonment of Service				Me.			
2. Complaints	Tn.						
3. Construction/or Equipment	Ct./2**		Ma.	Ct.			
4. Definition of cable TV		Ct. (19d) NY (19d)				NC	SD (8)***
5. Disconnections		Vt. (12, 18)					
6. Educational Uses		Wi.					
7. Forfeitures		SC (8,15)		NY (19d)			Vt.
8. Franchising or right-of-way Municipality			Ia.	Me. NH Ks.		Il.	In. '71 Nb. '69 NC '71 SD '72
County	Md. (17)	La.	Il. In.	Nb. NC			
Municipalities & Counties	Tn. (15 17 22)	SC (7,15)		Az. Mn.			Mi. '72 Nv. NJ '72 NY ('73) Ut. '53 Va. '72
9. Interconnection		Mn (12)					
10. Landlord-tenant Relationships	Ma.	Ct.	Ct. Ma.				
11. Liability of cable operator			Ct.			Ms.	
12. Line extension		Mn. (9) Vt. (5)					
13. Occupational Licensing exempt		In.					
14. Ownership		Me.				Ms.	
15. Pole attachment	Ca. ('78) Tn. (8)	SC (8)				Ut.	
16. Property damage or removal compensation	NM Tn. (8)		Ct.	Ct.			

*Effective date in parenthesis if other than year of adoption.

**Number of bills on same subject.

***Part of another law: number indicates subject(s) listed here that the same bill addresses.

Subject	1977	1976	1975	1974	1973	Pre-1973
17. Rate regulation	Ma. (21) Md. Tn. (8)					
18. Safety	Ct.	Vt. (5)		Ct.		
19. State regulation (a) New agency					Mn.	Ma. '71 NY ('73)
(b) PUC				De.		Ak. '70 Ct. '63 NJ '72 Nv. '67 RI '69 Vt. '70
(c) Other						Ha. '70
(d) Admendments	Nv.	Ct. (4) NY (4) Vt.	Ct. Ma.	NY/5		
20. Study committees		Ha. La. Mi.	Ma.	Ma./2 Mi. SC	Ia.	
21. Taxation or fees (a) Tax imposition			Il. Wi.	Ct.	Fl. Il.	Al. Ms.
(b) Exemption	Fl.	SD	Wa.	Ct. La.		
(c) Assessment			Ak.	Mt.		Az.
(d) State or franchise fee	Ma. (17)	SC (8)	NY	Ct.		
22. Theft of Service	Ga. Ha. Mn. Mo. Mt. NM Oh. Tn.	Ak. Az. Ct. Fl. Ks.	Ca. NY	De. (19) Mt.	In. Mc. NC NH Wa.	Ar. Md. '69 Va. Vt. '72

Source: Sharon A. Briley, "State Regulation of Cable Television - Problems and Progress" (Table 1. State Laws on Cable Television), in The Cable/Broadband Communications Book 1977-1978, ed. Mary Louise Hollowell (Washington, D.C.: Communications Press, 1977), pp. 34-35.

Table 2 - REGULATORY ACTIVITIES IN THE STATE AGENCIES

State	Regulatory Agency (effective date)	Systems for which Applications Processed				
		New	Existing	Renewals or Transfers	Rate Cases	
					Decided	Pending
Alas.	PUC 1970	8	6	0	6	1
Conn.	PUCA 1973	17 1 pndg	0	6 est.	24	1
Del.	PSC 1974	0	6(a)	0	1	2
Haw.	Dir. of regulatory Agencies 1970	4	6	1	4(b)	3 1 (leased channels)
Mass.	CATV Comm'n 1971	Not Applicable (see Profile)		(NA)	10(c) 16 COV	2
Minn.	Comm'n on cable Communs. 1973	24(d) & 23 IC	78	9	NA	NA
Nev.	PSC 1970	4	5	1	2	1
NJ.	PUB 1972	5	32	0	23	0
NY.	Comm'n on Cable TV 1970	94(c)	496(c)	64 R(e) 56 T	458(e)	48
RI.	PUC 1969	8	1	0	NA	NA
Vt.	PSB 1970	11	37	4 Est.	23 Est. (16 Full)	1

(a) PSC grants franchises only in unincorporated areas.

(b) 1 case through appeals process completely; 2 others denied and on appeal.

(c) Massachusetts required Certificate of Verification for all rates.

(d) 23 of total 47 certificates for 5 years.

(e) Based on municipalities rather than systems.

7	8	9	10	11
Reports, Studies or Information Produced	Regulations, Rulemakings, Policy Statements	Projects Assistance	Staff Size	Cost of Regulation
Annual reports include cable	Rate increase filing requirements amended 9/75 (all utilities)	Accounting assistance Cable symp '74	5 commissioners none cable 31 PUC staff	Cannot break out
No annual report Nelson Report 11/1/76	Regulations Uniform System of Accounts	None	5 commissioners 6 part-time on cable 100 PUC staff	Cannot break out
Annual report to governor has statistical compilation.	Regulations Uniform System of Accounts	None	5 commissioners none cable 9 PSC staff	Cannot break out
1-Management Audit of the Public Utilities Program '75	Regulations Proposed regulations	None	Director & Dep. A.G. (p-t) 4 cable staff	1970: \$40,000 (see profile) 1976: \$113,005 1977: \$183,879E
1-Licensing guide 6/74	Regulations 6 rulemaking 1 policy Uniform Rptng Sys	Municipal assistance	7 commissioners (p-t) 9 staff	FY'71: \$ 50,000 FY'74: \$138,000 FY'77: \$147,800 FY'78: \$160,950
Annual report Quarterly newsletter 20 reports and information	Regulations 2 RM decided 1 RM pending	8 developmental and assistance projects (see profile)	7 Bd members (p-t) 1 Exec. Dir. 7 staff 1 sp asst. A.G. (p-t)	1974: \$101,000 1975: \$194,500 1976: \$179,000 1977: \$201,000
Biannual report to governor includes cable	Proposed regulations	None	3 commissioners none cable 47 PSC staff	Cannot break out
Annual report Franchising guide Cable Facts Monthly Bulletin	Regulations and Rules of Practice 2 RM pending	Municipal Advisory System testing Inspections	3 commissioners 16 staff	1972: \$ 70,000 1974: \$ 77,900 1975: \$190,000 1977: \$238,000
Annual report Weekly Bulletin Franchising Wkbk 6/75 Operators Hdbk 5/77 5 other information	Regulations Rules of Practice Uniform Sys of Accts 10 RM/policy decs 6 pending	Gov't. channel Access State Agencies Conf Technical Assistance	5 commissioners 42 staff	FY'74: \$764,000 (see profile) FY'78: \$1,017,000
None	Report and Compliances Order 11/74	None	3 commissioners plan to hire cable analyst 35 PUC staff	Cannot break out
Biennial report has cable section	Rules of Practice Proposed regs.	None other than franchising	3 commissioners no cable 7 PSB staff	Cannot break out

Source: Sharon A. Briley, "State Regulation of Cable Television - Problems and Progress" (Table 2 - Regulatory Activities in the State Agencies), in The Cable/Broadband Communications Book 1977-1978, ed. Mary Louise Hollowell (Washington, D.C.:

Table 3 - LEGISLATIVE ATTEMPTS FOR STATE REGULATION

<u>State</u>	<u>Year(s) Bill Introduced</u>	<u>Recommended Regulatory Agency</u>
Alabama	1972	New cable commission
Arizona	1973, 1974	Arizona Corporation Commission
California	1973 1975	New cable commission Public Utilities Commission
Colorado	1969 1975	PUC (partial regulation) PUC (total regulation)
Georgia	1971 1975	New cable commission Public Service Commission
Illinois	1973, 1975, 1976, 1977	Illinois Commerce Commission
Iowa	1973	New cable commission
Kentucky	1974 1976	PSC New cable board
Maine	1973, 1975 1973 1975, 1977	New cable commission PUC Bureau within PUC
Maryland	1973, 1974 1974 1974 1976 1973	Secretary of Licensing & Regulation Commn. within Licensing & Reg. Dept. New cable commission PSC PSC
Michigan	1974, 1975, 1976, 1977	Advisory Commission within PSC
Mississippi	1975, 1976, 1977	PSC
Missouri	1976, 1977	PSC
Montana	1974, 1975, 1977	PSC
North Dakota	1973	PUC
N. Hampshire	1975	PUC
Ohio	1977	Educational TV Network Commission
Oregon	1973, 1975 1973, 1975, 1977	New cable commission PUC
Pennsylvania	1973, 1976, 1977 1973, 1974 (2 bills) 1975, 1976 1976	New cable commission PUC New telecommunications commission
S. Carolina	1975	PUC
South Dakota	1973	PUC

<u>State</u>	<u>Year(s) Bill Introduced</u>	<u>Recommended Regulatory Agency</u>
Tennessee	1976	PSC
Texas	1975, 1977	PUC
Virginia	1973	State Corporation Commission
Washington	1975, 1976, 1977	Utilities and Transportation Commission
West Virginia	1973, 1975 (2 bills) 1976, 1977 (2 bills) 1977	PSC New cable commission
Wisconsin	1973 (2 bills) 1974, 1975, 1976	Office within PSC Division within PSC
Wyoming	1975, 1977	PSC

Source: Sharon A. Briley, "State Regulation of Cable Television - Problems and Progress" (Table 3, State Laws on Cable Television), in The Cable/Broadband Communications Book 1977-1978, ed. Mary Louise Hollowell (Washington, D.C.: Communications Press, 1977), p. 42.

Factors in Determining a State Role

Briley (1977) posed three questions which must be answered before regulation of cable television can be considered. They are: (1) what aspects of cable television should be regulated?; (2) is state regulation reasonable or necessary?; and (3) what form of regulation should be imposed?⁴⁷ Additionally, the Urban Institute stated that rate regulation of cable television is no longer a mandatory responsibility of local government.⁴⁸ Reasons given for enacting regulation legislation vary from state to state. Nine of the most common are:

1. lack of local expertise and resources;
2. a goal of statewide development of communication services;
3. an existing problem which could most expediently be solved by state regulation;
4. lack of solutions at any other level;
5. control an entity using public streets for its distribution system;
6. prevent systems for charging exorbitant rates;
7. prevent systems from discriminating against customers in providing service only to those people it chooses;
8. prevent degraded service and bad technical standards;
9. protect public safety (systems must comply with state electrical standards).⁴⁹

Other reports such as the Sloan Commission's On the Cable - the Television of Abundance (1971) and the Whitehead Report recommended that state governments assist their franchising authorities without abusing the rights of the industry in receiving justifiable and profitable rate of return. Furthermore, they recommend that any state agency "should not issue but should supervise franchising procedures, identify franchise areas, set minimum standards, adjudicate appeals with respect to performance, and establish uniform accounting methods."⁵⁰ Accordingly, many experts on CATV argue that there is a need for parity, e.g., government should not overregulate but the industry must also expect some basic standards to be imposed upon them in regard to public protection.

Critics of state involvement agree that state regulation of CATV is not beneficiary because statutes passed by state legislatures in the past have not superseded local franchise regulations. They argue there are no CATV regulatory functions which the state can enact that local communities cannot apply with the exception of statewide uniformity. Furthermore, in view of the financial problems most state governments are having, Seiden (1972) was of the opinion that states do not need the added burdens to their bureaucracy that regulation of CATV would bring. He added that the questionable additional public service afforded by state regulation in the field of CATV mitigates against state pre-emption of local regulation.

Finally, other related arguments have included (1) cable television is not among the state priorities, and no "problems" exist to bring it to state-wide attention; (2) none of the state's regulatory authorities have jurisdiction over cable television; and (3) regulation tends to be duplicative, overburdening, and very costly.

Since both sides present formidable arguments for and against state involvement, we must ask how do we reach a solution and a medium point upon which the industry and state government can agree. The answer appears to lie in what the public demands in terms of CATV service. If the public has objections to the operation of cable television in its community, the source of alleviation should be the local government because those elected officials are the closest to an existing problem. However, Lower Nazareth Township v. Service Electric Cable TV, Inc. and Turchanik v. Plymouth Township have made it clear that some municipalities (townships of the second class) cannot, by the lack of statutory authority, solve their problems due to absence of said franchising and contracting authority. The lack of statutory authority thereby brings the Commonwealth role into focus, for the General Assembly can grant local governments lacking franchising rights the corporate power to do so.

CHAPTER V - IMPACT OF CATV ON LOCAL GOVERNMENT - FACTS AND OPINIONS FROM PENNSYLVANIA LOCAL GOVERNMENT OFFICIALS

General Results

As an integral part of the Local Government Commission study on CATV in the Commonwealth, Pennsylvania municipal officials were questioned on various aspects of CATV in their communities. The survey was conducted between September and December, 1978 and took into consideration both factual data on CATV operations and opinions of municipal officials regarding CATV in their communities. Respondents included both elected local officials and municipal employees such as managers, administrators, and other staff. Data accumulated from the questionnaire was then coded and tabulated by the Legislative Data Processing Center.

The questionnaire was divided into two parts. The first sought information on franchise procedures, rate provisions, access channels and administration of cable television in the communities. The second part was a Likert-scale opinion survey measuring the degree of acceptability of local officials toward cable television. Seventeen questions were posed on a 1-5 scale with one being "strongly agree" and five being "strongly disagree." The total response to the questionnaire was 1127 out of a possible 2565 municipalities (excluding counties) or a 43.9 percent rate of return. Classes of municipalities that responded were: cities (26 out of 52, for 50 percent); boroughs (418 out of 963, for 43.4 percent); townships of the first class (46 out of 92, for 50 percent); and townships of the second class (637 out of 1458, for 43.6 percent). However, of the 1127 responses received, not all questions were answered.

The survey also revealed that of approximately 12 million people residing in the Commonwealth, municipalities that responded to the survey represented a total population of 7,166,603.* The respondent municipalities represented nearly 60 percent of the population of the state (see page 52). Furthermore, of those municipalities responding to the survey, tabulation shows that respondents who have cable television in operation represent over 3.3 million or 27.56 percent of the state population.

* According to 1970 U.S. census figures.

The following is a breakdown of the total population of each class of municipality in the Commonwealth, the total population of each class of municipality responding to the survey, and the population of the municipal respondents by classification which have cable television in operation. Of course, this does not represent the number of persons who are serviced by cable because not all residents of a municipality subscribe to cable television, even if it is available. The table also shows the percentage of population the respondents represent to the total population for each class of municipality.

<u>CLASS OF MUNICIPALITY</u>	<u>TOTAL POPULATION OF EACH CLASS OF MUNICIPALITY</u>	<u>TOTAL POPULATION OF EACH MUNICIPAL RESPONDENT</u>	<u>TOTAL POPULATION OF RESPONDENT MUNICIPALITIES WITH CATV</u>
Townships-1st Cl.	1,489,316	954,593 (64.09%)	622,486 (41.79%)
Townships-2nd Cl.	3,603,087	1,610,229 (44.69%)	891,811 (24.75%)
Cities	3,995,220	3,175,991 (79.49%)	576,573 (14.43%)
Boroughs**	2,895,611	1,425,790 (49.23%)	1,211,946 (41.85%)
TOTAL	11,983,314	7,166,603 (59.80%)	3,302,816 (27.56%)

** Includes Town of Bloomsburg.

Also see Table 6 for breakdown by county.

Part One

Part one of the questionnaire sought to examine the current situation relating to franchising of CATV by municipalities. Tabulation showed that of 1077 responses, 621 or 57.6 percent of the municipalities indicated they had granted an organization permission to operate a CATV system within that community (see pages 56 through 59 for tabulations). Four hundred fifty-six or 42.3 percent indicated they had not granted permission. Of those answering in the negative, 53 or 11 percent are presently considering CATV, 19 or 4.1 percent considered CATV and rejected it, and 346 or 75.9 percent had given no consideration to CATV.

Of 1065 respondents answering whether their municipality has a CATV system in operation, 591 (55.5 percent) indicated they did have CATV in operation and 474 (44.5 percent) reported no system presently in operation.

Subsequently, those of which had CATV in operation (387 responses), 66 or 11.2 percent charged an application fee for those companies wishing to provide CATV to a municipality, and 521 (88.8 percent) did not charge such a fee. Eight municipalities refunded the application fee to a prospective CATV operator who was unsuccessful in obtaining the franchise, while 45 did not.

CATV Franchises

In considering the actual granting of franchises, of 596 total responses, 346 communities or 58.1 percent granted franchises by ordinance; 84 or 14.1 percent granted franchises by resolution; 81 or 13.6 percent granted franchises by formal agreement; 24 or 4 percent by verbal agreement; 18 or 3 percent by other methods; and 43 or 7.2 percent by a combination of the above.

Four hundred forty-eight respondents also reported on the period of years for which an initial franchise was granted. They were:

	<u>Percentage of those responding:</u>	
1-5 years	60 or 13.4%	71.9%
6-10 years	115 or 25.7%	
11-15 years	147 or 32.8%	
16-20 years	37 or 8.2%	28.1%
21-25 years	29 or 6.5%	
26-30 years	4 or .89%	
31-35 years	0 or 0%	
36-40 years	1 or .22%	
greater than 40 years	55 or 12.2%	

Analysis of this data reveals that over 70 percent of all initial franchise agreements last no more than 15 years. The premise underlying this high percentage could be that the municipality has sought to improve service to its residents during this period brought about by advancement in cable technology. If improvements were not forthcoming, the community would then be given the option of seeking the services of another cable company. Revision of the initial franchise was reported by 134 municipalities, with no revision reported by 391 municipalities.

Of the 566 municipalities which responded to a question on the actual payment of a franchise fee to a municipality by a cable company, 364 indicated that such a fee was being collected as a source of revenue while 202 indicated that no monies in form of fees were being received. Furthermore, of 295 communities surveyed collecting the franchise fee on a percentage basis, 17 were receiving 1 percent of the annual gross income of the cable company, 37 received 2 percent, 189 received 3 percent, 9 received 4 percent, 39 received 5 percent, and 2 received 6 percent. Finally, 51 respondents indicated they have increased annual intake from the franchise fee.

In addition to receiving revenues from the collection of fees, many municipalities also have been given the contractual power to decide whether a company can increase the monthly rate charged to a resident-customer. In the survey conducted, 324 communities provided for initial ratemaking while 202 did not. Two hundred sixty indicated that new rates have been approved since the initial franchise agreement.

As for the type of agreement, 230 municipalities in the survey had non-exclusive franchises with cable companies, 131 had exclusive franchises, and 160 had no provisions. An exclusive franchise is a contractual agreement between a cable operator and the local governing body authorizing the operator to build and operate a cable system in that community while eliminating other cable companies from consideration to provide that service in the future.

One method by which municipalities may insure that a franchise fee is remitted by the operator is to require municipal inspection of the financial reports of the CATV company. In the survey, 244 of 545 communities required such reports while 301 did not. As to frequency of these reports, 18 required quarterly reports, 14 required semi-annual, 179 annual, and 8 required some other reporting system.

In the past, the FCC required that cable systems in the top 100 markets, or those with subscribers over 3,500, set aside educational and local government

channels for public use to insure that divergent community opinions were aired. These are referred to as public access channels. Five minutes of time on the channel was free and available at all times on a first come, first serve basis for non-commercial use by the general public. On April 2, 1979, the United States Supreme Court upheld a lower court ruling that the FCC had exceeded its authority in promulgating rules that impose mandatory access and channel capacity requirements upon certain cable television stations, since such rules plainly impose common carrier obligations on cable operators and thus are counter to the Communications Act of 1934. FCC v. Midwest Video Corp., Nos. 77-1575, 77-1648, 77-1162.

Our survey revealed that of 474 respondents, 124 had free access channels used by the community. Forty-two were used for educational purposes, 5 for governmental purposes, 67 for public purposes, and 14 for other purposes. Multiple uses were given by 147 municipalities. Essentially, because of FCC v. Midwest Video, these communities may lose their prior prerogative of requiring that such public access channels be made available to their residents and officials.

Finally, most municipalities indicated that the administration of the CATV services in their communities was handled by the private operators. Of 589 respondents, 509 had private companies administering CATV and 69 had municipal officials administering CATV, while 11 had both administering the service.

PART I

Tabulated by:
Legislative Data Processing Center
April 24, 1979

Legend: A = Cities
B = Boroughs
C = Townships, 1st Class
D = Townships, 2nd Class

1. At any time has your municipality granted an organization(s) permission to operate a CATV system within the community?

	<u>YES</u>	<u>NO</u>
A	24	2
B	329	75
C	38	7
D	230	372
Total	621	456

If no-----

(a) such permission is presently being considered.

A	1
B	20
C	6
D	26
Total	53

(b) such permission has been considered and rejected.

A	--
B	6
C	--
D	13
Total	19

(c) no consideration has been given.

A	--
B	47
C	1
D	298
Total	346

2. Is a CATV system(s) presently in operation?

	<u>YES</u>	<u>NO</u>
A	23	3
B	295	107
C	33	13
D	240	351
Total	591	474

3. Did you charge a fee for the application?

	<u>YES</u>	<u>NO</u>
A	2	18
B	41	259
C	1	31
D	22	213

Was it refundable?

	<u>YES</u>	<u>NO</u>
A	1	1
B	3	25
C	--	2
D	4	17
Total	8	45

4. In what form was franchise granted:

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
Ordinance	19	197	26	104	346
Resolution	1	34	2	47	84
Formal Agreement	2	44	7	28	81
Verbal Agreement	--	5	--	19	24
Other	--	8	2	8	18
Combination of above	2	29	2	10	43

5. How many years was initial franchise granted for?

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
1-5 Years	1	29	3	27	60
6-10 Years	8	66	8	33	115
11-15 Years	5	89	13	40	147
16-20 Years	1	22	2	12	37
21-25 Years	1	15	3	10	29
26-30 Years	--	2	--	2	4
31-35 Years	--	--	--	--	--
36-40 Years	--	1	--	--	1
More than 40	3	24	2	26	55

Has this been revised?

	<u>YES</u>	<u>NO</u>
A	10	8
B	72	144
C	17	13
D	35	92
Total	134	257

6. Does franchise require payment of a franchise fee?

	<u>YES</u>	<u>NO</u>
A	20	2
B	204	97
C	31	5
D	109	98
Total	364	202

What is it?

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>Total</u>
1%	2	7	1	7	17
2%	2	22	3	12	39
3%	11	110	15	53	189
4%	--	6	1	2	9
5%	1	20	8	10	39
6%	--	2	--	--	2

Has initial fee been increased?

	<u>YES</u>	<u>NO</u>
A	2	11
B	34	134
C	3	24
D	12	79
Total	51	248

New fee?

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
1%	--	--	--	--	--
2%	--	4	--	3	7
3%	3	12	3	3	21
4%	--	3	--	--	3
5%	1	4	2	2	9
6%	--	--	--	--	--

	<u>YES</u>	<u>NO</u>
A	10	13
B	194	85
C	29	7
D	91	97
Total	324	202

Does franchise provide for new rate?

	<u>YES</u>	<u>NO</u>
A	14	6
B	158	94
C	21	13
D	67	77
Total	260	190

8. What type of exclusivity provision is included in the franchise?

	<u>Non-exclusive</u>	<u>Exclusive</u>	<u>No Provision</u>
A	13	6	4
B	127	72	76
C	19	11	5
D	71	42	75
Total	230	131	160

9. Are penalty provisions contained in your franchise?

	<u>YES</u>	<u>NO</u>
A	8	10
B	83	159
C	16	19
D	47	133
Total	154	321

10. Does franchise include financial reporting?

	<u>YES</u>	<u>NO</u>
A	11	10
B	145	143
C	26	12
D	62	136
Total	244	301

How often?

	<u>Quarterly</u>	<u>Semi-Annual</u>	<u>Annual</u>	<u>Other</u>
A	--	--	9	1
B	12	7	105	5
C	5	2	16	1
D	1	5	49	1
Total	18	14	179	8

11. Are free access channels used by your community?

	<u>YES</u>	<u>NO</u>
A	11	8
B	62	195
C	14	16
D	37	131
Total	124	350

12. Type of access channel programs are:

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
Education	1	18	4	19	42
Government	1	4	--	--	5
Public	4	29	5	29	67
Other	2	8	1	3	14
Multiple responses	6	66	13	62	147

Part II

Part II of the questionnaire sought opinions of local officials in regard to the actual operation of cable television in their communities and whether the Commonwealth should be involved in providing any technical or legal assistance. The scale for measure opinions was based on a one to five range with one being "strongly agree" and five being "strongly disagree." For purposes of analyzing the responses, those answering either one or two were labeled "agree"; those answering four or five were labeled "disagree"; and those answering three were labeled as "uncertain" or having no opinion to the question.

The purpose of this attitudinal scale was to rate individual responses on an agreement continuum of the attitude in question. The advantage of this rating scale was to allow for measuring the intensity of the attitude expression. With the five categories of responses available, it was obvious that the responses would vary to give a multiplicity of opinions.

The survey revealed that on the 17 questions asked, the average "agree" on all the questions combined was approximately 61.3 percent; the average "disagree" on all questions was 21.0 percent; while the average "uncertain" was 17.1 percent. The median "agree" on all questions was 65.4 percent, the median "disagree" was 16.5 percent, and the median "uncertain" was 19.8 percent. (See Table 4 - Opinions of Local Officials Toward CATV.) The importance of these statistics

would seem to indicate that a majority of municipal officials are of the opinion that a need exists for some guidance in educating these officials on technical and legal aspects of CATV. If cable television becomes available to a community, most local governing bodies of their staffs have the responsibility to insure that citizens receive quality service and fair charges.

The following pages include tabulation of Part II of the survey which deals with opinions of the local officials of townships of the first and the second class, boroughs, and cities. The results of each question are accompanied by a brief explanation of each question and logic behind it.

PART II

Legend: A = Cities
 B = Boroughs
 C = Townships, 1st Class
 D = Townships, 2nd Class

1. My municipality receives good off-air TV reception with home rooftop antennas without cable.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	2	5	7	3	4
B	31	47	82	43	73
C	8	7	10	4	2
D	23	27	85	41	40
	150		184	210	

No - System Not Installed

A	--	2	--	1	--
B	28	26	28	6	8
C	8	1	4	--	--
D	99	75	72	26	30
	239		104	71	

No Response

A	--	--	--	--	--
B	4	2	2	--	--
C	--	--	--	--	--
D	9	8	7	--	3
	23		9	3	

Sub-Total Response	212	200	297	124	160
Sub-Total Percentage	.213	.201	.299	.125	.162
Total Responses	412		297	284	= 993
Total Percentage	.414		.299	.287	

*PERCENTAGES HAVE BEEN ROUNDED OFF FOR PURPOSES OF SIMPLICITY

Question 1 sought to survey what percentage of the population received adequate TV reception without the use of cable. This would give some indication of the need of a cable system due to poor location because of the topography in different regions of the state. The tabulation showed that of the 993 respondents answering this question, where a CATV system had been installed, 150 "agreed" that they received adequate television reception without cable while 210 did not. Of those which did not have cable television, 239 municipalities indicated they had adequate reception while 71 did not. Without cable television 41.1 percent of the municipalities who answered question 1 "agreed" they received adequate reception, 28.7 percent did not, and 29.9 were uncertain.

2. Fees should be charged to each applicant for purposes of bidding for the right to operate cable television in municipalities.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	3	1	5	5	5
B	68	43	57	33	72
C	7	6	6	2	9
D	66	25	48	22	52
	<u>219</u>		<u>116</u>	<u>200</u>	

No - System Not Installed

A	2	--	--	1	--
B	30	15	26	5	19
C	--	1	5	1	3
D	116	41	61	21	56
	<u>205</u>		<u>92</u>	<u>106</u>	

No Response

A	--	--	--	--	--
B	3	--	2	1	2
C	--	--	--	--	--
D	10	3	4	2	4
	<u>16</u>		<u>6</u>	<u>9</u>	

Sub-Total Response	305	135	214	93	222
Sub-Total Percentage	.314	.139	.221	.095	.229
Total Responses	440		214	315	= 969
Total Percentage	.453		.221	.325	

As a method of raising revenue, many municipalities charge a fee to prospective applicant/cable operators who bid on the right to construct and operate cable television in those municipalities. Of course, these municipalities are assumed to have the legal right to grant franchises.

Surprisingly, of those which had CATV installed, almost as many respondents "disagreed" as "agreed" (200 to 219) with charging a fee. However, of those respondents who did not have cable installed, those who agreed that a fee should be charged outnumbered those who did not by a ratio of almost 2 to 1 (205 to 106). Overall, 45.3 percent of the 969 respondents "agreed" that a fee should be collected from prospective cable operators, 32.5 percent "disagreed," and 22.1 percent were uncertain.

3. In awarding bids, consideration of an applicant should include the number of channels that will be provided.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A	14	3	3	--	1
B	183	53	20	7	15
C	19	8	2	--	1
D	<u>134</u>	<u>44</u>	<u>18</u>	<u>3</u>	<u>14</u>
	458		43	41	

No - System Not Installed

A	2	1	--	--	--
B	68	13	7	4	5
C	9	3	1	--	--
D	<u>211</u>	<u>43</u>	<u>26</u>	<u>4</u>	<u>16</u>
	350		34	29	

No Response

A	--	--	--	--	--
B	6	2	--	--	--
C	--	--	--	--	--
D	<u>17</u>	<u>4</u>	--	<u>1</u>	<u>1</u>
	29			2	

Sub-Total Response	663	174	77	19	53
Sub Total Percentage	.672	.176	.078	.019	.053
Total Response	837		77	72	= 986
Total Percentage	.848		.078	.073	

In 1972, the Federal Communications Commission required that cable companies had to provide at least 20 channels to its customers. In April, 1979, the U.S. Supreme Court struck down the FCC rules requiring channel capacity be part of franchise agreements (Midwest Video Corp. v. FCC). However, this does not preclude state or local channel capacity requirements.

Contrary to the Supreme Court's decision of the FCC rules, respondents to this question overwhelmingly "agreed" that the number of channels to be provided by a cable company to a municipality should be considered during the bidding process (84.4 percent "agreed" while only 7.4 percent "disagreed"). Those municipalities with cable installed "agreed" with this provision by a margin of 11 to 1. Those municipalities without cable "agreed" over 12 to 1.

4. In awarding bids, consideration of an applicant should include the geographical area to be serviced.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	10	8	3	1	--
B	161	48	46	3	18
C	21	6	2	--	1
D	133	40	19	6	12
	427		70	41	

No - System Not Installed

A	2	1	--	--	--
B	56	21	11	3	5
C	9	3	1	--	--
D	195	55	29	5	13
	342		41	26	

No Response

A	--	--	--	--	--
B	5	2	1	--	--
C	--	--	--	--	--
D	19	3	--	1	1
	29		1	2	

Sub-Total Response	611	187	112	19	50
Sub-Total Percentage	.624	.191	.114	.019	.051
Total Responses	798		112	69	= 979
Total Percentage	.815		.114	.070	

Many municipalities are divided by natural geographical boundaries, and in larger cities, by ethnic neighborhoods. Let us assume that such divisions may cause fragmentation of these communities into separate, distinct entities. What one ward of a city considers important, another may not. Likewise, what one small town in Northcentral Pennsylvania may see as a necessity, another in Southeastern Pennsylvania may not. For example, Pittsburgh is divided into several districts with distinct characteristics which include Oakland, Bloomfield, and the Southside, among others. Likewise, Philadelphia has Germantown, Chestnut Hill, and Center City. Understanding the attitudes of residents of these areas is important because both Pittsburgh and Philadelphia are currently dividing their respective cities into districts in which each may have a different cable operator. Unless the franchise standards are very specific, the two cities will have no uniformity in regard to stations received. A cable operator in one ward may provide better service than another operator in a different ward. This could cause some problems for city council in terms of citizen complaints.

In smaller municipalities, a different problem is that cable television is not always available to the entire community. This is the case in some townships of the second class. Cable companies may service those areas with dense population of the township where profit is maximum and expense at a minimum. Other areas with less population in the same township may have no opportunity to receive cable television due to the expense of distributing the service to these high cost areas. This results in the township supervisors weighing the advantage of having some cable in the municipality and the problem of having to explain to certain residents why their neighbors down the road have cable and they do not.

This concern expressed here were supported by some evidence when 81.5 percent of 979 responding municipalities indicated they "agreed" that when bidding procedures begin, the geographical area to be served should be considered while only 7.0 percent "disagreed." Uncertainty was expressed by 11.4 percent of the respondents.

5. In awarding bids, consideration of an applicant should include the desired completion date of the system.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	1	2		3	4
A	10	6	4	2	--
B	165	62	29	1	17
C	18	8	2	--	1
D	<u>129</u>	<u>47</u>	<u>24</u>	<u>5</u>	<u>7</u>
	445		59	33	

No - System Not Installed

A	2	1	--	--	--
B	63	16	10	3	4
C	7	5	1	--	--
D	<u>170</u>	<u>69</u>	<u>35</u>	<u>7</u>	<u>14</u>
	333		46	28	

No Response

A	--	--	--	--	--
B	8	--	--	--	--
C	--	--	--	--	--
D	<u>15</u>	<u>6</u>	<u>1</u>	<u>--</u>	<u>2</u>
	29		1	2	

Sub-Total Response	587	220	106	18	45
Sub-Total Percent	.601	.225	.109	.018	.046
Total Response	807		106	63	= <u>976</u>
Total Percent	.826		.109	.064	

Most franchise agreements between a municipality and a cable operator specify the amount of time in which a cable system must be constructed and put into operation. Some prospective operators have had their contractual agreements nullified because they failed to complete their obligations within the date specified in the franchise agreement. Where there are no such agreements, the operators are under no such time limit. This could result in delay of service to customers.

Municipalities indicated in our survey that they approve a completion date be specified before a CATV franchise is awarded. Those agreeing were 82.2 percent while those disagreeing were 6.4 percent. Of the 976 total respondents, 807 or 31 percent of all the local governments in Pennsylvania "agreed."

6. In awarding bids, consideration of an applicant should include the reputation of the applicant (history and background of the cable company).

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	16	4	2	--	--
B	214	34	9	3	15
C	26	3	--	--	--
D	<u>149</u>	<u>31</u>	<u>15</u>	<u>3</u>	<u>14</u>
	477		26	35	
No - System Not Installed					
A	2	1	--	--	--
B	80	8	1	1	7
C	11	2	--	--	--
D	<u>222</u>	<u>40</u>	<u>16</u>	<u>4</u>	<u>13</u>
	366		17	25	
No Response					
A	--	--	--	--	--
B	8	--	--	--	--
C	--	--	--	--	--
D	<u>19</u>	<u>2</u>	--	<u>1</u>	<u>2</u>
	29			3	
Sub-Total Responses	747	125	43	12	51
Sub-Total Percentage	.764	.128	.044	.012	.052
Total Responses	872		43	63	<u>= 978</u>
Total Percentage	.892		.044	.064	

The question to which the sample was most "agreeable" was: "Should a municipality consider the reputation of a cable firm before awarding bids?" Reputation would include the quality of workmanship, e.g., (1) wiring; (2) ability to receive clear pictures; (3) ability to handle citizen complaints; and (4) reliability of service.

Results showed that 89 percent of the municipalities answering this question (978) "agreed" that reputation and background of a CATV company should be considered while 6.4 percent "disagreed." Of those communities with cable, 477 "agreed" while only 35 "disagreed." Of those without cable, 366 "agreed" while 25 "disagreed."

7. In awarding bids, consideration of an applicant should include the franchise fee (amount) the applicant is willing to pay.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	7	6	5	2	2
B	146	33	43	22	26
C	16	3	7	1	3
D	<u>91</u>	<u>33</u>	<u>52</u>	<u>5</u>	<u>25</u>
	335		107	86	

No - System Not Installed

A	1	1	1	--	--
B	50	13	17	5	10
C	7	4	1	1	--
D	<u>146</u>	<u>55</u>	<u>53</u>	<u>14</u>	<u>27</u>
	277		72	57	

No Response

A	--	--	--	--	--
B	5	2	--	1	--
C	--	--	--	--	--
D	<u>12</u>	<u>1</u>	<u>5</u>	<u>2</u>	<u>2</u>
	20		5	5	

Sub-Total Responses	481	151	184	53	95
Sub-Total Percentages	.499	.157	.191	.055	.098
Total Responses	632		184	148	= <u>964</u>
Total Percentages	.656		.191	.153	

Federal Communication Commission rules allow municipalities having cable franchise agreements to collect up to 5 percent of the gross receipts which a cable company receives annually as payment for the right to operate in those municipalities. Only under unusual circumstances, will the FCC allow more than 5 percent to be collected.

Municipalities in the survey "agreed" that applicants should include the amount they are willing to pay during bidding procedures that being by a margin of 65.6 percent to 15.3 percent, who "disagreed." Uncertainty was expressed by 19.1 percent. The ratio of "agreement" over "disagreement" was over 4 to 1 (632 to 148).

8. There should be a periodic evaluation of the cable franchise by a municipality.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	9	6	4	1	2
B	181	49	31	4	13
C	22	6	2	--	--
D	<u>106</u>	<u>46</u>	<u>33</u>	<u>7</u>	<u>19</u>
	425		70	46	

No - System Not Installed

A	3	--	--	--	--
B	61	24	4	2	6
C	8	4	--	--	1
D	<u>190</u>	<u>52</u>	<u>28</u>	<u>7</u>	<u>18</u>
	342		32	34	

No Response

A	--	--	--	--	--
B	7	1	--	--	--
C	--	--	--	--	--
D	<u>11</u>	<u>6</u>	<u>3</u>	<u>--</u>	<u>2</u>
	25		3	2	

Sub-Total Responses	598	194	105	21	62
Sub-Total Percentages	.610	.198	.107	.021	.063
Total Responses	792		105	83	= 980
Total Percentage	.808		.107	.084	

Periodic evaluations of a cable television franchise give municipalities a method to insure that quality of service is continued throughout the period for which the contract is in effect. If this service is not of quality, municipalities could terminate the agreement in the manner specified. In most instances, this would be non-renewal of non-exclusive franchise after the franchise has expired.

This question of whether a municipality should conduct a periodic evaluation of the cable franchise was overwhelmingly "agreed" to by more than 80 percent of the 980 responding municipalities. Disagreement was reported by 8.4 percent and 10.7 percent were "uncertain." Numerically, 792 of the 980 respondents were in agreement and 598 of those were strongly in favor of periodic evaluation of a cable franchise.

9. In awarding a cable franchise, municipalities should receive legal and technical assistance from a Federal or State agency.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	3	5	3	4	6
B	86	49	67	27	49
C	9	7	6	5	4
D	<u>178</u>	<u>33</u>	<u>34</u>	<u>21</u>	<u>45</u>
	270		110	161	

No - System Not Installed

A	1	--	1	--	--
B	41	13	23	8	11
C	2	2	6	1	2
D	<u>124</u>	<u>48</u>	<u>56</u>	<u>18</u>	<u>51</u>
	231		86	91	

No Response

A	--	--	--	--	--
B	5	1	2	--	--
C	--	--	--	--	--
D	<u>10</u>	<u>7</u>	<u>3</u>	<u>1</u>	<u>3</u>
	23		5	4	

Sub-Total Responses	359	165	201	85	171
Sub-Total Percentages	.366	.168	.205	.087	.174
Total Responses	524		201	256	= 981
Total Percentages	.534		.205	.261	

Since the FCC is gradually withdrawing from the regulation of CATV, local governments will be left with the enormous task of setting their own performance standards and finding their own avenues to guarantee that assistance is forthcoming.

This question sought to measure the opinions of Pennsylvania local governments on whether the Commonwealth or the Federal government should give legal and technical assistance. Tabulation shows that the majority of the 981 respondents (53.4 percent) were in favor of such assistance while 26.1 percent disagreed. A large number of those surveyed were uncertain (20.5 percent). In all cases, more classes of municipalities favored the assistance of a state or federal agency than those which did not. Those who "agreed" outnumbered those who "disagreed" in all categories of response.

10. A State agency, such as the PUC, should take a greater role in offering technical and legal assistance to a municipality when dealing with cable television.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A	1	3	3	5	9
B	78	35	56	28	80
C	4	8	6	3	10
D	<u>67</u>	<u>34</u>	<u>38</u>	<u>25</u>	<u>49</u>
	230		103	209	

No - System Not Installed

A	--	--	--	1	1
B	31	16	17	13	20
C	1	1	3	2	6
D	<u>96</u>	<u>50</u>	<u>61</u>	<u>24</u>	<u>62</u>
	195		81	129	

No Response

A	--	--	--	--	--
B	2	1	4	--	1
C	--	--	--	--	--
D	<u>6</u>	<u>2</u>	<u>6</u>	<u>4</u>	<u>5</u>
	.11		10	.10	

Sub-Total Responses	286	150	194	105	243
Sub-Total Percentage	.292	.153	.198	.107	.248
Total Responses	436		194	348	= <u>978</u>
Total Percentages	.445		.198	.355	

Question 10 was asked, in effect, to more specifically measure whether the Pennsylvania Public Utility Commission (PUC) should be the provider of technical and legal assistance to a municipality when considering a cable television franchise. An underlying assumption, but not visible, is that the PUC could be given the power to regulate cable television in the Commonwealth by statute and administrative rulemaking. Of course, this would only be done in the absence of any federal authority.

It is important to note in analyzing this question that no majority opinion was reported. A plurality of municipalities, 436 of 978 or 44.5 percent "agreed" the PUC should take a greater role in offering technical and legal assistance but 35.6 percent "disagreed." Adding those municipalities which were uncertain (19.8 percent) to those which disagreed shows that no real consensus can be made on the involvement of the PUC in cable television regulation.

Also revealed was the fact that municipalities with no cable television "agreed" on a higher ratio (195 to 129) than those with cable (230 to 209), which were almost evenly divided.

11. A State agency, other than the PUC, should take a greater role in offering technical and legal assistance to a municipality when dealing with cable television.

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
Yes - System Installed					
A	2	4	4	2	8
B	48	43	67	29	83
C	1	7	8	7	7
D	<u>36</u>	<u>18</u>	<u>48</u>	<u>33</u>	<u>67</u>
	159		127	236	
No - System Not Installed					
A	1	1	--	--	--
B	17	11	35	14	20
C	2	1	4	2	4
D	<u>56</u>	<u>27</u>	<u>74</u>	<u>38</u>	<u>90</u>
	116		113	168	
No Response					
A	--	--	--	--	--
B	2	1	2	--	3
C	--	--	--	--	--
D	<u>5</u>	<u>4</u>	<u>6</u>	<u>4</u>	<u>4</u>
	12		8	11	
Sub-Total Responses	170	117	248	129	286
Sub-Total Percentages	.179	.123	.261	.136	.301
Total Responses	287		248	415	= <u>950</u>
Total Percentages	.302		.261	.436	

Several states which regulate cable television and also offer technical and legal assistance to local governments do so under the auspices of a separate, independent commission. These commissions generally have powers over rate regulation, oversee franchising procedures, and act as adjudicators in disputes between operators and local officials. If such an agency was created in Pennsylvania, it would be necessary to pass legislation to give the agency adequate professional staff, regulatory authority over cable television, and an appropriation(s) necessary for the agency's operation.

The survey revealed that municipalities were opposed to the suggestion that a state agency other than the PUC oversee CATV in Pennsylvania. Some reasons stated on the returned questionnaires included: (1) the PUC has the staff and mechanisms to undertake this role; (2) local governments are opposed to the creation of an additional state bureaucracy.

Those respondents who "disagreed" (43.6 percent), for the first time outnumbered those who "agreed" (30.2 percent). More than 1/4 of the respondents were "uncertain" (26.1 percent).

12. In awarding a cable television franchise, special public hearings should be held.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	9	5	4	1	2
B	108	59	55	23	34
C	13	3	9	--	6
D	<u>190</u>	<u>38</u>	<u>42</u>	<u>15</u>	<u>26</u>
	325		110	107	

No - System Not Installed

A	1	2	--	--	--
B	39	21	20	5	12
C	4	2	3	1	3
D	<u>151</u>	<u>48</u>	<u>51</u>	<u>19</u>	<u>29</u>
	268		74	69	

No Response

A	--	--	--	--	--
B	6	1	1	--	--
C	--	--	--	--	--
D	<u>11</u>	<u>6</u>	<u>2</u>	<u>1</u>	<u>3</u>
	24		3	4	

Sub-Total Responses	432	185	187	65	115
Sub-Total Percentages	.439	.188	.190	.066	.117
Total Responses	617		187	180	<u>984</u>
Total Percentages	.627		.190	.183	

Public hearings give residents of a community a forum through which to participate in the actual policymaking of those who govern them. When CATV franchises are being considered by a municipal governing body, the majority of the respondents "agreed" that such hearings should be held (62.7 percent) while 18.2 percent "disagreed" and 18 percent were "uncertain." The majority of each class of local government surveyed was also in agreement with public hearing provisions.

13. Franchise fees should be permitted periodic adjustment.

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
Yes - System Installed					
A	7	7	4	--	3
B	98	77	57	20	26
C	13	7	7	1	3
D	<u>95</u>	<u>46</u>	<u>39</u>	<u>9</u>	<u>21</u>
	350		107	83	
No - System Not Installed					
A	1	1	--	--	--
B	34	22	30	5	5
C	5	1	6	--	1
D	<u>124</u>	<u>63</u>	<u>68</u>	<u>14</u>	<u>26</u>
	251		104	51	
No Response					
A	--	--	--	--	--
B	5	1	1	--	1
C	--	--	--	--	--
D	<u>5</u>	<u>9</u>	<u>5</u>	<u>--</u>	<u>2</u>
	20		6	3	
Sub-Total Responses	387	234	217	49	88
Sub-Total Percentages	.397	.240	.223	.050	.090
Total Responses	621		217	137	= 975
Total Percentages	.637		.223	.140	

Periodic adjustment of franchise fees between the municipality and cable company creates additional revenue for the use by the community. For instance, if a municipality is receiving 3 percent of the gross annual receipts of a cable company and the company takes on 10 percent additional customers than the previous year, the municipality may wish to renegotiate the franchise agreement to increase the percentage of intake to 3.5 percent. The extra .5 percent would be in addition to the greater amount of revenue received by the municipality from the gross annual receipts of the company which increased its customers by 10 percent at a lower 3 percent fee. In reverse, if a cable company loses 10 percent of its customers in one year, it may wish to decrease the franchise fee annual payment to 2.5 percent.

Municipalities in the survey favored periodic adjustment by a 4 to 1 margin. Those "agreeing" were 63.7 percent, those "disagreeing" were 14 percent, and those "uncertain" were 22.3 percent.

14. Adjustment of cable television rates per customer should require a public hearing.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	9	2	6	3	2
B	138	39	44	17	41
C	14	4	8	1	4
D	<u>114</u>	<u>29</u>	<u>34</u>	<u>11</u>	<u>28</u>
	349		92	107	

No - System Not Installed

A	2	1	--	--	--
B	49	20	15	4	9
C	3	3	3	1	3
D	<u>175</u>	<u>43</u>	<u>45</u>	<u>13</u>	<u>20</u>
	296		63	50	

No Response

A	--	--	--	--	--
B	5	2	--	--	1
C	--	--	--	--	--
D	<u>13</u>	<u>5</u>	--	<u>2</u>	<u>4</u>
	25			7	

Sub-Total Responses	522	148	155	52	112
Sub-Total Percentages	.528	.150	.157	.052	.113
Total Responses	670		155	164	= 989
Total Percentages	.678		.157	.165	

One of the most crucial problems facing municipalities which have cable television is if its governing body should have the regulatory authority to decide whether monthly rates that residents pay can be increased or decreased. When appropriate, this authority is specified in the franchise agreement. However, this is currently one of the areas most open to litigation. Additionally, if it is determined that a governing body has such regulatory authority, it is mandated by the "Sunshine Act" to open discussion on rate increases to the general public. However, if there is no contractual agreement between the cable operator and the municipality, the residents may not have an opportunity to express support or disagreement for any proposed increase or decrease in rates.

In the survey, 67.8 percent of the 989 responding municipalities felt adjustment of cable television rates per customer should require a regular public hearing. Those who disagreed were 16.5 percent and 15.7 percent were uncertain. Overall, all classes of municipalities were in agreement with mandatory public hearings for CATV rate increases.

15. Transfer of ownership or control of the franchise should require prior approval of the municipality.

Yes - System Installed	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A	13	4	3	1	1
B	192	38	25	5	21
C	18	5	2	1	5
D	138	20	25	11	23
	428		55	68	
No - System Not Installed					
A	3	--	--	--	--
B	71	9	8	1	7
C	9	4	--	--	--
D	216	30	17	12	23
	342		25	43	
No Response					
A	--	--	--	--	--
B	5	--	1	1	1
C	--	--	--	--	--
D	13	4	4	1	2
	22		5	5	
Sub-Total Responses	678	114	85	33	83
Sub-Total Percentages	.683	.115	.085	.033	.083
Total Responses	792		85	116 = 993	
Total Percentages	.798		.085	.116	

In the economic environment in which we live, business competition is keen and the search for profit for the use of future investments is intense. It is often inferred that in the cable industry, there is constant buying of the smaller firms by the larger and the consolidation of the smaller into the larger. If a municipality has a franchise with a cable company that is purchased by another, or one which simply changes ownership, the municipality affected needs assurances that the quality of service of CATV is maintained by the new owner. One method to achieve this end is municipal approval of the transfer of ownership or control when such occurs. Of course, this approval would have to be specified in the original franchise agreement. Additional problems could arise if one company is servicing 20 municipalities and a consensus of those 20 could not be reached in terms of mandating notification and approval of a change in ownership. Furthermore, if a CATV franchise serviced 20 municipalities and 2 communities did not want change of ownership, approval of the transfer may be impossible.

Municipalities we surveyed overwhelmingly agreed to this question by a margin of nearly 7 to 1. Those agreeing totaled 79.8 percent, while 11.6 percent

disagreed and 8.6 percent were uncertain. More specifically, 678 of the 993 respondents felt strongly that transfer of ownership of a franchise should require prior approval of the municipality.

16. Municipalities should have the legal right to operate their own cable television franchise.

Yes - System Installed

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
A	7	2	4	3	6
B	124	23	60	15	53
C	11	2	9	3	6
D	<u>67</u>	<u>23</u>	<u>39</u>	<u>18</u>	<u>65</u>
	259		112	169	

No - System Not Installed

A	2	--	--	--	--
B	36	13	26	3	17
C	5	1	4	1	1
D	<u>110</u>	<u>33</u>	<u>54</u>	<u>27</u>	<u>70</u>
	200		84	119	

No Response

A	--	--	--	--	--
B	5	1	2	--	--
C	--	--	--	--	--
D	<u>6</u>	<u>3</u>	<u>2</u>	<u>5</u>	<u>7</u>
	15		4	12	

Sub-Total Responses	373	101	200	75	225
Sub-Total Percentages	.383	.104	.205	.077	.231
Total Responses	474		200	300	= 974
Total Percentages	.487		.205	.308	

In Pennsylvania, approximately 20 communities are served by CATV which is not under private ownership. There is no provision in Pennsylvania Law to permit nor prohibit municipalities from owning and operating their own cable television franchise. Obviously, the advantages are lower monthly rates due to the non-profit nature of the systems and more community control over the actual operation of the franchise. Disadvantages include higher installation fees, less technical expertise, and fewer channel capacities.

No clearcut majority was reported by the survey as to whether municipalities should have the legal right to operate their own cable television franchise. Of the 975 total respondents, 48.7 percent agreed that municipalities should have this legal right, 30.8 percent disagreed and 20.6 percent were uncertain. A plurality of 38.3 percent "strongly agreed" while the next highest percentage (23.1 percent) "strongly disagreed" on a 1 to 5 scale.

17. Municipalities should have an official to handle customer complaints about CATV operations.

	AGREE		UNCERTAIN	DISAGREE	
	<u>1</u>	<u>2</u>		<u>3</u>	<u>4</u>
Yes - System Installed					
A	3	2	6	3	7
B	63	28	57	31	101
C	2	4	1	8	16
D	<u>43</u>	<u>13</u>	<u>40</u>	<u>26</u>	<u>90</u>
	158		104	282	
No - System Not Installed					
A	2	--	1	--	--
B	33	14	14	12	23
C	2	1	6	3	1
D	<u>70</u>	<u>27</u>	<u>63</u>	<u>36</u>	<u>97</u>
	149		84	172	
No Response					
A	--	--	--	--	--
B	3	1	--	2	2
C	--	--	--	--	--
D	<u>4</u>	<u>--</u>	<u>7</u>	<u>3</u>	<u>7</u>
	8		7	14	
Sub-Total Responses	225	90	195	124	344
Sub-Total Percentages	.230	.092	.199	.127	.352
Total Responses	315		195	468	= 978
Total Percentages	.322		.199	.479	

TOTAL RESPONDENTS: Municipality A were 26 out of 52 for (50%)
Municipality B were 418 out of 963 for (43.4%)
Municipality C were 46 out of 92 for (50%)
Municipality D were 637 out of 1458 for (43.6%)
1,127 out of 2,565 for (43.9%)

Municipalities which have cable television often receive complaints from citizens about the service residents receive regardless of whether or not the community has a franchise. This tends to burden local officials who, in reality, can do nothing about these situations. If the municipality does not have a franchise, pressure is put on them to demand improvement in service or to terminate the agreement. However, this also must be specified in the contract whether the municipality has such an option.

The survey revealed that municipalities should not handle citizen complaints. Of the 978 respondents, 322 agreed that municipalities should have an office to handle citizen complaints while 47.9 disagreed and 19.9 percent were uncertain. All classes of local governments were generally opposed to this idea.

TABLE 4

PART II - OPINIONS OF LOCAL OFFICIALS TOWARD CATV
 (Percent of Total Responses Per Question)

<u>Question</u>	<u>"Agree"</u>	<u>"No Opinion/Response"</u>	<u>"Disagree"</u>
1.	.441	.318	.304
2.	.453	.221	.324
3.	.848	.078	.072
4.	.815	.114	.070
5.	.826	.108	.064
6.	.763	.044	.064
7.	.654	.191	.153
8.	.808	.107	.084
9.	.534	.205	.261
10.	.445	.198	.355
11.	.301	.261	.436
12.	.627	.190	.182
13.	.636	.222	.140
14.	.676	.156	.165
15.	.796	.085	.116
16.	.485	.205	.308
17.	.322	.199	.477
MEAN *	.6135	.171	.210
MEDIAN **	.645	.198	.165
MODE ***	---	.205	.064

* (Statistical average)

** (Middle response in a range from the lowest to highest percentage)

*** (Most frequently reported percentage)

NUMBER OF RESPONDENTS BY COUNTY AND CLASS OF MUNICIPALITY*

Total Population Surveyed/Number of Respondents

<u>County</u>	<u>Cities</u>	<u>Boroughs</u>	<u>1st Cl. Twp.</u>	<u>2nd Cl. Twp.</u>	<u>Total</u>	<u>Percent Return</u>
ADAMS	0/0	13/10	0/0	21/12	34/22	.647
ALLEGHENY	4/2	82/28 ¹	26/15 ²	16/12	128/57	.445
ARMSTRONG	1/0	16/2	0/0	28/11	45/13	.288
BEAVER	1/1	30/20	5/3	17/8	53/22	.415
BEDFORD	0/0	13/6	0/0	25/7	38/13	.342
BERKS	1/0	30/15	3/0	41/20	75/35	.466
BLAIR	1/0	8/4	0/0	15/5	24/9	.375
BRADFORD	0/0	14/6	0/0	37/14	51/20	.392
BUCKS	0/0	22/16	1/0	30/16	53/32	.603
BUTLER	1/1	22/11	1/1	32/12	56/25	.446
CAMBRIA	1/1	33/9	1/0	29/10	64/20	.312
CAMERON	0/0	2/0	0/0	5/3	7/3	.428
CARBON	0/0	12/5	0/0	11/5	23/10	.434
CENTRE	0/0	11/3	0/0	25/11	36/15	.416
CHESTER	1/0	15/9	1/1	56/30	73/40	.547
CLARION	0/0	12/6	0/0	22/4	34/10	.294
CLEARFIELD	1/1	19/7	0/0	30/7	50/15	.300
CLINTON	1/1	7/3	0/0	21/12	29/16	.551
COLUMBIA	0/0	9/2 ³	0/0	29/5	33/7	.212
CRAWFORD	2/1	14/10	0/0	35/15	51/26	.509
CUMBERLAND	0/0	12/8	4/1	18/12	34/21	.617
DAUPHIN	1/0	16/7	3/1	20/6	40/14	.350
DELAWARE	1/1	27/12	12/7	9/4	49/24	.489
ELK	0/0	3/3	0/0	10/4	13/7	.538
ERIE	2/1	16/9	1/1	21/8	40/19	.475
FAYETTE	2/1	16/3	0/0	24/7	42/11	.261
FOREST	0/0	1/1	0/0	8/6	9/7	.777
FRANKLIN	0/0	1/1	0/0	15/4	21/8	.381
FULTON	0/0	1/1	0/0	11/2	12/3	.250
GREENE	0/0	6/0	0/0	20/7	26/7	.269
HUNTINGDON	0/0	18/3	0/0	30/18	48/22	.458
INDIANA	0/0	14/6	0/0	24/11	38/17	.447
JEFFERSON	0/0	11/7	0/0	23/11	34/18	.529
JUNIATA	0/0	4/1	0/0	13/6	17/7	.411
LACKAWANNA	2/1	17/6	0/0	21/7	40/14	.350
LANCASTER	1/1	18/6	1/1	40/18	60/31	.516
LAWRENCE	1/0	9/6	0/0	16/6	26/12	.461
LEBANON	1/1	7/4	2/0	16/6	26/11	.423
LEHIGH	1/1	8/5	3/1	12/5	24/12	.500

<u>County</u>	<u>Cities</u>	<u>Boroughs</u>	<u>1st Cl. Twp.</u>	<u>2nd Cl. Twp.</u>	<u>Total</u>	<u>Percent Returned</u>
LUZERNE	4/1	35/13	4/2	32/16	75/32	.426
LYCOMING	1/1	9/4	0/0	42/18	52/23	.442
MCKEAN	1/0	6/5	0/0	15/5	22/10	.454
MERCER	2/1	14/6	1/0	31/17	48/24	.500
MIFFLIN	0/0	6/3	0/0	10/3	16/6	.375
MONROE	0/0	4/0	0/0	16/7	20/7	.350
MONTGOMERY	0/0	24/15	14/9	24/16	62/40	.645
MONTOUR	0/0	2/0	0/0	9/4	11/4	.363
NORTHAMPTON	2/1	19/3	1/1	16/6	38/11	.289
NORTHUMBERLAND	2/2	11/2	1/1	22/9	36/14	.388
PERRY	0/0	9/5	0/0	21/10	30/15	.500
PHILADELPHIA	1/1	-	-	-	1/1	1.000
PIKE	0/0	2/0	0/0	11/4	13/4	.307
POTTER	0/0	6/2	0/0	25/16	31/18	.580
SCHUYLKILL	1/0	30/15	0/0	36/14	67/29	.432
SNYDER	0/0	6/0	0/0	15/9	21/9	.428
SOMERSET	0/0	25/7	0/0	25/9	50/15	.300
SULLIVAN	0/0	4/1	0/0	9/4	13/5	.384
SUSQUEHANNA	0/0	13/5	0/0	27/12	40/17	.425
TIOGA	0/0	16/6	0/0	30/10	40/16	.400
UNION	0/0	4/3	0/0	10/1	14/4	.285
VENANGO	2/1	9/3	0/0	20/7	31/11	.354
WARREN	0/0	6/3	0/0	21/11	27/14	.518
WASHINGTON	2/1	32/12	1/0	31/13	66/26	.393
WAYNE	0/0	6/3	0/0	22/9	28/12	.428
WESTMORLAND	6/2	37/17	3/1	18/10	64/30	.468
WYOMING	0/0	5/4	0/0	18/9	23/13	.565
YORK	1/0	36/23	3/2	32/16	73/41	.561

¹Includes the Municipality of Monroeville

²Includes the Municipality of Penn Hills

³Includes the Town of Bloomsburg

*Listing of Municipalities in the Commonwealth of Pennsylvania as classified by the Department of Community Affairs, Bureau of Municipal Statistics.

TABLE 6 - REPRESENTATIVE POPULATION OF RESPONDENT MUNICIPALITY BY TYPE AND COUNTY

County	Total County Pop.	Total 1st Cl. Twp. Pop.	Resp. - 1st Cl. Twp. Pop.	1st Cl. Twp. Resp. w/ CATV	Total 2d Cl. Twp. Pop.	Resp. - 2d Cl. Twp. Pop.	2d Cl. Twp. Resp. w/ CATV	Total City Pop.	Resp. - City Pop.	City Resp. w/ CATV	Total Boro Pop.	Resp. Boro Pop.	Boro Resp. w/ CATV
ADAMS	56,937				36,373	21,269	13,336				20,564	14,298	3,558
ALLEGHENY	1,613,964	356,625	251,443	242,933	101,223	74,803	33,659	584,527	558,066	37,977	571,589	241,782	218,093
ARMSTRONG	75,559				87,858	15,084	6,216	843			26,858	1,244	
BEAVER	210,993	28,808	12,553	12,553	63,963	27,414	8,719	14,635	14,635	14,635	103,587	33,823	28,784
BEDFORD	43,298				33,723	9,952	4,819				9,575	3,377	3,067
BERKS	301,163	26,600			113,042	46,057	23,061	87,643			73,878	35,517	34,669
BLAIR	135,356				48,163	25,206	23,203	63,115			24,078	13,398	13,398
BRADFORD	58,976				35,458	13,232	8,801				23,518	10,222	10,222
BUCKS	446,355	67,498			306,972	91,826	7,368				71,855	62,104	45,762
BUTLER	133,284	17,422	17,422	17,422	74,250	33,230	10,235	18,691	18,691	18,691	22,921	14,152	11,403
CAMBRIA	188,804	4,543			77,832	16,753	12,188	42,476	42,476	42,476	63,953	21,099	20,109
CAMERON	7,096				3,838	3,317	425				3,258		
CARBON	50,573				15,152	8,050	8,050				35,421	18,801	18,801
CENTRE	102,745				52,883	34,204	33,713				49,862	40,412	40,412
CHESTER	292,420	6,689	6,689	6,689	206,516	108,037	25,363	12,331			66,884	37,137	6,290
CLARION	38,451				23,814	5,458					14,637	9,822	9,573
CLEARFIELD	76,852				46,421	12,856	1,707	10,112	10,112	10,112	20,319	14,037	13,069
CLINTON	37,721				16,831	9,931	8,148	11,427	11,427	11,427	9,463	5,008	5,008
COLUMBIA	55,114				25,304	3,476	453				**29,810	**11,860	**11,860
CRAWFORD	81,913				47,283	17,781	1,437	23,304	16,573	16,573	10,726	8,168	6,972
CUMBERLAND	164,439	49,545	7,325	7,325	46,222	29,309	20,931				68,672	48,915	48,595

** Includes town of Bloomsburg.

TABLE 6 (Cont'd.)

County	Total County Pop.	Total 1st Cl. Twp. Pop.	Resp. - 1st Cl. Twp. Pop.	1st Cl. Twp. Resp. w/ CATV	Total 2d Cl. Twp. Pop.	Resp. - 2d Cl. Twp. Pop.	2d Cl. Twp. Resp. w/ CATV	Total City Pop.	Resp. - City Pop.	City Resp. w/ CATV	Local Boro Pop.	... Boro Pop.	Boro Resp. w/ CATV
DAUPHIN	232,241	39,453	17,178	17,178	80,480	22,403	19,625	68,061			44,247	12,782	12,782
DELAWARE	606,584	336,723	251,034	120,950	53,402	11,594		56,331	56,331	56,331	160,128	65,028	44,754
ELK	37,770				19,974	14,861	14,861				17,796	17,796	17,796
ERIE	264,573	4,517	4,517	4,517	94,764	68,336	48,984	136,791	129,231		28,467	13,857	6,956
FAYETTE	154,667				100,913	29,877	23,638	27,925	11,643	11,643	25,829	4,215	4,215
FOREST	4,926				4,215	2,195	646				711	711	711
FRANKLIN	105,126				70,986	20,923	20,923				34,140	32,166	32,166
FULTON	10,776				9,548	2,494					1,228	1,228	1,228
GREENE	36,040				28,783	9,684	6,264				7,307		
HUNTINGDON	39,146				22,837	13,258	8,952				16,309	8,564	8,564
INDIANA	82,418				53,652	28,632	15,216				28,766	4,885	2,465
JEFFERSON	43,765				21,416	8,217	1,953				22,349	17,223	17,123
JUNIATA	16,712				13,738	6,290	3,622				2,974	829	
LACKAWANNA	237,365				32,211	7,515		115,174	12,478	12,478	89,980	21,512	21,512
LANCASTER	325,636	24,052	24,052	24,052	166,575	84,359	52,395	57,690			325,636	38,002	35,741
LAWRENCE	108,477				49,338	17,632	1,152	38,559			20,580	18,484	14,336
LEBANON	100,811	5,690			48,587	21,326	16,395	28,572	28,572	28,572	17,962	11,919	11,919
LEHIGH	242,310	47,006	14,594	14,594	49,625	21,774	20,037	109,871	109,871	109,871	35,808	24,277	24,277
LUZERNE	346,543	34,295	18,110	18,110	75,212	32,752	25,077	115,027	30,426	30,426	122,009	57,927	54,713
LYCOMING	113,658				47,980	25,903	22,015	37,918	37,918	37,918	27,760	9,043	9,043

TABLE 6 (Cont'd.)

County	Total County Pop.	Total 1st Cl. Twp. Pop.	Resp. - 1st Cl. Twp. Pop.	1st Cl. Twp. Resp. w/ CATV	Total 2d Cl. Twp. Pop.	Resp. - 2d Cl. Twp. Pop.	2d Cl. Twp. Resp. w/ CATV	Total City Pop.	Resp. - City Pop.	City Resp. w/ CATV	Total Boro Pop.	Resp. Boro Pop.	Boro Resp. w/ CATV
MCKEAN	51,915				26,748	10,234	8,503	12,672			12,495	11,739	11,739
MERCER	128,930	15,421			46,555	29,409	11,552	33,653	11,000	11,000	33,291	14,485	13,543
MIFFLIN	45,268				29,695	10,976	7,591				15,573	14,438	14,438
MONROE	47,817				32,920	8,044	5,065				14,897		
MONTGOMERY	643,650	309,422	270,427	76,914	171,103	93,617	24,436				163,125	129,702	61,700
MONTOUR	16,662				10,312	3,013	545				6,350		
NORTHAMPTON	238,606	10,472	10,472	10,472	70,367	29,563	29,569	102,136	29,450	29,450	55,631	10,141	10,141
NORTHUMBERLAND	99,190	11,781	11,781	11,781	30,472	10,504	8,147	24,744	24,744	24,744	32,193	1,465	1,465
PERRY	28,615				19,604	8,138					9,011	5,634	5,634
PHILADELPHIA	1,950,098							1,950,098	1,950,098				
PIKE	11,818				8,384	2,691	992				3,434		
POTTER	16,395				9,281	5,386	1,879				7,114	1,910	1,320
SCHUYLKILL	160,089				56,931	24,184	22,698	19,715			83,443	45,495	44,979
SNYDER	29,269				18,709	7,947	1,182				10,560		
SOMERSET	76,037				46,925	19,783	7,561				29,112	11,418	10,427
SULLIVAN	5,961				4,728	2,352					1,240	718	718
SUSQUEHANNA	34,344				21,432	10,049					12,912	3,977	3,640
TIOGA	39,691				24,266	7,956	3,934				15,425	13,263	13,263
UNION	28,603				19,234	4,118					9,369	6,762	6,762
VENANGO	63,087				25,690	5,229	3,600	23,662	15,033	15,033	13,735	7,100	6,798

TABLE 6 (Cont'd.)

County	Total County Pop.	Total 1st Cl. Twp. Pop.	Resp. - 1st Cl. Twp. Pop.	1st Cl. Twp. Resp. w/ CATV	Total 2d Cl. Twp. Pop.	Resp. - 2d Cl. Twp. Pop.	2d Cl. Twp. Resp. w/ CATV	Total City Pop.	Resp. - City Pop.	City Resp. w/ CATV	Total Boro Pop.	Resp. Boro Pop.	Boro Resp. w/ CATV
WARREN	47,682				29,870	19,522	15,139				17,812	3,140	2,859
WASHINGTON	216,481	3,347			117,440	57,225	45,189	26,940	19,827	19,827	68,754	30,322	28,635
WAYNE	29,581				21,121	8,122	3,388				8,460	6,822	6,822
WESTMORELAND	384,401	52,943	12,975	12,975	142,594	87,673	71,823	89,642	37,389	37,389	99,222	48,960	45,291
WYOMING	21,251				16,267	8,822	5,153				4,984	3,580	3,580
YORK	286,266	36,464	24,021	24,021	135,079	78,372	60,278	50,335			64,388	49,095	48,246
TOTALS	11,983,314	1,489,316	954,593	622,486	3,603,089	1,610,229	891,811	3,995,220	3,175,991	2,526,671	2,884,005	1,425,790	1,211,946

Resp. w/ CATV means a respondent municipality to the survey that has cable television currently in operation.

Philadelphia and Pittsburgh - Cable Television in the Commonwealth's Largest Cities

Much of this report has centered on local governments in Pennsylvania, exclusive of the Commonwealth's two largest cities. Although the focus is primarily concerned with the smaller communities, some mention must be given to the advancement of cable communications in Philadelphia and Pittsburgh. Each city's situation related to cable television is different. The following briefly describes the cable franchises of each city.

PITTSBURGH

In 1978 the city council passed an ordinance providing for the construction and operation of a cable communications system in Pittsburgh. Years were spent developing an acceptable cable ordinance. Prior to adoption of the current one, four previous drafts had failed. The ordinance, passed last year, is 60 pages in length and contains a 36 page addendum that provides for the construction of a community cable network. It is detailed, complex, and provides for 900 miles of plant in a system which will eventually pass some 170,000 homes.⁵¹ Construction is to take place over a four year period with each franchise providing a minimum of 30 channels in 5 separate programmed areas. Those service areas are separated by natural geographic boundaries, ward lines, and population (see table 7).

The five areas, all under one franchise ordinance, are interfaced with four other program areas in the city which will provide public access channels to the residents. Additionally, each area served will have specially equipped communication studios in which the four public access channels for community use are provided. These channels are set aside for local government programming, local educational programming, general public programming, and neighborhood programming.⁵²

The regulations of cable television in Pittsburgh will be under the jurisdiction of the city's Bureau of Cable Communications which indicated in

July, 1979, that twelve cable companies had shown interest in the city's planned system. The estimated cost of construction is \$315,000,000 in addition to the \$250,000 cost for submission of a formal proposal by a cable applicant. It is estimated that cable subscribers' monthly payment will be approximately \$8 for the expected 30-plus channel system. Installment of home box office or movie channel programming will supposedly cost an additional \$8 per month.

It was further estimated the 60,000 subscribers would have cable television by mid-1985, which will be the fifth year of the 15 year franchise agreement with a cable operator.⁵³ In Pittsburgh, cable operators will have to post a \$3 million bid bond and a \$6 million construction bond, which will be reduced to \$4.5 million toward completion of construction. Additionally, a \$1 million performance bond will remain in effect throughout the 15 years of the franchise agreement. A \$4 million sub-contractor bond for 60 percent completion of the system will drop to \$2.4 million when the project is completed.⁵⁴

The franchise fee agreed upon within the first five years of the contract is 3 percent of the estimated \$9.2 million gross receipts of the operator. The total yield to the city in form of revenues is estimated to be \$275,000. After the five years, the franchise fee increases to 5 percent and will stay at that percentage through the remainder of the agreement.⁵⁵

The cable franchise ordinance, although complex and all inclusive, has been severely criticized by the cable industry. Robin Cruise, Managing Editor of Cablevision wrote "From Pittsburgh's vantage point, there is no question that the ordinance is anything short of ideal--after the years of arduous research that went into the matter, the city would have settled for nothing short of perfection. However, from non-Pittsburgh perspectives, the ordinance is regarded as complex, demanding and what one NCTA (National Cable Television Association) official termed 'idiotic.'" He adds, however, that cable companies are very interested in the Pittsburgh scene due to its "classic cable market" and that the rigorous demands of the ordinance will be met according to specifications.⁵⁶

Finally, some mention must also be made regarding the importance of CATV in the City of Pittsburgh. The city is characterized by mountainous topography which is not conducive to good television reception. In some areas of the city it is difficult or nearly impossible to pick up signals from downtown television studios. Thus, there is interest in cable by those residents who wish to receive adequate television reception from all three network affiliated stations.

Finally, an additional problem facing Pittsburgh is one that is common to many metropolitan areas. While the city has no CATV, it is available to residents in the suburbs. For example, suburban residents can receive some televised sporting events taking place in the city while city residents cannot. This is possible by cable companies importing distant TV signals from other major cities which have professional athletic teams playing in Pittsburgh. (For example, WOR Channel 9, New York - televises Mets Baseball and Ranger and Islander Hockey.) Obviously, this could result in a loss of attendance at home events as a result of games televised to the suburban Pittsburgh areas.

PHILADELPHIA

Unlike Pittsburgh, the City of Philadelphia has had limited cable television since 1966 when city council granted six cable franchises within the city for a ten year period. Council extended the original franchise period for 2 six month periods which expired in 1978. However, only one franchise, held by Telesystem Corporation, was ever developed to provide CATV services to subscribers within part of its franchise area. The area currently serviced is in the southern portion of Philadelphia, west of Broad street.

The current cable television franchise that became effective on March 5, 1979, will divide the city into four areas which will be served with non-exclusive franchises. The term of the franchise is for 15 years with the successful cable company receiving options for another 15 years upon application. Each system is to provide a minimum 30 channel capacity to subscribers and maintain additional access channels (1 for governmental purposes, 1 - industrial, 1 - public access,

1 - combined use). A uniform charge is to be implemented upon all four zones designated by city council but no rate schedule was established in the initial franchise ordinance.

The annual fee to be paid to the city for the use of city streets and other facilities is 3 percent of the annual gross revenues of the cable companies. The city is also given the power, in accordance with FCC rules, to increase the franchise fee to 5 percent if it becomes necessary. The cable companies are also required to pay for any street work permits as required by city ordinances.

Problems with the construction of cable television in Philadelphia were outlined by the report of a 1978 special Senate Committee chaired by Senator Vincent Fumo. The report stated that construction costs depend on where cable was actually going to run in the city. The options are (1) above ground; along utility poles; (2) underground; and (3) mixture of poles and buildings above ground. In center city, because of the historical areas, option number 2 would be the obvious choice but the cost of running such cable underground was estimated to be in excess of \$60,000 per mile. In other areas, the cost of underground cable will exceed \$25,000 per mile. Cable strung above ground, along existing poles, would cost approximately \$3.50 or \$5.00 per pole, annually, depending on the utility company owning those poles.⁵⁷

Philadelphia also faces easement problems resulting from cables running through the basement of property owners. Running cables from basement to basement is inexpensive in new homes because utilities can avoid high cost of trenching from home to home. Of course, the right to run cable on private property whether outside or through basements "is contained in easements granted to the utility companies by property owners."⁵⁸ Cable run on property of individual owners must also be run on a continuous wire and cannot be separated. If one owner objects to the use of his/her property for this purpose, all property owners on that block could not receive this service.

A final problem identified by the Fumo Committee is in cases involving multiple tenant buildings. A landlord could deny tenants access to cable TV by

refusing to permit the operator access to the building. An underlying reason stated in the report was a demand for payment from the cable companies for the use of the landlord's property. The report stated "These are not merely hypothetical problems, but problems which have arisen in CATV experience and will probably surface in greater force as the CATV market is expanded."⁵⁹

The problems facing Pittsburgh and Philadelphia are distinct from those facing other local governments in the Commonwealth. Both cities are home rule communities and since there are apparently no statutory provisions prohibiting the franchising of CATV by home rule municipalities, Pittsburgh and Philadelphia undoubtedly will not be entangled in litigation similar to that which has plagued townships and boroughs. Unlike other local governments, both have the staff capacities to provide their own legal and technical assistance. In addition, the demand for cable television appears to be a strong one and cable operators are willing to serve these demands.

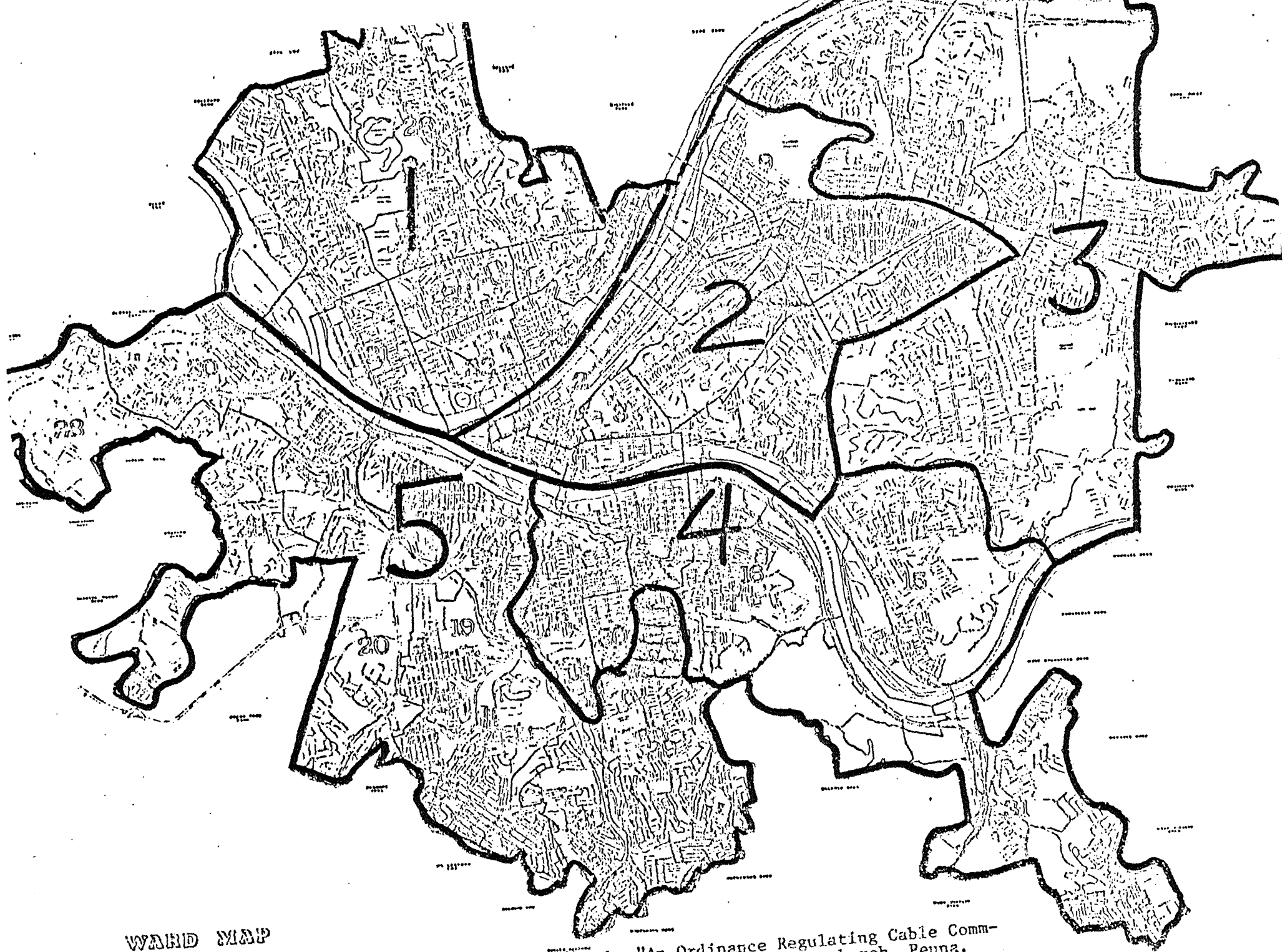
TABLE 7

CITY OF PITTSBURGH CABLE TELEVISION FRANCHISE AREAS*

Cable TV	Neighborhood Areas			
<u>Areas</u>	<u>Wards</u>			
1	21, 22, 23, 24, 25, 26, 27			
2	1, 2, 3, 4, 5, 6, 7, 8, 9			
3	10, 11, 12, 13, 14			
4	15, 16, 17, 18, 30, 31			
5	19, 20, 28, 29, 32			
	<u>Population in each area</u>			
<u>Area</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Other</u>
1	167,838	68,413	15,086	487
2	110,128	76,009	32,997	1,122
3	130,994	88,804	41,215	975
4	83,915	70,924	12,746	337
5	151,472	147,123	4,106	203

The census data on population in Pittsburgh was obtained from the Southwestern Pennsylvania Regional Planning Commission (S.P.R.P.C.). The figures were taken from the 1970 census and were broken down by Ward and race.

*SOURCE - City of Pittsburgh, "An Ordinance Regulating Cable Communications, Pittsburgh, Pa., No. 20, August 21, 1978.



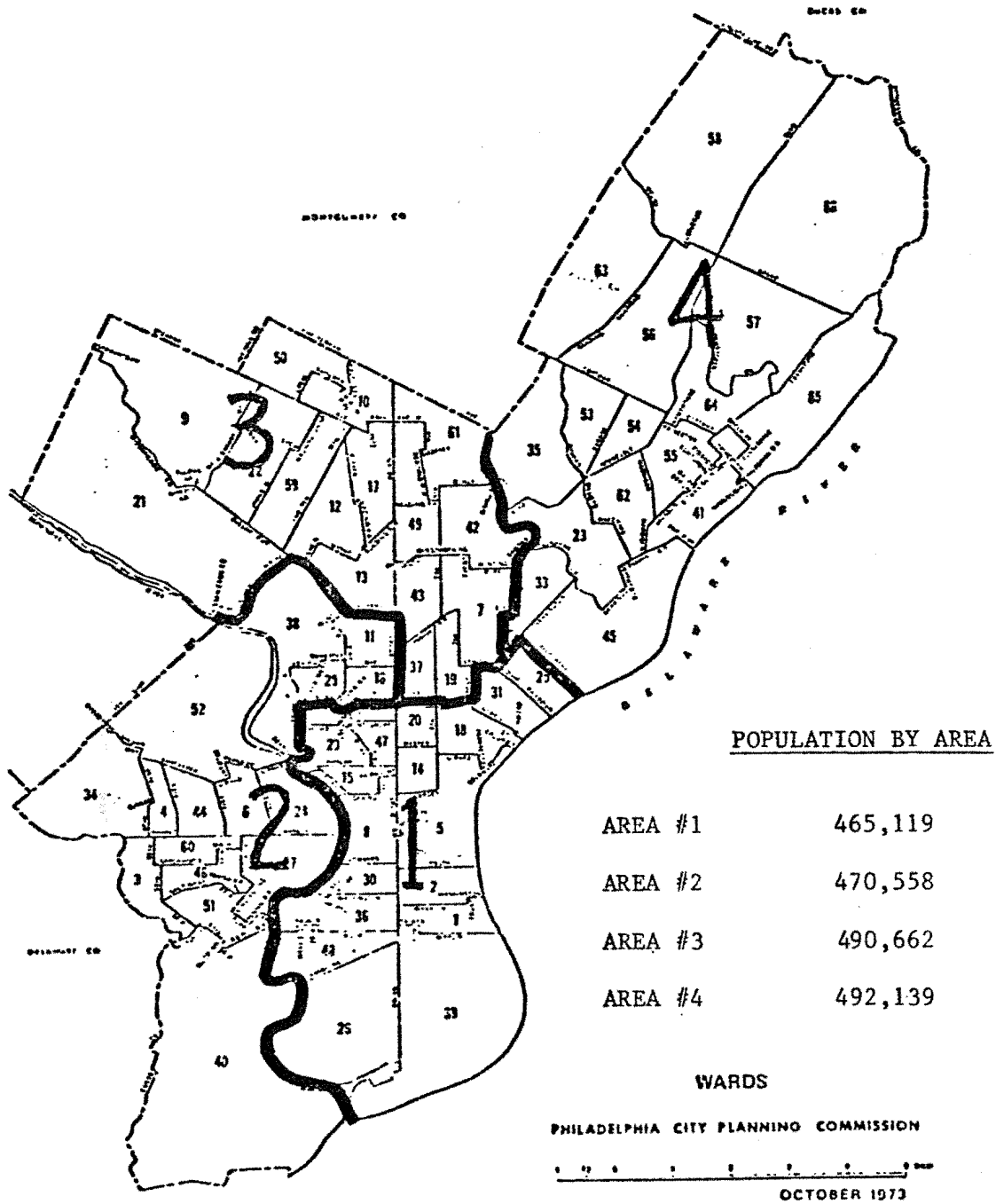
WARD MAP

CITY OF PITTSBURGH
DEPARTMENT OF CITY PLANNING

SOURCE—City of Pittsburgh, "An Ordinance Regulating Cable Communication", No. 20, August 21, 1978, Pittsburgh, Penna.

TABLE 8

CITY OF PHILADELPHIA CABLE TELEVISION FRANCHISE AREAS



APP. NO. 80-19

SOURCE - City of Philadelphia, An ordinance establishing standards for the awarding of Cable Television Systems franchises within the City of Philadelphia. Philadelphia, Pennsylvania, March 5, 1979.

CHAPTER VI - THE FUTURE OF CATV

Federal Legislation

In 1978, House Communications Subcommittee Chairman Lionel Van Deerlin (D-California) introduced House Bill 13015, which was an attempt to completely rewrite the Communications Act of 1934. Although hearings on the matter were conducted by the subcommittee, the bill was not passed.

A revised version of the bill, House Bill 3333, (based upon the testimony of the hearings on House Bill 13015) was reintroduced in 1979. Major provisions of the bill include deregulation of the cable television market, and reversal of the Copyright Act of 1976 to require cable operators to negotiate directly with program producers and program broadcasters for the rights to programs. These proposals have received support and/or criticism, depending upon the group affected.

On the matter of deregulation, the cable industry is opposed. While the industry does not approve of many of the current FCC regulations, it holds that some form of protective regulations is necessary. In particular, the cable industry does not wish to see common carriers (telephone companies), who have the plant hardware already in place, to enter the cable television broadcasting field. Officials of AT&T testified at hearings on U.S. Senate Bill 601, legislation similar to House Bill 3333, that the corporation has no desire to enter the cable rebroadcasting market. Cable technology is not limited to one-way broadcasting, for the technology also allows for two-way transmission, digital and computer services.⁶⁰

Views on the proposed requirement obligating cable system operators to obtain the rights to programs from the program producers or broadcasters are similarly divided. Executives from professional sports claim that cable broadcasts of sporting events adversely affect attendance. They testified at House Subcommittee on Communications hearings on House Bill 3333 that this is

financially damaging to the sports franchises, and that cable operators should therefore compensate them for broadcast rights.⁶¹ In response to sports executives, the NCTA argues that cable retransmission of sports events does not diminish attendance and support for local teams. Rather, it provides the sporting public with increased opportunities to view various sports teams and events.⁶²

Program producers and broadcasters also claim to be harmed by cable systems. Program producers invest money in the development and production of programs. The rights are then sold to program broadcasters for first-run and re-run broadcasts. Neither the producers nor broadcasters feel that fees paid by cable operators according to the Copyright Act of 1976 are an adequate and a fair return on their investments.⁶³

The cable industry is strongly opposed to the proposed retransmission consent requirement. The industry holds that retransmission consent would seriously hinder cable growth, since cable systems must have a broad spectrum of programming to attract and hold subscribers. To require cable operators to obtain retransmission consent would be unworkable and would hamper the industry. Similar obligations were required by the FCC for cable firms in the top 100 television markets in 1968. The cable industry points to the bad experiences and the fact that the FCC abandoned its retransmission rules in 1972.

The cable industry believes that it is now paying its share. If payments do become unbalanced, the Copyright Royalty Tribunal has a mechanism for periodic review of the copyright fees. The National Cable Television Association (NCTA) claims that \$12 to \$14 million was paid in copyright fees during the first year of operation of the Copyright Act. The fee revenues are expected to continue to grow in the future.

The attempts to rewrite the Communication Act of 1934 have involved a great deal of time and effort and has also stirred a degree of controversy. Due to wide ranging disagreements over the proposals of House Bill 3333 and a lack of congressional support, no clear consensus to the extent of the rewrite, a complete

rewrite of the Communications Act will be abandoned. The vehicle for change will now be amendments to the Communications Act. At this time broadcast issues are not being considered. Presently, the FCC continues to promulgate or abandon regulations as it sees fit under the Communications Act of 1934.⁶⁴

State Legislation

As mentioned earlier in this study, House Bill 833 has been introduced in the Pennsylvania General Assembly. This bill would grant specific statutory authority to the Pennsylvania Public Utility Commission to regulate pole attachments of cable operators on utility poles. House Bill 1020 which has also been introduced and proposes to amend the Borough Code to specifically permit any borough which purchases electricity for distribution to the inhabitants of the borough to operate and provide cable television service. Both bills are currently in House Committees.

Recently, Senate Bill 945 has been introduced to amend the Second Class Township Code to grant specific regulatory and franchising authority to townships over cable television. It also provides for the issuing of permits to cable companies for the right to use public right-of-ways for the extension of cable television lines. This bill is currently in the Senate Local Government Committee. Additionally, House Bill 1420 has been introduced to place cable television systems under the jurisdiction of the PUC.

Technology and the Future

CATV began in the late 1940's as a means to improve television reception from local stations for rural Pennsylvanians. It has developed into a sophisticated system of TV broadcasting and telecommunications.

Communications satellites now make it possible to transmit signals nationally and internationally. News and special programs, sporting events and the broadcast signals at network television stations can be transmitted great distances and distributed to television households.

Special pay cable programming services offer first run movies, sports events, etc. for an additional monthly subscriber fee. This can be expanded to provide various educational, cultural, children's and special programming. Access channels negotiated in the local franchise agreement can provide subscribers with public affairs, public service and local educational programming from the local cable operator. As improved telecommunication technology increases signal transmission and channel capabilities, the opportunity to provide more and varied program choices to subscriber/viewers will become available.

Cable TV technology is not limited to the one-way distribution of programming as we now know it. The technology is available to offer computer and digital services and two-way transmission. Home security and fire alarm services can be connected to a home's television. Some banking and shopping may be done through computer connections to the home televisions. Newspapers may be televised on the home TV screen, rather than distributed. There are currently several systems in operation which permits television viewers to transmit electronic responses to questions asked during programs.⁶⁵

One such system, called Qube, is available in Columbus, Ohio. Subscribers can participate in programming by using a pushbutton console. The two-way system allows viewers to be polled on community issues, to transmit opinions on programming, and to order merchandise.⁶⁶

A similar, but more limited two-way system is being experimentally used in Berks County, Pennsylvania. The system allows students to respond to teachers during educational programs. The system has also been used to enable senior citizens to respond to local politicians.⁶⁷

The future for cable television is unlimited. As the technology of all telecommunications improves, so too will the capabilities of cable systems. Cable services will be increased, expanded, and offered in response to consumer demands. Cable systems will continue to grow and extend services to more households. Many of the issues related to the future development and advancement of

cable television may be best debated at the federal level as part of a national policy on telecommunications. At the same time, however, certain issues and facets of cable television that impact directly on the state and local area are probably best handled by these authorities.

Cable Regulation Perspectives

Congressman Thomas Luken (D-Ohio) has stated that the rewrite of the Communications Act of 1934 involves the question of deregulation. Congress has approached the issue from both a philosophical and a practical standpoint. The philosophical approach can be broad, covering public interest and a host of other social issues. The practical approach looks at issues and questions on a case-by-case basis, and then only when the marketplace is deficient in controls. In areas where marketplace controls are sufficient, deregulation can take place. The question should not be whether to regulate, but who should regulate. House Bill 3333 attempts to deregulate franchising. Other legislation should be on a case-by-case, issue-by-issue basis.⁶⁸ It would appear from the fate of House Bill 3333, discussed previously, that even deregulation will be done on an issue-by-issue basis, either by the FCC's promulgation or abandonment of regulations or by amendment to the Communications Act.

The answer to "who should regulate" depends on who is responding to the question. Commissioner James Quello of the FCC is of the opinion that regulation should be at the federal and local level of government. Occasionally, the state may be best suited to regulate, as in the case of pole attachments. Generally speaking, however, two tiers of regulation (federal and local) are sufficient.

Monroe Rifkin, President of the American TV and Communication Corporation, stated that the NCTA position is that the federal government should regulate and local governments should administer the regulations. Although this is the stated position of NCTA, the sentiment is not held unanimously.

Mr. Frank Scarpa, President of the National Video Systems, Vineland, New Jersey, advocates regulation by state agencies. Citing his experience as a cable television firm owner in New Jersey (a state which regulates cable television), Mr. Scarpa feels that state regulation is beneficial to the cable industry. As proof, he points out that cable subscribers have increased from 150,000 in 1972-1973 to 400,000 today. There are approximately 2.5 million TV households in the state.

According to Mr. Scarpa, states are closer to the problems experienced by and with the cable industry. Franchise standards and related matters are considered to be non-federal issues. A state agency is in a better position to understand the intricacies of local situations than a federal agency. State agencies generally are more receptive and afford the cable industry more participation in the regulatory process. Cohesiveness in the cable industry is promoted through a regulatory process that considers only those operators in that state. The ability of operators within a limited jurisdiction to receive direction is greater when the issues are well known in that jurisdiction. For example, cable owners seeking relief from regulations dealing with pole attachments would be able to present a better argument before a State Regulatory Commission than the FCC because the FCC must consider all the consequences of their decision as it relates to all cable companies throughout the United States. The state agency would base its decision on a limited issue, thereby giving cable operators a smaller forum to present their arguments.

This state regulatory framework additionally serves as a guideline in which municipalities still participate as the decision makers for selecting systems, choosing access channels, granting rights-of-way, etc.

Mr. George Cincotta, Chairman of the New York State Commission on Cable TV, takes a similar position on state regulation. He believes Washington is too far away from local concerns to effectively regulate. State and local levels are better suited in dealing with CATV.

Speaking about New York's policies Mr. Cincotta says that the cable Commission attempts to promote CATV growth and development. At the same time, however, the cable Commission is concerned with safety, technical standards, signal qualities, consumer protection and providing municipalities with assistance.

These views indicate the wide diversity of opinion on the question of regulation, which is generally based on how the interested party is affected.

CHAPTER VII - CONCLUSION AND RECOMMENDATIONS

Although cable television had its origin in Pennsylvania, the Commonwealth has set forth no policy toward those who operate telecommunications systems in this state. Future technological developments of cable TV promise to overwhelm even the most sophisticated television viewer. The industry, cognizant of this fact, intends to utilize its scientific capabilities with utmost expediency towards providing this end. This should result in the creation of newer and better technology, the cost of which will ultimately be borne by the consumer. Therefore, it was the purpose of this study to examine the "state of the cable industry" in Pennsylvania and the affect of that industry upon the citizens of this state.

In reviewing the status of CATV in the Commonwealth, we conclude that local government supervision of the cable industry is a necessity and that the need for state guidance is unavoidable. Local officials are close to their constituents and remain the principle contact for citizen participation in the decision-making process. In reviewing contractual obligations between cable companies and local governments, we are of the opinion that all municipalities should have the right to franchise for cable service. The local franchise should be best suited for a specific municipality in which the determination of the contents of any agreement would be left with the local governing body.

Recognizing the rights of municipalities to franchise, however, is not enough. This study has indicated that with no clearcut policy or guidelines available, many municipalities will be left with few sources of assistance to aid in determining the contents of a cable franchise. Should the municipality rely on the legal services of the industry to formulate agreements? We believe this to be impractical and unjust to local governments. Therefore, we are of the opinion that technical and legal aid should be provided by the Commonwealth acting in the role of a contributor. We reject any premise that such assistance would create additional bureaucratic nightmares, leaving cable companies and

municipalities with the impression that the state is interfering. Our reasoning for this is illustrated by: (1) the courts have shown in Lower Nazareth Township v. Service Electric Cable TV, Inc. and Turchanik v. Plymouth Township that certain municipalities currently have no legal authority to enter into contractual obligations with the industry in providing CATV for their residents; (2) there is public demand for CATV throughout the state and it is not limited to specific geographical areas or any one classification of local government; (3) 53.4 percent of the municipalities which we surveyed "agreed" that municipalities should receive legal and technical assistance from a federal or state agency; and (4) the Federal Communications Commission is slowly withdrawing from its partnership with local government in providing assistance, regulatory authority, and standards.

In recommending any policy, the interest and wishes of the public should be of primary consideration, but we must be careful to institute procedures which will not hinder the industry's ability to provide cable service. Future technological development and expansion should not be impeded by governmental controls which are too restrictive. A policy to insure that both the public and industry receive mutually satisfactory returns will have to be resolved by the enactment of precise and fair legislation. We therefore recommend:

1. Support current legislation to amend Section 1156 of the Second Class Township Code to authorize the township supervisors to issue permits to cable television operators for the attachment of cable television lines. This would effectively overturn the decisions in Lower Nazareth Township v. Service Electric Cable TV and Turchanik v. Plymouth Township. However, townships of the second class would still be limited in their ability to regulate the operations of other permittees.
2. Amend the corporate power sections of the Borough Code, Third Class City Code, First Class Township Code, and the Second Class Township Code to grant the governing bodies the power to enter into franchise agreements (similar to provisions of SB 945 of 1979). Municipalities operating under a home rule or optional charter plans of government should also be given a specific grant of authority under separate legislation. Such franchise agreements should include but may not be limited to:

- a. enable the governing body to set initial monthly rates through negotiation with cable companies and approve subsequent increases.
 - b. require cable operators to provide certain public access channels as required by the governing body.
 - c. require that individuals owning and operating cable companies (including corporations and parent companies) disclose proper identification of ownership.
 - d. require that all franchises be non-exclusive in nature and terminate at a period not exceeding 20 years.
 - e. within a prescribed time period, termination of any franchise agreement at the discretion of the municipal governing body in cases where there is a change in control or ownership of a cable franchise without prior approval of the governing body.
 - f. collection of a franchise fee within limits prescribed by Federal Communication Commission regulations.
 - g. require cable operators to submit a semi-annual statement of earnings to the municipality for determination and collection of the franchise fee.
 - h. provisions for a schedule of completion of the cable system.
 - i. provisions relating to design, construction, and technical standards which are not otherwise regulated by the federal or state government (adherence to zoning regulations, use of municipal rights-of-way, etc.). Operating standards should be given periodic evaluation by the municipality.
 - j. require cable operators to provide proper insurance, indemnification, and security as required by the municipal governing body.
 - k. provisions for redress of legitimate consumer or subscriber complaints regarding performance of the existing cable system.
 - l. require public hearings on initial consideration of a cable franchise, subsequent negotiations concerning the franchise, and rate increases.
 - m. penalty provisions in the event the cable operator violates material provisions of the franchise agreement.
3. To insure that appropriate procedures are utilized to select a proper cable company for a municipality, the governing body should consider using bidding methods as a means to review and accept a franchise proposal that meets the standards specified by the municipality.
 4. This study has indicated that other states which regulate cable television do so either under the auspices of a public utility

regulatory agency or a separate commission on cable television. Municipal officials expressed opposition to the creation of an additional state bureaucracy to regulate cable communications. Taking this into consideration with the knowledge the Pennsylvania Public Utility Commission possesses the mechanics to provide technical, legal assistance as well as performance standards, we would recommend that no independent state regulating agency be created.

We suggest that a Bureau of Cable Communications be established within the PUC to deal with the relevant matters concerning CATV. Such a Bureau should only have the power to:

- a. provide technical expertise and assistance to local governments upon the municipality's request (Ex: provide model ordinances).
- b. adjudicate disputes between public utilities and cable companies over the issue of pole attachments when such cannot be resolved among the parties concerned (see HB 833 of 1979).
- c. adjudicate disagreements between municipalities and cable companies to resolve the disputes involved with rate increases when no compromise can be achieved. Mediation should only be entered into when requested by either the municipality and/or the cable company.
- d. establish guidelines governing design construction, and maintenance standards not inconsistent with federal regulations for the protection of public safety.
- e. require a uniform system of accounts and reporting standards on the part of cable companies. The Bureau should maintain records of ownership, change in ownership, gross revenues, and the location and extent of each cable system within the Commonwealth. A copy of each franchise agreement in the state should be kept on file.
- f. compile and make available an annual report on the status of CATV in the Commonwealth. The report should include:
 - (1) lists of ownership of cable firms operating in the Commonwealth.
 - (2) number of subscriber per cable system in each municipality.
 - (3) revenues earned by cable firms in each municipality.
 - (4) list of rates charged by each cable operator in each municipality and franchise fee collected by the local governments.
 - (5) list of disputes adjudicated by the Bureau and parties involved.
 - (6) compilation of all franchise agreements by year initially awarded and duration of each.

5. Amend Title 18 of the Pennsylvania Consolidated Statutes (Crimes and Offenses) to specifically include theft of cable television service. The industry should be protected from those who obtain cable television without the approval of and proper payment to cable operators.
6. Approximately, twenty municipalities operate non-profit cable television systems within their corporate limits. In almost all cases, these municipalities are in rural locations that may otherwise be without CATV due to the unwillingness of operators to invest in a geographical area where a substantial return cannot be earned after expenses. Although the quality of such cable television is at times inferior to private companies, this is the only alternative those municipalities possess. Therefore, we recommend that municipal ownership and/or operation of CATV be permitted in situations where private industry has had the opportunity but has chosen not to develop a cable system due to the high costs of investment and low rate of return. We also recommend that those municipalities currently operating municipal, non-profit, or subscriber-owned CATV systems be permitted to continue to do so.

In implementing the recommendations of this report, it is obviously not the intention to restrict or inhibit the growth of CATV in the Commonwealth. Rather, cable growth should be fostered insofar as it benefits the public interest while at the same time providing a stable environment of operation and a fair return to the cable system owners. After extensive research, it is the opinion of the staff of the Local Government Commission that the major impact point of cable operations is on the municipal level. Local governments can best determine, through negotiation with cable companies, the local public interest of CATV within their communities.

GLOSSARY OF TERMS ASSOCIATED WITH CABLE TELEVISION

Antenna - A device used to transmit or receive broadcast signals.

Broadband - A general term used to describe wide bandwidth equipment or systems which can carry a large portion of electromagnetic spectrum. A modern broadband communications system can accommodate all broadcast and many other services, with its 300 MHz capacity.

Cable TV - Previously called Community Antenna Television (CATV). A communications system which distributes broadcast programs and original programs and services by means of coaxial cable.

Cablecasting - Originating programming over a cable system. Includes public access programming.

Carriage - A cable system's procedure for transmitting the signals of television on its various channels. FCC rules determine which signals cable systems must or may carry.

Certificate of Compliance - the approval of the FCC that used to be required before a cable system could carry television broadcast signals. Regulation was deleted in October, 1978.

Channel - In television, a single path or section of the electromagnetic spectrum 6 MHz wide, which carries a television signal.

Channel Capacity - the maximum number of 6 MHz channels which can be simultaneously carried on a cable TV system.

Closed Circuit - A system of transmitting TV signals to private subscribers, in which the receiving and originating equipment are directly linked by cable, microwave or telephone lines, without broadcasting over the air.

Coaxial Cable - Copper or copper-sheathed aluminum wire surrounded by an insulating layer of polyethylene foam, used by cable systems. The insulating layer is covered with tabular shielding composed of tiny strands of braided copper wire, or a seamless aluminum sheath. The wire and shielding react with each other to set up an electromagnetic field between them.

Common Carrier - Any point-to-point communications relay service available to the general public at non-discriminatory rates. The carrier cannot control message content (e.g., telephone companies).

Community Antenna Relay Service (CARS) - The 12.75 - 12.95 GHz microwave frequency band which the FCC has assigned to the CATV industry for use in transporting television signals to cable system headends.

Crossownership - Ownership of two or more kinds of communications outlets by the same individual or business. The FCC prohibits television stations and telephone companies from owning cable systems in their service areas. Television networks are prohibited from owning cable systems anywhere in the U.S.

Distant Signals - TV signals which originate at a point too far away to be picked up by ordinary home reception equipment; also signals defined by the FCC as outside a broadcaster's license area.

Franchise - Contractual agreement between a cable operator and the governing local authority authorizing the operator to build and operate a cable system in that community.

Grade A Contour - The line encompassing a television station service area in which a good picture is estimated to be available 90 percent of the time at 70 percent of the receiver locations. Signal contours determine what educational channels are carried on a cable system and, in smaller markets, what stations must be carried from other small markets.

Grade B Contour - The line encompassing a television station service area in which a good picture is estimated to be available 90 percent of the time at 50 percent of the receiver locations. The Grade B Contour is larger than and surrounds the Grade A Contour.

Grandfathering - Exempting cable systems from regulatory or legislative enactments because 1) they were in existence or operation before the rules, or 2) substantial investments were made in system construction before the rules. FCC grandfathering applies, for example, to signal carriage and certain crossownership situations.

Hardware - The equipment involved in production, storage, distribution or reception of electronic signals. In cable it means the headend, the coaxial cable network, amplifiers, the television receiver and production equipment such as cameras and videotape recorders.

Headend - Electronic control center--generally located at the antenna site of a cable system--usually including antennas, amplifiers, frequency converters, demodulators, modulators and other related equipment which amplify, filter and convert incoming TV signals to cable system channels.

Interconnect - To link cable headends, usually with microwave, so that subscribers to different cable systems can see the same programming simultaneously.

Leapfrogging - Cable operators' practice of skipping over one or more of the nearest TV stations to bring in a more distant signal on the cable.

Leaseback - The practice by telephone companies, cable equipment manufacturers, and others, of installing and maintaining cable distribution systems, and "leasing" the facilities "back" to separate contractors for operation of the system.

Multipoint Distribution Service (MDS) - Stations are intended to provide one-way microwave radio transmission (usually in an omnidirectional pattern) of customer supplied programming from a stationary transmitter to multiple receiving facilities located at fixed points designated by the customer. MDS operators must operate as common carriers.

Ordinance - A local law which governs the institution and operation of a cable television system in a community.

Pay TV - A system of television in which viewers pay directly for programs not available on advertiser supported television. Scrambled signals are usually distributed and unscrambled at the homeowner's set with a decoder. Subscribers pay for programs either per channel, in which monthly payment covers all programming on a continuously operating channel; or per program, in which the decoder is activated upon payment for a specific program. Current examples of pay fare include sports programs, first-run movies, cultural events or professional training. Pay TV on cable systems is also known as pay cable, subscription television and premium television (e.g., Home Box Office, Prism, etc.)

Penetration - In reference to a cable system, the ratio of the number of subscribers to the total number of households passed by the system. Penetration is the basis of a system's profitability.

Performance Standards - The minimum technical criteria that must be met by cable systems, consistent with standards set by the FCC or the local ordinance.

Pole Attachment - When cable systems use existing pole lines maintained by power and telephone companies, an attachment contract must be negotiated between the parties of interest.

Public Access Channel - A channel that FCC rules formerly required cable systems in the top 100 markets to set aside, along with the education and local government channels, in order to insure that divergent community opinion is aired on cable television. Five minutes of time on the public access channel is free and available at all times on a first-come, first-served basis for noncommercial use by the general public.

Software - Programming and programming materials such as films, videotapes and slides; or, computing routines in a computer.

Subcarrier - A carrier which is in turn carried by another carrier. The color information in a television signal, for example, is modulated onto a subcarrier at 3.58 MHz higher in frequency than the video carrier.

Subscriber - A person who pays a fee for cable services.

Tap - A device installed in the feeder cable which connects the home TV set to the cable network. Also called a drop.

Television Market - A city or complex of neighboring cities served by commercial television broadcast signals from one or more TV stations located within the area. The FCC uses television markets for designating what kind of cable services an operator should provide in terms of signal carriage and nonbroadcast channel use.

TV Penetration - The percentage of homes having one or more television sets at the time of the American Research Bureau survey. The ARB surveys local markets from October through July; the number of surveys in a year depends on the size of the market.

Terminal - The equipment added to a cable subscriber's set, including connectors, transformers and convert (if necessary), plus more sophisticated components such as digital response keyboards, videotape recorders, single frame video refresh, etc.

Translators - A type of broadcast relay system which picks up signals from distant or blacked-out television stations, converts the signals to another channel to avoid interference and retransmits them into areas the original signals could not have reached. Translators do not use cable to reach subscribers' homes and do not offer the other kinds of services that cable can provide (local origination, two-way operation, etc.).

Two-Way Capacity - Ability of a cable system to conduct signals to the headend as well as away from it. Two-way or bi-directional systems carry data and audio and video television signals in either direction.

UHF - Ultra High Frequencies, the range of frequencies extending from 300 to 3,000 MHz; also, television channels 14 through 83.

VHF - Very High Frequencies, the range of frequencies extending from 30 to 300 MHz; includes television channels 2 through 13.

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FOOTNOTES

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