Wednesday, June 11, 1969

Meeting -- Frederick W. Ford
President
National Cable Television, Incorporated

LAW OFFICES OF
PITTMAN LOVETT FORD HENNESSEY AND WHITE
1000 FEDERAL BAR BUILDING WEST
1819 H STREET, NORTHWEST
WASHINGTON, D.C. 20006

ELIOT C. LOVETT (1963)
RALPH D. PITTMAN
FREDERICK W. FORD
LEE G. LOVETT
JOSEPH F. HENNESSEY
MARC A. WHITE
JOHN N. PAPAJOHN

TELEPHONE
(202) 293-7400

CABLE ADDRESS
"PITLO"

January 28, 1970

Mr. Clay T. Whitehead
Staff Assistant
The White House
Washington, D. C.

Dear Tom:

Thank you for your letter of January 23 and its enclosures.

Since I last talked with you I have severed my connections with NCTA and, as you can observe from the letterhead, I have become a member of this firm. I have, therefore, forwarded your letter and enclosures to Mr. Donald V. Taverner, the newly appointed president of NCTA, for his information.

If I can be of assistance to you at any time, please don't hesitate to call on me.

Sincerely,

Fred

Frederick W. Ford

cc: Donald V. Teverner

July 17, 1969

Dear Mr. Ford:

The President has asked that I reply to your letter of July 9th regarding the need for Department of Commerce responsibility for developing communications policy for the future.

As I indicated in our meeting several weeks ago, we are very much aware of the substantive and organizational problems in the communications area, and your views are certainly both welcome and helpful.

Your analysis of the problem is certainly useful and we certainly appreciate having your views. I hope we will have the opportunity to discuss some of these problems again.

Sincerely,

Clay T. Whitehead
Staff Assistant

Mr. Frederick W. Ford
President
National Cable Television Association, Inc.
1634 Eye Street, N. W.
Washington, D C. 20006

cc: Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:ed

NATIONAL CABLE TELEVISION ASSOCIATION
INCORPORATED
1634 EYE STREET, N. W. WASHINGTON, D. C. 20006

July 9, 1969

FREDERICK W. FORD
PRESIDENT

(202) 347-3440

The President
The White House
Washington, D. C.

Mr. President:

There have been many studies of communications policy during the period since the Communications Act of 1934 was enacted, including the Final Report of the President's Task Force on Communications Policy in 1968. These studies have not been evaluated by a department in the executive branch charged with the responsibility for developing specific recommendations for the improvement of the laws and government structure for the management of the telecommunications function. I do not believe, from my experience as a former member and Chairman of the Federal Communications Commission, that the Commission is equipped or is in a sufficiently objective position to perform this function.

The Department of Commerce has been intimately involved in the development of the basic laws establishing the Federal Radio Commission in 1927, and the Federal Communications Commission in 1934.

Beginning on page 7 of the enclosed address, I have set forth my reasons why the Department of Commerce should be asked to assume responsibility for the development of a sound communications policy for the future, including whatever statutory recommendations for effectuating it are appropriate.

I hope you will find my suggestion helpful in formulating a course of action in this important area.

Respectfully,

Frederick W. Ford

Frederick W. Ford
President

Enclosure

WEEKLY Television Digest

A TELEVISION DIGEST WHITE PAPER

JUNE 2, 1969, VOL. 9:22

Full Text

NAB-NCTA Staff Recommendations on CATV Regulations

Submitted for Consideration by NCTA Board May 28-29, 1969, and NAB Board June 16-20, 1969.

The National Association of Broadcasters and the National Cable Television Association have been made increasingly aware that constant conflict between the two industries which should have compatible interests does not serve the public interest. In consideration of this fact, the staffs of the two trade associations have evolved proposals for consideration by their respective Boards of Directors which, in the spirit of compromise, would allow both industries to move forward and establish an effective national broadcasting communications policy in the public interest.

The proposals which are set forth below would involve amendments to the copyright laws and changes in regulatory policies to be enacted as amendments to the Communications Act. However, in the event regulatory legislation cannot be enacted at this time, both industries express a desire that the FCC would lend its support to the effectuation of this compromise through its own regulatory authority.

I—COPYRIGHT

The copyright law would be amended to reflect the following:

A. CATV would be liable for copyright payments under the terms and conditions set out below:

1. CATV systems will have a compulsory license to carry all local television signals. Local broadcast signals are defined as Grade B contour signals or their equivalent.

2. The copyright statute would recognize the concept of "adequate" television service. Adequate service means that the CATV system shall have available to it the services of stations fully affiliated with each of the national TV networks plus the services of no more than three non-affiliated commercial TV stations. This means, for example, that in a market such as Philadelphia, which has stations fully affiliated with all existing national networks and three commercial TV stations not so affiliated, no importation of distant signals shall be permitted.

In the event that it is necessary to import a distant signal for the purpose of getting adequate service, the signals of the most proximate station in either category shall be the first to be imported. A CATV system, to the extent that it does not have a sufficient complement of local signals to comprise the signals of a full network station for each of the national television networks and the signals of three commercial independent stations, would have a compulsory license to receive signals of distant stations to bring them up to this adequate service concept; provided, however, that the CATV system would be compelled to obtain the signals necessary to achieve this adequate service from television stations next most proximate to the CATV system. A distant television signal means the signal of a television broadcast station which is extended or received beyond the predicted Grade B contour of that station.

II—EXCLUSIVITY

CATV systems located in primary or secondary broadcast markets must recognize exclusive licensing of copyrighted material as follows:

1. As against "distant" signals imported into a "primary" television market, a CATV system, upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must provide the same protection of copyrighted material as that which the broadcast station is afforded against other broadcasters in the same television market.

2. As against Grade B television signals carried in a "primary" television market, a CATV system upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must protect the first run only syndicated showing of a copyrighted work.

3. As against distant signals imported into a "secondary" television market, a CATV system upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must protect the first run only syndicated showing of a performance or display of a copyrighted work.

4. For purposes of affording exclusivity protection, a CATV system will be deemed to be within the market of a commercial television station if the CATV system is

located in whole or in part within 35 miles of the main post office or reference point of the community in which the commercial television station is located. The geographic coordinates of the main post offices and reference points will be those adopted by the Federal Communications Commission in Appendix B of *Further Notice of Proposed Rule Making* in Docket No. 18397, released May 16, 1969 (FCC 69-516).

5. A CATV system located within the 35 mile radius of a community listed by ARB as one of the top 50 television markets will be deemed to be located in a primary television market.

6. A CATV system located within the 35 mile radius of a community listed by the ARB as above [markets 51st or smaller] the top 50 television markets will be deemed to be located in a secondary television market.

III—GRANDFATHERING

All CATV systems serving subscribers as of the date of the passage of this Bill would be grandfathered as to all existing service. They could continue to carry the signals that they presently carry and would not have to provide any of the "exclusivity" set forth above.

This grandfathering would extend only to the franchise area in which each grandfathered system operates. In the case of a non-enfranchised CATV system, the grandfathering would extend to the boundary of the political subdivision in which the CATV system currently operates.

The grandfathering indicated in this section relates solely to signals currently carried. Should signals be changed or substituted, the new changes will reflect all exclusivity provisions for this agreement.

IV—REGULATORY CONSIDERATIONS

The NAB and the NCTA agree that the most efficient manner of effectuating the compromise in the public interest would be through the enactment of legislative amendments to the Communications Act. However, if this is not possible at this time, both organizations agree that since the FCC has the authority to implement these policies it will proceed to do so upon the enactment of copyright legislation.

1. Retain the carriage and nonduplication currently set forth in present Commission rules.

2. Originations—The FCC should promulgate rules that will permit CATV systems to originate, without any restrictions, sponsored programs on a single channel. There would be no limit to the number of channels the CATV system could devote to either automated service or public service type programs. Advertising, however, would be limited to either the channel permitting unlimited originations of any type of programs or on those channels devoted to automated services.

V—INTERCONNECTIONS

Consistent with the spirit of compromise in the public interest, and conditioned upon the acceptance of the other portions of this agreement, recognition must be afforded to the necessity for the preservation of television broadcast services to all areas of the country. Accordingly, both organizations agree that CATV systems receiving broadcast programs would be prohibited from interconnecting for the purpose of distributing entertainment type programming. This prohibition could be waived on a case-by-case basis for good cause shown for contiguous CATV systems for the purpose of serving a local market area.

VI—COPYRIGHT PAYMENTS

CATV systems will pay reasonable copyright fees as determined by the Congress. Small and remote CATV systems should either be exempt from payment or should pay a nominal amount. The proposals set forth above are contingent on a fair and satisfactory statutory resolution of the matter of copyright payment.

Finally, although too late for inclusion in this document, the question of the carriage of local FM signals has been discussed with the NCTA representatives and it is believed that a satisfactory resolution of this problem can also be achieved.

Monday 6/9/69

3:20 I have scheduled an appointment for Frederick Ford, President, National Cable Television Association, Incorporated, for next Wednesday (6/11) at 4:00 p.m.

NATIONAL CABLE TELEVISION ASSOCIATION
INCORPORATED
1634 EYE STREET, N. W. WASHINGTON, D. C. 20006

June 4, 1969

FREDERICK W. FORD
PRESIDENT

(202) 347-3440

Dr. Clay T. Whitehead
Special Assistant to
the President
The White House
Washington, D. C. 20500

Dear Dr. Whitehead:

Recently representatives of the National Association of Broadcasters and the National Cable Television Association arrived at a tentative agreement regarding cable television. This is a difficult and complex communications regulatory problem which is not fully appreciated. I have enclosed a copy of the agreement for your information.

If you believe it will be helpful, I will be glad to meet with you any morning next week to give you my evaluation of this problem, based on my service both as the president of this Association and as a former member of the Federal Communications Commission.

Sincerely,

Frederick W. Ford

Frederick W. Ford
President

Enclosure

Yes Call & have come in Wed AM if possible.

RESOLUTION ADOPTED BY THE

NATIONAL CABLE TELEVISION ASSOCIATION

BOARD OF DIRECTORS

May 28, 1969

Be it resolved that the Board of Directors of the National Cable Television Association does generally endorse the proposals which have been the subject of discussion by the National Association of Broadcasters and the NCTA. We recognize that many of the areas of discussion need clarification and that the methods employed to effect their implementation are crucial. We encourage the continuation of negotiations between the representative organizations, and we express our hope that these matters can all be successfully resolved through the continuing spirit of good faith which has characterized the proceedings to date.

TEXT OF NAB/NCTA STAFF AGREEMENT

The National Association of Broadcasters and the National Cable Television Association have been made increasingly aware that constant conflict between the two industries which should have compatible interests does not serve the public interest. In consideration of this fact, the staffs of the two trade associations have evolved proposals for consideration by their respective Boards of Directors which, in the spirit of compromise, would allow both industries to move forward and establish an effective national broadcasting communications policy in the public interest.

The proposals which are set forth below would involve amendments to the copyright laws and changes in regulatory policies to be enacted as amendments to the Communications Act. However, in the event regulatory legislation cannot be enacted at this time, both industries express a desire that the FCC would lend its support to the effectuation of this compromise through its own regulatory authority.

I. COPYRIGHT: The copyright law would be amended to reflect the following:

A. CATV would be liable for copyright payments under the terms and conditions set out below:

1. CATV systems will have a compulsory license to carry all local television signals. Local broadcast signals are defined as Grade B contour signals or their equivalent.

2. The copyright statute would recognize the concept of "adequate" television service. Adequate service means that the CATV system shall have available to it the services of stations fully

affiliated with each of the national TV networks plus the services of no more than three non-affiliated commercial TV stations. This means, for example, that in a market such as Philadelphia, which has stations fully affiliated with all existing national networks and three commercial TV stations not so affiliated, no importation of distant signals shall be permitted.

In the event that it is necessary to import a distant signal for the purpose of getting adequate service, the signals of the most proximate station in either category shall be the first to be imported. A CATV system, to the extent that it does not have a sufficient complement of local signals to comprise the signals of a full network station for each of the national television networks and the signals of three commercial independent stations, would have a compulsory license to receive signals of distant stations to bring them up to this adequate service concept; provided, however, that the CATV system would be compelled to obtain the signals necessary to achieve this adequate service from television stations next most proximate to the CATV system. A distant television signal means the signal of a television broadcast station which is extended or received beyond the predicted Grade B contour of that station.

II. EXCLUSIVITY: CATV systems located in primary or secondary broadcast markets must recognize exclusive licensing of copyrighted material as follows:

1. As against "distant" signals imported into a "primary" television market, a CATV system, upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must provide the same protection of copyrighted material as that which the broadcast station is afforded against other broadcasters in the same television market.

2. As against Grade B television signals carried in a "primary" television market, a CATV system upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must protect the first run only syndicated showing of a copyrighted work.

3. As against distant signals imported into a "secondary" television market, a CATV system upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must protect the first run only syndicated showing of a performance or display of a copyrighted work.

4. For purposes of affording exclusivity protection, a CATV system will be deemed to be within the market of a commercial television station if the CATV system is located in whole or in part within 35 miles of the main post office or reference point of the community in which the commercial television station is located. The geographic coordinates of the main post offices and reference points will be those adopted by

the Federal Communications Commission in Appendix B of Further Notice of Proposed Rule Making in Docket No. 18397, released May 16, 1969 (FCC 69-516).

5. A CATV system located within the 35 mile radius of a community listed by ARB as one of the top 50 television markets will be deemed to be located in a primary television market.

6. A CATV system located within the 35 mile radius of a community listed by the ARB as above the top 50 television markets will be deemed to be located in a secondary television market.

III. GRANDFATHERING: All CATV systems serving subscribers as of the date of the passage of this Bill would be grandfathered as to all existing service. They could continue to carry the signals that they presently carry and would not have to provide any of the "exclusivity" set forth above.

This grandfathering would extend only to the franchise area in which each grandfathered system operates. In the case of a non-enfranchised CATV system, the grandfathering would extend to the boundary of the political sub-division in which the CATV system currently operates.

The grandfathering indicated in this section relates solely to signals currently carried. Should signals be changed or substituted, the new changes will reflect all exclusivity provisions for this agreement.

IV. REGULATORY CONSIDERATIONS: The NAB and the NCTA agree that the most efficient manner of effectuating the compromise in the public interest would be through the enactment of legislative amendments to the Communications Act. However, if this is not possible at this time, both organizations agree that since the FCC has the authority to implement these policies it will proceed to do so upon the enactment of copyright legislation.

1. Retain the carriage and nonduplication currently set forth in present Commission rules.

2. Originations -- The FCC should promulgate rules that will permit CATV systems to originate, without any restrictions, sponsored programs on a single channel. There would be no limit to the number of channels the CATV system could devote to either automated service or public service type programs. Advertising, however, would be limited to either the channel permitting unlimited originations of any type of programs or on those channels devoted to automated services.

V. INTERCONNECTIONS: Consistent with the spirit of compromise in the public interest, and conditioned upon the acceptance of the other portions of this agreement, recognition must be afforded to the necessity

for the preservation of television broadcast services to all areas of the country. Accordingly, both organizations agree that CATV systems receiving broadcast programs would be prohibited from interconnecting for the purpose of distributing entertainment type programming. This prohibition could be waived on a case-by-case basis for good cause shown for contiguous CATV systems for the purpose of serving a local market area.

VI. COPYRIGHT PAYMENTS: CATV systems will pay reasonable copyright fees as determined by the Congress. Small and remote CATV systems should either be exempt from payment or should pay a nominal amount. The proposals set forth above are contingent on a fair and satisfactory statutory resolution of the matter of copyright payment.

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ADDRESS OF
FREDERICK W. FORD, PRESIDENT
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

BEFORE THE
HOLLYWOOD RADIO AND TELEVISION SOCIETY
BEVERLY WILSHIRE HOTEL
BEVERLY HILLS, CALIFORNIA

OCTOBER 15, 1968

THERE IS CABLE TV IN YOUR FUTURE!

Mr. Chairman, members of the Hollywood Radio and Television Society, distinguished guests and friends:

Today is a perplexing and parlous time for many in the communications industry - not only for those in the young and vibrant industries such as cable television, but also for those in the older and supposedly more stable forms of communications.

I am talking of those young radicals of forty years ago who staked their future on a dream that has now become the status quo -- a status quo threatened, they think,by a new group of young cable television system operators who also have a dream -- a dream that will become a reality -- the maximum number of services for the maximum number of people. But, I say to you that their status quo is not threatened. We will no more destroy broadcast television than it destroyed radio, or than radio destroyed phonograph records. The character of broadcast television may be changed by cable television as the older art forms were changed by broadcast television, but broadcast television, like its predecessors, will go on with the help of cable television in the years ahead to greater economic heights and popularity.

Today there are more than 2,000 cable television systems in operation; 1,938 franchises have been granted for the construction of systems which are not yet in operation for various reasons, principally because of the chilling actions of the Federal Communications Commission; and 1,318 communities in which applications are now pending. This totals some 5,300 communities in the United States that either have operating cable television systems, granted franchises for the construction of such systems or have applications pending which have not yet been acted upon.

Compared with this wide spread development of cable television throughout all fifty states, there are only 237 UHF stations on the air distributed throughout the 70 channels or an average of about 3.4 stations per channel, even though UHF channels have been available for 16 years. In addition, there are 564 licensed UHF translators, 163 permittees and 58 applications pending which are all concentrated in the upper UHF channels. In contrast, there are 579 VHF stations on the air or 48.2 stations per channel In addition, there are 1,370 VHF licensed translators, 192 permittees and 178 applications pending. It would, therefore, appear that the existing television industry can be accommodated in much less UHF space even though the principles governing channel assignments and propagation characteristics are not comparable. If I were a UHF station operator, I think I would probably seek the same benefits of an economy of scarcity for UHF which has blessed the VHF industry. Perhaps if the available UHF channel assignments were as difficult to come by as VHF their value would increase accordingly. When I observe the VHF industry's heart-rendering sobs to preserve each megacycle of space for UHF, I wonder what their attitude would be towards three or four additional VHF assignments in their towns. I am sure they would welcome such a development -- which will never come to pass.

With this statistical foundation of the physical facilities of the television industry, I would like to turn now to a summary of the status of our cable television industry, and then perhaps make some general comments about communications before answering the five questions posed in the notice of this luncheon.

The CATV industry has had a number of very serious problems during its brief life span. Perhaps our most dramatic and most difficult problem was that involving copyright. As you will recall, a number of years ago United Artists brought a suit against Fortnightly Corporation alleging copyright infringement. It was claimed in that action that the CATV system in receiving and transmitting a copyrighted program to its customers was in fact making a public performance for profit. After many years of litigation the Supreme Court of the United States held that CATV operators, like viewers and unlike broadcasters, do not perform the programs they receive and carry.

Many meetings were held between representatives of the various copyright owners and cable television interests before this decision was rendered. These meetings have continued more brightly since the decision and they are now increasing in intensity. I am very hopeful that a solution to the problem can be found satisfactory to all parties, and one which the Congress can accept.

Second, perhaps in importance to you, was the litigation involving our relationship to the Federal Communications Commission. United States v. Southwestern Cable, a companion case to the United Artists case was decided by the United States Supreme Court on June 10, 1968. Here, the Court recognized authority in the FCC to regulate cable television but ". . . restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting." The Court expressed no views on the validity of the specific Commission rules. In a subsequent decision, however, the U. S. Court of Appeals for the Eighth Circuit broadly upheld the validity of those rules.

The Federal Communications Commission, therefore, now has authority over cable television ancillary to its primary responsibility to regulate broadcast television. In concept and purpose, the assertion of this authority and its confirmation is negative. Thus, the Commission has placed itself in an almost impossible position of moving forward with an affirmative regulatory program based on negative authority to integrate cable into our television system, but this the Commission must surely do. Some Commissioners seem a little confused about this obligation and would apparently deny it, but to deny it would be to confess that jurisdiction was asserted for the sole purpose of suppressing cable television, a totally indefensible principle for the exercise of governmental power -- regulate to destroy.

We, in the cable television industry, began several years ago seeking an en banc hearing before the Commission, but without success. The Commission asserted jurisdiction on the basis of staff summaries and has yet to look the first cable television operator in the eye. We are still hopeful that before the Commission decides to issue Notices of Proposed Rule Making, imposing 5-year freezes, prohibiting the sale of advertising on channels originating programs or other types of harassments, it will begin an inquiry into the many different problem areas which the growth of our industry has created. In this way the Commission would accumulate expertise in the field and lay. to a degree, a factual background for any proposed actions.

Next in importance has been our relations with the telephone companies concerning restraints in pole line agreements and tariffs on our origination of programs, and their claimed rights under ancient franchises to offer cable television services. The FCC has held that tariffs for such services must be filed with that Agency and supported by certificates of convenience and necessity. The Bell System is

amending their tariffs to ease the restrictions on originations to leased systems and to pole rental contracts. We are hopeful that our excellent liaison arrangements with the phone companies will result in easing other areas of disagreement which exist or may develop.

The remaining problem area involves the jurisdiction of the state over parts of the cable television industry. A literal reading of the Southwestern case certainly gives the impression that the entire area has been pre-empted by the Federal Government. Undoubtedly, a conflict in jurisdiction between the Federal and State Governments will develop. This conflict, I believe, will be resolved either by the courts or the Congress without injury to the long range development of cable television.

Let us turn now to some more general observations about communications. It has been my experience that frequently in communications, today's victory may be the precedent for tomorrow's defeat. For example, the broadcaster won a great victory in San Diego when he persuaded the Commission to find that it had the power to prohibit the cable system from selling advertising on origination channels. If this power really exists as an ancillary matter over cable television then how much more directly the power must exist over the primary regulated industry. Thus, when the American Broadcasting Company, the Association of Maximum Service Telecasters, and other broadcast groups petition the Commission to ban the origination of entertainment programs and commercials on cable television, they may be lucky if a fight does not develop at the Commission to reduce commercial continuity by 50% during prime time on broadcast television. It could happen under the principle of the San Diego victory.

It was a great victory for broadcasters when the U. S. Circuit Court of Appeals invalidated the personal attack rules under the "Fairness Doctrine". If, on appeal of this and another case, the "Fairness Doctrine" is held unconstitutional it will undoubtedly be a great victory. In such a case, however, what will happen to the multiple owner? Will the government thereby be required to maximize the diversity of all broadcast mass media to accomplish the greatest chance of fairness?

Finally, had the cable television industry been successful in the U. S. Circuit Court of Appeals for the Eighth Circuit in having the FCC-cable television rules nullified, would this victory have led to a freeze on the growth of cable television, pending adoption of new rules? A victory might well have formed the precedent for serious defeat.

It is, therefore, with great misgiving that I observe one element in television seeking the extension of government control over another. One does not deliberately set about to hurt another and usually escape with impunity. In our competitive world, one must succeed by the excellence of his performance, not by dissipating his energies in seeking unconscionable regulatory restraints on a feared competitor.

The next time you are urged to participate in some added regulatory burden on cable television, think through the consequence of success very carefully -- you may spend a great deal of time and money in establishing a precedent for your own destruction.

In conclusion, I would like to present my answers to the five questions posed in the notice of this luncheon.

1. Will cable television become a huge new outlet for Hollywood entertainment product?

If in the years to come as many as six thousand cable television systems are constructed and if we assume that in time they will each have a minimum of twenty channels, we are talking about a capacity of 120,000 six megacycle channels instead of about 2,750 which we have in use by broadcast television today.

In spite of these numbers, I anticipate that cable television will have little impact on broadcast television over the years. In an open market, without FCC restraints, the capital required to build our channels to our customers compared with the capital costs of broadcasters will be considerably greater. To support these higher capital costs, the cost per thousand for advertising that we must necessarily charge on these origination channels will be higher. The broadcaster will be able, therefore, in most instances to over-buy us in the entertainment market and undersell us in the advertising market. Neverthless, there probably will be additional requirements of entertainment product to fill additional channels as our population and economy grows. I do not anticipate a new and sudden demand for product, but I do anticipate ever increasing demands which may grow to very substantial proportions in the years ahead. In fact, I am surprised that cable television systems have not been widely offered an integrated package of entertainment and advertising sufficient to program one channel. Perhaps that will happen next.

2. Will cable television become a vast new advertising medium?

I think the answer to this question is undoubtedly, yes. We already have seen enough to predict confidently the development of a new generation of television advertisers both for cable television and for broadcast television as advertisers get acquainted with TV at very low costs on cable systems -- then move on to take advantage of wide area coverage.

In many areas of the country today, CATV systems are serving the local merchants, the corner drug store, the shoe store, the drive-in theatre with low-cost television audiences. It is a natural alliance for a merchant with a visual story to relate and no reason or desire to pay for coverage beyond his own community when he can obtain that coverage for a very low total cost.

In programming for the interests of the single community, in reawakening interest in and participation in the affairs of the community, and in providing low-cost access to the television tube -- cable television is helping close the public interest gap.

3. Is cable television a direct link to world girdling satellites?

There seems to be a difference of opinion on the future of satellite-to-home broadcasting. Technically, satellite-to-home broadcasting is possible at the present time at prohibitive costs. In addition to those costs, there are many policy questions which must also be resolved before this service could be established -- such as the need for the service, the use of satellites for domestic purposes, etc. Assume, however, that such a system were to be established, cable television would certainly seek to receive and deliver such signals to the public like any other broadcast service. I would anticipate, in fact, that cable television would play an important role in the development of the art. The very existence of cable television capabilities might well influence the manner in which such a new service is structured.

4. Is cable television a first step toward the wired city?

Undoubtedly the answer to this question is that cable television has pointed the way to the conservation of the radio spectrum, one of our great natural resources, and has inspired the wired city concept. Cable television has captivated the imagination of all men

interested in an infinite variety of communications services which are not now available. One of the fundamental principles of communications, to my mind, is that the more facilities that are used for communications, the more additional ones are needed. The concept of the wired city with full communications switching service on a universal basis may never be realized, however, I am confident that in the years to come various forms of the wired city will evolve. Both the staff studies of the President's Task Force on Communications Policy, and Mayor Lindsay's Advisory Task Force on CATV and Telecommunications are extremely favorable to the principle of wire. I will venture that almost any group of objective men who study our television and other communications problems will inevitably conclude that the maximum number of services of high quality for the maximum number of people can only be achieved through wire.

5. Will cable television become the gateway to pay-television and other home services?

I have never been an opponent or an advocate of pay-television. I have felt very strongly that if it ever comes, broadcasters will force it on cable television. If it is permitted on broadcast television, it should be permitted on cable television. It is certainly technically feasible to build cable television systems in which a program-by-program fee is charged, as was done in Los Angeles, but the economic feasibility of such an operation has still never been demonstrated. There are those who believe that nationwide pay-television by wire can never survive economically, and I am inclined to this view. There are others who believe that pay-television is inevitable. Perhaps some day a real test may be permitted where the answer will be written in red or black ink for all to see, but I don't think that day is very close at hand.

With the channel capacity that future cable television systems will have, there is no question that extensive subsidiary home services will develop. It is perhaps in the nature of this development that what is starting out as cable television may become the most interesting. Once an adequate number of entertainment, educational, cultural and informational programs are available to 100% of our population, the excess capacity of cable systems could and should be used for other services to the public. Such services will undoubtedly raise a whole new set of problems.

The early pioneers in communications, in broadcasting, and in television were not afraid of problems -- be they technical or regulatory. Do not listen to those who condemn future concepts like the wire city as an "abomination", or satellite-to-home broadcasting as a threat to the status quo. We face the future with confidence in our ability to master the technical problems of television. We challenge the government to match these solutions with regulatory solutions which will provide better service for all. We have a better mouse-trap which we ask the government to recognize. We ask you to give us a better mouse.

# # # #

ADDRESS OF FREDERICK W. FORD
PRESIDENT
NATIONAL CABLE TELEVISION ASSOCIATION, INC.
BEFORE THE
PETROLEUM INDUSTRY ELECTRICAL ASSOCIATION
GALVESTON, TEXAS
APRIL 23, 1968

Let us start from the premise that our present television industry is indispensable and of primary public interest. I am firmly of the opinion that it must be preserved with some room for expansion into the UHF band even though I have never seen any studies or data of any kind that would support a contention that UHF is now or ever will be competitive with VHF.

At the present time there are 227 UHF stations on the air distributed throughout 70 channels, or an average of about 3.2 stations per channel even though UHF channels have been available for 16 years. In addition, there are 564 licensed UHF translators, 163 permitees, and 58 applications pending which are all concentrated in the upper UHF channels. In contrast, there are 579 VHF stations on the air, or 48.2 stations per channel. In addition, there are 1,370 VHF licensed translators, 192 permitees, and 178 applications pending. It would, therefore, appear that the existing television industry could be accommodated in much less UHF space even though the principle governing channel assignments and propagation characteristics are not comparable.

On one occasion some years ago, at my request, the Chief Engineer's office at the FCC prepared a chart comparing the contours of possible UHF stations in the Northeast quadrant of the United States with possible VHF contours. The results showed that the statistical coverage of the 70 UHF channels would not equal that of the 12 VHF channels in that area. This chart was shown to the Senate Subcommittee on Communications. It was at this point that I completely abandoned any idea of an all UHF system as being in the public interest.

In passing, I would like to note that cable television systems help - rather than hurt UHF stations. A study by the American Research Bureau has exploded the myth that cable systems have an adverse effect on UHF broadcasters. The ARB study, sponsored by Triangle Stations, showed just the opposite.

The report of this study represents one more exhibit in the steadily mounting pile of evidence effectively disproving the oft-repeated charge that cable is bad for UHF. Hopefully, this panoply of evidence will soon begin to make an impression at the FCC.

No one can find fault with the pro-UHF position at the Commission. Indeed, while UHF is not a cause with quite the universal appeal of motherhood or apple pie, it does present an opportunity to support the underdog element of our television broadcast society. And that's all to the good, so long as it is not carried on blindly to the extent that both UHF and the public suffer.

But those at the FCC who would continue to restrict cable, on the grounds that it represents a potential threat to UHF, are allowing themselves to be misguided and misled. Instead of wasting their energies trying to make cable the scapegoat for the lack of viability in UHF broadcasting -- a theory supported only by prejudice and preconceived notions, not by facts -- they would do better to acknowledge in a practical way the benefits of cable to both the broadcast industry and the public as the great equalizer in the disparity between the propagation characteristics of UHF and VHF.

The television industry violently opposes any decrease in its spectrum space and this is quite understandable, although most of the VHF station owners in intermixed areas who tried UHF abandoned it as an inferior service. There is a minimum of competition in the television industry and as long as there is plenty of room for growth in the UHF band the industry is protected from charges of restricted competition. It is, therefore, greatly in their interest to maintain this image of freedom of entry and unrestricted competition by the UHF frequency buffer zone. This, of course, raises the question, in view of the shortage of spectrum space, of how long the nation can afford this luxury. If it cannot afford this luxury, is there an alternative which will protect the television industry from charges of restricted competition by introducing more competition into that industry, and at the same time protecting it from very distasteful economic and regulatory controls?

How can the present television industry best be preserved if, as Chairman Hyde recently indicated, there must be inroads into the UHF frequencies in some way to serve other important national needs? He

understands out of his rich experience the fundamental principle of allocations - use it or lose it - and UHF has not used it very extensively.

I would like to interject right here that Chairman Hyde has an encyclopedic knowledge of the radio and television industry. Even though we are not in very close agreement on some of the issues involving CATV, I regard him as one of the finest public officials who has ever served on the Commission. From my close observation, he has always, without exception, done his very best to be right, and I am sure with his background and judicious temperament he will lead the Commission to a more moderate view on CATV.

I have given the answers to the problem of competition in the television industry many times. CATV should be permitted to introduce competition between VHF stations by receiving distant signals and distributing them to the public. They should also be authorized to originate programs within their limited economic capability without restrictions on the sale of advertising. The cost per thousand basis would in no way compete with television or radio stations and would assist in developing originated programs. In this way, CATV would take the place of such an extensive UHF buffer zone and provide means of competition between television stations, thus freeing adequate frequency space to meet other pressing needs without any injury to our existing television structure. In addition, it would aid in providing local public service programming and some additional entertainment programming as well as untold subsidiary services in the future.

Thus, the public would benefit by a greater choice of local public service and entertainment programming and by a greater choice of television station programming. I would anticipate that the stations would continue their upward curve of earnings, CATV would expand rapidly and the public would be better served by a greater choice of national, regional and local programs.

I would like to turn now to the assumption by some that it is only a matter of time until all television is transferred to wire.

I do not believe that the present state of the CATV art, the urgent frequency demands, nor the huge expenditure which would be required justify a program, even with unwanted government subsidy, of attempts to transfer all television or any substantial part of it to cable. Some vague idea of the cost of an all wire television plant can be gained by considering the book cost of domestic land line telephone companies of 47.3 billion dollars, as of December 31, 1966. Whereas, the original cost of tangible television network and all station property, as of the FCC Annual Report for 1966, was one billion dollars.

There is no justifiable reason to move to an all wire television system precipitously or in the foreseeable future. No one has pointed out to me any public interest reason for such an action. Wire systems will grow and expand rapidly once freed of the present FCC artificial restraints and will render a fine public service, but I am not aware of any public need which would justify the dislocation of the television industry or even of noticeably altering its structure. I believe our network and station system is sound and must be preserved, but I believe this can be done simultaneously with the full development of cable television for the benefit of the public.

The present state of the art of cable television does not yet permit it to serve 100% of our population economically. If we could serve 100% of the population I would be opposed to any greater regulation, although of a different kind, than that imposed on newspapers simply because we do not use any appreciable amount of spectrum space. The shortage of spectrum space is the principal reason for the regulation of television, but there is no shortage of wire and most of our franchises are on a non-exclusive basis - just as newspapers. There are some limited exceptions to this position such as political broadcasts and the fairness doctrine arising out of practical necessity because of our peculiar relationship to the broadcast industry.

In short, I foresee inroads on UHF frequencies to satisfy other national needs, but not to the extent of injuring our existing television system. Mobile radio, industrial and other commercial demands must have additional frequency space if our country is to grow and our gross national product is to be adequately increased. The increased efficiency introduced by the use of radio frequencies in commerce must be employed to full advantage in the national interest.

As I understand our national goal for radio and television, it is the greatest number of program services for the greatest number of people. Television stations cannot accomplish this objective alone, although they are and will remain the dominant system for national and regional program origination, but satellites and cable are new technologies which must be integrated into our mass communications complex.

In summary, I believe that:

1. Our present television structure must be preserved as being of primary public interest.

2. Television station needs can be met without retaining such an extensive UHF frequency buffer zone to maintain an image of freedom of entry or of unrestricted competition.

3. Cable television systems help rather than hurt UHF stations in their competitive position with VHF stations.

4. Limited inroads on UHF frequencies must be permitted to the extent necessary to accommodate other national needs, but not to the injury of our television structure.

5. Cable television should be permitted to introduce greater competition between television stations by delivering distant signals and originating programs without limitation on advertising.

6. In order to achieve our national goal of the greatest number of program services for the greatest number of people, the new technologies of cable and satellites must be integrated into our national mass communications complex.

7. The transfer of television to an all wire system is not needed in the foreseeable future because frequency needs can be met without the dislocation of television stations, and the inordinate cost of such a project is uneconomical and not justified by any public interest standard of which I am aware.

If this program, which is in rough form, is generally followed, I anticipate that these industries will move relentlessly and prosperously forward to a new and expanded era of audio-visual mass communications, and other radio starved industries can share this precious natural resource for the further advancement of the public good.

# # # #

REMARKS OF FREDERICK W. FORD
PRESIDENT
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

BEFORE THE

CATV PANEL OF THE
43rd ANNUAL CONVENTION
OF THE
NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS
DENVER, COLORADO
NOVEMBER 6, 1967

No two segments of the telecommunications industry have more in common, more in the way of mutual interests, than educational broadcasters and cable television operators.

Cable television is proud to have played a role in the development and growth of ETV. And educational broadcasters should be no less reluctant to take credit for the fact that, in many communities, ETV programming has made a significant contribution to the public through CATV.

Service to the community and support of educational television have been bywords in our industry almost from the day of its inception in 1949. That attitude isn't being recounted here to suggest that we have done anything more than any forward thinking public spirited industry should be expected to do.

What is unusual, I believe, is that an industry as young as ours has accepted its responsibility with the complete dedication and unrestrained enthusiasm we have shown. Moreover, it should be recognized that these are self-assigned responsibilities -- to undertake any and all public service projects to which our business is technologically adaptable.

A cable television system may serve the educational needs of its community in any of the following ways:

1. Carrying the signals of one or more educational television stations to citizens of the community who would otherwise not receive them.

2. Providing connections and multiple outlets to local schools, enabling the teachers to make use of educational and commercial programs in the classroom.

3. Providing a channel through which educational programming originated by a local school or educational agency may be distributed to the entire school system and the community.

Let me give you the results of a recent study we conducted of the activity of CATV systems in aid of educational television.

A tabulation of Federal Communications Commission records identified ETV stations carried by CATV systems; to determine the extent of activity under points 2 and 3, NCTA mailed a prepaid postcard to all of the operating CATV systems -- roughly 1,800.

We received 416 replies, which are tabulated below for your convenience. In many instances we also received letters amplyfing the service to educational television being rendered. The results were most gratifying.

Swiftly, quietly, and without subsidy of any kind, the cable television industry has become a major factor in the distribution of educational programming. Perhaps even more significant, there are clear signs that it is becoming an important source of educational material.

Briefly, FCC records indicate that the carriage of ETV signals by CATV systems has increased 673% since 1964 (the last time NCTA surveyed the practice). During the same period of time, the number of ETV stations on the air has increased only 54%. There are 719 CATV systems located in 45 states distributing the signals of 94 ETV's -- 73% of the Nation's educational television stations.

And where there is no local educational television station, the CATV's are stepping in to fill the breach. Forty four systems are now serving their communities with educational programs originated over their facilities by a local educational institution, and eighteen more have announced their intention to do so in the near future. (These sixty two systems were tabulated from the 416 replies to the postcard questionnaire -- we have no way of knowing if the results are projectionable to the remaining three-quarters of the cable television

industry, but it seems a reasonably safe assumption that we are far from discovering all examples of the practice. The respondents alone are carrying educational material to 940,778 students in 2,004 schools.)

These facts indicate two things: First, that CATV operator is concerned with the welfare of his community and anxious to undertake those public service projects to which his business is technologically adaptable, and second, that beyond any doubt CATV has proved its ability to make a major contribution to the distribution of educational programming.

To be frank, we were, ourselves, surprised and gratified by the results of this survey.

A complete tabulation of the returns is attached for your convenience.

Of course, slight differences have existed from time to time between ETV and cable interests. But the nature of these differences has been over which of several avenues is likely to offer the most effective means to accomplish our joint objectives -- not over the objectives themselves. And foremost among our joint objectives has always been -- and continues to be -- the further development and widest possible dissemination of educational TV.

To the end that our respective efforts in this direction are fully coordinated for maximum utilization of available talent and resources, the staffs of the National Association of Educational Broadcasters and NCTA recently held the first of an anticipated series of meetings. From this initial meeting came a better understanding of our mutual problems and a firm resolve to work out the solution to these problems in an atmosphere of enlightened cooperation and progressive accord. At this meeting the following tentative program was decided upon:

1. NCTA would prepare a letter to their members on educational television.

2. Each of the two Associations would designate a liaison officer between the two organizations.

3. The Educational Television Committee of the NCTA would become more active.

4. We would jointly attempt to set up a local liaison committee betweel educational television broadcasters and CATV operators.

5. We will include in the NCTA kit for new operators a description of the machinery to be employed in order to avoid friction.

An additional subject of mutual concern is the copyright legislation.

You have a problem with the provisions of the copyright bill which would be somewhat restrictive. So do we! We are extremely hopeful that the solution adopted for educational television will permit us to continue to help deliver the fine public service you render. I hope we will be able to assist you in the delivery of programs between schools or to the public without additional copyright fees. Frankly, I am fearful of the consequence of letters some operators have been receiving from television stations telling them that they would like their signals to be carried but copyright owners require them to advise that certain programs must be deleted. If such a practice becomes general the economics of copyright could prevent us from rendering the service we are prepared to provide.

With the programs I describe we hope we will be successful in obviating friction. Perhaps the Congress in its wisdom will permit us to continue to offer this service. If proper copyright provisions are not enacted into law it could have a serious impact on our ability to continue our present service or to expand it in the future.

Thank you.

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ATTACHMENT TO
REMARKS OF FREDERICK W. FORD

BEFORE THE

CATV PANEL OF THE
43rd ANNUAL CONVENTION
OF THE
NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS
DENVER, COLORADO
NOVEMBER 6, 1967

CATV AS AN INSTRUMENT OF EDUCATION: AN NCTA SURVEY

There are 719 CATV systems located in 45 states which receive the signals of 94 educational television stations located in 36 states and the District of Columbia. Of these 719 CATV systems, 641 carry 1 ETV signal; 72 carry 2 ETV signals; 5 carry 3 ETV signals; and 1 system carries 4 ETV signals.

73.4% of all ETV signals on the air (128) are carried by CATV systems, in comparison to 1964 when 39.7% of all ETV signals on the air (83) were carried.

Since 1964 there has been a 54% increase of ETV stations on the air; a 673% increase of CATV systems carrying ETV signals; and a 191% increase of ETV signals on the air carried by CATV systems.

The following figures were derived from the 416 systems responding to a postcard survey:

No.	%	
301 or	72.4	systems now serve schools
20 or	4.8	systems plan to serve schools in the near future
95 or	22.8	systems do not serve schools
416	100.0	Totals

Of the 416 systems reporting 44 or 10.6% now originate ETV programs and 18 or 4.3% plan to originate ETV programs in the near future.

The total number of hours per week of educational programs originated over CATV systems is 422.

The average number of hours per week for a system originating educational programming is 16.

Of the 416 respondents, 301 reported some form of service to schools in the following categories:

	No. of Schools	No. of Students
Elementary	1,318	440,453
Jr. High School	295	154,575
Sr. High School	323	200,951
Jr. College	29	26,392
University	39	118,407
TOTALS	2,004	940,778

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ADDRESS OF

FREDERICK W. FORD, PRESIDENT

BEFORE THE
SEVENTEENTH ANNUAL CONVENTION
OF THE
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

SHERATON-BOSTON HOTEL
BOSTON, MASSACHUSETTS

JULY 2, 1968

THE POLAR STAR OF CATV

Last year, at our Convention, the title of my address was "Year of Decision for CATV." And it certainly has been - just that - a year of decision. Last year we were beset, castigated, accused and slandered by our opponents. We resolved to fight harder in the firm belief that our service to the public was demonstratively and indispensably in the public interest. Now, after two important decisions[1/] we are a stable industry. Our property is secure. Our dreams a reality. Our business a full-fledged member of the mass media complex. Our faith justified. Our reputations vindicated. We have arrived.

We perform these vital functions free of the charge of piracy and relieved of the accusation that we utilize the property of others for our private gain. It also means that we are a business affected with the "public interest" and in that role we will be regulated by the Federal Communications Commission "not inconsistent with law" in the "public interest, convenience and necessity."

The CATV industry has sought this status for many years. Many times we have proposed legislation to accomplish this end. Many times we have testified to this effect. On many occasions we have initiated meetings with broadcasters, representatives of the Commission, the Congress and others for this purpose.

1/ United States, et al. v. Southwestern Cable Co., et al. (U.S. Sup. Ct. decided June 10, 1968)

Fortnightly Corporation v. United Artists Television, Inc. (U.S. Sup. Ct. decided June 17, 1968)

In doing so we steadfastly opposed unfair and destructive regulatory schemes. We continuously opposed the selfish refusal of others to accept fair and reasonable provisions for our regulation. When the Commission, acting under the present law, asserted jurisdiction to regulate the CATV industry we opposed those efforts because we sincerely believed that the present law gave the Commission no such jurisdiction, but we showed our good faith by supporting legislation to give the Commission jurisdiction to regulate CATV.2/

The first point - Commission jurisdiction has now been settled. The second point - The nature of the regulations is yet to be resolved. Listen to the comforting words of the Supreme Court speaking through Mr. Justice Harlan in the landmark Southwestern Cable Co. case:

> "It is enough to emphasize that the authority which we recognize today under §152(a) is restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting. The Commission may for these purposes issue 'such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law,' as 'public convenience, interest or necessity requires.' . . . We express no views as to the Commission's authority, if any, to regulate CATV under any other circumstances or for any other purpose."

Earlier, the Court stated:

> "We must emphasize that questions as to the validity of the specific rules promulgated by the Commission for the regulation of CATV are not now before the Court."

Thus, the Supreme Court has laid to rest the primary issue of Commission jurisdiction. But it has reserved the question of the validity of the specific rules which the Commission has adopted. This question is now pending before the United States Court of Appeals for the Eighth Circuit in the case of Black Hills Video Corporation, et al. v. FCC.

2/ Hearings before House Committee on Interstate and Foreign Commerce, 89th Cong., on H.R. 12914, p. 149

In examining our relationship to the Commission we must look to the purposes of the Communications Act as set forth in Section 1:

> "For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities . . ." (Emphasis supplied)

Under the Court's decisions this provision applies to CATV, not as a common carrier, but as part of the interstate reception service of television signals. To understand our future, we must look to the history and meaning of the Commission's standard of regulation - "the public interest, convenience and necessity."

The phrase "public interest, convenience and necessity" contained in the Communications Act of 1934, as amended, was carried over from the Radio Act of 1927 - the first attempt at comprehensive regulation of radio broadcasting.

Congressman White, the principal spokesman in the House for the bill,which later became the Radio Act of 1927, had this to say about the phrase:

> "First and foremost, /the legislation/ asserts unequivocally the power and authority of the United States over this means of communication and gives to the Federal Government power over the vital factors of radio communication. It gives to the Commission . . . the power to issue licenses if the public interest or the public convenience or public necessity will be served thereby.
>
> "This is a new rule asserted for the first time, and it is offered to you as an advance over the present right of the individual to demand a license whether he will render service to the public thereunder or not."

Senator Dill, who was the floor leader for the bill in the Senate, viewed the standard in a similar sense:

"When we lay down a basic principle to control the granting of licenses, we are then in a position to limit the right of those who want to use radio apparatus."3/

According to Judge Stephen Davis, who was Solicitor for the Department of Commerce under Herbert Hoover, and a principal administration spokesman on the question of radio legislation, the idea of a public interest in broadcasting was first officially expressed in 1924 by Secretary Hoover before the Third Annual Radio Conference. The National Radio Conferences afforded a means whereby broadcasters exercised a degree of voluntary control over the industry in the absence of effective governmental regulation. Up to the time of the Third Conference, broadcasting seemed to have been universally regarded as a private enterprise imbued with no public element whatever. Although the broadcaster's purpose was generally to attract listeners through attractive program fare, there was no duty to do so and no regulatory sanction available against any who did otherwise.

The idea of a public service in broadcasting was repeated more forcefully by Mr. Hoover a year later at the Fourth Radio Conference, when he stated:

"The ether is a public medium, and its use must be for the public benefit. The use of a radio channel is justified only if there is public benefit. The dominant element for consideration in the radio field is, and always will be, the great body of the listening public, millions in number, countrywide in distribution. . . .

"The greatest public interest must be the deciding factor. I presume that few will dissent as to the correctness of this principle, for all will agree that public good must overbalance private desire; but its acceptance leads to important and far-reaching practical effects, as to which there may not be the same unanimity, but from which, nevertheless, there is no logical escape."

3/ It should be noted that the licensing authority was not encompassed in the public interest standard. The standard was adopted to permit the granting or denial of licenses under a specific statutory licensing scheme. Furthermore, the standard is not imposed upon CATV with respect to a licensing scheme, but would appear to be only as a test with respect to our activities which are reasonably ancillary to the Commission's responsibilities with respect to the television industry.

The Conference resolved, among other things, "That the public interest as represented by service to the listener shall be the basis for the broadcasting privilege." Its proceedings were furnished to both Houses of Congress and were undoubtedly accorded considerable weight in framing the 1927 Act.

Writing as an informed contemporary observer, Judge Davis had this to say in 1927 concerning the adoption of the new standard:

> "The act contains no definition of the words 'public convenience, interest, and necessity,' and their meaning must be sought elsewhere. The phrase has been used in many state statutes with respect to public utilities, such as water, electric, gas, and bus companies. The state laws do not attempt to define it. Indeed, it has been said to be a legislative impossibility to give the words exact definition. They comprehend the public welfare and involve a question of fact deducible from a variety of circumstances. They require determination as to reasonable necessity or urgent public need or high importance to the public welfare, but not indispensability of the service, and the decision is made from considerations of sound public policy after due regard is given to all of the relevant facts affecting the general public as well as the applicant. The convenience and necessity of the public as distinguished from that of the individual or any number of individuals is the test. The desire of the applicant is not the influencing factor."

Historically, then, I think it is clear that the "public interest, convenience or necessity" had great meaning at the time it was adopted as a legislative standard in the Radio Act. Its significance lay in the contrast it presented to what had prevailed before. Private interests were to be subordinated to those of the listening public. Although accepted as axiomatic today, the fact that licenses could no longer be had for the asking was described in 1927 by Judge Davis as constituting "a revolution in practice." Within this general frame of reference, however, any further refinement of the term had to await decisions rendered by the courts under the new law as well as the rules and case law which the regulatory body would establish.

With the assumption by the Commission of jurisdiction over CATV, we too must await decisions to be rendered by the courts under this newly recognized authority as well as the rules and case law which the regulatory body will establish to put flesh on this bare bones phrase as it relates to cable television.

I do not believe that either the First or Second Reports and Orders adopting rules for CATV were written with the full impact of Section 1, and the public's interest and convenience in wire foremost in the Commission's mind. The language of those reports rather indicate impatience with CATV systems and a paternal protectionism for broadcasters, program suppliers, market delineation[4/] and other factors adverse to the viewer. The Supreme Court has now made it clear to the Commission that some of these underlying attitudes are without foundation in the law. I look forward, hopefully, to a more objective and balanced review by the Commission of its obligation to make available so far as possible to all of the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities.

We believe that one important sign post for the Commission's exercise of its newly recognized jurisdiction can be found in the language of another Supreme Court case wherein the Court said, "that the Congress declared that the people of all the zones 'are entitled to equality of radio broadcasting services, both of transmission and reception.'"[5/] . . . This is a clear declaration that there should be no second class television citizens. The elimination of second class television citizenship is what CATV is all about.

Let me refer to a second and more recent sign post. In the recent copyright case, the Supreme Court, speaking through Mr. Justice Stewart said:

4/ See CATV and Copyright Liability, 80 Harvard L.R. 1514, 1521 (1967)

5/ Federal Radio Commission v. Nelson Brothers Co., 289 U.S. 266 (1933). The corresponding provision, Section 307(b) of the Communications Act, as amended, has been construed to the same effect.

> ". . . broadcasters have been judicially treated as exhibitors, and viewers as members of a theater audience. Broadcasters perform. Viewers do not perform. Thus, while both broadcaster and viewer play crucial roles in the total television process, a line is drawn between them. One is treated as active performer; the other, as passive beneficiary.
>
> "When CATV is considered in this framework we conclude that it falls on the viewer's side of the line." (emphasis supplied)

Further on, in referring back to the key issue of CATV's function, the Court said:

> "The function of CATV systems has little in common with the function of broadcasters. CATV systems do not in fact broadcast or rebroadcast. Broadcasters select the programs to be viewed; CATV systems simply carry, without editing, whatever programs they receive. . . . We hold that CATV operators, like viewers and unlike broadcasters, do not perform the programs they receive and carry." (emphasis supplied)

This sign post says only too clearly that CATV is a reception service. To be able to perform its function, CATV must be freed of restrictions which are designed with broadcasters in mind and not the needs of viewers.

The Supreme Court has ended the controversy over copyright. There is no reason why the Congress should not accept the views of Assistant Attorney General Edwin Zimmerman and other authorities cited by the Supreme Court, that it would be preferable to leave the FCC free to regulate CATV in terms of the public interest rather than have regulation within the framework of a copyright statute with attendant restraints by non-cooperative private interests.

We must, however, be prepared for assaults upon the results of the copyright case. Make no mistake about it - we are still the economic underdogs in our communications society. We have many long and hard

fights ahead which will require the full support of this entire industry. We must, therefore, be ever watchful that the security of your ownership and economic health is not jeopardized by provisions of law inimical to your ability to serve the viewer.

Your representatives have held many meetings in recent months with interested parties. We have presented and explored the possibilities of a number of solutions to the issues separating the CATV industry from the broadcasters and copyright owners. I am sure we all recognize that our posture has now been dramatically altered. Nevertheless, we intend to keep our carefully established lines of communications open and the dialogue active for we recognize many problems remain which require attention. As in the past, we will always be ready to meet and discuss issues of every kind with any of the interested parties, just as they have been willing to meet and discuss the pertinent issues with us. Moreover, there are many areas besides those which have occupied us in the past upon which an exchange of ideas could be mutually beneficial.

When I joined this industry, I firmly believed that the great future expansion of our country's communications lay in cable. Commissioner T. A. M. Craven, with his incomparable understanding of our radio spectrum, conveyed to me ten years ago the full impact of the serious deficiencies of our spectrum management and the necessity for a "long look ahead." To me, cable, in part, offered the flexibility, the diversity, and the challenge of his quest.

We are not engaged in a business alone - ours is a movement, ours is the bright communications future of tomorrow. We are engaged in a most exciting venture in the maintenance of our democratic system of government.

In your hands is the means for more efficient delivery of better pictures and greater variety of programs of television stations. You also have the potential to supply an infinite variety of auxillary services for the public good, many of which have been suggested, but many more, I venture, have not yet even been conceived.

I would like to single out one service today for special attention - the origination of local live public service programs. Two years ago, at our Miami convention, I carefully documented the rationale, history and background of this local live public service program-

ming concept of our national communications policy. I found that, "The television broadcaster, and particularly the network affiliate, has not discharged this important responsibility for local live public service programming, and for a very good reason. He can't." I proved to my own satisfaction that this was true. Commissioners Cox and Johnson recently issued a 308 page report confirming to some extent my findings, but not my explanation of the reasons for this deficiency. They have forcefully revealed the failure of television stations to fully discharge their responsibility to serve the truly local needs of many of their communities. The reasons are apparent. In the Miami speech I said:

> "There are literally hundreds of communities, in fact, 4,899 communities with a population of more than 2,500 throughout the United States. There are only some 612[6/] television stations to serve their local needs and interests. How can such a limited number of television stations serve the purely local interests of more than 4,600 communities without trespassing on the time of uninterested viewers? How can such a limited number of stations serve the churches, the civic, religious, educational and cultural interests, and provide time for the discussion of public issues, and the political campaigns of all of these communities? How can they serve as a show case for all of the communities? Television cannot do the job. Cablecasters can do the job in the 4,389 communities where there are operating systems, franchises granted, or applications pending. You can do it, but the broadcaster cannot.
>
> "Furthermore, television broadcasters are faced with a very difficult and perplexing problem in providing public service for the total areas they serve. Although a television station is assigned to a principal city, the Commission has held that it is responsible for providing public service to the entire area covered by its signal - an area in which it claims to be the 'local station.' Since the broadcaster's only saleable commodity

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6/ FCC Public Notice 17963, June 17, 1968, showed 646 commercial TV stations on the air.

> is time on one channel, he is faced with a dilemma in allocating time for public service use, sufficient to serve his area, while retaining most of his broadcast time to serve his commercial interests."

The CATV operator is faced with no such dilemma. He does not serve a wide area. His dedication is to a single community. Within the limits of at least one channel in our CATV systems, can we not establish an industry tradition not only of free speech, but of freedom of access to our sound cameras to exercise that right of free speech which is the inalienable right of every race, creed or color.

Imagine the benefits of a channel of television in each community in our country devoted to exploring in depth the problems, the tension, the hates, the poverty, the hopes, the plans and dreams of viewers for a better place in which to live - a channel to discuss local bond issues, to hear debates between candidates for local offices, to retrain the jobless, and on which to celebrate local events. The vast community resources for programming include the schools, city councils, Chambers of Commerce, school boards and local events too numerous to mention. Is it too much to hope that this industry can restore local communications with access to our sound cameras for the so-called "common man" who has something he wishes to tell his fellow townsmen? What I am suggesting is an every increasingly meaningful and thoughtful involvement by our industry in a highly personalized medium of local live public expression. I quote from a letter I recently received -

> "Never has an industry been so rich in possibilities for the improvement of responsible dialogue and constructive action in American life. Never has the opportunity for realization of those possibilities been so great. Never has the NEED been so imperative."

A dream? I ask, "Why Not?"

Let us leave this convention with the high purpose that we will dedicate our technological success to serve the public and not attempt to make it the public's master. Let us here resolve that we will not become complacent, that we will not rest on our past successes, but together we will push ever forward with service to the viewer and the public's interest, convenience and necessity as the polar star by which we set our course.

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REMARKS OF FREDERICK W. FORD
PRESIDENT
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

BEFORE THE

CATV PANEL OF THE
43rd ANNUAL CONVENTION
OF THE
NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS
DENVER, COLORADO
NOVEMBER 6, 1967

No two segments of the telecommunications industry have more in common, more in the way of mutual interests, than educational broadcasters and cable television operators.

Cable television is proud to have played a role in the development and growth of ETV. And educational broadcasters should be no less reluctant to take credit for the fact that, in many communities, ETV programming has made a significant contribution to the public through CATV.

Service to the community and support of educational television have been bywords in our industry almost from the day of its inception in 1949. That attitude isn't being recounted here to suggest that we have done anything more than any forward thinking public spirited industry should be expected to do.

What is unusual, I believe, is that an industry as young as ours has accepted its responsibility with the complete dedication and unrestrained enthusiasm we have shown. Moreover, it should be recognized that these are self-assigned responsibilities -- to undertake any and all public service projects to which our business is technologically adaptable.

A cable television system may serve the educational needs of its community in any of the following ways:

1. Carrying the signals of one or more educational television stations to citizens of the community who would otherwise not receive them.

2. Providing connections and multiple outlets to local schools, enabling the teachers to make use of educational and commercial programs in the classroom.

3. Providing a channel through which educational programming originated by a local school or educational agency may be distributed to the entire school system and the community.

Let me give you the results of a recent study we conducted of the activity of CATV systems in aid of educational television.

A tabulation of Federal Communications Commission records identified ETV stations carried by CATV systems; to determine the extent of activity under points 2 and 3, NCTA mailed a prepaid postcard to all of the operating CATV systems -- roughly 1,800.

We received 416 replies, which are tabulated below for your convenience. In many instances we also received letters amplyfing the service to educational television being rendered. The results were most gratifying.

Swiftly, quietly, and without subsidy of any kind, the cable television industry has become a major factor in the distribution of educational programming. Perhaps even more significant, there are clear signs that it is becoming an important source of educational material.

Briefly, FCC records indicate that the carriage of ETV signals by CATV systems has increased 673% since 1964 (the last time NCTA surveyed the practice). During the same period of time, the number of ETV stations on the air has increased only 54%. There are 719 CATV systems located in 45 states distributing the signals of 94 ETV's -- 73% of the Nation's educational television stations.

And where there is no local educational television station, the CATV's are stepping in to fill the breach. Forty four systems are now serving their communities with educational programs originated over their facilities by a local educational institution, and eighteen more have announced their intention to do so in the near future. (These sixty two systems were tabulated from the 416 replies to the postcard questionnaire -- we have no way of knowing if the results are projectionable to the remaining three-quarters of the cable television

industry, but it seems a reasonably safe assumption that we are far from discovering all examples of the practice. The respondents alone are carrying educational material to 940,778 students in 2,004 schools.)

These facts indicate two things: First, that CATV operator is concerned with the welfare of his community and anxious to undertake those public service projects to which his business is technologically adaptable, and second, that beyond any doubt CATV has proved its ability to make a major contribution to the distribution of educational programming.

To be frank, we were, ourselves, surprised and gratified by the results of this survey.

A complete tabulation of the returns is attached for your convenience.

Of course, slight differences have existed from time to time between ETV and cable interests. But the nature of these differences has been over which of several avenues is likely to offer the most effective means to accomplish our joint objectives -- not over the objectives themselves. And foremost among our joint objectives has always been -- and continues to be -- the further development and widest possible dissemination of educational TV.

To the end that our respective efforts in this direction are fully coordinated for maximum utilization of available talent and resources, the staffs of the National Association of Educational Broadcasters and NCTA recently held the first of an anticipated series of meetings. From this initial meeting came a better understanding of our mutual problems and a firm resolve to work out the solution to these problems in an atmosphere of enlightened cooperation and progressive accord. At this meeting the following tentative program was decided upon:

1. NCTA would prepare a letter to their members on educational television.

2. Each of the two Associations would designate a liaison officer between the two organizations.

3. The Educational Television Committee of the NCTA would become more active.

4. We would jointly attempt to set up a local liaison committee betweel educational television broadcasters and CATV operators.

5. We will include in the NCTA kit for new operators a description of the machinery to be employed in order to avoid friction.

An additional subject of mutual concern is the copyright legislation.

You have a problem with the provisions of the copyright bill which would be somewhat restrictive. So do we! We are extremely hopeful that the solution adopted for educational television will permit us to continue to help deliver the fine public service you render. I hope we will be able to assist you in the delivery of programs between schools or to the public without additional copyright fees. Frankly, I am fearful of the consequence of letters some operators have been receiving from television stations telling them that they would like their signals to be carried but copyright owners require them to advise that certain programs must be deleted. If such a practice becomes general the economics of copyright could prevent us from rendering the service we are prepared to provide.

With the programs I describe we hope we will be successful in obviating friction. Perhaps the Congress in its wisdom will permit us to continue to offer this service. If proper copyright provisions are not enacted into law it could have a serious impact on our ability to continue our present service or to expand it in the future.

Thank you.

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ATTACHMENT TO
REMARKS OF FREDERICK W. FORD

BEFORE THE

CATV PANEL OF THE
43rd ANNUAL CONVENTION
OF THE
NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS
DENVER, COLORADO
NOVEMBER 6, 1967

CATV AS AN INSTRUMENT OF EDUCATION: AN NCTA SURVEY

There are 719 CATV systems located in 45 states which receive the signals of 94 educational television stations located in 36 states and the District of Columbia. Of these 719 CATV systems, 641 carry 1 ETV signal; 72 carry 2 ETV signals; 5 carry 3 ETV signals; and 1 system carries 4 ETV signals.

73.4% of all ETV signals on the air (128) are carried by CATV systems, in comparison to 1964 when 39.7% of all ETV signals on the air (83) were carried.

Since 1964 there has been a 54% increase of ETV stations on the air; a 673% increase of CATV systems carrying ETV signals; and a 191% increase of ETV signals on the air carried by CATV systems.

The following figures were derived from the 416 systems responding to a postcard survey:

No.	%	
301 or	72.4	systems now serve schools
20 or	4.8	systems plan to serve schools in the near future
95 or	22.8	systems do not serve schools
416	100.0	Totals

Of the 416 systems reporting 44 or 10.6% now originate ETV programs and 18 or 4.3% plan to originate ETV programs in the near future.

The total number of hours per week of educational programs originated over CATV systems is 422.

The average number of hours per week for a system originating educational programming is 16.

Of the 416 respondents, 301 reported some form of service to schools in the following categories:

	No. of Schools	No. of Students
Elementary	1,318	440,453
Jr. High School	295	154,575
Sr. High School	323	200,951
Jr. College	29	26,392
University	39	118,407
TOTALS	2,004	940,778

# # # #

REMARKS BY
FREDERICK W. FORD
PRESIDENT
NATIONAL CABLE TELEVISION ASSOCIATION

BEFORE THE
TELECOMMUNICATIONS SYMPOSIUM
OF THE
BROADCAST ADVERTISING CLUB OF CHICAGO

SHERATON-CHICAGO HOTEL
MARCH 29, 1968

THE POTENTIAL OF CABLE TELEVISION AND NATIONAL POLICY

I would like to congratulate the far-sighted executives responsible for planning this telecommunications symposium designed to explore the technological and sociological aspects of the "Communications Explosion."

Nearly 2,000 community antenna or cable television systems are in operation in the United States today. They serve some three million homes or approximately 10 million viewers, which is nearly six per cent of the total U. S. television audience, estimated at about 182 million.

Applications for new CATV systems have been granted in about 1,900 additional communities, and applications are pending in some 1,400 other towns and cities. In all there are about 5,300 communities in the United States involved in some way with cable television.

Cable television might today be called a restless giant -- a giant waiting to see how Congress and the Supreme Court are disposed toward settling our problems concerning copyright payments and FCC jurisdiction.

Congress is still wrestling with legislation spelling out a reasonable copyright law. And the copyright issue, as well as the extent to which the FCC may legally assert jurisdiction over CATV, were both the subject of oral arguments before the Supreme Court earlier this month.

There is every indication that the Supreme Court will hand down decisions in these separate cases before recessing for the summer. But whether the current session of Congress will complete action on a copyright revision bill affecting CATV appears to be anybody's guess.

Business Week has just predicted that the matter will be carried over until 1969 -- because of the prospect of early adjournment in an election year.

Once the copyright and jurisdictional issues are resolved, the cable television industry can be expected to expand rapidly.

We stand today upon the threshold of a great new era in communications -- an age in which it will be commonplace to use satellites to communicate within and between nations.

This will be a period when laser beams may be fashioned into electronic pipelines; when computers may take over from telephone and wire services; when an almost endless array of new uses will be competing for portions of the electromagnetic spectrum.

Cable television will play a leading role in the tense, exciting drama about to unfold on the world's telecommunications stage.

Cable television is already one of the fastest growing industries in the United States today. But our growth rate has been slowed appreciably by the FCC's Second Report and Order which clamped rigid controls on CATV operations and virtually excluded us from the big cities.

CATV has continued to develop -- not because of the FCC -- but in spite of it.

Last year, for example, the number of new miles of cable was up only four per cent from 1966. A year earlier the increase had amounted to 20 per cent. And the year before that the gain was 16 per cent.

In other words, last year's growth rate -- as measured by new miles of cable -- was a scant one-fifth the growth rate of 1966 and only one-fourth the figure of 1965.

The same slowdown has been evident in the opening of new systems. Here the growth rate -- or percentage of increase -- last year was only about one-third the year-earlier level.

Does this mean that cable television may be approaching the saturation point -- that perhaps we're running out of potential new subscribers?

Not at all. Despite the negative attitude of the FCC and sharp deceleration in the growth of cable miles and new systems, we're signing up new customers faster than our technicians can make the necessary hookups.

Despite all the burdensome regulations the FCC has imposed on cable systems -- and notwithstanding the severe restrictions under which our industry is forced to operate -- the number of subscribers per cable mile has continued to increase at a steady rate of approximately 20 per cent a year <u>for the past three years</u>.

It's not too difficult to figure out the reasons for our popularity.

In addition to affording viewers a wider choice of programs, sharper pictures and more faithful color reproduction, cable television -- through its program origination facilities -- can offer a variety of public services that regular commercial television is not designed for and cannot match.

Cable operators are closing the gap between national and local TV programming by giving viewers a first-hand opportunity to see their communities in action.

Cable television has the capacity to function -- and in many communities <u>is</u> functioning -- as a sort of electronic weekly newspaper by televising those events that are uniquely community projects -- meetings of town councils, school boards and local Chambers of Commerce; debates between candidates for state and local offices; local election returns; high school plays and athletic contests; community fund-raising appeals; and similar public service programs.

The contributions of cable television to the small community have not gone unnoticed or unacclaimed. Addressing a recent seminar that our Association sponsored to encourage program originations -- or, as we call it, cablecasting -- Senator Frank E. Moss (D-Utah) had this to say about the subject -- and I quote the Senator directly:

> "Cablecasting gives people in communities of this type their only opportunity to originate programs about their local affairs -- to discuss local bond issues, to hear debates between local political candidates and to celebrate local events. In other words, cablecasting promotes democracy."

It is estimated that about 200 systems presently originate programs of one type or another and this number is expected to double within a year.

The CATV industry has also made a significant contribution to educational television. A recent survey by our association showed that three-fourths of all ETV stations were being picked up by cable systems and that such carriage had soared by nearly 700 per cent since 1964, the year of our last previous survey.

Moreover, our recent study showed that where there were no local educational TV stations in existence, CATV operators were stepping in to fill the breach. Forty-four systems were serving their communities with educational programs originated over their facilities by local educational institutions, and an additional 18 systems announced their intention to inaugurate such service in the near future.

The respondents to this survey represented only about one-quarter of our industry but these returns alone revealed that cable systems were originating or relaying educational material to about 950,000 students in more than 2,000 schools. And we can assume, I think, that the remaining 75 per cent of our industry has been equally co-operative with educational broadcasters.

Another survey we conducted-- this one only a few weeks ago in connection with our cablecasting seminar -- disclosed that two-thirds of all respondents were providing free "drops" -- or hookups -- to

schools in their areas, and three-fourths of the responding systems were making such service available at no charge or at cost.

These developments point up two salient facts: first, that the cable operator is intensely interested in the welfare of his community and anxious to undertake those public service projects to which his business is technologically adaptable; and, second, that the CATV industry has proven beyond any doubt its willingness and its ability to make a major contribution to the distribution of educational programming.

In view of the public-spirited activities of cable operators, it becomes increasingly difficult to understand the logic of the FCC's restrictive actions against our industry.

For example, the Commission has yet to seek intelligent answers to the thorny questions thrust upon it by our industry, although the broadband proceeding recently announced does offer at least one faint ray of hope.

What is unfortunate, I think, is that the FCC is so broadcaster-oriented it finds it difficult to recognize the legitimacy of any service paralleling broadcasting even though it complements that medium.

Cable operators -- even those who engage in program originations -- can hardly be said to provide effective competition to regular commercial broadcasters although they do promote competition between television stations which, for the most part, is sadly lacking in the industry today.

Just last week the third FCC hearing examiner who has ruled on the problem discredited one of the pet claims of the broadcast industry that cable systems are injurious to UHF stations, both present and proposed.

Forest L. McClenning was the third FCC examiner in recent months to explode that myth -- and to give additional credence to evidence presented by our industry that cable television helps, rather than harms, UHF broadcasters.

Despite such findings by its professional staff, the Commission itself is apparently determined to devise new ways to harass our industry.

Only recently it discovered a way to make the use of microwave facilities more expensive for cable operators by moving us to new and higher frequencies requiring a greater number of microwave hops to cover the same distance previously negotiated in the lower ranges.

At the same time, the Commission banned use of the new frequencies for private microwave transmission of programs originated by cable systems -- a move obviously calculated to deny subscribers the benefits of any cable television network.

On top of these developments, we hear increasing talk in broadcast and Commission circles about banning commercials on CATV -- this, in apparent disregard of Constitutional guarantees of free speech and despite the fact that a recent study indicated only six per cent of the respondent systems carried anything even remotely resembling a sponsored program.

I'd like to hear a rational explanation of why a local merchant should be denied the right to sponsor a commercial on a cable system which would reach only his customers and not be denied an equal right to place an ad in the local paper.

Suppose the newspaper and magazine industry had tried and been successful in banning advertising on programs originated on radio,or that the radio industry had tried and been successful in banning commercials on television when that medium was in its infancy. Just suppose radio and then television had been told -- originate all the programs you want to but don't interconnect and don't carry commercials. Would radio or television be as successful in making their immense contribution to our economy if they had been told "You can go swimming, but don't go near the water."? I don't believe we can compete for the same dollar on a cost per thousand basis, or that we will necessarily have any economic impact on radio or television.

Only recently a prominent spokesman for the broadcasters warned that if all television transmissions were transferred to wire, it would be the telephone companies, not the cable industry, that would be the principal beneficiary.

This particular broadcast representative hinted darkly that major elements of our industry had joined forces with the telephone companies in an effort to rob television stations of their assigned frequencies in the electromagnetic spectrum.

I'm only sorry that this spokesman, for whom I have the highest personal regard, didn't take the time to read a statement that I made three years ago -- to the effect that "since all of us in the TV industry have a common goal we (broadcasters and cable operators) should join forces toward this long-range objective and avoid the temporary clashes that would disrupt our progress toward that goal."

Anyone who seriously believes that the cable television industry is part of a giant conspiracy to abolish broadcasting as we know it today has little knowledge of the economics of our industry and little regard for the record we have made.

It's about time, I believe, that broadcasters and cable operators acknowledged their partnership in communications progress. And it's about time we both showed greater awareness of the obvious fact that a healthy cable industry is important to broadcasters, and a robust broadcast industry is essential to the future of cable.

That doesn't mean, of course, that at some future time it may not be necessary to transfer some unneeded TV transmission capability to cable. As the essential land-mobile radio services continue to require additional frequencies, the public interest may dictate some realignment of spectrum allocations, but not to the real injury of the television industry.

Within the past few days, the FCC has made public a report by its bureau chiefs and other staff officials, suggesting that reallocation of unassigned UHF channels on a geographic basis offers the best hope for relief of land-mobile frequency congestion without lengthy delays.

If some television must be put on cable, would broadcasters not find it more to their advantage for this to be the coaxial cable of our industry -- which is largely their industry too -- than for their programs to become an integral part of the telephone companies' "nationwide grid system" and the elimination of this independent industry?

Let's consider the spectrum problem in the same perspective we view other national resource problems.

Our forests, rivers, minerals, the very air we breathe are natural resources that most people take for granted. But while these elements are largely overlooked by the general public, they're never completely ignored. The public is at least to

some degree aware of their existence. And, periodically, some crisis develops to make these resources -- or the scarcity thereof -- the subject of national attention and concern.

That hasn't been true -- at least not until recently -- about the growing shortage of spectrum space.

While most people are conscious of the extent to which radio, television, long-distance telephone, radar, police radio and similar services affect their daily lives, few persons, aside from the technically inclined, are aware that these telecommunication functions depend on a resource just as limited as our trees, water and minerals.

The proverbial man-in-the-street has little concept of the term, electromagnetic spectrum, and even less understanding of how this resource has become a silent partner vital to all our national enterprises.

But it's important -- in fact, it's vital to the future, safety and security of our country -- that we worry about it -- and that we take some sort of prompt, effective action to assure the most efficient use of this limited national resource.

Actually, there's nothing new about this problem. For the past 40 years, one group or another has issued warnings that our silent partner has been ailing.

More recently the warnings have become more frequent and more urgent. And President Johnson's appointment of a Telecommunications Task Force -- plus increased attention to this issue on Capitol Hill -- are perhaps the most encouraging indications that these warnings are finally being heeded.

No one knows, of course, what the President's Task force will recommend. While representatives of our industry have conferred with Task Force members -- and have offered them our wholehearted cooperation -- it would be presumptuous for anyone to speculate on their eventual conclusions.

We can, however, with complete propriety turn back the clock nearly two full years to review the findings of another group of telecommunications experts on the subject of spectrum allocations. In that connection, I'd like to quote briefly from a report entitled, "Electromagnetic Spectrum Utilization -- the Silent Crisis," prepared by an advisory group to then-Secretary of Commerce John T. Connor.

This advisory group-- officially identified as the Telecommunications Science Panel of the Commerce Technical Advisory Board and headed by one of the nation's foremost communications experts, Dr. James Hillier of RCA -- warned that "means of improving the overall efficiency of utilization of the electromagnetic spectrum are urgently needed -- in fact, the situation is critical."

Continuing, the report had this to say:

"It is inevitable that further portions, if not all, of the electromagnetic spectrum will become saturated. Better organized and more informed judgments as to the relative values of the various telecommunications services to the nation will be required for the spectrum allocation process and for the organization of research projects directed primarily to more effective overall spectrum utilization.

"It is essential that planning and research be organized now in economics and sociology, and be expanded in science and technology, if the nation is to have the tools it will need to make intelligent decisions with regard to spectrum utilization in the future."

We have in that report, I think, the road map that will help to lead us out of the communications jungle -- the formula that will help us clean up what Business Week has called the "communications mess."

Not only government but private industry as well must step up the pathetically small sums it now expends on research designed to increase the effectiveness of spectrum use.

As the Commerce Department's advisory panel noted, such outlays, particularly in connection with better use of presently-exploited frequency ranges, represent "only a few hundredths of one per cent of the value of the dependent industry."

But the acceleration of such research is only the first step we must take.

It has become obvious in recent weeks -- from the statements of communications experts, both public and private, and from the testimony at Congressional hearings -- that we also need a cabinet-level Department of Communications, to assure the growth and progress of the nation's telecommunications industries.

In this sophisticated age of transistors and solid-state components, we can't expect to solve the perplexing communications problems of our fast-changing world with the kind of antiquated thinking and machinery better suited to the era of crystal sets and earphones.

I am hopeful that the much-needed new Department of Communications will be established by Congress within the near future. Just as recent Congresses have recognized the advantages of a Department of Transportation and a Department of Housing and Urban Development, so too will our lawmakers see the necessity for this new communications agency, for new machinery, for a fresh approach separate and apart from other cabinet offices which would have a tendency to subordinate this function to their existing responsibilities.

Congress also should revamp and revitalize our communications laws. And from these new statutes -- and our new communications agency -- must come new policies -- a new framework -- to meet the growing needs of our defense establishment, to accommodate the public interest, and to bring together into a single useful fabric the loosely-knit ravelings of our present patchwork communications program.

Our new policies, when formulated, must provide for an integrated approach that makes optimum use of all our communications resources -- both commercial and educational television, the cable industry, land-mobile services, satellites and all other communications capabilities.

We must coordinate radio, telephone, satellite and other means of wire and wireless communications into a solid, meaningful pattern that replaces the haphazard, hodge-podge arrangement which we have inherited from the past. Our regulating programs must keep up with our technology. If this is properly done satellites, radio, television and cable will continue to grow as viable parts of our mass communications complex.

And perhaps most important, we must impart to our whole telecommunications program a new sense of purpose and direction -- to assure:

(1) That it meets other national objectives;

(2) That it operates always in the public interest; and

(3) That it remains free of monopolistic influences and negative tendencies.

This should make it possible for cable television to provide -- or facilitate the development of -- community services undreamed of a few years ago -- services that improve our living standards, combat ignorance, poverty and disease, contribute to public safety, expand our educational horizons, promote greater understanding of our democratic processes, and stretch the supply of critically-short manpower by more efficient use of key personnel.

Such a new approach would give the cable television industry the opportunity it seeks to contribute to a permanent, effective solution of our present communications problems.

We earnestly believe we've earned the right to participate as a full-fledged member of the communications team.

Judging by several factors -- by the growing interest of astute investors, by the mounting demand for CATV services, by the increased attention from leaders of Congress and the Executive Branch, and by the warm reception you've accorded me today -- I'd say we're near achievement of our main objectives.

The cable television industry, despite its relatively recent birth, has definitely come of age and, moreover, gained the recognition and acceptance it deserves. Let us get on with the job and let the communications explosion wisely proceed.

Thank you for inviting me to join you here today.

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STATEMENT OF

FREDERICK W. FORD, PRESIDENT

NATIONAL CABLE TELEVISION ASSOCIATION, INC.

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

MAY 20, 1969

STATEMENT OF

FREDERICK W. FORD, PRESIDENT
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS AND POWER
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE
HOUSE OF REPRESENTATIVES OF THE UNITED STATES

MAY 20, 1969

INTRODUCTION

My name is Frederick W. Ford. I am president of the National Cable Television Association, Inc. (NCTA), with offices at 1634 I Street, N. W., Washington, D. C. 20006. The association is composed of about 1,000 members serving roughly 50% of the total cable television subscribers in the Nation. There are about 138 associate members who are engaged in manufacturing or a related activity.

I appear here today in support of H. R. 10510, "A bill to amend the Communications Act of 1934 to authorize the Federal Communications Commission to issue rules and regulations and to issue orders with respect to community antenna systems, and for other purposes."

Although we support the bill, we will make certain suggestions to the committee to provide a more objective regulatory climate for the growth and public service of the cable television industry.

My testimony will be divided into four major parts. (I) A review of the consideration of cable television by the Congress; (II) A review of the Federal Communications Commission's relationship to cable television, including its attitude and present proposals; (III) A review of consideration of cable television by the courts; and (IV) Our conclusions and recommendations.

I

CONGRESSIONAL CONSIDERATION OF CATV

Congress has shown a continuing interest in CATV, but has not enacted any legislation to regulate it. Its first active consideration of CATV was in hearings before the Senate Committee on Interstate and Foreign Commerce in 1958. Bills were introduced in 1959 to regulate CATV. After hearings, the Subcommittee on Communications of the Senate Interstate and Foreign Commerce Committee reported to the Senate its own bill, S. 2653 (86th Cong., 1st Sess. 1959). Following two days of debate the bill was recommitted by the Senate. A bill (S. 1044 and H. R. 6840, 87th Cong., 1st Sess., 1961) was introduced in the following Congress at the request of the Commission, but it received no action.

On February 25 and 26, 1965, the Commission made a progress report to the Subcommittee on Communications of the Senate Committee

on Commerce (Serial No. 89-18). On April 28, 1965, H. R. 7715 was introduced (89th Cong., 1st Sess.) following the release of the Commission's First Report and Order in Dockets Nos. 14895 and 15233, and its parallel Notice of Inquiry and Notice of Proposed Rulemaking asserting jurisdiction over all CATV systems in Docket No. 15971. Extensive hearings were held beginning on May 28, 1965 (Serial No. 89-16) but no further action was taken.

In 1966, Chairman Staggers introduced H. R. 13286 at the request of the Commission giving it broad authority to regulate CATV. Congressman Rogers introduced H. R. 12914 which would deny authority to the Commission to regulate CATV. Congressman Mackay introduced H. R. 14201 which I suggested during the course of the hearings on the previous two bills. These hearings (Serial No. 89-34) were concluded on April 7, 1966. H. R. 13286 was approved and reported by the Committee on June 17, 1966, in all material respects as submitted by the Commission, but no further action was taken on the bill.

I submitted extensive testimony in both of these hearings on behalf of the National Cable Television Association. I request to have that testimony considered as a part of my testimony today.

On April 17, 1969, Congressman Stratton introduced H. R. 10268 to rescind certain "interim procedures" on cable television adopted by the Commission, and House Concurrent Resolution No. 205 calling on

the Commission to rescind its Notice of Proposed Rulemaking and Notice of Inquiry in Docket No. 18397. On April 23, 1969, Congressman Stratton introduced H. R. 10510 to authorize the Commission to issue rules and regulations and to issue orders with respect to CATV, and for other purposes. These bills by Congressman Stratton are now pending.

II

CONSIDERATION OF CABLE TV BY THE COMMISSION

I would now like to briefly review the highlights of the Commission's regulatory treatment of CATV. A more intensive and comprehensive review is contained in my testimony on H. R. 7715, in 1965, and on H. R. 12914, H. R. 13286, and H. R. 14201, in 1966, to which I have referred. The major portion of my remarks will be directed to the changes which have taken place since those hearings.

In the late 1950s, the Commission first considered CATV and found that it had no jurisdiction to regulate CATV. (CATV and TV Repeater Services, 26 F.C.C. 403 (1959)). However, this attitude soon began to change, first on case-by-case consideration (Carter Mountain Transmission Corp. v. F.C.C., 321 F.2d 359 (D.C. Cir., 1963)), of microwave served CATV systems, and later by rulemaking proceedings affecting microwave served CATV systems. (First Report and Order on CATV, 38 F.C.C. 683 (1965)). By 1966, the Commission had extended

regulation to all CATV systems, whether microwave served or not, in its Second Report and Order on CATV (2 F.C.C. 2d 725 (1966)), and enunciated its present CATV rules. (47 C.F.R. §74.1101, et seq.). A decision of the Commission to halt CATV expansion in the San Diego, California, area, ultimately resulted in the Southwestern Cable Co. decision. During the same time, the Commission chose not to regulate CATV as a common carrier. (Philadelphia Broadcasting Co. v. F.C.C., 359 F.2d 282 (D.C. Cir., 1966)).

The Commission's rules on CATV were adopted because the Commission thought that CATV competed "unfairly" with broadcasters, even though the courts had held that it did not. (Cable Vision, Inc. v. KUTV, Inc., 211 F.Supp. 47, 335 F.2d 348 (9 Cir., 1964)). In relying upon the concept of "unfair competition" the Commission expressed the hope for some relief from the burden of its rules if and when the courts required CATV systems to pay copyright royalties. But the U. S. Supreme Court held that CATV systems need not pay copyright royalties. (Fortnightly Corp. v. United Artists Television, Inc. 392 U.S. 390 (1968)). After the Fortnightly and Southwestern cases, supra, the Commission began to move into other areas of CATV regulation, such as closed-circuit origination of programming. (Compare, Midwest Television, Inc., 13 F.C.C. 2d 478 (1968), and, Jefferson-Carolina Corp., 14 F.C.C. 2d 601 (1968)). The Commission had already

rejected empirical tests of CATV operations which, hopefully, would have shown whether the Commission's fears were well founded or baseless. (Suburban Cable TV Co., Inc., 9 F.C.C. 2d 1013, reh. den., 11 F.C.C. 2d 604 (1968)) and, Valley Cablevision Corp., 11 F.C.C. 2d 611 (1968)). The Commission also moved to control CATV's relationships with some telephone companies. (General Telephone Co. of California, et al., 13 F.C.C. 2d 448 (1968), aff'd sub nom. General Telephone Company of California, et al v. F.C.C., ____ F.2d ___ (D.C. Cir., 1969)).

Concurrently, the Commission unleashed an almost bewildering array of CATV-connected proceedings. In fact, it would appear that intense competition developed among Commission staff personnel to see who could devise the most effective way to stop CATV's growth. As examples, there were inquiries into cross-ownership of TV and CATV (Docket 17371); changes in the distant signal rules (Docket 17438); proposals for carriage of ETV signals without hearings (Docket 17597); proposals to force CATV to carry Pay-TV (Docket 11279); proposals to eliminate filing of repetitious CATV requests (Docket 18373); prohibition of microwave transmissions of CATV originated programming in the Business Radio Service (Docket 17824); inquiry into CATVs which are affiliated with telephone companies (Docket 18509); changes in CATV notice requirements (Docket 18416; and many others. In addition, from the adoption of the Second Report and Order on CATV, until

December 13, 1968, there were filed with the Commission, 413 applications for waiver of the evidentiary hearing requirements or requests for hearing under the major market rules, of which the Commission wholly granted 75 waivers, partially granted another 39, and set only 56 for hearing.

The Commission began to founder in a quagmire of its own making, which was freely predicted at the time of its excursion into CATV regulation. So, having an aversion to the word "freeze" which had been suggested to it by its staff, the Commission accomplished the same result, although denying it, when it issued a Notice of Inquiry and Notice of Proposed Rulemaking in Docket 18397. (15 F.C.C. 2d 417 (1968)). On December 13, 1968, at the same time it released its Fourth Report and Order on Pay-TV (15 F.C.C. 2d 466 (1968)) in an obvious and fairly successful news management attempt.

In addition to proposing detailed rules on CATV originated programming, cross-ownership, and general rules on regulation by other governmental levels, CATV operation as a common carrier, reporting requirements, and technical standards, as well as a broad inquiry into almost every aspect of CATV, the Commission proposed detailed rules for CATV in major and minor markets and outside of any market,

as well as "interim procedures" which effectively implemented the proposed rules immediately. The Commission's proposed market policies created three classes of television viewers: Those within thirty-five miles of a major television market, those within thirty-five miles of a minor television market, and those who are outside of any thirty-five mile limited reception zone. (15 F.C.C. 2d at 428, et seq.).

In the first category are all CATV systems within a thirty-five mile radius of 153 cities located within the 100 largest television markets. These will be allowed to carry only local television signals. Distant signals will be prohibited unless "retransmission consent" is obtained. (15 F.C.C. 2d at 436). Moreover, all local signals cannot be carried in all circumstances. For example, when local signals overlap, a circumstance prevailing in 91 of the top 100 markets, the CATV system can only carry the local signals of the closer community unless it receives "retransmission consent" or is within thirty-five miles of both communities (15 F.C.C. 2d at 436), even though all signals would be considered "local." To illustrate, a CATV system located in a community 36 miles from Washington, D. C. but only 34 miles from Baltimore could only carry the Baltimore stations - not those from Washington!

Second, CATV systems within a thirty-five mile radius of small television markets, i.e. communities having a television broadcast

station but not in the list of 153 major market cities, could carry all the local signals, and full network stations, one independent station, and educational stations.

Third, CATV systems located outside any of these radii, could carry any number of distant signals provided they avoided leap-frogging - i.e., the CATV system must first carry those stations most proximate within each of four classes of stations: Full network stations; partial network stations; independent stations; and, ETV stations.

As an "interim procedure" the Commission has frozen all proceedings on requests for the importation of distant signals into the largest 100 markets which are not compatible with the proposed rule - it has done so even though the FCC stoutly maintains that the proposed rules are not effective before adoption.

In evolving the new doctrine, the Commission eschewed its protection of UHF stations (15 F.C.C. 2d at 431), and proceeded to cure what the Commission still considered "unfair competition." The Commission in paragraph 37 of its Notice of Proposed Rulemaking and Notice of Inquiry of December 13, 1968 in Docket No. 18397 creates a new kind of "unfair competition." The competition which concerns the Commission --

> ". . . is the public interest in the broadcast field -- 'the larger and

> more effective use of radio . . .'
> That being the case, we must proceed
> to consider regulations to eliminate
> this aspect of unfair competition."

In simple language -- the Commission's concern is with the competition of the delivery by wire of commercial television programs without paying copyright with the direct delivery of television programs by television stations. (par. 35).

The Commission having been successful in adopting its own CATV regulatory legislation, after giving the Congress a deadline within which it must do so, now proposes to adopt its own copyright legislation as soon as its similar warning to Congress expires. (par. 40).

In paragraph 38, the Commission said, "The most appropriate and simplest way to eliminate this element of "unfair competition" is by adoption of a rule permitting the importation of distant signals, but requiring the CATV system which proposed to operate with distant signals in a major market to obtain "retransmission consent" of the originating stations. The Commission considers this a "device of permitting market forces to eliminate the unfair competition." This "retransmission consent" is a bold effort to apply Section 325(a) of the Communications Act to CATV, although the language of that section and its interpretation by the courts and Congress make it clear that

it was not intended to apply to cable systems.

I would like to concentrate on the enactment of section 325(a), the "rebroadcasting consent" provision in the Act, by the Commission, as a rule of law applicable to CATV on an "interim basis" as well as prospectively in the rulemaking proceeding.

Once this "device for permitting market forces to eliminate unfair competition" is understood, I think it will be clear that it is more accurately a device to eliminate any growth of cable television. The cure imposed would then be that no more competition could develop, except as our master antenna systems are forced by the FCC to completely change their character and try to become fully competitive broadcast stations. Who knows? That could be the purpose of all the confusion. That could be why CATV has been made so complicated. It is very difficult to regulate an entire industry when an agency only has negative authority, and the courts are willing to give it all the rope it needs in which to become hopelessly entangled in a regulatory mess. And, a mess is exactly what the Commission has made out of its CATV regulations. The Commission needs the help of

Congress to extricate it from its folly and to keep it from making the mess worse. It probably would be regarded as a blessing at the Commission if the Congress did no more than stop it from further complicating CATV. (See lengthy apology in Television Age by Commissioner Cox for Second Report and Order and Notice of Proposed Rulemaking and Notice of Inquiry, December 13, 1968, entitled, CATV: WHY IS IT SO COMPLICATED?)

The first reference I have to the idea that section 325(a) would apply to CATV systems is on page 48 of the so-called "Cox Report", a staff report prepared for the Committee on Interstate and Foreign Commerce, United States Senate (December 26, 1958), which was transmitted by the committee chairman to the FCC on December 30, 1958. It was prepared by Kenneth A. Cox, committee special counsel, and now a member of the FCC. In his report, Mr. Cox urged the Commission to consider Section 325(a) of the Act as a model if any elements are making unfair use of the property of others and to consider recommending legislation along the line of section 325(a) if the Commission lacks authority in this field. He also recommended that the Commission require special common carriers serving CATV to furnish

proof "that they have the consent of the stations whose signals they carry. 1/

Although, as will be shown, this approach was repudiated by the committee, Commissioner Cox does not give up easily. He apparently no longer believes that congressional legislation is necessary to implement this idea. (But see, Hearings before the House Subcommittee on Communications and Power on H. R. 7715, p. 116, et seq., where Commissioner Cox still thought, on May 28, 1965, that legislation was necessary to require CATV to obtain consent of originating station.)

1/ "Also, in connection with its proceedings in docket No. 12443, the Commission should give careful consideration to the statutory policy set forth in section 325 of the Communications Act as it relates to reasonable protection of property rights in broadcast program materials. If it finds that any of the elements in the country's overall television service are making unfair use of the property of others and are thereby gaining competitive advantages which will ultimately react to the injury of the public, and if it feels it presently lacks authority in this field, the Commission should seek any amendments to the act which it finds to be necessary to deal with the problem. It seems clear that as an underlying basis for the Nation's television economy, steps should be taken to assure broadcast stations of reasonable exclusivity for network programming and syndicated or feature films which they have procured for release in their respective markets -- except, of course, for the unavoidable overlap from nearby stations which are received directly by local viewers. Without such protection, the programming problems of stations in smaller markets will be rendered progressively more difficult, with resultant impairment to the service they can provide the public. While much of this necessarily falls within the province of the courts, there is a substantial area in which the Commission should act. In particular, they should give immediate attention to the advisability of requiring special common carriers serving CATV systems to furnish proof that they have the consent of the stations whose signals they carry." (p. 48, Cox Report.)

The Commission considered Commissioner Cox's report and responded on April 13, 1969, in its Inquiry Into the Impact of CATV on the Orderly Development of Television Broadcasts, in Docket No. 12443. (26 F.C.C. 403, 429.)

The Commission held that it did not have legal authority to apply section 325(a) to CATV, but expressed its intention to recommend to Congress that it extend the provisions of this section to CATV. In reaching this conclusion, the Commission stated at page 429 of the Inquiry:

"Section 325(a) of the act (which is in substance the same as the corresponding section of the Radio Act of 1927) reads as follows:

> 'No person within the jurisdiction of the United States shall knowingly utter or transmit * * * any false or frudulent signal of distress * * * nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.'
>
> "Some broadcasters argue that CATV systems are included within this provision, as 'broadcasting stations' engaged in 'rebroadcasting' (in practice, as already mentioned, it appears that CATV's seldom attempt to get such consent). They cite in support of this position a statement by Senator Dill, one of the sponsors of the Radio Act of 1927, in connection with Senate consideration of that legislation. (See Cong. Rec. 2880.) Therein, Senator Dill urged the adoption of this provision because otherwise a station would spend considerable money for a program and it could then be picked up and broadcast from other stations, 'and particularly over the wired wireless, and money charged for listening to it.' The reference to 'wired wireless' is taken as an indication that Congress had in mind wire retrans-

mission of the sort since developed by CATV systems. However, attention must also be given to the rest of Senator Dill's statement, which reads as follows:

'* * * The provision referred to does not prevent rebroadcasting, but it does require those who would rebroadcast to get permission from the original broadcaster. I do not think the construction placed upon the section by the gentleman who sent the telegram is justified. Of course he cannot rebroadcast it, but rebroadcasting is not publishing. It has a generally understood meaning, namely the reproduction by radio of the broadcasting waves. (Emphasis supplied.)

"66. We have in the past indicated our approach to a somewhat similar question, in our Report and Order on Amendment of Rebroadcasting Rules (1 R.R. (Pt. 3) 91: 1131). We were asked in that proceeding to hold that section 325(a) was meant to protect the property right of whoever had such a right in the particular program, and that therefore consent should be required to be secured not only from the station rebroadcast but from the network station originating the program, or the sponsor or advertising agency which bore the cost of producing it. We quoted Senator Dill's statement, and observed that it appeared that Congress intended to protect the property rights in the program of those having such rights -- in 1927 generally the station but now frequently others. We stated, however --

'To the extent that section 325(a) may no longer accurately reflect present conditions or effectively carry out the original intent of Congress, the amendment of the section, or its repeal insofar as it pertains to rebroadcasts, is a matter requiring legislative action.'

"67. We are of the same view today. It may well be that Congress would desire to protect the property right of a broadcaster as against CATV retransmission as well as against rebroadcasting. For this reason, as well as because of the competitive impact involved here, we

> intend to recommend to Congress that an appropriate amendment to section 325(a) be enacted, so as to extend the 'consent' requirement to CATV's. But we do not believe that we can conclude that section 325(a) in its present form includes the requirement that CATV's get the consent of the stations whose signals they carry.
>
> "68. By other broadcasters, who do not urge that section 325(a) now goes so far, we are asked to recognize the existence of a property right, and to affirm it by rule; then, it is said, we would be in a position to issue 'cease and desist orders' against any CATV system rebroadcasting a signal without permission. This course of action we do not believe appropriate. This is not the forum in which the existence or nonexistence of a private property right can be adjudicated; we note in this connection that while CATV's have been in commercial operation for nearly a decade, no serious prosecution of this claim has yet been made by any broadcaster, as far as we are aware. Until the existence of such a right is determined finally, either by judicial decision or by congressional enactment, we cannot appropriately consider a rule based on the assumption that it exists."

In the 1966 hearings before this committee, I commented on the Commission's recommendation that Congress consider whether a provision similar to section 325(a) be made applicable to CATV, and I quoted from Senator Pastore to the effect that such a provision would be "an invitation to destroy CATV," and from Congressman Springer that CATV could not be operated at all under those circumstances. For the convenience of the committee, I set forth the full text of that testimony, beginning at page 126:

"A. Consent of originating station. -- The Commission has stated:

'We believe that Congress should consider whether there should be a provision similar to section 325(a) applicable to CATV systems (i.e., whether, to what extent, and under what circumstances, CATV systems should be required to obtain the consent of the originating broadcast station for the retransmission of the signal by the CATV system. ('FCC Second Report and Order,' p. 83, par. 153(iii).)'

"This is not a new suggestion. It was advanced by the National Association of Broadcasters in hearings in 1959 before the Senate Committee on Interstate and Foreign Commerce in connection with legislation to regulate CATV systems. At that time, the FCC thought, also, that this would be a good idea. However, the Senate committee after thorough consideration recognized the proposal for what it was, namely an outright bid by broadcasters to control completely the growth and operations of CATV systems as they saw fit, and the committee refused to adopt this provision.

"When the bill (S. 2653), in 1960, as reported to the Senate, was being presented and explained for passage on the floor of the Senate, Senator John O. Pastore, the chairman of the Communications Subcommittee, which had held the hearings on the bill, a strong advocate of the bill and the Senator who was designated by the chairman of the Senate Interstate and Foreign Commerce Committee as the official spokesman for that committee in steering its passage on the floor, stated:

'When the bill was originally introduced there was a provision in the bill, as there is a provision in the Communications Act, to the effect that once these systems were licensed they would have to get the permission of the people who are originating the signal. Now, that would have been quite unfair. That would

actually be saying to these people, 'Go back and pay for something you have not been paying for up to now.' Naturally, the broadcaster who would say, 'If you are obliged to come to me to get my permission, then I have a right to charge a fee.' The broadcaster could charge $1,000 or could charge $1 million if he wanted to, depending upon whether to put the CATV system out of business or to keep the system in business.

'I will tell Senators how fair the subcommittee was. We thought that was an unreasonable provision at the time we considered it, so we made an exception. We eliminated it from the bill. We have said that insofar as CATV is concerned, we will not disturb the present practice. (Congressional Record (daily), Senate, May 17, 1960, p. 9676.)'

"To the same effect was the following exchange in the debate on S. 2653:

'Mr. Schoeppel. Question No. 2: Some of the communications to my office indicate a belief that S. 2653 would require a community antenna company to obtain permission from the television broadcaster before he could distribute the television signals. It is my understanding that no such provision appears in the bill. Will the Senator comment on this point?

'Mr. Pastore. Positively. That is one of the things I have emphasized. I will say to the Senator, that even I would not vote for passage of the bill if that were required, because I think it would be an invitation to destroy the CATV industry. I am not bent on destroying the industry. (Ibid, pp. 9682 and 9683.)' (underscoring supplied.)

"Members of this committee apparently recognized this fact when the same proposal was advanced by broadcasters in the hearings on H. R. 7715. When it was suggested in the course of the hearings on H. R. 7715 that section 325(a) should be made applicable to CATV systems, Representative Springer asked:

'You could not operate CATV at all under those circumstances, could you? (Printed hearings on H.R. 7715, p. 351.)'

"The fact that section 325(a) of the Communications Act requires a broadcaster to obtain the permission of the emitting station before its signal can be used and rebroadcast does not mean that the same provision should apply to a CATV operator. Broadcast stations are supported by advertising. Obviously, the broadcaster who is armed with the veto power over the rebroadcast of his own signal can protect his signal against his competitor, whereas CATV does not compete and does not use such signals to attract viewers to other advertising. CATV does not advertise or substitute other advertising for that of the station whose signal is received. In fact, the Commission has ordered explicitly:

'Where a signal is required to be carried / by the CATV system/ it shall be carried without material degradation in quality, and shall be carried in full except to the extent that nonduplication of higher priority signals may be required under the rules.'

"This would expressly forbid a CATV system from cutting off advertising and inserting other advertising in its stead, because this would not be a signal which is 'carried in full.' It is this association's understanding that this comports with the present and traditional practices of CATV operators. NCTA and the whole CATV industry would strongly support this principle in the Commission rules.

"This requirement would make totally unnecessary requiring the CATV operator to obtain the consent of the emitting station. Instead of allowing the broadcaster to protect his advertising, the requirement would place the broadcaster in the position of being able to control completely the CATV operations in the form of conditions precedent to the grant of his consent.

"Under the circumstances, it is understandable that the Commission considers this proposal as possibly a more effective control of CATV than nonduplication and other

rules. The Commission stated:

> 'As a general approach encompassing all stations, we are proposing to the Congress that it consider the question of extending the rebroadcast concept of section 325(a) to CATV. It may be that regulation of this nature would prove a preferable and more effective means of achieving fair recognition of the exclusivity contracts of the program marketplace.' (FCC Second Report and Order, p. 31, par. 55.)
>
> "I do not believe that this would constitute a 'preferable' approach but it would certainly 'constitute a more effective means' of controlling completely CATV growth and future operations. It would place the CATV operator at the complete mercy of the broadcaster whose primary interest is to curb what he considers to be a method of placing his audience in a position by means of a more efficient antenna to receive competing television signals. We urge you to reject this approach to the regulation of CATV in order to avoid giving the networks this power over all CATV systems in the country receiving signals carrying their programs. According to the trade press, the Columbia Broadcasting System has presently revised its contracts to reserve this power."

On March 8, 1966, just prior to the delivery of this testimony, the Commission released its Second Report and Order in which it stated in paragraph 108:

> "Finally, we shall make brief mention of the copyright matter because, despite our plain statements in paragraph 159 of the First Report, there would still appear to be some confusion on the part of some persons as to the effect of our carriage and non-duplication rules upon the pending copyright disputes. We have stated that our decision is not intended to affect in any way the pending copyright suits, involving as they do matters entirely beyond our jurisdiction. We have

> simply taken into account the existing practices of CATV systems and the present inability of program suppliers to control the availability of their programs via CATV. Thus, the fact that we have given the local station the right to have its signal carried over the CATV system (and not duplicated for a reasonable period), affords no defense to that system in a copyright suit. The station cannot bestow broadcast or transmission rights to programming which it does not own (or as to which it has not obtained a license to do so). See Report on Rebroadcasting Rules, 1 (part 3) Pike & Fischer, R.R. 91:1133, 1134, 1137, where we stated in connection with rebroadcast rights under Section 325(a), that the section 'may no longer accurately reflect present conditions' since most programs were not owned by the originating station who could not therefore legally grant the rebroadcast permission sought. In short, if the copyright suits are decided adversely to the CATV industry, we may, as stated in the First Report, have to revise our rules. We have acted now, in light of the present copyright situation, which would appear likely to obtain for some substantial period of time, and without the slightest intent of affecting the determination to be made in the pending suits." (underscoring supplied)

Two and one-half years later the Commission had abandoned its deference towards copyright, Chairman Hyde, in his press conference on the December 13, 1968 Notice, indicated that the full intention of the Commission was to require CATV to pay copyright. I quote from that press conference:

> A. "I believe that the action which the Commission is proposing here will direct attention to the major obstacle in the development of CATV. I believe this problem of how to set up the cable service in competition with the over-the-air service under conditions of fairness has been the main obstacle. I think the action we are taking here will lead to a resolution of that problem

Q. "Even without a resolution of the copyright problem?

A. "What we are doing here will in effect put the CATV in the market place for his programs if a way isn't found to do this through copyright. I am assuming, of course, that our proposal is approved after rulemaking. We would require as a proposed rule that a CATV obtain the consent of the program originators for the retransmission of his programs. This would be similar to Section 325 of the Act, although not Section 325 as such. He doesn't get into the top 100 markets now. Our rule precludes it unless he can show that operating outside the 325 and outside of copyright he will not -- his operation will be in the public interest. We haven't found any such operation to be. Rather it has been our opinion that for them to bring distant city signals in without getting rights from the program sources to compete with TV stations who must get rights from program sources would be unfair and not in the public interest.

Q. "Now he has got to get an OK if he's within 35 miles from the people who are originating programs live - in these big cities. What makes it any more reasonable to believe he is going to get an OK under those provisions?

A. "Well sir, the problem will be his.

Q. "Last spring, the Supreme Court ruled that normally CATV operators don't have to pay copyright fees for programs they retransmit. In this case what you are saying is that if a man set up a system - say in Washington and wants to get some different program materials from a station in New York City - in order to do this he has to ask the New York City stations and presumably that New York City station would demand a copyright fee.

A. "Yes.

Q. "So, in other words, you are saying if you want to get the material, it is up to you how to get it.

A. "Yes. What we are saying is that you get into the program market just the same as must the TV operator.

Q. "You also say that this is going to mean increased growth.

A. "Yes it does. It has already been developed here by the questions that have been asked that CATV is not operating in the first 100 markets as a distributor in the sense of bringing distant city signals to the big markets. There are CATV operations which improve the local signal, etc. and there can be any number of those - but as of now, there are no significant CATV operators bringing foreign or distant city signals to the cities in the first 100 markets. Such hearings as we have completed - well, only one - has not made a case that would justify the introduction of them under present conditions - so what we are proposing here is a rule which hopefully will make it possible for CATV to expand into the top 100 markets under conditions where their operations will be comparable to the conditions of television. In other words, they will both be getting their programs from the program market and instead of - let's say - barring the entry of CATV because they are not in the program market - we are suggesting they get into the program market. /NOTE: See Susquehanna Broadcasting Co., et al., 7 F.C.C. 2d, 579, 582 (1967), where distant signals were allowed in York, Lancaster and Lebanon, the 33rd market. It is our understanding that some 271 systems receive and distribute distant signals in the first 100 markets. We will supply a list of such systems, if desired./

Q. "We still would have to worry about the nonduplication problems, isn't that right?

A. "Nonduplication and carriage will still prevail.

Q. "And we still have to carry local programs - so essentially what you're telling us is to superimpose the new rules on to the old rules?

A. "We have superimposed the new rules on but I don't want my answer to be indicated as meaning it's entirely addition. In some sense we have made a substitution, not a mere addition. We do substitute this retransmission for the hearing process."

In the magazine, Television Age, Commissioner Cox confirms this intention. It is my opinion that the Commission knows CATV cannot get program-by-program clearance, as the Commission specifically requires and, therefore, the CATV industry is solidly frozen. It seems to me that this industry and the Congress is entitled to a short, frank, concise and open statement to that effect from the Commission, instead of the shoddy device of a discredited "consent to retransmit" interim procedure to accomplish the same result.

There is just one more point I would like to add on this subject. The Supreme Court found, in the Southwestern Cable case, giving the Commission jurisdiction over CATV, that "CATV systems do not in fact broadcast or rebroadcast." In doing so, the Court relied on the Commissions findings concerning section 325(a), as set forth above. It is, therefore, quite obvious that the Court had no idea that the Commission was going to use its new found authority to reverse what the Court could well have considered long-standing administrative interpretation having the force and effect of law. I merely raise the

point that the consideration of the applicability of this section to CATV by the Congress , its failure to change it and reliance on it by the Court may well foreclose the Commission from changing its mind on the law. We certainly hope the Congress will take action to foreclose controversy on the point in the future.

To summarize:

1. Commissioner Cox recommended consideration of section 325(a) ten years ago to the Senate Commerce Committee and the Commission.

2. The FCC shortly afterwards agreed and recommended legislation to apply section 325(a) to CATV.

3. The Senate Committee refused to accept these recommendations on the ground that it would be an "invitation to destroy CATV."

4. In 1966, in its Second Report and Order on CATV, the Commission again recommended the 325(a) approach, but it is significant that when the Commission submitted its proposed legislation to Congress the section 325(a) provision was omitted. This committee ignored the recommendation.

5. In its Second Report and Order, in 1966, the Commission admitted that 325(a) was unworkable because the

stations probably could not give consent.

6. The Supreme Court, in holding CATV was not "rebroadcasting", relied on the FCC finding to that effect in 1966, as noted above.

7. With all of this history discrediting 325(a) as appropriate for CATV, the Commission not only proposed this "invitation to destroy CATV", but made it effective as an "interim procedure" or as one Commissioner characterized it a "sensible arrangement" - an arrangement that overlooks the requirements of law.

Little wonder that the CATV industry looks upon the Commission as its enemy.

I would next like to turn to the attitude of the FCC towards cable television, which has been most disturbing to me. We believe that the Commission has still not exposed itself in person to an en banc factfinding hearing. It is true, they held a little quickie on February 3 and 4, 1969, but because of the large number of people (53 witnesses in two days) who wanted to be heard, the Chairman held questioning of witnesses to a minimum,which effectively prevented the Commissioners from becoming involved or from learning very much about the industry -- except what a low opinion the CATV industry had of the Commission.

The Commission disparages CATV by saying that it has not originated programming which it has the technical capacity to do. Seldom mentioned is the fact that, up to now, the Commission's policy has been to prevent CATV from originating programming. This subcommittee should be aware that the Commission has foreclosed the use of frequencies in the Business Radio Service for transmission of CATV originated programming. (See, F.C.C. Docket 17824, and Community Antenna Relay Service (CARS), 11 F.C.C. 2d 709 at 731 (1968)). This has been a long-standing policy, and was even recommended by the Commission to the Congress. (See, Second Report and Order on CATV, 2 F.C.C. 2d 725 at 787 (1966)). Little wonder that the CATV system operator has been hesitant to invest large sums to originate programs, despite the urging to do so by NCTA, when he was aware that the Commission intended to prevent him from providing such a service. The Commission now erratically proposes to compel CATV to originate programs. Confusion is the order of the day.

I am told that the Commission opposed the moratorium legislation at the Office of Copyright, and that it filed a seventy-page memorandum opposing the Department of Justice supporting the application of Fortnightly for a writ of certiorari. The Commission is, no doubt, surprised that we considered these actions as an effort on the part of the Commission to prevent the highest court in the land

from issuing an authoritative ruling on the applicability of the present copyright law to CATV - in effect, taking a partisan action on behalf of one plaintiff against one defendant in an area in which the Commission has no responsibility. The Commission, I am sure, is also surprised that we regarded this effort, combined with efforts to prevent this industry from securing relief from a rash of law suits pending a legislative solution of the copyright problem, as an attempt to injure the service we render and to unlimitedly punish this industry financially, even perhaps to its destruction -- again, in an area in which it has no responsibility. The Commission has steadfastly refused to put the financial reports of television stations together with the information on the existence and growth of CATV systems in its possession into its data computer to determine the economic impact of CATV on television stations. The Commission's denial of the Philadelphia and Goshen, Indiana tests was another example of their seeming determination to avoid acquiring any meaningful data on CATV.

Perhaps the lowest point in our relations with the FCC came with its approval, in the "public interest," of an agreement between a CATV system and a broadcasting station dismissing objections to the CATV on the grounds of economic impact in consideration for a minority interest in the CATV system. Although there were some mitigating

provisions in the agreement, from our point of view, this type of hijacking of an interest in CATV by a broadcaster is inevitable under the provisions of the Commission's CATV rules adopted by the First and Second Reports and Orders. Once 325(a) is applied to CATV, the television stations would be able to take over the cable industry like candy from a baby.

The Commission's assertion of jurisdiction to regulate CATV was, in fact, an assertion of negative jurisdiction to protect broadcasting. Up to now that seems to be the extent of the Commission's regulatory philosophy of CATV. It has taken no meaningful action to fit this industry into the electronic mass communications complex, nor has it announced any plans for the "Full Development of CATV" -- only one proposal after another, and one ruling after another to restrict, harass and contain it.

III

CONSIDERATION OF CABLE TELEVISION BY THE COURTS

The authority of the Commission with respect to cable television has been before the courts on several occasions. The first instance in which a court ruled was in the so called, "Carter Mountain" case. After an evidentiary hearing, the Commission denied the application of Carter Mountain Transmission Corporation for a microwave facility on the ground that improved service to the CATV would cause the "demise" of the only local TV station in the CATV

community. The denial was without prejudice to refiling the application when the application was able to show that the CATV system would not duplicate the programs of the local TV station and would carry that station on its CATV system. On appeal, the court affirmed the Commission's action. (Carter Mountain Transmission Corp. v. F.C.C., 311 F.2d, 359 (1963)).

On April 23, 1965, the Commission issued its First Report and Order in Dockets 14895 and 15233, adopting rules requiring CATV systems using microwave facilities to carry certain "local" signals on their systems, and to protect those signals from duplication by CATV. Shortly thereafter, an action was instituted by Black Hills Video Corp. in the United States Court of Appeals for the Eighth Circuit challenging the jurisdiction of the Commission and the validity of the rules. A second action was instituted also challenging the jurisdiction of the Commission and the validity of its rules adopted in the Second Report and Order of March 8, 1966, which asserted authority to regulate all CATV systems including off-the-air as well as microwave systems. These and other cases were consolidated for hearing. At the same time these cases were pending there were two other cases pending. The first was United States, et al. v. Southwestern Cable Co., in which the United States Court of Appeals for the Ninth Circuit held the rules invalid and issued an

injunction against the Commission enforcing its cease and desist order. In the second case, Buckeye Cablevision, Inc. v. F.C.C., (387 F.2d 220 (1967)), Judge Bazelon, speaking for the court, held the rules valid. The Supreme Court granted certiorari in Southwestern and on June 10, 1968, upheld the jurisdiction of the Commission without passing on the validity of the rules.[2/] The Eighth Circuit upheld the rules in all respects shortly thereafter.[3/]

I think it is important to note here that there has been a fundamental change in the philosophy of interpreting the law of the land as it applies to the Federal Communications Commission, and the Commission's relationship to the industries and related industries it regulates. It was once thought necessary to find a grant of authority by the Congress to the Commission for its regulatory actions, and that no "plenary power' existed for the regulation of industries associated with broadcasting. (Report and Order, CATV and CATV Repeater Services, 26 F.C.C. 403 (1959)). This is no longer true. The United States Supreme Court in United States, et al v. Southwestern Cable (390 U.S. 159 (1968)), stated in granting authority

2/ United States v. Southwestern Cable Co., Inc. (390 U.S. 157 (1968)).

3/ Black Hills Video Corp.v. United States (399 F.2d 75 (8 Cir. (1968)).

to the Commission to regulate cable television that it /the Court/ may not in the "'absence of compelling evidence that such was Congress' intention . . . prohibit administrative action imperative for the achievement of an agency's ultimate purposes.'"

Since CATV was not thought of or mentioned in the Communications Act of 1934, as amended, and Section 152(a) of the Act applies it to all interstate communications by wire, the Court found that the Act applied to cable television, although not providing any regulatory scheme or standards for its application. The fact that Congress has not, during the past ten years, legislated a regulatory scheme was apparently considered, both by the Commission and the Court, a mere oversight. We, therefore, in the absence of congressional action, have a judge-made regulatory scheme for cable television in the following terms:

> "The Commission has been charged with broad responsibilities for the orderly development of an appropriate system of local television broadcasting. The signaficance of its efforts can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population. The Commission has reasonably found that the successful performance of these duties demands prompt and efficacious regulation of community antenna television systems. We have elsewhere held that we may not, 'in the absence of compelling evidence that such was Congress' intention . . . prohibit administrative action, imperative for the achievement of an agency's ultimate purposes.' Permian Basin Area Rate Cases, ___ U.S.___, ____,

> Compare National Broadcasting Co. v. United States, supra, at 219-220; American Trucking Assns. v. United States, 344 U.S. 298, 311. There is no such evidence here, and we therefore hold that the Commission's authority over 'all interstate . . . communication by wire or radio' permits the regulation of CATV systems.
>
> "There is no need here to determine in detail the limits of the Commission's authority to regulate CATV. It is enough to emphasize that the authority which we recognize today under § 152(a) is restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting. The Commission may, for these purposes, 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. § 303(r). We express no views as to the Commission's authority, if any, to regulate CATV under any other circumstances or for any other purposes." (United States et al. v. Southwestern Cable (June 10, 1968)).

Unless the Congress is willing to permit the Commission to continue to propose new authority for itself and give Congress deadlines by which it must veto such authority, it is imperative that the Congress provide in all legislation affecting the Commission that the Commission is prohibited from arrogating to itself power and authority not specifically granted to it by the Congress.

If this is not done the Congress may be faced with additional assertions of authority by the Commission with more deadline challenges to the Congress to forestall action. On these same legal principles, the Commission may extend its authority over wages and

hours, employment practices, retirement benefits, and many other subjects, including that presently claimed over copyright, which are related to broadcasting, so long as its actions are (1) not in conflict with law; (2) found by the Commission to be imperative to achieve the Commission's ultimate purposes; and (3) appropriate and unsupported protestations of public interest are made.

IV

CONCLUSIONS AND RECOMMENDATIONS

The FCC has adopted its rules based on a policy of protection of traditional broadcast facilities through an elimination of competition from other television programs. The basic propositions put forth by the Commission as the basis for this restrictive regulation of cable television are twofold:

First, the Commission claims that CATV competes unfairly with television stations because broadcasters pay copyright programming costs, and CATV does not. In June, 1968, the Fortnightly decision[4/] held CATV systems not liable for copyright payments under existing law. However, the Senate Copyright Subcommittee is presently drawing up new legislation that would impose copyright liability on

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4/ Fortnightly Corporation v. United Artists Television, Inc. (U. S. Sup. Ct., June 17, 1968)

CATV systems. We do not oppose the concept of across-the-board compulsory copyright payments and, in fact, the industry expects the passage of legislation this session. However, we do agree with the Senate Copyright Subcommittee Chairman, Senator McClellan, who expressed serious doubts over the FCC authority to require CATV systems to pay copyright via the Commission's "retransmission consent provisions" of the Commission's December 13 rulemaking.

The proposed legislation deals solely with the area of the regulation of communications within the jurisdiction of the House Commerce Committe, and we, therefore, support it. It does not attempt to encompass matters which are presently being considered by the Judiciary Committee and Senator McClellan's Copyright Subcommittee.

The second proposition used as a base for restrictive CATV regulation by the Commission is that CATV will have an adverse economic impact upon the development of UHF television and by providing the public with more program choices eventually result in the failure of existing local stations. Note that the industry considers this proposition baseless. No factual evidence indicates that CATV, in fact, <u>has</u> this alleged impact (only in one case has the Commission found the possibility of CATV adverse economic impact and here the FCC overruled a hearing examiner who held exactly the

opposite). But, the cloudy thinking of the FCC is apparent when one considers that this impact would be the same, whether we pay copyright or not. Therefore, the Commission's apparent belief that if we pay copyright all will be well does not solve the problem of impact - which really isn't a problem at all - only make-weight argument. The proposed legislation provides for safeguards to avoid, not the proposition, but the Commission's fear.

In short, H.R. 10510 deals with all of the Commission's stated problems and would give authority to the Commission to issue rules and regulations to (1) require the reception of television broadcast station signals within whose established reception area any such system is located; (2) to maintain the station's exclusivity as a program outlet against simultaneously duplicating signals from stations whose signals are distributed beyond their established reception areas; (3) to establish reasonable technical standards and reporting by CATV systems; and (4) authority to require the deletion of distant signals upon a finding that a local station was failing as a direct result of such reception and distribution of such distant signals. It would grant the Commission no other authority and would nullify regulations which do not conform with this authority. It would not

authorize application of the inequitous provision of 325(a) to CATV and would prevent the Commission from interfering with the jurisdiction of another congressional committee to formulate and recommend legislation in the copyright area.

The CATV industry has been trying for more than five years to come to peace with the Commission, and keeps telling itself that it should have confidence in the institutional function of the Commission. We thought that our industry had hit botton at the Commission in 1967, and there was no way to go but up. We underestimated the resourcefulness of the Commission. We hit a new low with the December 13, 1968 notice and the series of new rules being issued as "clarifications." We are now convinced, and I think the recital of facts I have documented here today should convince the subcommittee that the Commission should be relieved of most of the responsibility for cable television it has seized without specific congressional approval. We believe that it has forfeited the normal deference a congressional committee accords one of its agencies, and that the Congress should peremptorily revoke the FCC's jurisdiction over cable television. We believe that the total subordination of this service to broadcasting and the abandonment of the regulation of this industry by the Commission's proposed rule, made effective before adoption, to what

the Commission considers a competitive industry, is totally indefensible.

It is impossible to ask or expect this committee to adjudicate all of the complaints and grievances the CATV industry has against the Commission. This much is clear. The CATV industry has no confidence in the desire, willingness or the ability of the Federal Communications Commission, as presently constituted, to conduct a fair and impartial hearing on cable television or to regulate it in the public interest. Apparently, the feeling on the part of the Commission is equally antagonistic towards the cable television industry. It is probably too much to expect of human nature for the Commission to view dispassionately the growth of CATV. It undoubtedly regards broadcasting as its major concern and of necessity considers CATV as an interloper. We fear it always will. Under such conditions, concern for the public interest would seem to require the separation of these two antagonists and that for the public good, the regulation of cable television should be placed in more objective hands.

We, therefore, urge:

> That the Communications Act of 1934, as amended, be further amended to provide that nothing in that Act shall be understood or construed to give the Commission the jurisdiction or power to control or regulate cable television systems, and that all govern-

mental regulatory functions, except authority over microwave and spurious emissions heretofore lodged in the Commission relating to cable television systems, be transferred to the Department of Commerce, pending further hearings and determination by the Congress of a new governmental structure for the management of its telecommunications function, and that H. R. 10510 be converted to a grant of authority for the purposes therein specified to the Secretary of Commerce.

We will be glad to cooperate in submitting language to accomplish that result.

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