DAVE KINLEY

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INTERVIEWER

Liz Burke

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INTERVIEW

BURKE: This is tape is sponsored by the Hauser Foundation for oral history, which is part of The Cable Center and Museum in Denver documenting the history of cable. I'm Liz Burke, I'm the interviewer today, and Dave Kinley has a long history in cable, and we're going to take you back to some of the early years at the beginning of the FCC and then trace the development of his involvement in cable. How are you today, Dave?

KINLEY: Good. Thank you, Liz. I appreciate being here.

BURKE: Thank you so much for coming. It's a real pleasure to be able to interview you, and of course I'm familiar with some of your more recent industry contacts, the American Cable Association, which is on your shirt, and the National Cable Television Association, and we'll talk about that, but I want to talk about some of your early years in cable because I think you have some unique insights in the fact that you got involved in cable when the rules hadn't been written yet.

KINLEY: That's correct. Actually, my first involvement with cable was an interview with the chairman of the Federal Communications Commission, Dean Burch, back in 1972, and the big battles back then were all between the broadcasters and the cable operators because the only thing the cable operators had to sell was the broadcasters' signals out of market, and that was turning the carefully laid plans of the FCC on its head because the FCC back in the late '40s and early '50s had gone through a very tedious carving out of monopoly areas for broadcasters, and had just completed all of that when cable came along about five years later in the late '60s and had the capability of bringing in stations from outside the market that would upset this careful balance that the FCC had spent years in crafting. And so, in 1968 there was a very important decision that said that cable did not have to pay copyright under the then existing copyright laws. It was the TelePrompTer decision in 1968, and as a result of that, and under the auspices of the Nixon administration's, what was called the Office of Telecommunications Policy headed by a man named Clay Whitehead, what was called the Whitehead Compromise was worked out. But that compromise over the use of distant signals and how many distant signals could be brought into an existing television market had to be implemented by the FCC and its regulations. And one other thing that happened prior to that, the FCC in 1968, about the same time as the TelePrompTer decision, had in effect decided at the behest of the broadcasters that distant signals from other markets could not be imported into a local television market with an administrative hearing with an FCC judge at the FCC, and those administrative hearings typically took three to four years. So that was really called the deep freeze on the development of cable when the FCC announced that decision in 1968. And the way the freeze was broken was a compromise that was crafted by the Nixon Whitehouse, and then had to be implemented by the FCC called distant signal importation rules, and in different sized markets, the cable operator could basically import more signals the larger the market that the cable operator was located in and it was called the 3-2-1 rule. If you were in a large market, you could bring in three distant signals; if you were in a medium sized market, you could bring in two; if you were in a small television market, you as the cable operator could only bring in one distant signal. Those rules had just been put on the books shortly before I went to the FCC, and the reason that Dean Burch asked me to come to the FCC was that he candidly did not trust the people who had been involved in the writing of the rules to administer them properly. He felt they had become particularly biased, and had been too deeply involved on behalf of the cable industry so he wanted some new blood. So I came to the FCC in early '73, sort of as chief of the Cable Bureau until 1976. During that period, the Cable Bureau went from about 30 employees to about 120 employees, and we were administering a new process called the certification process in which cable operators had to apply for the right to bring in these distant signals and be certified under the existing rules, that they were in compliance with all of those rules. So my major task starting in '73 was to staff the Bureau up to administer that process so that we didn't create a log jam for the industry's development because they couldn't launch these new signals unless they had certification from the FCC. So we had a serious problem of there being a potential bottleneck at that point, a regulatory bottleneck on the development of the industry, even though the compromise had been worked out and everybody had signed off on it. So that was one task, and the other task, which became more important in '75 and '76 was to work out a lot of the rough edges on those rules because it was very clear that some of the things that were added by the FCC in its implementation really were putting a stranglehold on the development of the cable industry, and there were anomalies in the rules that didn't make sense as the industry started to develop.

BURKE: So in those years, what was the industry like?

KINLEY: The industry was very small. I can remember in battles over the early pay television rules in 1974 that the total number of pay television subscribers in the entire country was 40,000 at that point, and one of the issues that we wrestled with was why are the broadcasters and the theater owners so upset over a group of systems that only has 40,000 subscribers nationwide, and yet they were very concerned about the threat to their ultimate viability. So it was a very small, highly fragmented industry, yet was not trusted on Capital Hill. In particular there had been situations in which the National Cable Television Association leadership had sent signals to Capital Hill on certain legislative initiatives that said they would support and then turned around and reneged on. So the industry had a bit of a black eye at that point in the early '70s because they had reneged on what Capital Hill perceived to be agreements that they were willing to go along with, and legislation that they would then turn around and back off on.

BURKE: What was your major contact with cable industry at that time?

KINLEY: When I was chief of the Cable Bureau, most of the contacts outside the Commission itself, which then was a seven person commission, it's now five person, so it was a little bit more complicated dealing with seven commissioners' offices, but outside of the Commission my primary contacts were with the National Cable Television Association, which was then headed by a man named David Foster and later by a man by the name of Schmidt, who has since gone into the wireless industry, and Tom Wheeler, who later went over to the cellular telephone industry association, and then just a whole boatload of Washington attorneys who represented these smaller companies.

BURKE: And when you started doing this you'd already been on Capital Hill. How did you get into this particular path? What was your route into the FCC?

KINLEY: Well, that was really through personal acquaintances, a man named Chuck Lichtenstein, who at that point was Dean Burch's legal assistant, was really Dean Burch's right-hand man on major policy issues at the Commission, and I had worked with Chuck in the early days of the Nixon administration at what was then the Department of Health Education and welfare. We were both on the staff of Robert Finch, and got to know Chuck quite well. He went to the FCC; I went on to work at the Justice Department, and later the FBI. And when the nomination of Patrick Gray, whom I was working for at the FBI, when that nomination fell apart because of what came out about his role in Watergate, I was at that point ready to go back to California and resume the practice of law. I was, frankly, very disillusioned because of the Watergate experience. I was not involved in it, but I was involved in the investigation of it at the FBI, and was actually involved in the investigation of many people that I had worked with in the Nixon campaign in 1968, and frankly had no use for them and what they had tried to do through the Watergate episode. But, Chuck called me at one point and said I'd like you to come over and interview Dean Burch because we're looking for some new faces in this little bureau called the Cable Television Bureau, which at that point wasn't even a bureau, it was a task force of about 20 people. It happens that I had just had back surgery and was not able to move and travel back to California to start interviewing for potential legal jobs in California. But for that back surgery I probably never would have gone into cable because I literally couldn't leave Washington at that point, so I said, well, what the heck, I'll go over and talk to this guy Dean Burch. Dean was fairly well connected. He had been Barry Goldwater's campaign chairman in 1964, had headed the Republication National Committee, and was fairly tightly wired into the Nixon administration because of those contacts. So I went for the interview with Dean, and I was very impressed with Dean Burch. He was a very quick, extraordinarily capable guy, somewhat opinionated, but you always knew where he stood. I developed an immediate respect for him in that interview, and ended up going to work for him in this new capacity. So that's how that happened.

BURKE: Well, that's an interesting story, and a very auspicious beginning in your cable career, and you've stayed in cable throughout your career. You've made several changes, but I would have to say from my perspective that was really the incubation of cable. It had been in existence, but there wasn't enough activity to really get the regulators involved until that time when you were actually on the FCC staff and they grew to have the certification process.

KINLEY: You remember the certification process?

BURKE: I do, I do, because we had to apply for some things when I was dealing with our family business, and so at that point cable kind of became regulated. Why don't we start there and talk about your experience in cable regulation because you really saw it at a time when it began to be regulated.

KINLEY: I think, looking back on it, typical of the FCC and government action in general it was overreaction. It was more regulation than you really had to have for what you were trying to accomplish, but it was because of the pressure from the local broadcasters who wanted very much to protect their markets from what they saw as erosion of audience share, both from the importation of distant signals and the launching of pay television channels. Now a lot of that changed, of course, when the first satellite went up in 1975 because then there was the possibility of the launching of cable only channels, which is what the FCC frankly wanted to see. With the promise of cable was the development of diverse programming, and cable achieved that beyond anyone's wildest dreams to the point that the government had to step back in and say no, no, you've gone too far, this has been too successful, now we have to make this programming available to your competitors, the DBS operators, who had never developed any programming on their own.

BURKE: But that didn't happen for quite some time.

KINLEY: That didn't happen until 20 years later.

BURKE: So specifically in 1975 you were there at the FCC when that tremendous growth occurred and the new programming became available. What did that do to your agency?

KINLEY: It meant that the issues shifted more toward programming issues and away from the issues of distant signal importation. Distant signals became less and less important. They were still fairly important at that point, but as that satellite programming became available there was less regulatory reason to deal with cable regulation the way it was structured in 1972 because that was all structured around the use of these distant signals.

BURKE: And now suddenly you had a whole new landscape.

KINLEY: Whole new landscape, whole range of products to sell that were not governed in any way by the existing rules of the FCC. We're getting ahead of ourselves, but that led to much later developments. But in '75 and '76 one of the things that was holding back the development of satellite was, and this was something that personally I disagreed with and ultimately we got it changed, but at that point the agency was licensing receive-only earth stations, and so you, as a cable operator, could not activate an earth station to receive this programming until you got a license from the FCC, and that created a huge backlog because everybody wanted to get these earth stations up and running. I remember the pressure I was under to sign off, in 1975, on the first earth station license because this company wanted to be able to say they were the first so that, as I remember, so that they could bring in the Thrilla from Manila with Frasier and Ali. But that gradually changed because it just didn't make any sense to have those dishes required to be licensed.

BURKE: So what happened to that requirement?

KINLEY: About two years later it went away. It was just too much paperwork.

BURKE: Paperwork, and of course from the operators' perspective that was just a drop in the bucket. There was a tremendous amount of paperwork in what was supposedly quite an unregulated industry. Was there ever any attempts at your bureau to help the cable operators?

KINLEY: Well, yes, what we attempted to do primarily from '74 to when I left in '76 was to lift the burden of a lot of those regulations, but again, it was all centered on, mostly centered on the anomalies in syndicated exclusivity, network exclusivity, and the use of these distant signals that sounded great in theory in 1971 when you went out and tried to apply it to different markets. I didn't quite work, and so it became evident that we had to roll some of that back. At every step of the way, if ever there was a proposed change, or a change that I was proposing to the Commission, the NAB and the broadcasters were all over us because they would start shouting that that was a change in that original compromise from 1971 and that we were violating the spirit of that compromise.

BURKE: Well, those certainly had to be very interesting years because it seems in many ways the industry was ahead of the regulations.

KINLEY: Oh, no question. That's fairly typical, particularly in technology that are technology-driven industries, that the technology moves ahead quickly and the regulation is constantly trying to catch up with it. You see that today in internet and computers, same thing.

BURKE: Given the path your career took, I'm sure you've got a lot of insights from being on Capital Hill.

KINLEY: Yeah. Government has a hard time... when you're dealing with something that is changing rapidly, government has a very difficult time dealing with it and keeping up with it. I think that the government, just personally, my personal philosophy having been through and trying to implement schemes of regulation in a technology-driven business, my personal feeling is you're usually better off, if you can't figure out what the right answer is, you're better off not giving an answer and just letting it evolve because if you can't come up with what is clearly a right answer in a regulation that probably indicates that things are moving too quickly for you from the government perspective, and that you really ought to let the marketplace determine what's happening, at least at that stage. Now there may be things that happen in the marketplace, such as the now proposed combination of DirecTV and Echo Star into a single entity where the government may need to step in and do something, but if you can't figure out what the right answer is, if it's not real clear what the right answer is, you're probably better off not implementing any answer at that point, and the tendency of government then is to say, well, there is no right answer. One side says, well, here's the right answer, and the other side says, well, no, here's the right answer, and you end up with a compromise somewhere in the middle, so you get a half right answer, and the half right answer is worse than no answer at all.

BURKE: So were there many compromises during that transition?

KINLEY: Oh, there were constant compromises like that, yes, constantly.

BURKE: Did you go through a formal or informal process? How did you get that result?

KINLEY: Well, it always had to end up in a formal process, but there was a lot of behind the scenes negotiation, particularly on the pay television rules. I spent endless hours in the chairman's office in meetings with lobbyists about how to craft a compromise over the use of... then it was the use of movies of a different age, what the different windows were for movies on pay television.

BURKE: Well, for people who don't understand that process, let's talk a little bit about the process of you get input, what would you do with it, and how would the rules be crafted?

KINLEY: Of course it's different now because they have a lot different, and I think rightly so, they have a lot different rules now that govern who can say what to whom at the agency, and when they can say it and what they have to disclose about it. Back then it was a real free-for-all. Nobody had to disclose anything about any meetings. So you had a lot of informal meetings behind the scenes of lobbyists, usually in the chairman's office, and would try to work out what they could live with or how they would justify certain things, and do a lot of what-ifs, and then if you reached some kind of informal agreement then you'd have to usually go through a formal rule-making process, and that was always interesting because that generally meant that a lot of different players jumped in to the public rule-making process and you got different pressures that then put pressure on keeping the original deal together. So you were always in this situation in which someone comes in and makes a really sound point about this proposal that's been worked out behind the scenes, and you go back to the chairman and you say, you know, they've got a real point here, we need to think about that, and the first thing that happens is the parties to the original compromise say, wait a minute, you're breaking apart our compromise now. And that went on an awful lot.

BURKE: Did you and your staff actually write the rules?

KINLEY: Yes.

BURKE: And then they would be put up for comment, and then the public comment period would go on until it was approved.

KINLEY: And then we'd have to write up a Report & Order which was usually, oh, it could be anywhere from two to thousands of pages because you have to satisfy certain requirements under the Administrative Procedures Act that require the agency to take into account the public comment, and you do that through the written discussion of the points that have been filed by the public.

BURKE: How much of your time did that take up, just getting through the rule-making?

KINLEY: Toward the end of my term at the FCC that was taking up probably 75% of my time, and by that time the other 25% of my time was being taken up with legislative considerations because copyright was a hot issue on Capital Hill at that point, and the whole issue of the agency's jurisdictional basis towards regulation... one other thing that maybe people today forget about is prior to 1984, back in this period of the '70s, there was no legislation anywhere that used the words cable television. There was no legislation that gave the FCC authority to deal with cable television. It was all under a jurisdiction called "ancillary to broadcasting." It was ancillary to the Commission's jurisdiction to deal with broadcasting issues.

BURKE: Sounds pretty open.

KINLEY: Well, but it was somewhat limited, too, because we always had to worry about that because we were constantly subject to challenge. In fact, one case went all the way to the Supreme Court on the question of the local origination requirements that the FCC had come out with, and on a concurring opinion in a 4-4-1 vote, in which Chief Justice Burger wrote a concurring opinion, he concurred on very narrow grounds with the four that said the FCC had jurisdiction to issue these rules on local origination all tied to its regulation of broadcast and use of broadcast signals.

BURKE: That was a very big deal, too.

KINLEY: That was the Midwest Video decision, it was a huge decision.

BURKE: That was a huge deal.

KINLEY: But what it did was it put the FCC, and frankly the industry, on notice that because Burger himself said he was very troubled by this case and he was willing to go along with it very reluctantly, and so it put everybody on notice that something had to be done in clarifying the jurisdiction and the legislative basis for the Commission's dealing with the cable television industry. And the industry wanted it, too because by that time it was no longer a small, dispersed, rural-based, fragmented business. It had started to move into the top 50 markets in a big way with the satellite programming.

BURKE: I was going to ask you about how the lobby groups were working at this time, and you have mentioned the NCTA was a lobbyist group, were there other groups that were active?

KINLEY: Yes, a new one started in 1976 called the Community Antenna Television Association, CATA, later called Cata, and later changed its name to the Cable Telecommunications Association but kept the same acronym, CATA. It started in approximately 1976 because they felt... there was a group of smaller, more rurally-based cable operators that broke with NCTA on the copyright question. NCTA ultimately supported copyright legislation because it gave cable operators a compulsory license, which the big operators felt was extremely important because even though that meant they'd have to pay, they got a compulsory license. They couldn't be denied the use of these broadcast signals as long as they paid the set fees, which would be set by the copyright tribunal. They wouldn't be just open to public negotiation.

BURKE: Now that was a different decision.

KINLEY: That was a different decision, and that was legislation that was passed in 1976, but in the course of that, many cable operators felt that they were having to pay unfairly. They resisted strenuously the idea that they should have to pay copyright fees.

BURKE: Now were those the days of the long form and the short form, or did that come later?

KINLEY: That came later.

BURKE: So this is the early copyright issues?

KINLEY: This is the early copyright issue, and the group broke away from NCTA and formed Community Antenna Television Association. In fact, the fellow who later became extremely closely identified with CATA, Steve Effros, worked for me at the Cable Television Bureau at the FCC.

BURKE: So that was a familiar face when he came knocking at your door.

KINLEY: Oh, yes, very much so. He'd been very much involved in the drafting of really the second, what was called the reconsideration of the '72 rules that came out in 1974, that was really his baby. So he was very familiar with the FCC requirements, but he, in about '77 or '78 left the bureau went into private practice and then ultimately joined CATA and became its spokesperson.

BURKE: And hew as there for many years.

KINLEY: He was there until about two or three years when CATA finally folded into NCTA.

BURKE: So he was a familiar face while you were there and ongoing.

KINLEY: Right. But CATA was formed and basically you had those two groups, NTCA and representing most of the industry, and CATA presenting a smaller, more rurally-based group of operators.

BURKE: You moved on FCC. What we circumstances where you moved on?

KINLEY: In 1976 it seemed pretty clear to me that Gerald Ford was not going to win re-election against Jimmy Carter, and I didn't want to be among thousand of political appointees out on the street out on the street looking for work after the November election. We had established a pretty decent record at the FCC of moving quickly. The Bureau had a good reputation within the Commission and outside the Commission as a group of, frankly, young rebels that could really accomplish things. We were sort of viewed as the hot hand. I decided, as one person put it, I decided to quit while I was on the upside and not wait for the pendulum to swing back the other way. So announced my resignation not knowing what I was going to do because I felt strongly that I should not negotiate terms of employment with an outside entity while I was still at the Commission. So I announced my intention to resign so that I could start discussions with law firms and other companies, and ultimately...

BURKE: So was that a tough decision for you?

KINLEY: That was a very tough decision because I loved the people I was working with, but a tougher decision came later, shortly after that, and that was to turn down Dean Burch because Dean Burch at that point had gone into private practice in Washington and really twisted my arm about coming to work with him. The other one who twisted my arm was Monty Rifkin at what was then American Television and Communications Corporation, and I'd always been tempted to find out what the business world was like, and so I made a very tough decision, which was to go into the business side by going out to Denver and working with Monty Rifkin at ATC rather than going with a Washington D.C. communications law firm.

BURKE: So real briefly, was it what you expected or was it a whole new world?

KINLEY: I didn't know what to expect. It was a whole new world for me.

BURKE: So you packed up and moved to Denver.

KINLEY: Yes.

BURKE: What were those years like? Those were busy years in cable.

KINLEY: Yes, because it was the beginning of the opening of the major markets, and so none of these markets had franchises so that's what led to the huge franchising wars of the late '70s and early '80s, and from about... by coming to ATC in 1976, although Monty didn't have this in mind, what ended up happening was that many of these elected officials in cities like Rochester, NY, Syracuse, Jacksonville, Little Rock, I knew all of them because they at one time had come into the FCC or I had been at meetings of various municipal associations representing the Cable Bureau and the FCC. So my name was known out there. I knew many of these people on a first name basis, which turned out to be helpful in getting ATC involved in going after these new markets and doing some franchise hunting.

BURKE: What was the growth like in the industry in those days?

KINLEY: It was huge. It was huge.

BURKE: We're talking after Thrilla from Manila, and people sort of discovered cable. Were they clamoring for it?

KINLEY: Yeah, we used to talk about the truck chasers. The minute they knew cable was coming down their street they'd go chase the truck and try to get signed up even before you had cable there in the neighborhood because there was such a demand for HBO and some of the other new satellite channels that were coming on at that point. It opened up a whole new world because even in the markets like Rochester, NY, Syracuse, NY, Jacksonville, FL were in the markets between 25 and 50, huge markets – Phoenix, Houston, Dallas – huge markets, but not as large as New York or Philadelphia or Los Angeles, but huge demand for this type of programming there when there hadn't been a demand for distant signals. Nobody in Houston had really cared about signals coming in from Dallas because they all had the same programming anyway, but this was new programming. This was brand new programming. You couldn't get off-the-air from a television station.

BURKE: So this was very exciting.

KINLEY: Hugely exciting. But it also was extremely competitive. The franchising wars were, there were some ugly episodes.

BURKE: Of course that was mostly local.

KINLEY: It was all local politics, yeah.

BURKE: Because you were dealing with each individual entity and cutting deals.

KINLEY: Yep, cutting deals. You tended to see the same consultants who worked for the cities in evaluating proposals, but every situation was different because it was all local politics. There was a lot of movement by individual companies to rent citizens and make them local investors in the franchise and give them stock in return for their political connections, and a lot of unseemly stuff went on behind the scenes.

BURKE: So this was sort of another phase of the Wild West years.

KINLEY: That was really wild. The Wild West entrepreneurs try to come in and conquer the big city and instead they get their heads handed to them by the local politicians.

BURKE: So now in addition to the politics going back to the local level and getting the franchises and competitive bidding, you also had these entrepreneurs looking for funding. What was that scene like?

KINLEY: I got into that by 1983 when I went with a company called Northland Communications that was founded by someone whom I had hired at the FCC as the chief economist of the Bureau, and his plan was to seek funding through the raising of limited partnership money. I spent time from 1983 to 1986 doing a lot of presentations before investor groups for these public limited partnerships, and we raised a lot of money through that and built the company up from nothing to 50,000 subscribers, and today that company is about 250,000 subscribers mostly on those public limited partnerships.

BURKE: But that was actually your next job.

KINLEY: Right.

BURKE: So you didn't get into the funding until you left ATC.

KINLEY: Right. I left ATC and went to Viacom where I worked again on major market franchises for Viacom, and then went into the smaller start-up company which we got into the limited partnership funding.

BURKE: I think there were some more issues that you got to deal with when you were back at ATC because the development of cable meant with your expertise you probably were the person that had to deal with the pole attachment legislation and some of the programming issues. Now, how did you deal with those issues?

KINLEY: Well, the pole attachment legislation actually came about in a very interesting way. There is a very interesting story about that. The FCC for years, even before my days there, had wrestled with what to do about pole attachment rates, the rates that cable operators paid to attach to the utility poles. You recall that I mentioned that the jurisdictional basis for the Commission's regulations on cable was very tenuous because it was all based on it being ancillary to their statutory duty to regulate broadcasting. Well, that ancillary jurisdiction got stretched pretty thin when you started talking about regulating rates between the telephone company and the cable operator over this telephone pole. What did that have to do with the use of broadcast signals? So the Commission really didn't want to get into that but we kept trying to figure out a way to do it and it was difficult because we were subject to jurisdictional challenge and we were pretty convinced we would lose even if we tried to do something, which the cable industry desperately wanted the FCC to do. So, after I left the FCC and went to ATC, we had an episode happen in North Carolina in which ATC was in a dispute over pole attachment rates where the local telephone company, then called United Telephone based in Kansas City, Missouri, raised its rates from, I think it was something like a buck a pole a year to five dollars a year, and that was an outrage we felt. And so my advice to Monty Rifkin was don't pay it and let them make the next move. Well, what United Telephone ended up doing was sending out crews to start cutting down the cable in this town in North Carolina.

BURKE: What a mess!

KINLEY: And we made sure we had photographers there who took pictures of these construction crews with United Telephone shirts on cutting our cable off the pole.

BURKE: There was a reason why telephone and cable companies didn't get along in those days.

KINLEY: Oh yeah, that had some historical roots because telephone really wanted to be in this business back in the '60s and then they were thrown out of it by the cross-ownership rules in 1970 and couldn't get into it, and even had to dispose of some of their properties. So there was some feeling among the telephone companies that it was their pole and they could charge whatever they wanted to for the right to attach to that pole, and frankly they were right. There was nothing on the books that said they had to limit their charges for space on the pole.

BURKE: And not only that, it wasn't clear who had jurisdiction.

KINLEY: It wasn't clear that anybody had jurisdiction over that. Maybe state PUCs, but that depended on the individual state, and of course the cable industry didn't want to see that jurisdiction go to each individual state because they had no experience on dealing with the state PUCs. So it went to Congress and the industry succeeded in getting some legislation, and that came about in a strange way because a man named Tim Wirth, who had just been elected to Congress in 1976, I had actually worked with Tim at the department of HEW in 1969 and 1970, and Tim was on the staff as a White House fellow of the secretary of HEW, and I was on that same staff and I got to know Tim. Well, when Tim was elected to Congress he was assigned to the House telecommunications sub-committee, and so shortly after I went to work at ATC I suggested to Monty Rifkin that I go see Tim and talk with him about this pole attachment problem. This was right after United Telephone had cut down our wires and we'd taken photos of that. So I said, I think we've got a perfect case here to not only go to the FCC, but particularly take this to Capital Hill. Let me go talk to Tim Wirth about this. So I went to Capital Hill and I had an appointment, I went to Tim's office and he was on the floor of the House, and his office said we'll try to get word to his legislative assistant to get word to Tim and have him come out. His legislative assistant who came off the floor at that point was Robert Sachs, who today is the president of the National Cable Television Association. So Robert was a very young legal assistant to Tim Wirth in 1977 who came off the floor and said what is it that you want to see Tim about? So I tried to explain to him in 30 seconds what the pole attachment issue was, and he said Tim can't come right now but maybe we can set up another meeting. So what that led to was about three or four weeks later, again, continuing to chase Tim, we got a meeting in Denver with Tim and several of the CEOs and myself of the cable companies that were headquartered in Denver, and we laid out this problem for him and showed him the photos of United cutting the wires and cutting out service for these subscribers. By the way, what happened there was that ATC paid the money under protest to get the service restored and insisted that it be segregated in a separate fund, which it was, until this could be worked out.

BURKE: And that was just a compromise.

KINLEY: That was just a compromise because we had to get service restored in that North Carolina town. So Tim decided he would take this on and he was going to ask that there be a hearing, and the chairman of the committee at that point was Lionel Van Deerlin from San Diego, who was a fairly friendly guy for cable because Cox was very big in San Diego at that point. So Tim prevailed on Mr. Van Deerlin to hold a hearing, and that was the best thing that could have happened for us in 1976 because as luck would have it, United Cable – we were pushing for this behind the scenes – but United Cable was invited to attend that same hearing and testify on behalf of the telephone companies to give their side of why they had snipped the wires. I was asked to testify to give the cable operators' point of view about why they shouldn't have snipped the wires, and to show the photographs. So a man who's name I cannot recall now, but he was a big burly guy, and very pompous, and he was the general counsel of United Telephone from Kansas City, and he came to this hearing. We couldn't have scripted his comments any better because he ended up alienating everybody on that House panel by his attitude, and his attitude as he explained at that point was these are our poles, we can charge anything we decide to, nobody has the right to regulate us on this, and it doesn't matter what the impact on the cable industry is because they're our poles. Why don't they go put up their own poles? Those were practically his... That was the synthesis of his position.

BURKE: So that sort of set the stage.

KINLEY: That set the stage and within probably, oh, I think it was one or two sessions more of Congress, we had the 1978 Pole Attachment Act, which gave... and this was before any other legislation had ever been passed to give the FCC jurisdiction over anything dealing with cable, so this was before the '84 Act. In 1978, the Congress, largely because going back to that hearing and that one episode of United clipping those wires, which we had the photos of, they passed the act giving the FCC legal authority to regulate pole attachment rates for the first time.

BURKE: So you were literally there when you saw that happen.

KINLEY: I still have, in my box of mementos, a piece of a pole that Tom Wheeler set out to those of us who were involved in that pole attachment legislation. It was a little slice of the pole with the plaque on it.

BURKE: Well, it was parallel and competitive in those days between cable and telephone, and of course telephone had been banned from the cable industry.

KINLEY: Right, right.

BURKE: So that was very interesting, and that ban wasn't lifted for many years. So cable continued to develop, and it seems at this point at a huge pace. You'd overcome the pole attachment issue. What were some of the other things you had to deal with?

KINLEY: Um, well, by this time the certification process at the FCC had pretty well gone away. They had retrenched on that. The next big issue really was rate regulation at the local level because under the existing local franchises for the most part they gave authority to the local city council or some other local body the right to regulate the rates charged by the cable operator. During the franchise wars there were a lot of promises made about what rates would be and how long they would be left in place. Frankly, there were a lot of over promises made, and the industry got itself in a lot of serious trouble because they felt as long as they got the franchise, it didn't matter what they promised. Somehow they'd get out of it later on. This meant that there were some serious clashes with local authorities when they tried to make the cable operator stick to his promises on keeping the rates in place.

BURKE: Among other things.

KINLEY: Among other things, but a lot of it was rate regulation. In addition, I think the cable industry, or individual cable companies underestimated what it was going to cost to wire these major cities under the franchises, and so they had used a certain set of numbers and those numbers were now much higher to build the system. So the lower numbers supported a rate freeze for, say, three years, but the higher numbers meant that it wasn't going to work.

BURKE: So, now, why the discrepancy?

KINLEY: Well, because it cost more to build the system than the cable operator originally thought it would when he made the proposal that got him the franchise that said here are my rates, I'll only charge eight bucks and I'll leave that in place for three years after I activate the system. Well, if the system costs twice as much to build as you thought it was going to cost, that put pressure on your promise to keep those rates in place for three years because you'd had to spend twice as much investment and you weren't going to be able to recoup it.

BURKE: Not to mention building out systems and upgrading them because at this point competition was becoming more of a factor.

KINLEY: You were starting to see some competition at that point, not a lot, but some. So the industry went to Capital Hill, and candidly with some horror stories on rate regulation where cities had just flat out refused. And the cities on the other side said, yeah, but some of them promised and they broke their promises. It was a lot of ill will between cable operators and local franchising authorities over rate regulation issues that grew out of the franchising wars, and the industry succeeded in essentially being deregulated from rate regulation, having local rate regulation pre-empted.

BURKE: And that was done at the federal level.

KINLEY: That was done at the federal level in the 1984 Act. There were some tradeoffs but that was the big item. The biggest victory for the cities in that statute was the clarification on requirements for public education and government access channel requirements, that those were authorized at the federal level, and that the cities were guaranteed a 5% franchise fee, which they had not been guaranteed before this. The question of how much of a fee they could charge was still very much up in the air at that point. So the tradeoff was the cable operators said we'll give the cities certainty on local origination studios and PEG access channels and a 5% franchise fee. In return, they don't regulate our rates. So that's how the '84 Act came about.

BURKE: So that was '84. I think we skipped over some things. We didn't talk much about your time at Viacom. Was that similar or different?

KINLEY: No, it was... by that time I was spending all of my time on securing due franchises for the company. I built... Viacom at that point had essentially no franchising effort ongoing, and they brought me in to really kick-start it, and I set up five field offices and got franchise applications into about 20 communities and hired about 40 people over the space of about 12 months.

BURKE: You must have been traveling a lot.

KINLEY: I was traveling all the time, yeah.

BURKE: That's a big job. So then in order to do that you moved from Denver...

KINLEY: I moved from Denver to Pleasant, California where Viacom was headquartered and worked out of there.

BURKE: And you did that for awhile until you went up to Seattle.

KINLEY: That's when I went up to the company that was basing its financing on the raising of limited partnership money.

BURKE: So you moved from the franchising wars into the funding wars.

KINLEY: Into the funding wars, right, because now that everybody had gotten these franchises...

BURKE: Now they had to build them.

KINLEY: They had to build them, they had to raise the capital to do it. Now that wasn't what Northland did. What we were doing was acquiring smaller cable systems that had not been upgraded from typical 12 to 21 channel capacity because at the same time, as we talked about before, there was a lot of programming that was now available, but you had to have the channel capacity and if your system only had 12 channels, the capacity to carry only 12 channels, it didn't matter how many satellite programs were available. So a lot of these smaller operators who were very comfortable with 12 channels didn't want to have go out and raise the money and put their own money at risk in upgrading their systems to 35 channel or 54 channel capacity. So we built the company on going and acquiring those systems and having the money in place to upgrade them to launch all these new channels and raise the rates accordingly.

BURKE: That sounds like a huge opportunity.

KINLEY: It was a huge opportunity, and it was mainly because of the Cable Act of '84 because you could do all that and raise the rates any way you wanted to to cover your cost. So you could upgrade your plant to launch all these new channels, and it also enable you to build new line extensions to areas that were not previously economically feasible because the local government kept your rates so low that you couldn't afford to go out into less dense areas.

BURKE: I thought we could talk a little bit about the growth of programming because here you are involved in companies now, building systems, raising money, getting franchises, but the real growth of cable came from all the new programming. When did that come about?

KINLEY: That really started in the early '80s with the launch of a satellite to put HBO out nationwide, which had occurred in '75. There were a number of new programming services that were developed just for satellite. HBO had actually been developed in 1972, but it was being distributed by terrestrial microwave, which was a very inefficient and very expensive way to distribute programming, and the beauty of satellite was that it was just two hops, one up to the satellite and one down, and then it was nationwide. So a lot of other entrepreneurs saw the opportunity to launch additional programming, not just pay television programming, but launch it and then Ted Turner and others, another one was Bill Grimes on behalf of ESPN, developed the dual revenue stream, essentially, in which they convinced operators that it was worth the operators' investment to pay for this programming so that it would be developed and it would be unique to the cable industry, and something that could not be obtained by NBC, ABC, and CBS. That was the key to it. I mean, the cable operators would not have put that money up unless they'd had exclusivity on that programming, and that's really how ESPN and CNN and the ones that are household names now developed because the cable operators said, okay, we'll pay for this because we realize that this is something that we can give our customers that they can't get from anyone else, and that really exploded in the early '80s. There were 30, 40, 50 channels, and many of them fell by the wayside, but a lot of them, such as Discovery and ESPN, which at that point was known as the late night fishing channel because that's about all they had, originally, was fishing tapes, and we used to make a lot of jokes about ESPN in that respect, but their big breakthrough came as they gained distribution then they could bid on more and more important programming instead of having to rely on recycled tapes and stuff that really didn't cost very much. So it was a process of bootstrapping to get to the size audience that they could then use, and that cash flow they could then leverage from the cable operators to bid on programming that was of wider interest.

BURKE: To me it reminds me of a chicken and an egg issue because here you've got the operators and you've got the programmers, and one without the other couldn't do it.

KINLEY: Right.

BURKE: And you saw the profound growth of both industries, and then you hit channel capacity and at some point there was more programming then the cable operators had room. Can you talk a little bit in terms of chicken and egg? Do you see that analogy?

KINLEY: Oh, yeah! We could not have wired the major markets unless we had something more interesting to sell than just distant signals and pay television. HBO and WTBS by microwave, in a small town in Georgia, that might be okay there, but that wasn't going to wire Atlanta. You needed a lot more, and you needed product that people couldn't get anywhere else. So you couldn't just take shows that were already on the networks or even off the networks which people had already seen. You couldn't build a channel on reruns of Seinfeld or reruns of Have Gun, Will Travel. You had to have original programming, and Discovery was one of the first to really recognize that and ESPN did as well, but obviously the original programming that they had was very cheap stuff because they couldn't afford much else. But operators had to be willing to pay for this, and it was almost as though you were sort of being a joint venturer with that new programmer because you realized that you were probably paying more than that programming was really worth because they just didn't have the distribution, but in order for them to gain the distribution to be able to have more leverage in getting additional programming they had to get the distribution first. Well, then they had to get people to pay for the distribution. So it truly was...

BURKE: They had to cooperate.

KINLEY: Yeah. It had to be a cooperative effort. One of the beauties was that it really did work out that way.

BURKE: I can remember, some of the early stations in particular, I remember the weather channel went on early because people welcomed something different, and so there was the tremendous growth of new channels. There was also issues of just how reliable the system was, and I remember the early microwave systems as going down, being fuzzy, not having redundancy. How did cable deal with all of their technology issues?

KINLEY: Well, the biggest breakthrough was satellite transmission, of course, because that was virtually crystal clear and highly reliable. Unlike multiple hops of microwave, which were subject to weather problems and terrain problems, satellite was two hops and nationwide with crystal clear pictures, and the only maintenance you had to worry about was to sweep the snow off the dish occasionally and it really was not subject to weather or rain interference, and was not subject in particular to interference from leaves and trees. So it was very efficient and very cost effective.

BURKE: Well, in addition to the satellite advancements, there were also advancements in fiber optics, and one of the things that finally happened is lots of cable was put in the ground. Were you involved in companies that were doing that?

KINLEY: Well, we did a lot of construction in extending service to new areas in the early to mid '80s, but fiber really didn't become viable until later than that, in the early '90s. So I was not involved in that. I started my own company in 1985, and in 1989 we built... it wasn't the first fiber run nationwide, but it was the first one actually in the state of Washington where we had some systems, and we did it to extend service to an area in central Washington out of the town of Quincy to go down to a resort area called Crescent Bar that we could not have done cost effectively with coaxial cable. We put in an eight mile run of fiber optic transmission, and our technicians were very leery of it. They thought these were glass fibers and how were we going to deal with that. They were very used to dealing with coax and they were very reluctant to deal with fiber, but once they saw the reliability of it, they just fell in love with it.

BURKE: I wish we had an example of coax, which is like your first, and fiber, which is like a thread, but that was another huge development in terms of ability to transmit a large amount of data. Do you think people had an idea of the future use of fiber optics?

KINLEY: I think it was becoming evident back then, particularly on the channel capacity and the reliability because as you said, with one thin glass fiber you could transmit literally hundreds of channels, and you could do it with very little signal degradation because the fiber was so transparent to the signal itself that you didn't need a whole string of amplifiers that would take a weaker signal that had been weakened by transmission through the copper wire and then have to boost it back up. Well, every time you had it transmitted through that copper wire and then boost it back up again, you degrade the quality of the signal. There's always some interference that comes in. Over fiber that just doesn't happen and people saw that in the late '80s. It was very evident that fiber would be the next big thing technologically.

BURKE: And of course fiber preceded the internet, but fiber optics is perfectly suited toward the internet. When did you first think that the internet could have anything to do with cable?

KINLEY: Well, I didn't really start focusing on the internet until about '97. It became obvious that the combination of digital television services from the satellite and internet access over cable were going to be two huge revenue streams that would enable you to finance the upgrades to fiber that needed to happen. In other words, once again, you couldn't just go with the existing programming and the existing rate structure to justify a complete refitting of the system for fiber optics because the customer was still getting the same programming. It didn't matter to him that there weren't fifteen amplifiers between him and the source of the signal, so he wasn't going to pay more for that, but the minute we had the possibility of digital, which was more channels and a clearer picture, and the possibility of internet access then you could raise the money to retrofit your system with fiber optics because you now had two new revenue streams.

BURKE: Well, jumping back because prior to 1997 you got involved in legislation and you were a founder and a chairman of what is now the American Cable Association. So before we get into where cable is in 1997 forward, let's talk about what was happening in those years when you saw a need to be involved in more legislation.

KINLEY: From 1984 to 1992 the rates of the cable operator were not regulated, and that led to, candidly, some real abuses, particularly among what I characterized as strictly financial players in the industry. They saw the opportunity to come in and buy these cable systems, not do anything about improving the signals or adding programming and jack up the rates, and that happened in a particular case down in Tennessee in which a company came in called Multimedia and took the same number of channels, which was a 35 channel system, didn't add anything to it, and they raised the rates five bucks, and I think they raised the rate from $12 to $17 a month for no additional services because that's what their financial plan called for. The customers were outraged and that outrage reached the ears of Al Gore, who then was a Senator from Tennessee, and in the summer of '92 he had been picked by Bill Clinton to be the vice-presidential candidate with him, and everyone in the industry, of course, knows the story about the Bush veto of the act in October of '92 and the overriding of that Bush veto for the act, which ultimately became the Cable Consumer Protection Act of 1992 over Bush's veto. It was the only veto which George Bush ever had overwritten in his four years as president, and it all went back to the outrage caused by, or this was a major factor in it, that Al Gore was determined that cable operators would not be allowed to do what this company, Multimedia had done in the state of Tennessee. So that led to the cable act, and most of the small operators were not active in NCTA or on Capital Hill or at the FCC. From '84 on there was no particular reason to be active. They were busy raising money, upgrading their plant, launching new services because they could raise the rates to cover all these additional costs and generate a decent return for their investors. Well, in '92 that came to a screeching halt, and the small operators were not really part of the process that led up to the '92 Cable Act. Most of us felt that John Malone and Jerry Levin and the other big wheels would take care of the problem because they had more at stake than we did. So in '92, late '92 the act was passed, the FCC was given 180 days to come out with price regulations for the cable industry. I think most of the small operators really weren't paying much attention, thought that, well, it will all be administered through the local franchise authority, yes, we'll have to go back to that but we've got good relations with the local franchising authority and it'll just be reinstitution of rate regulation as it was prior to 1984, and most small operators weren't too concerned about that because they had good relations with their local franchising authority. It was only the big guys in the big cities that seemed to be having the problems, but the FCC came out with a huge surprise and that was that these rates were going to be subject to federal regulation, under federal guidelines that immediately implemented a 10% rollback in the existing rates across the board for everybody. No matter where your rates were, they were going to be cut 10%, and the first set of regulations was about 600 pages long, and I remember the day that that landed on my desk I was just flabbergasted. Nobody had an inkling that it was going to get this complicated. Just the description alone of what was called the benchmarking process, and trying to determine what your rate should be meant that you'd have to hire an accountant fulltime, probably one accountant per system fulltime, to do it. It got so incredibly complicated, and it was complicated in large part because certain members of the communications subcommittee on Capital Hill were determined to punish the cable industry for its abuse of consumer rights. A lot of small operators felt that they had been had, and that they'd been sold down the river, that their story had not been told, that the policy makers on Capital Hill didn't even know that those companies existed. They though the whole industry was TCI and Time Warner. There was an emergency conference in May of 1993 in Kansas City, Missouri in which about 75 companies showed up, and it was a conference to talk about two things. One was to try and understand what you as a small operator had to do with this first 600 pages of regulation that you didn't even have time to read, and the other was, well, what do we do about this? I was asked by Stan Searle, whom I hadn't seen since my days at the FCC 16 years earlier, to come down and be the speaker, and the way that happened, actually, was kind of funny. My partner at Sun Country Cable, Lynn Simpson, had always enjoyed the consulting business, and about a month before this we had sent out... under pressure from her I finally relented and said, okay, we'll take another run at marketing ourselves, and she had sent out a mailer for our consulting business, and one of the people that it went to that I didn't even remember was Stan Searle, and it arrived on Stan's desk at the same time that he and Dean Peterson were trying to put together this emergency conference. Stan called me about four weeks before that conference and said, hi, how are you, I don't know what you've been doing, but I see you're doing this. He didn't even know if I was a cable operator at that point, and he said we're holding this meeting down in Kansas City and would you mind coming down and being the lunch speaker? I really wasn't too enthusiastic because I wasn't enthusiastic about the consulting business to begin with at that point. We were trying to do a number of acquisitions to our existing company and it was taking time away from that, but I reluctantly agreed to go down and give a lunch speech. I talked about the impact that the deregulation '84 had had, and I just sketched out what our company had done and how I felt that we had been stabbed in the back by Congress and that we'd been sold down the river by the big companies who could get out from under this fairly easily, but the serious impact, the major, adverse impact was going to be on the small independent operator. I got a standing ovation at the end of the speech.

BURKE: Hmm, I think we've hit a nerve here.

KINLEY: By midnight that night they'd asked if I would head up a new association, and we came up with the name that night at about midnight. We called it the Small Cable Business Association because I felt that we wanted to tap into the wellspring of political goodwill on Capital Hill that small business had, and we wanted to go into this as a small business issue. I felt strongly that if we were going to do anything we had to do it as a small business. In other words, we had to redefine the argument here. The argument couldn't be about whether our rates should be regulated or not. The argument had to be over look what the federal government is doing to small business. Easier said than done.

BURKE: But it needed to be done.

KINLEY: I felt strongly from my days at the FCC that that was the only way we would succeed. We had to differentiate ourselves. We had to say we're different from the big cable companies. We're different than NCTA. Yet NCTA through all of this purported to speak for everybody. Well, we didn't think that we'd get many members, but within the first four or five months we had 300 companies that signed up and committed to the dues structure of a nickel a subscriber per quarter, 20 cents a year per subscriber for this. It's hard to convey to people today just eight years later, the feeling that the small independent cable companies had at that point that they were on the brink of extinction, that they were literally going to be put out of business unless something changed. There was so much ill will on Capital Hill and at the FCC, which was now controlled by Chairman Hundt, who was a close personal friend of Al Gore, no coincidence that the rate regulations were very tough with Hundt in charge, that they just didn't care what the impact was. In fact, when we first started going back, the four of us went back in the summer of '93 to have meetings with anybody who would meet with us on Capital Hill or at the FCC, they didn't even realize there were small companies out there. They were stunned to learn...

BURKE: How many.

KINLEY: Yeah, they were stunned to learn that there were hundreds of these companies. They thought that maybe there were one or two or three, but that they were all owned by TCI or Time Warner anyway, or affiliated in some way. They had no idea that there were these hundreds of cable companies out there that were not affiliated in any way with the big operators, and probably served at that point maybe 25% of the customers in the country.

BURKE: And of course, more importantly, they really did serve rural America that wouldn't have been served without that.

KINLEY: Right, they were serving areas that the large operators could care less about.

BURKE: At that point you became involved again in that whole piece of it. On a personal note, I remember that. I remember at some point you addressed the National Cable Television Cooperative and got strong support there.

KINLEY: I hadn't been involved in the Cooperative, which had been formed in '84, but on the suggestion of a board member of the Cooperative, John Johnson, who I happened to run into by chance at a seminar that NCTA was conducting in Los Angeles on how to handle the rate regulations, I bumped into him and I happened to mention to him that about two weeks before we had started this little association, and he hadn't heard about that, got very interested and said, you know, you really have got to go talk to our NCTC, National Cable Television Cooperative board of directors and talk to Mike Pandzik, and I said, that's great, I've never had any contact but I'd be happy to do it. He set up a meeting about a week later because the board happened to be meeting down in Tucson and I was invited to speak to the board, and you were there. That's where I laid out just the formation of this new entity, and a lot of people, frankly, were skeptical. Not you, and not NCTC, but there was some feeling about the industry already had two trade associations. Why did it need a third? Wasn't CATA the group that was supposed to be representing this same group of small independent operators? Well, the problem that CATA had at this point, they had two problems. One was that Steve Effros, for good and sufficient reason, had made a real effort to have all of the top 30 companies in the business become members of CATA. So, all of the major operators were members of CATA as well as NCTA. The second thing that most people didn't know was that CATA was being subsidized by NCTA. Yes, it was under a consulting contract in which CATA did certain things, but they were being paid, I was stunned to learn it was like a quarter of a million dollars or $300,000 a year to perform certain functions for NCTA. And so NCTA really was keeping CATA alive, and I had a lot of trouble about that when I found that out and all of the sudden, and I knew Steve and I had a lot of respect for Steve, but I realized that there was a reason that he was making the big money that he was making, and it was all because NCTA was supporting this, and then it became clear why CATA had not taken a stronger stand on all of these issues, not that they necessarily could have changed it but there were points that I later learned about at which I felt CATA could have been more effective. But you have to understand that in '92 there was such overwhelming anti-cable sentiment on Capital Hill, remember, this was a piece of legislation which they'd overridden the veto of the president of the United States, and you can only do that with a two-thirds majority in both Houses. That's incredible! So we were truly swimming uphill. People hated the cable industry at that point on Capital Hill. So we started the Small Cable Business Association. We ran it out of my office. My wife set up all the billing, set up the database so that we could do the billing out of my office, and remember, we were still trying to run a cable company. I wasn't getting any money for doing this, and we had a small staff. I think we had about 16,000 customers at that point, in five states, and I had a small accounting department, and all of the sudden people started calling us as though we were NCTA and we were their service organization, and that was a very tough time, a very tough time on my entire staff. I don't know how they put up with it because they started getting calls. One person got a call from a truck stop where a cable operator was driving cross-country in Iowa and he decided when he got into this truck stop, you know how they have the telephones at each table so the trucker can check in with his dispatcher? Well, this cable operator decided he was going to call SBCA, and he got one of our accountants on the line and started haranguing her about his problems with NCTA and his problems with rate regulation, which of course this poor accounting clerk didn't have any clue about what he was even talking about. So those were some of the problems we faced in getting SBCA off the ground.

BURKE: I wanted to go back again to 1992, and those were tough years in cable. On a personal note, that's when I met you, and I want to give you a little flavor for that. I was a freshly minted 1992, January 1st I took over our family cable business. We had 3,000 subscribers. I was the president and had never done anything in cable except go to the association meetings and be involved, and suddenly I was dealing with pole attachments and this 600 page new legislation, which of course I read, you know. And we did have a full-time accountant get involved with us, but I realized that other people needed help and I was encouraged to go to NCTC where I met you and I remember you giving your pitch to all the members, and it made perfect sense to me. It's like we're going to have to band together and we're going to have to represent our own interests and go to Washington, and at that point I'd heard someone say this is a very black time in cable and we're going to be in a hole for awhile, so we might as well decorate it and do whatever we can do. That may have been a Steve Effros quote. But at that point, you organized and got people going back to Washington to raise the consciousness about small operators. I think that was very significant. Do you want to talk a little bit about that time period and the kind of support you got?

KINLEY: Well, I got a lot of support from small operators and some support from CATA simply because of my personal relationship with Steve Effros and Jim Ewalt because by that time Jim Ewalt was executive vice-president of CATA, and I had hired him at the FCC when we did that major staffing up back in the early '70s. He was one of the bright young lawyers that we brought into the Cable Bureau. So I prevailed on them just personally to give us some assistance. My original idea was that SBCA, as we called it then, was not going to be a new trade association because as I told Steve, the last thing the industry needed was a third trade association in Washington D.C. That was just going to further muddy the waters, but I saw our group as kind of a grassroots army that was like the Minute Men in the Revolutionary War in which somebody else supplied the ammunition and we brought our rifles and showed up at the battle. But we used ammunition supplied by others, and those others were going to be CATA and NCTA because we didn't have the resources. We had no resources. We had just started billing at that point out of my office with my wife doing it on her computer, and our small group of accountants doing the bookkeeping for the association such as it was. So we did not have resources to pay for Washington lobbyists the way that the two associations did. But as I said, to our amazement during that first four or five months we just kept getting more and more membership applications in. We never marketed it; word just go around, and every day we'd go to the mailbox and there were more applications with people wanting to join the association. So we were really flooded. We were trying to run 16 cable systems in five states at that point. It was 16,000 customers in rural areas, and trying to do that... we had also taken over the management of another 16,000 subscribers in another five states that were on the brink of bankruptcy under a management contract. And we had also started – remember, the way this all started was that I had reluctantly agreed to marketing promotion for our consulting business with Lynn Simpson, who has since passed away. So we were trying to do the consulting work at the same time on rate regulation, so it was a very exhausting and confusing time, and I was also having to go back to Washington a great deal to follow up these visits that we had with the original eight test cases that I had taken back there for meetings. One of the commissioners that we met with was so impressed by the cases that we presented that he insisted – and his name was Barrett – that he insisted on visiting one of these small systems, which was just north of San Francisco. He didn't even realize that there were rural areas in California, and that there were small operators out there. Kevin and Susan Daniel were the couple that owned this group of four small headends in rural Marin County. They had already had to cutback two jobs, I think it was – their business office person and one of their plant technicians because of the rate rollback – and they had just secured a loan at that point. When they were faced with the prospect of the rolling back of the rates, there was a serious question as to whether they were going to make it, and we ended up, I ended up frankly, using that case as kind of to become the poster child of the impact of the FCC's rate regulations and the unintended consequences from those regulations on small family-owned businesses in rural areas. Probably the best thing that happened to us was in that respect was that we found an ally. I knew that we had to find an ally outside the FCC because the FCC was very tightly controlled by Ed Markey, and it was very clear that he was out to punish the large cable operators and that he was dictating to Chairman Hundt what Hundt should do on the regulations involving rates, and we weren't going to get any relief through the FCC. So I felt we had to find an ally in Washington, and the logical one to go to was the Small Business Administration. Well, most cable operators had never had any reason to deal with SBA. You may have in your telephone business because there were loans and loan guarantees available to small companies, but we'd never gone to them for assistance like this. So it happened that there was an office called the Office of Advocacy at SBA, and we set up some meetings with them, and Barry Pinellas, who now works on the House small business committee, at the time was an assistant counsel for market competition. Well, as it happened, in one of these meetings that we had with Barry where he was familiar with communications issues but had never really looked at cable issues, he had heard the same things about this big, bad, terrible cable industry that gouged customers with high rates, and he wasn't sure what we were all about. But he happened to mention in one meeting that there had been some amendments in 1992 enacted about the same time as the Cable Act, amendments to the Small Business Act, but that the SBA had not put out any regulations to implement these amendments and that was something he was going to have to get around to. Well, when we looked at what was in those amendments – because I asked him, well, tell me more about these amendments, because they had to do with classifications of small businesses, and I said are you telling me that there's an act on the books that restricts the way in which federal agencies can define small businesses, like small cable companies? And he said, oh yeah, that was in this set of amendments that was just passed. Well, by this time it's the summer of '93, so we started looking at that. The outside counsel that we had working on some FCC matters and I, Derrick Brysack and I, looked at that statute and realized that we could make a case that the FCC had violated these amendments because it was clear that that they weren't even aware of them, and that they'd violated them in the way they'd gone about classifying small operators, that they had not taken into account the impact on small operators, and that the one classification they had come up with, which was to minimize the impact on systems of fewer than 1,000 customers violated these SBA amendments. We then asked for a meeting with the director of the Office of Advocacy, who happened to be a presidential appointee who'd been confirmed by the Senate, a guy named Jerry Glover. Well, he was a guy that if you ever got into a real legal back alley legal fight, you'd want him on your side. He was kind of a chunky guy with a thick neck, and he was a litigator out of small town Tennessee, and he knew how to fight legal battles down at the most basic level. But as he kept telling me, he didn't want to become a communications lawyer. So he tried to persuade the FCC that they should back off with respect to certain... that they should come up with some relief measures for small cable companies. We convinced him that he could file a lawsuit against the FCC so that you would have a situation in which one federal agency, this was unprecedented, would be suing another agency.

BURKE: But there's nothing to stop it.

KINLEY: There was nothing to stop it, and in fact, it played into a strategy that he had in mind at the time because the question of whether SBA had authority to sue to enforce its regulations against federal agencies was an open issue that he wanted very much to clarify, and he was very aggressive about that, and he saw this as a chance to actually demonstrate that he could file a lawsuit against another federal agency. Remember, this is in the first year of the Clinton Administration. Well, he was ready to do that. In fact, Barry Pinellas wrote the entire brief and was ready to file it because there was a filing deadline because of the time that had passed since the agency had issued its rate regulations and there were already legal challenges in the D.C. Court of Appeals, but nothing based on the SBA. So we thought, well, we can somehow intervene in that lawsuit as SBCA on behalf of small operators and challenge the way the FCC ignored the impact on small operators in violation of these SBA amendments, which is what we were trying to get Glover to agree to do, and at one point he agreed to do it. He said, okay, we will do it if I can't get them to back off, and Barry went ahead and wrote this brief and the night before it was to be files, Glover worked out an arrangement with the FCC where they promised him that they would come out with regulatory relief for small operators. So it came that close, but what had also happened at the same time was the Justice Department got wind of what Glover was about to do and came over and visited with him, and made it very clear that they looked with great unhappiness and disfavor on one agency in this new Clinton Administration suing another federal agency, that it just was not going to look good for the Clinton Administration to do that, to have that happen. So Jerry had to kind of back off. So we were pushing him on one side, but the Justice Department was pushing him on the other side. Anyway, what ultimately ended up happening was that the FCC did get very nervous behind the scenes that they were clearly in violation of these SBA amendments that they hadn't even taken into account, and as a result they came out with a new set of rules for small companies. And what was interesting about it was that if you looked back in the whole history of cable regulation at the FCC, there had never been any regulations based on company size. All of the regulations going back to 1966 dealt with the size of the system, not with the size of the company that owned the system. They had never done anything like that. This was the first time, in 1995, that they came out with a set of rules based on the size of the company that owned the system, which was our whole push. Very early we decided that a) we had to make this a small business issue, not a rate regulation issue, and b) we had to do it based on company size. It was not going to help us if the Commission came out with something for all systems under 1,000 subscribers because we had companies that had 1,500 subscribers, or 2,000 subscribers, but if you took all of the companies under a certain size that you would get all of our members, and at one point the FCC, I remember a call from the chief of the Cable Bureau saying we want to set the limit for this lessened regulation, easier regulation, we want to set the limit at companies of 250,000 subscribers, Well, it turned out SBCA had one member that had 400,000 subscribers, Telemedia Corporation, and I went back to them and I told them, guys, here, I want you to know what I'm going to do, but we run the risk that the whole thing may collapse. I'm going to go back and insist that it has to go to 400,000 subscribers and I want to double-check that that gets you covered, and I was assured by the general counsel at Telemedia that it did cover them, if I could get the 400,000. So I went back to the Cable Bureau chief and said we can't live with it at 250,000. It's got to be 400,000, and CATA fought us on that behind the scenes, as did NCTA because they thought that that was going to sink it. It turned out that it didn't, and that was the reason that the FCC, when that Order came out people wondered how did they get to 400,000? Well, it was because that was the size of the largest member in SBCA and we had insisted that every one of our members had to be covered by whatever new order came out, which was a big risk at the time because there was a chance that the FCC would back off entirely if we didn't accept the 250,000 number.

BURKE: It's kind of a bet the ranch deal.

KINLEY: It really was a bet the ranch at that point.

BURKE: Well, what an amazing result.

KINLEY: And then that led to the '96 Act. We did a lot of lobbying on...

BURKE: The '96 kind of undid that phase.

KINLEY: Well, the '96 Act took it further. We came up with the idea... we were sitting around discussing this one time in '95 after the Commission came out with its 400,000 company size order, what could we do in the legislation? I've always been uncomfortable, ever since my days at the FCC, with anything based on specific numbers. The FCC does that all the time. They'll say, well, everyone with fewer than 10,000 subscribers, or a system with 3,500 or more subscribers has to do local origination. Well, subscriber numbers fluctuate all the time, and the industry fluctuates a lot. So I'd always felt that we wanted to get away from that, and so my suggestion at the time to our lobbyist was let's go for a percentage, let's say that any company that has fewer than x per cent of the nation's subscribers will not be regulated. I said, what number do you think we could sell, and he said, we'll start high, and we did, we started at 3%. Well, that was pretty outrageous because at that point that meant that any company with, I think it would have meant all but the top ten companies would have been deregulated.

BURKE: Gotta start somewhere.

KINLEY: Which was a little overreaching on our part, but again, while I got great support from the membership, CATA in particular fought us on that, said it will not fly, you'll never get this percentage thing, you're going to tank the whole thing if you try to do that, and of course NCTA didn't want any part of it. So behind the scenes they were fighting us. We ultimately backed off of 3% and went in for 2% and got 1%, and so that's how the small cable section of the Telecomm Act of '96 originated in that provision saying that any company with fewer than 1% of the nation's subscribers, which is still 600,000 customers, even though the percentage sounds small that's what we were trying to achieve. Let's give them something that sounds small but really covers all our members, but also floats. I didn't want to get stuck with this, well, if you go over... if you get your 400,000 and first customer then you're out, and as the industry grows and it takes in more subscribers we still want to be small relative to that whole universe. So we got the 1% figure even though that covered a lot of subscribers, but it sounded small at 1%.

BURKE: Well, and that brings us to the Telecommunications Act of 1996, which was very significant. In addition to that, you were involved with cable operators at quite a level. Were you still the SBCA at that time?

KINLEY: Yes, SBCA changed its name in 1999, two years ago, and that was right at the time that the Community Antenna Television, or CATA, became the Cable Telecommunications Association. CATA was folded out of business. NCTA wouldn't support it anymore, and they made it very clear behind the scenes that the 30 top companies in the industry did not need to be funding two trade associations. And so we thought that was a great opportunity, so we changed the name to sound more inclusive to American Cable Association and then formed the Strategic Alliance with the National Cable Television Cooperative, which had essentially the same membership, and for the first time, really in the history of the industry, you have a situation in which all of the small or independent cable companies, those not affiliated with programming interests like Time Warner and AT&T and Cox, Comcast, all those companies have programming interests, but for the first time in the history of the industry we have all of the ones that don't have programming interests united and speaking with one voice, and that has never happened before. And frankly, looking back on my career in cable, strictly from a career standpoint, that's something I am extremely proud of, that we managed to accomplish that starting in '93 when we had our backs to the wall, and that that group of people that almost went out of business in '93, of which there were several bankruptcies, now speaks with one united voice in Washington D.C.

BURKE: Well, it's been no small feat.

KINLEY: And it's 1,000 companies, so it has impact because it's the major voice now for the rural cable consumer.

BURKE: And of course you have ongoing interests with that group.

KINLEY: I'm past chairman, I served as chairman of that group from '93 to '97, and then we hired a full-time president, Matt Polka, who had been on the board and the executive committee because he was general counsel of one of the first members of SBCA called Star Cable Associates out of Pittsburgh, and he took over as president on a full-time basis in 1997, and serves as president today, and works very closely with the National Cable Television Cooperative, which I have the pleasure of being on the board of directors since '98 and I'm now chairman of.

BURKE: Do you want to say a few words about how that's been going?

KINLEY: Well, the National Cable Television Cooperative through all of this... you're really a better person to talk about it because you were one of the early members there, which I was not. At the same time that you were busy in building that group up, I was consumed with trying to build up SBCA, but I think the Cooperative has blossomed in just such unforeseen ways, really since '95, and part of the breakthrough for that was the '96 Cable Act because during the lobbying on that, SBCA managed to convince the Senate Commerce Committee to insert language in its version of what became the Telecomm Act, insert language in there that would have outlawed quantity discounts. Well, that would have put NCTC out of business, and so they weren't real happy about that, but we used that and I knew we would be able to use it as a bargaining chip to bring two of the major cable programmers to the table that had always refused to deal with NCTC.

BURKE: That was very exciting.

KINLEY: People now sort of assume...

BURKE: People don't understand how hard that was.

KINLEY: Right, sort of assume, well, everybody deals with NCTC. Well, that's true, almost everybody does. But in 1995, most of the major programmers refused to deal with NCTA, and the two targets that we took a shot at to get into contracts with NCTC were Time Warner and Viacom, so that we could get HBO and then get CNN and Nickelodeon and many of the popular channels, and we succeeded in getting a written agreement from both Time Warner and from Viacom that they would enter into a contract with NCTC in return for our backing off from supporting this language that would have outlawed quantity discounts.

BURKE: I just want to insert I vividly remember this because I happened to be the chairman of NCTC when that happened, and I remember reading all the drafts of the legislation and thinking why didn't we do this sooner? But it was a real window of an opportunity, and I think it had significant ramifications for small cable operators and for the whole industry.

KINLEY: Well, when I started doing the research on it, because it was clear that we had to do something to bolster NCTC in the process of the debate over what became the Telecomm Act, and I went back and researched what was in the '92 Act, and it was clear that if you just knocked out about seven words from the program access provision of the '92 Act, which specifically endorsed, but not by name, it didn't say you can have quantity discounts, but there was some broad catch-all language with about seven words at the tail end of one section that gave the opening for quantity discounts, and so I went back to our board and I said if we propose knocking out these seven words then we will be able to put pressure on the programmers to deal with NCTC, and that's what ultimately happened. And they were very general words, but it was kind of a catch-all – "for any other good and sufficient reason related to the economics", or something like that, I can't remember the exact language. And lo and behold, the Commerce Committee put that in.

BURKE: Well, it's a classic example of lobbying making a huge difference.

KINLEY: Right, and then when it got to the floor, Bob Dole was offering basically an omnibus amendment that would have restated everything in what had come out of the Commerce Committee in one form or another, and remember, he was the Minority leader at this point, he was not in the Majority in '96, and we had a deal with his top legislative aide that until I told her that he could pull that language out that they wouldn't do it. My deal with Pandzik, my communications with the president of NCTC, was you have to assure me that there is a written obligation by Time Warner and Viacom that they will do a contract with NCTC, otherwise I am not going to transmit that go ahead to Dole's aide. Time Warner used all kinds of excuses. They said their guy was out of town, and so they didn't want to deal with it right then. They had the letter drafted but I said it's got to be an officer and it's got to be somebody who's binding the company. Mike got back to me and said they're saying there's nobody here that can do that, the guy that we need is... and this is 9:00 at night in Washington D.C., while they're still debating the thing on the floor of the Senate, saying the guy that would have to sign this is on vacation, he's down at the beach somewhere, and I said, fine Mike, tell them that there are fax machines, but we're not going to pull, we're not going to give the go ahead to Senator Dole to take that language out until the right guy signs that letter on behalf of Time Warner. Lo and behold, by the next day it was signed.

BURKE: It happened.

KINLEY: And so we communicated that to Senator Dole's staff and the language came out, but unless we'd had that language in there, and unless we had stood firm, there had to be a written obligation to do that signed by an officer of the corporation, I don't think that would have happened.

BURKE: That was an exciting time in cable, and you're still involved in cable. So from 1996 until now can you tell me some of the developments in cable and how they've affected you?

KINLEY: Well, the two biggest developments since '96, first I guess the thing I'm proudest of is the Strategic Alliance of 1,000 cable companies now in the National Cable Television Cooperative and the American Cable Association, that group speaking as one voice for the first time. But the two other developments from a business standpoint, of course, have been digital tiers and internet access. Both of those are hugely promising. I think interactive television has some promise, as well, video on-demand, but the whole issue from my perspective is not the health of the major companies. They're going to do fine, but what about this group of companies outside the top ten that represent probably 20% of the customers in the country and are serving areas that the big companies aren't interested in. What's to happen to them and what's to happen to that service in those areas, and I'm very concerned about that, and that's the reason that I continue to stay involved even though our company really is down to one cable system. We've sold 17 of our 18 systems in the last two years, and we have just one remaining, but I still have remained involved because first I wanted to be part of bringing this whole group together to speak with a single voice, but secondly, I'm very concerned that the regulations and the legislation continue to take into account the existence of these companies and that they never overlook that and that we never stop telling our own story, that we never again find ourselves in the position of relying on the National Cable Television Association to do that job for us, that we are the best ones to tell it, and so that's primarily why I stay involved.

BURKE: So, here today, do you have any words of wisdom or things that you think are important?

KINLEY: Well, to me, looking back on my, it's been almost 30 years in the industry, the one thing that stands out to me is always do what you say you're going to do. Whenever the industry has gotten itself into trouble it's been because spokesmen for the industry have led people to believe one thing and then they've gone out and done something else. I can recite countless examples of when that's been done to me in my business life, when people have told me one thing and then done something else. It's old-time and it's hokey, but it's so true – integrity is probably the most important commodity that you have in your career. You can have all the skills, you can have the greatest mind in the world, but without integrity it's nothing. Unless people can count on you to do what you tell them you're going to do it doesn't matter how smart you are, and it doesn't matter how rich you are, and that's been the lesson for me in every aspect of my career, both in the business and in the political and the regulatory side.

BURKE: It's a big lesson. You've brought an incredible perspective to this interview. You've seen many parts of the cable industry. It's a real pleasure to do your interview.

KINLEY: It's been fun.

BURKE: I'm very honored to be part of this. I look forward to seeing what you're going to do in the years to come, and you have a lot of experience, a lot to give back. I have to tell, it's just a real pleasure to be here today.

KINLEY: Well, I'm so glad you did this. I really appreciated the chance to talk a little bit about it. It's been fun.

BURKE: Thanks again.

KINLEY: Thanks.
