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REPORT TO THE SUBCOMMITTEE ON COMMUNICATIONS, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

RELEASED

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Cable Television And A Regulatory Policy

Federal Communications Commission

Both the issues and solutions facing cable television regulation are not clear cut; they are complex with no simple strategy for producing a wide variety of programs for the American television audience.

If cable television is to become an increasingly innovative mode of communication, a well-defined policy aimed at promoting program diversity on cable and preserving an effective system of over-the-air broadcasting must continue to evolve.

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JULY 16, 1976

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-131935

The Honorable Lionel Van Deerlin
Chairman, Subcommittee on Communications
Committee on Interstate and Foreign
Commerce
House of Representatives

Dear Mr. Chairman:

This report provides information about the regulatory policy issues involving cable television. We prepared the report after discussions held with your office on April 27, 1976. At that time it was noted that the Subcommittee had issued a report in January 1976 on "Cable Television: Promise Versus Regulatory Performance," but your office felt it would be useful for us to express our views on the issues.

As your office requested, we have not obtained formal written agency comments. However, we discussed the matters presented with agency officials and have considered their comments in the report.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

Contents

ABBREVIATIONS

FCC	Federal Communications Commission
GAO	General Accounting Office
UHF	ultra high frequency
VHF	very high frequency

COMPTROLLER GENERAL'S REPORT TO THE SUBCOMMITTEE ON COMMUNICATIONS, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

CABLE TELEVISION AND A REGULATORY POLICY
Federal Communications Commission

D I G E S T

The basic product of cable television is over-the-air commercial and public broadcasting programs whose signals are picked up from local and distant stations and transmitted, generally with improved reception, by cable to subscribers.

Because of cable television's exceptional promise, interest in its development has increased continually since its inception. Cable operators discovered that they could market their services even in communities with satisfactory reception by capturing signals from distant stations to increase subscribers' program choices.

Cable television started in the 1940s and by the 1950s was developing rapidly. In the 1960s cable operators penetrated urban television markets. In 1952 there were 70 cable systems in the United States servicing about 14,000 subscribers. In 1975 there were more than 3,400 operating cable systems serving about 8,000 communities reaching some 10 million subscribers.

This represents about 15 percent of the Nation's television homes. The real future of cable television appears to rest with the remaining 85 percent of the available viewer capacity.

Until 1962 regulation of cable television was left almost entirely in the hands of local government. In 1962 the Federal Communications Commission established indirect jurisdiction over cable television through its regulation of a microwave carrier serving several cable systems. Since then one factor limiting cable television's progress in penetrating the markets has been the Commission's extensive and complex regulations governing cable systems. (See p. 3.)

Determining how television should be regulated has been, and is, difficult. Future development of cable television must consider assumptions about the established broadcast service. In the long run, additional channels of communications may mean a broader range of service to the public. This broadening of services could, however, affect the established broadcast service if a system essentially free of cable regulation deprives the public of present benefits without offering the prospect of future improvements. (See p. 4.)

Neither the issues nor the solutions are clear. There is no simple strategy for producing a wide variety of programs for the American television audience. This lack of strategy for reaching a national cable policy argues against extreme action--either a completely regulated or a completely deregulated cable television policy.

If cable television is to become an increasingly innovative mode of communication, a policy considering the following issues must continue to evolve.

--To what extent should broadcast services be protected from competition? (See p. 7.)

--Because the Commission has been charged with regulating in the public interest, would clarification of this term provide a more precise policy application among broadcasting, cable and other possible modes of television communication? (See p. 8.)

--What role, if any, should the Government assume in developing cable television's nonbroadcast services? (See p. 9.)

--Should the Commission or the marketplace determine the importance to be assigned to over-the-air local service? (See p. 10.)

--How can the Commission's 1952 television master plan, created in the early years of broadcast television, be further updated to allow for several modes of television competing to satisfy the public's interest? (See p. 12.)

A limited assessment of the uncertainty and controversy surrounding these issues led GAO to the following general conclusions:

--A well defined cable television policy is important, not only as it affects cable's ability to supply broadcast service in the future, but also as it affects future modes of communication seeking entry to the markets. (See p. 15.)

--An agreement on the key factors influencing a national cable television policy must be reached. Goals must be established and a strategy for reaching these goals developed. Both congressional and additional Commission action may be needed to resolve the issues regarding cable television development. Such action should be aimed at promoting program diversity on cable television and preserving an effective system of over-the-air broadcasting.

MATTERS FOR CONSIDERATION BY THE SUBCOMMITTEE ON COMMUNICATIONS

The Subcommittee on Communications should:

--Require the Commission to conduct a detailed analysis of the issues raised in this report and report its findings to the Subcommittee. Where appropriate the Commission should recommend legislative actions to the Subcommittee.

--Monitor the Commission's progress to insure that the Commission achieves its dual objectives of promoting diversity of cable television and preserving an effective system of over-the-air broadcasting.

CHAPTER 1

INTRODUCTION

The basic product of cable television is over-the-air commercial and public broadcasting programs whose signals are picked up from local and distant stations and transmitted, with generally improved reception, by cable systems to subscribers.

Certain rules for cable television have been premised primarily on cable's possible impact on and relationship to traditional over-the-air broadcast. These rules generally cover the number of stations the cable systems can provide their subscribers, public access to cable systems, and educational and local government access channels made available without charge. Cable operators basically take the position that they are providing many new services both broadcast (sports events not available on local television) and nonbroadcast (consumer service and stock quotes). The broadcasters argue that cable operators have sought to grow by using programing originated by broadcasters.

This report seeks to identify and provide a limited assessment of some of the policy issues facing cable television decisionmakers, such as:

--To what extent should broadcast services be protected from competition?

--Because the Federal Communications Commission (FCC) has been charged with regulating in the public interest, would clarification of this term provide a more precise policy application among broadcasting, cable, and other possible modes of television communications?

--What role, if any, should the Government assume in developing cable television's nonbroadcast services?

--Should FCC or the marketplace determine the importance to be assigned to over-the-air local service?

--How can FCC's 1952 television master plan, created in the early years of broadcast television, be further updated to allow for several modes of television competing to satisfy the public's interest?

Determining a proper regulatory posture for cable television is a difficult process requiring periodic reassessment of program goals against available information on such factors as commercial broadcasting, new technologies, social and economic factors, and cable television economics.

SCOPE

We made our review at FCC Headquarters in Washington, D.C., where we reviewed pertinent legislation, FCC documents and reports, applicable court decisions, assessments made by the Department of Justice, and interviewed FCC officials.

CHAPTER 2

CABLE TELEVISION--ITS DEVELOPMENT AND FUTURE

Authority over telephone and telegraph (wire) and radio (over-the-air) communications resided in various Federal organizations before 1912. The Radio Act of 1912 consolidated radio regulatory authority in one cabinet department, and the Radio Act of 1927 further consolidated the authority for over-the-air communications by creating the Federal Radio Commission. The Radio Act of 1927 did not give the Federal Radio Commission jurisdiction over telegraph and telephone carriers. Authority over these carriers was exercised by the Post Office Department, the Interstate Commerce Commission, and the Department of State.

The Communications Act of 1934 abolished the Federal Radio Commission and created the Federal Communications Commission, which was given authority over both interstate wire and over-the-air communications. The purpose of this act was to make available on a nationwide and worldwide basis a rapid and efficient communications service for all the people of the United States.

The 1934 act directed FCC to regulate in the public interest, convenience, and necessity. FCC's basic regulatory authority for broadcast communications resided in its licensing power; however, FCC also controls technical features of broadcasting, such as radio and television frequency assignments. Except for procedural changes enacted in 1952, the Communications Act of 1934 has remained substantially the same.

CABLE TELEVISION DEVELOPMENT

Cable television began in the late 1940s as community antenna television, a method of bringing existing television signals to mountainous or remote areas where reception was weak or nonexistent. A receiving antenna would be installed on a mountain top; there, television signals were received, amplified, and sent by cable into homes in the valley below or other areas that had inadequate reception. The idea later spread to larger cities where high buildings interfered with reception.

From its inception until 1962, regulation of cable television was left almost entirely in the hands of local government. In 1962 FCC indirectly established jurisdiction over cable systems through its regulation of Carter Mountain Transmission Corporation, Carter Mountain Transmission Corporation v. F.C.C. 321 F. 2d 359 (1963), a microwave carrier serving several cable systems. In 1965 all systems served by microwave became subject to FCC regulations. From 1965 to the present, FCC has issued three comprehensive policy documents (cable orders) on the regulation and use of cable television.

The third and current order provides that all cable systems must carry all local stations, and distant signals may be imported only to certain limits set by FCC, depending on market size. In order to open new outlets for local expression, the order requires each major-market cable system to provide channels for free public access, educational use, and local government use. A discussion of the three cable orders and subsequent rulings on the regulation and use of cable television is included in appendix I.

CABLE TELEVISION'S POTENTIAL

In 1945 FCC allocated 13 channels 1/for television use in the very high frequency (VHF) range of the electromagnetic spectrum. 2/ In 1948 channel 1 was reassigned for use by other radio services.

The assignments of channels 2 through 13 to broadcasters throughout the country were not sufficient to achieve the 1934 act's requirement for providing service to all the people. In 1952 FCC allocated spectrum space in the ultra high frequency (UHF) range to provide 70 additional channels--14 through 83. In May 1970 FCC reallocated UHF channels 70 through 83 for future use by the land mobile radio service.

Television broadcasting accounts for the largest single use of the spectrum. For example, a television station's combination of picture and sound requires about 600 times the spectrum space occupied by an amplitude-modulated radio program.

1/ Channels are bands of frequencies in the electromagnetic spectrum used to carry television signals.

2/ The spectrum is the entire range of frequencies of electromagnetic radiation. Bands of these frequencies act as the communication lanes for television signal transmissions and other uses.

In 1974 about 628 commercial stations were engaged in television broadcasting, and about 68 million households in the United States contained television sets.

The three national networks--American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., and National Broadcasting Company, Inc.,--sell air time to national advertisers and distribute programs and commercials to their 15 (5 each) owned and 529 affiliated stations. In addition, about 84 commercial stations are independents, without network affiliation.

Cable television offers potential for greater selection of channels beyond what is currently available through either UHF or VHF. Its capacity, unlike the broadcast spectrum, has no inherent limits. Thus cable television offers potential in such areas as educational and cultural programs and can improve reception of over-the-air broadcasts.

Cable television's major product is over-the-air commercial and public broadcasting programs whose signals are picked up from local and distant stations. These programs, when introduced into local markets, can compete directly with over-the-air television. Pay cable television's major product is movies, sports, and entertainment programs for an additional charge. Cable television is, however, increasing its number of original programs or leasing channels to others for that purpose. The potential also exists for such nonbroadcast services as facsimile reproduction of newspapers and magazines; electronic mail delivery; and a wide range of business, health, educational, and municipal services.

Because of cable television's exceptional promise, interest in its development has increased continually since its inception. In 1952 there were only 70 cable systems in the United States servicing about 14,000 subscribers. In 1975 there were more than 3,400 operating cable systems serving about 8000 communities throughout the United States, reaching some 10 million subscribers. This represents only about 15 percent of the Nation's television homes. The real future of cable television appears to rest with the remaining 85 percent of the available viewer capacity.

Cable television may first have to succeed as a business before it can realize its full potential as an innovative technology. The future development of cable television must consider assumptions about the established broadcast service. In the long run, additional channels of communication may mean a broader range of service to the public. This broadening of services could, however, affect the established broadcast service if a system essentially free of cable regulation deprives the public of present benefits without offering the prospect of future improvements. If cable television is to become an increasingly innovative mode of communication, a policy aimed at promoting program diversity on cable and preserving an effective system of over-the-air broadcasting must continue to evolve. We hope this report provides the framework for further implementing such a policy.

CHAPTER 3

POLICY ISSUES

There is no simple method to identify what the public benefits from cable television are in the form of more television service and better programing. Certain key issues, however, must be resolved before the Nation can hope to achieve the objectives of promoting greater program diversity through cable television and still maintain an effective system of over-the-air broadcasting.

COMPETITION

Issue--To what extent should broadcast services be protected from competition?

The decision to regulate in a competitive atmosphere involves intervention in the marketplace to modify the forces of competition. The amount of competition which can be borne within and among regulated industries depends on particular circumstances, such as (1) at what point economies of scale in production and distribution are realized, (2) at what point competition becomes too intense and interferes with public service, and (3) how much product or service variety the customers wish to have or insist on.

For technical and economic reasons the spectrum permits only a limited number of broadcasters to transmit in a given market area. Thus the limitation of electromagnetic spectrum availability reduces competition. One possible purpose for cable regulation in these markets is to protect over-the-air broadcasting from too much cable competition resulting in the loss of revenue primarily on the grounds that the broadcasting services satisfy some overriding public need. A Department of Justice official noted that policymakers had been unwilling to be precise, yet precision is essential to rational development of cable in response to consumer choice.

A second purpose for cable regulation might be to protect against the complete loss of broadcast stations. The broadcast industry has opposed the widespread development of cable television, arguing that cable's carriage of distant signals would seriously impair the quality and quantity of broadcast service provided to the public by both commercial and noncommercial broadcasters. Under present regulations the Federal Communications Commission does not have a documented case of a television station going off the air because of cable competition.

Another purpose for regulating cable television would be to insure that the cable system operator does not take undue advantage of subscribers or programers because cable systems, although nonexclusive franchises, may be monopolies because of the costs of duplicating the system. A Department of Justice official stated in April 1975

> "***the actual degree of monopoly power depends on how good the alternatives are. Cable systems, which are often welcomed as competitive innovators in big markets, are sometimes regarded as monopolist ogres in isolated communities."

A sound cable television policy must include measures for determining what level of over-the-air service should be protected and how this might be achieved.

PUBLIC INTEREST

> Issue--Because FCC has been charged with regulating in the public interest, would clarification of this term provide a more precise policy application among broadcasting, cable, and other possible modes of television communication?

Regulating under the dual standard of "in the convenience and necessity" was first introduced in the Transportation Act of 1920 and was applied to circumstances where the entry and exit of transportation services could reasonably be associated with user needs. The Communications Act of 1934 expanded this standard, directing FCC to regulate in the public interest, convenience, or necessity.

The public interest in the Federal regulation of Communications refers to consumer, or end user, interest. The Supreme Court has noted, in F.C.C. v Sanders Brothers Radio Station 309 U.S. 470 (1940) involving the regulation of radio, that the public interest to be served was the interest of the listening public. For television, therefore, it would appear that the public's interest is directly affected by decisions involving the number and types of television viewing options.

FCC has used the term "public interest" so that it appears to be substituted for terms such as "FCC goals," "regulatory viewpoint," or "broadcast and/or cable interest." Thus the statutory mandate to regulate in the public interest has been likened to the broad instruction, "Here is a problem; deal with it." Because of this broad reaching authority, interpretation of the public interest in specific cases and issues through carefully developed standards may contribute to the (1) clarity of regulatory reasoning and (2) soundness of resulting rules and decisions.

NONBROADCAST SERVICES

Issue--What role, if any, should the Government assume in developing cable television's nonbroadcast services?

Nonbroadcast services other than pay cable television are those in which educators, publishers, merchants, pollsters, and others, through use of cable television systems, could (1) send information into viewers' homes (one-way systems) or (2) send information into viewers' homes and receive a response (two-way systems). Some potential nonbroadcast services include facsimile production of newspapers and magazines, electronic mail delivery, and special communication systems to provide job training. The cable industry generally considers the development of such cable television nonbroadcast services to be economically impractical. The industry cites the uncertain regulatory environment, lack of financing, and lack of consumer demand as the reasons for the slow development. For example, marketable applications of nonbroadcast services would depend on cable systems for their signal distribution networks. Some applications, such as facsimile mail, would need national distribution methods. Thus, in the absence of communities wired for cable television, the nonbroadcast service of facsimile mail may be technically feasible, but economically impractical.

FCC's current regulations for cable television limit the number of signals to be imported into a market area. This limitation is intended, in part, to "create an incentive for the development of those nonbroadcast services that represent the long term promise of cable television." In citing other restrictions on cable, FCC noted that:

> "we are affording the minimum number of distant signals necessary to promote its entry into some of the major television markets but that, ultimately, its success will depend on the provision of innovative nonbroadcast services."

A wide range of benefits could result from nonbroadcast cable services. But because potential abuses could also occur assurances must be made that the interests of individuals would be protected.

The degree to which nonbroadcast services evolve may depend greatly on Federal efforts to

--determine development priorities,

--coordinate development,

--provide financial incentives or assistance, and

--prepare guidelines for operating constraints.

<u>LOCAL SERVICE</u>

Issue--Should FCC or the marketplace determine the importance to be assigned to over-the-air local service?

The Communications Act of 1934 requires that FCC provide for a widely dispersed communications service with a fair and efficient distribution of service among the several States and communities. In response, FCC established a plan intended to give communities television service addressed to their unique needs and interest through protecting and furthering locally oriented service. Local service is any program the station originates or is primarily responsible for producing and any program employing live talent more than 50 percent of the time. Some of the objectives ascribed to local service include, (1) making broadcasting attentive to the interest and needs of the community, (2) providing local groups with an outlet for expression, and (3) insuring that the community's identity is not destroyed by nationally focused mass communications.

In 1962 and 1963 FCC made inquiries about local services in the Chicago, Illinois, and Omaha, Nebraska, metropolitan areas. FCC found that the television stations in these areas were generally making a reasonable effort to determine the needs and interest of area residents with respect to local programing. These inquiries also showed, however, that the metropolitan television stations relied predominantly on network and other nonlocal sources for programing and originated little programing of their own. The local programing consisted mostly of news, weather, and sports. While the inquiries reaffirmed the importance and desirability of a locally oriented television program service, FCC differed with respect to the best means of promoting the local service goal. As noted below, several FCC Commissioners developed independent studies in order to demonstrate the need for adopting minimum amounts of broadcast time to be devoted to local programing.

In 1968 two FCC Commissioners conducted a 3-month study of local service provided by radio and television in Oklahoma. They found that stations provided almost no programing that could be described as local expression, and that little programing was tailored to individual community needs. The study concluded that FCC and broadcasters were disinterested in public service, and that this disinterest might accurately reflect the preferences of the viewing public.

In July 1973 an FCC Commissioner reported that FCC had not established minimum performance standards for public service provided by broadcasters. He reported it was FCC's practice to make no inquiry into licensees' news, public affairs, and other nonentertainment and nonsports programing even when the stations provided little or no programing in these categories. He noted that a major Minneapolis, Minnesota, network-affiliated station had its license automatically renewed in 1968 although providing no public affairs broadcasting during a composite test week and proposing only 30 minutes weekly in the future.

The most recent information available at FCC showed that local service programing accounted for about 11 percent of broadcasters' 1973 programing, and local nonentertainment/nonsports programing accounted for about 9 percent.

Cable television regulations have stressed the high value which FCC places on local service. In 1965

FCC noted that few cable systems originated local programing, and were they to do so, the programing would not be available to persons in rural areas and to other nonsubscribers. In 1966 FCC decided that cable should not be allowed to compete openly with ultra high frequency and gave as a reason that cable did not serve as an outlet for local expression. In 1969 FCC ordered cable systems to provide program origination starting in 1971. In 1974, however, it modified the requirement, making cable television's program origination requirement optional rather than mandatory.

Cable systems serving 3,500 or more subscribers, however, must have available equipment for local production and presentation of cable-cast programs and permit local nonoperator production and presentation of such programs.

Within FCC's policy framework a fair and equitable distribution of stations is necessary to provide communities with local service programs. When considering FCC's findings concerning local service availability, it appears that the following actions may help provide some insight to the need for local service standards.

--Examine broadcast and cable television's efforts to provide local services.

--Determine what public support is needed to require a more substantial broadcasting commitment to local service programing.

--Determine whether the majority of viewers prefer nationally focused network programing.

TELEVISION MASTER PLAN

Issue--How can FCC's 1952 television master plan, created in the early years of broadcast television, be further updated to allow for several modes of television competing to satisfy the public's interest?

In 1948 FCC, recognizing that its 1945 television allocations using only very high frequency parts of the electromagnetic spectrum were insufficient for encouraging competition among broadcasters and for providing reasonable diversified programing for television viewers, suspended the processing of new applications while it studied the channel allocation problem.

The television master plan, released in April 1952, terminated the freeze in station applications. The plan provided for 82 channels--12 VHF and 70 UHF.

The plan was affected by four FCC policy decisions.

--The structure of broadcast television was to be planned in detail--as opposed to the amplitude modulation radio licensing free-market-entry concept.

--Existing stations could continue to broadcast on channels already assigned to them.

--A large part of the spectrum would be set aside for television use.

--Commercial television stations would all have such technical characteristics as power and antenna height so that their service area would be comparable--as opposed to having small, medium, and large radio stations.

The master plan was aimed at giving many communities their own station or stations to act as outlets of local expression. Certain features of the plan may have, in practice, originally created difficulties for achieving a fair and efficient distribution of television service among the States and communities.

--The plan mixed UHF and VHF stations in the same markets--with VHF having the superior transmission range--resulting in underutilization of the UHF assignments. (Only 28 percent of the UHF assignments were in use in June 1975.)

--The plan was put into effect when most television receivers were not built to receive UHF channels.

FCC officials commented that deficiencies in the 1952 master plan became apparent early in 1954. All attempts to find more frequency spectrum immediately adjacent to the VHF band failed. These officials also commented that a variety of actions were instituted, policies were adopted, and legislation was proposed to narrow the inequality between UHF and VHF. One such action was FCC's support of legislation requiring television receivers shipped in interstate commerce to be equipped for all channel reception.

A clear determination of the effect FCC's actions have had on television programing may provide some insight into additional future actions available to allow for several modes of television competing to satisfy the public interest.

CHAPTER 4

CONCLUSIONS

This report provides a limited assessment of certain key issues facing cable television decisionmakers. Neither the issues nor the solutions are clear cut; they are complex with no simple strategy for producing a wide variety of programs for the American television audience. We believe this lack of strategy for reaching a national cable policy argues against extreme actions--either a completely regulated or completely deregulated cable television policy.

The communications role cable television should play has brought about controversy and uncertainty in such areas as:

--Competition between cable and over-the-air broadcasting.

--Protecting the public interest through Government regulation.

--Using and developing nonbroadcast services.

--Amount of local service to be provided to the viewing public.

--Adequacy of the Federal Communication Commission's television master plan.

In the face of the uncertainties, we believe the following general conclusions are appropriate.

First, a well defined cable television policy is important, not only as it affects cable system's ability to supply broadcast services in the future, but also as it affects future modes of communication (video cassette and satellite) seeking entry to the markets.

Second, an agreement on the key factors influencing a national cable television policy must be reached. Goals must be established, and a strategy for reaching these goals developed. Both congressional and additional FCC action may be needed to resolve the issues regarding cable television development. Such actions should be aimed at promoting program diversity on cable and preserving an effective system of over-the-air broadcasting.

MATTERS FOR CONSIDERATION BY THE SUBCOMMITTEE ON COMMUNICATIONS

The Subcommittee on Communications should:

--Require FCC to conduct a detailed analysis of the issues raised in this report and report its findings to the Subcommittee. Where appropriate FCC should recommend legislative action to the Subcommittee.

--Monitor FCC's progress to insure that FCC achieves the dual objectives of promoting diversity of cable and preserving an effective system of over-the-air broadcasting.

FCC'S CABLE ORDERS ON REGULATION AND USE OF CABLE TELEVISION

By the late 1950s, cable was developing rapidly and by the 1960s cable operators had begun penetrating urban television markets. Cable operators had discovered that they could market their services even in communities with good reception by capturing signals from distant stations to increase subscribers' program choices.

ASSUMING JURISDICTION

Distant station signals are frequently transmitted to cable systems through the services of microwave relay. In 1962 FCC indirectly established jurisdiction over cable systems through its regulation of Carter Mountain Transmission Corporation, a microwave carrier serving several cable systems.

FCC denied Carter's application for a license to expand its facilities and improve service for the cable systems. The denial was based on FCC's findings that a local broadcast television station which was in financial trouble would go out of business if cable service was improved.

Later in 1962 FCC instituted a rulemaking proceeding to consider the feasibility of bringing all microwave-linked cable systems under its jurisdiction. This proceeding resulted in the First Report and Order, released in April 1965.

FIRST REPORT AND ORDER

The First Report and Order, although applicable only to microwave-linked cable systems, established the basic rationale which, with subsequent elaboration, has guided the regulation of cable since then.

FCC concluded that its obligation to make television service available to all people was not met by placing primary reliance on cable systems, which could not or would not be made available to many people. It concluded that cable systems served the public interest when they acted as a supplement rather than a substitute for broadcast television.

FCC sought to meet its service obligation through its 1952 television master plan. Local stations, according to FCC, afforded a means for community self-expression and provided programing designed to meet particular tastes and needs of the public in their service areas. Further, few cable systems originated local programing, and were they to do so, the programing would not be available to persons in rural areas and to other nonsubscribers.

FCC determined that cable television services could not be permitted to curtail existing local service or to inhibit the growth of new broadcast stations. FCC found that cable-imported programs created competition for audience attention and that such competition could substantially reduce broadcast stations' audience and revenues.

FCC was concerned with the slow development of new ultra high frequency stations. FCC held cable system's competition with new stations was sharp and direct because cable provided programs not available from existing local stations. Further, in some situations a new station would not be built if cable service was available. While FCC recognized that cable enhanced the market positions of UHF stations by enabling subscribers to view UHF stations on sets that received very high frequency channels only, it also took note that cable splintered viewing audiences and duplicated the programing of struggling new UHF stations.

FCC found two features of cable television competition detrimental to local stations.

First, cable television, while carrying distant stations, might not carry the local stations' signals. The result was a loss of potential audiences for the local stations.

Second, broadcast stations dealt with program suppliers to obtain the right to exclusive exhibition of programs within a particular geographic area for a particular length of time. This exclusive right reflected the judgment that program duplication within stations' markets reduced audience size and program value. First order rules prohibited cable systems from exhibiting programs from distant stations which duplicated local stations' programing.

According to FCC the first order rules were to insure that cable performed its valuable supplementary role without unduly damaging or impeding the growth of television broadcast service. FCC found that its responsibilities would not be discharged by withholding actions until indisputable proof of irreparable damage to the public interest had been compiled.

SECOND REPORT AND ORDER

The Second Report and Order (March 1966) reaffirmed that cable's appropriate role was to supplement rather than supplant commercial broadcasting and extended the application of this auxiliary role to the area of educational broadcasting. Cable's competition to broadcasting, which in the first order had been termed "unusual" and "anomalous" was in the second order termed "unfair."

The second order noted the changing nature of cable. The majority of the cable systems were carrying programs on 5 or more channels; 12-channel systems were being built and 20-channel systems were being proposed. Microwave facilities were being used increasingly to transmit signals over greater distances.

FCC was concerned with the effect of both UHF stations and cable systems operating in the larger markets. If cable systems obtained large numbers of subscribers in these markets, the UHF stations might encounter great difficulties. The order pointed out that cable television need not completely eliminate independent UHF stations to be harmful. For example, if cable systems impaired the financial base of these stations and affected their ability to program effectively, the result would, nevertheless, be detrimental to the public interest.

FCC decided that cable should not be allowed to compete openly with UHF. It concluded that the economic impact of this course would lead to results inconsistent with the public interest because:

1. Cable systems did not serve rural areas. If cable television undermined UHF's healthy development, viewers in the large population centers would be getting additional service at the expense of those in rural areas.

2. Cable television was a form of pay television. Its development would result in some viewers getting additional service at the expense of those who could not afford the service.

3. Cable television did not serve as an outlet for local expression. It did not present local discussions by ministers, educators, or political candidates. Additional stations were required to meet important needs for local programing and self-expression. Cable television's interference with UHF development would frustrate this congressional purpose and undermine the goal of a fourth network built on these additional stations.

The second order also required cable systems to (1) carry the most powerful local stations to the limits of their channel capacity, (2) blank out the program of a distant station if a local station carried the program the same day, and (3) notify local stations before undertaking new operations or increasing the number of stations carried.

Second order rules also prohibited cable systems operating in the 100 largest television markets from carrying distant signals unless they could prove through public hearings that distant-signal carriage would be consistent with the public interest and the establishment and maintenance of a healthy television broadcast service. Cable systems were permitted to continue to retransmit distant-station signals carried before 1966.

The second order stated FCC's primary concern about cable's competitive advantage--broadcast stations paid for their programing while cable did not. In 1968, however, the Supreme Court decided in Fortnightly Corp. v. United Artists Television, Inc. 392 U.S. 390 (1968) that cable systems were not subject to liability for copyright payments when retransmitting locally available signals.

In December 1968 after the Court decision, FCC proposed retransmission consent rules. Under these rules the cable operator was required to obtain the consent of distant stations, on a program-by-program basis, to carry their signals. The stations, however, in dealing with the program copyright owners did not buy the rights which would enable them to give retransmission consent to cable operators. Therefore, obtaining retransmission consent required a cable operator to bargain with the copyright owner of each program which it proposed to carry from distant stations.

The second order also urged the Congress to prohibit cable systems from originating programs. In October 1969 FCC reversed this position, and adopted a rule requiring cable systems with 3,500 or more subscribers to originate their own programs, starting January 1, 1971, as a condition for carrying broadcast signals. FCC noted that using broadcast signals had enabled cable systems to finance the construction of high-capacity cable facilities. Requiring cable television to devote part of its facilities to origination service, FCC was encouraging the larger and more effective use of broadcast services in the public interest.

In December 1974 FCC eliminated mandatory program originations by cable systems; it nevertheless required systems serving 3,500 or more subscribers to make equipment available for local program originations.

CABLE TELEVISION REPORT AND ORDER

The Cable Television Report and Order released in 1972 took a more comprehensive position on cable television than did the previous rules.

Under this third order all systems must carry all local stations, and distant signals may be imported only up to certain limits set by the FCC, depending on the market size. Also, cable systems in the 100 major television markets must provide, among other things, a minimum of 20 channels and at least 1 channel each for public, educational, local government, and leased access. For 5 years after the start of cable service, the education and local government access channels must be made available without charge. The 1972 rules also restricted cable's access to copyrighted programs in the top-50 television markets and limited access to markets 51 to 100.

SUBSEQUENT RULEMAKING

Since 1972 FCC has issued a total of 65 decisions amending and clarifying various sections of the rules concerning cable television. The major subject areas of these decisions include franchise standards, signal carriage, pay cable, cross ownership, network and syndicated program exclusivity, origination, cablecasting, channel capacity and access channel requirements, and public inspection files maintained by cable television systems. A number of amendments were made also to technical standards, cable television relay service requirements, and procedural rules. An April 1976 FCC document entitled "Regulatory Developments in Cable Television" summarizes these major rulemaking actions.

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Although the three FCC policy positions and subsequent rules outlined above do not represent a complete listing of the numerous actions FCC has taken on cable television, they do present the basis on which FCC has guided the regulation of cable television.