

STAFF REPORT

"The State of Cable Television in Pennsylvania"

"Update September, 1974"

to

Honorable Percy G. Foor
Chairman, Consumer Protection Committee

Honorable Eugene R. Geesey
Chairman, Consumer Protection Sub-committee on Public Utilities

by

Otis W. Littleton, Executive Director
Consumer Protection Committee

Stephen Dull, Research Associate
Consumer Protection Committee
(In charge of project's staff)

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Introduction

This Update Report on cable television in Pennsylvania is intended both to supplement the initial "Report on CATV Systems And Need For State Regulation" released by the Consumer Protection Committee in October of 1973 and to provide an analysis of the influence of the CATV industry in the Administration of Governor Milton J. Shapp.

The Update Report takes a hard look at the past and present roles of the CATV industry on proposed legislation and raises questions only a complete and candid disclosure by the Executive Branch can answer. This report does not seek to investigate but does seek to expose why cable television legislation has not been enacted in the Commonwealth.

Many documents, reports, interviews and opinions were solicited and volunteered by the Committee's staff in preparing the reports and writing the legislation. The Cable Bureau of the Federal Communications Commission in Washington supplied the Committee with numerous documents of F.C.C. law. The Pennsylvania Cable Television Association provided the Committee with the industry point of view. We are also indebted to the many groups, organizations and individuals who gave public testimony and otherwise communicated with the Committee on cable television.

The History of the Legislative Process of CATV
Legislation in Pennsylvania

During the middle 1960's, the Public Utility Commission held hearings to determine whether or not the Public Utility Act of 1937 gave the Commission the powers to regulate Community Antenna Television. The Commission decided to back away from interpreting the 1937 Act broadly by including cable television as a telephone service. Until this day no state regulation of cable television has taken place.

The lack of state concern for cable television does not mean that the cable television industry has no concern for the Pennsylvania market. Due to the unique topography, most notably the ridges and valleys in the north and western parts of the state, Pennsylvania claims to be the birthplace of cable TV in 1949. Today, the Pennsylvania Cable Television Association claims that the 437 operating systems in the state are more than any other state in the union. The latest edition of Television Factbook reveals that Pennsylvania has 926,491 cable subscribers which represent 20 percent of the TV households in the state. The Factbook also reveals that 229 franchises are not yet in operation and some 93 additional applications are pending. Close to half of the 3,000 incorporated municipalities in the state have cable television.

The National Cable Television Association in Washington, based on October 1973 figures for Pennsylvania, estimated that the 926,500 subscribers paid nearly \$70 million in Cable TV fees last year. N.C.T.A. based the revenue on an average monthly rate of \$5.40 per month and added an additional 10 percent for additional cable outlets in the household. However, cable rates in the state are on the increase. The 32,000 subscriber system in Harrisburg on September 1, 1974, for example, increased monthly rates by 18 percent from \$4.95 to \$6.00 a month. Cable TV in Pennsylvania will soon become a \$100 million a year business.

Nationally, Pennsylvania ranks near the top in all areas of Cable TV according to N.C.T.A. There are 3,070 cable systems in the nation with over 8,000,000 or 12 percent of the total TV households wired for cable reception. In 1973 alone the Cable TV industry nationwide grossed over \$500,000,000.

With such a burgeoning industry already at hand in Pennsylvania, part-time local officials soon fell prey to the "pie in the sky" promises of the cable entrepreneur. With the Federal Communications Commission a distant bureaucracy in Washington and private consultants an expensive service, the local government officials soon found themselves signing Cable TV franchises for 25 years or longer at fees often times no greater than one percent. (For additional background on local government regulation of CATV, see Appendix I.)

With the need for statewide involvement in Cable TV apparent, Representative Eugene Geesey, Public Utility Sub-committee Chairman, authored legislation which amended the 1937 Public Utility Law to redefine the transmission of communication messages to include "television signals by cable." The legislation removed the Public Utility Commissioner's legal question raised in 1965 by granting the power to regulate Cable TV to the Commission.

Later, Representative Geesey instructed his staff to begin a thorough investigation into all aspects of Cable TV within and without of state government. During the summer of 1973, the staff prepared a report on cable communications in the state. The final draft of the report entitled, "Report on CATV Systems and Need For State Regulation," outlined the present regulations at the local and federal level and studied the Cable TV legislation already enacted in six states. The Report recommended legislation providing for regulation by the Public Utility Commission with certain powers shared with local government. (For additional details, see Appendix II.)

On October 9, 1973, Representative Geesey introduced a second Cable TV

bill, House Bill 1448. The bill brought an immediate protest from the Pennsylvania Cable Television Association, who until this time, had not been heard on the subject of state regulation. As George Barco, general counsel to P.C.T.A., would charge in a public hearing in Erie on February 28, 1974, the state association opposed the bill for the following reasons:

1. The bill would establish a full-time, five-member supervisory committee, with all of the attendant expense which will be an unnecessary additional financial burden to the industry.
2. The Bill provides for the enforcement of the Federal rules and regulations, an expense and undertaking which should not be assumed by the Commonwealth.
3. The Bill superimposes another system of governmental regulation over existing F.C.C. and municipal regulation, complicating and duplicating the regulatory situation.
4. Although the Bill proposes to regulate CATV as a public utility, it does not give it the authority of other public utilities of eminent domain.
5. The Bill fails to recognize in any way the existence and operation of the CATV companies in the state and no provision is made for a "grandfather clause."
6. The Bill includes many restrictions and limitations for which there is no reason or justification whatever, with the invitation throughout (the bill) to municipalities to impose further and greater restrictions and limitations, all in all representing regulatory treatment utterly without parallel or precedent in any other industry.

With George Barco's opposition to House Bill 1448 clear, the Public Utility Sub-committee proceeded to hold a series of public hearings around the state. As it finally developed, two days of hearings were held in Philadelphia,

December 17 and 18, 1973; a day in Erie, February 28, 1974; and Harrisburg, March 7, 1974. The P.C.T.A. chose to sit back and listen and not until General Counsel Barco's remarks in Erie and a day long session of opposition to the bill in Harrisburg did the State Cable Association choose to speak on state regulation of Cable TV.

The Philadelphia hearings were preempted by a four hour bus tour of the lone operating cable system in the city. The Telesystem's tour began at the studio in Elkins Park, just over the city line in Montgomery County, and continued to a head end in the franchised area in South Philadelphia west of Broad Street.

Telesystem's Chief, Fred Leiberman, who refused to testify in public hearings, dispatched his most accomplished salesman, Al Bloom, and Engineer, Jim Stillwell, to educate the Committee on the achievements of the company in actually wiring up 2,000 South Philadelphia homes to the Cable.

Later at the public session, the Sub-committee was to learn of a phenomenon called "trafficking in CATV franchises." The Philadelphia Community Cable Coalition, under President Jack O'Rourke, outlined how unbuilt cable franchises were sold for a profit without one foot of cable wired. The Coalition, a citizen action group, described how the city was divided into six districts by City Council in 1966. The 10-year franchises, automatically self-renewed containing a nontransfer clause, gave an effective exclusive right to the cable company. The franchises did not mandate interconnection of the six systems, protect subscriber fees, set any technical or operational standards, provide construction schedules, or provide for system maintenance. In essence, Fred Leiberman and the five other franchise holders were given practically a blank check by City Council to Cable Philadelphia as they saw fit. (For additional information, see Appendix III.)

With city government effectively neutralized, the cable entrepreneurs either chose to ignore the newly won franchise right or proceed to sell the uncabled franchised area originally given to them at no cost except for Tele-systems. Ironically, the cable franchise ordinance has a nontransfer clause which reads as follows:

"The authorization granted by this ordinance may be exercised only by the (company name) except that it may be assigned to an affiliate or subsidiary of (company name) substantially owned by (company name) provided that the assignor and assignee undertake to be bound by the terms and conditions of this ordinance."

The Rand Corporation in its study, Cable Television a Handbook for Decisionmaking, says that the city should set clear guidelines for sale or assignment of the franchise, with prior approval by the franchising authority, and public hearings should be required. The study also suggests that the city might want to "limit transfers in the first few years more strictly so that the winning bidder cannot soon sell out to another corporation at a fat profit."

In a series of articles in the Newark Star Ledger, the New Jersey State CATV law, which includes provisions regarding transfer of ownership, is discussed. The newspaper states that because of these rules "(they) can do much to eliminate the discredited practice of speculating in franchises." The article goes on to state that New Jersey's home rule approach had encouraged politically favored individuals in a number of municipalities to use their influence to obtain franchises--solely for the purpose of peddling them to legitimate CATV operators at a handsome personal profit.

The New Jersey CATV Study Commission Report noted that most complaints received by the (New Jersey) Commission involved nonexistent service or excessive delays in starting service, attributing this delay in some cases to "outright speculation by the franchisees."

The late former Mayor of Philadelphia, Richardson Dilworth, in an August 13, 1973 Philadelphia Daily News article said, "the ordinances passed by (Philadelphia) City Council in 1966 were adopted without adequate public hearings or any consideration for the general welfare. The ordinance granting the franchise laid down no effective controls and did not even set a date by which the franchises had to get its system into operation. The only limitation on the franchise is that they cannot transfer, but that provision has been breached by at least one of the franchises."

The franchise that the former Mayor referred to was the one held by Jerrold Electronics, headed originally by Milton J. Shapp. On October 8, 1971, Jerrold sold all its cable systems both operating and nonoperating to National Trans Video, a subsidiary of Sammons Communication, for \$30.2 million. The unbuilt Philadelphia franchise cost National Trans Video supposedly \$75,000 alone. (See Appendix IV for additional details of Jerrold Electronics methods in Philadelphia.)

General manager of Jerrold, Dave Brody said that the reason his company sold its cable interest was because Jerrold is in manufacturing cable electronic equipment and wanted to divest of the operating end.

The City of Philadelphia chose not to have anyone testify at the Subcommittee's public hearings there. Alec Bastos, an economist in the Office of Mayor Frank Rizzo, was assigned as the city's cable regulator. According to the Philadelphia City Charter, the City Solicitor is supposed to investigate any violation or alleged violation of city ordinances and take reasonable means to enforce them.

In an interview granted to a staff investigator two weeks before the Philadelphia hearing, Bastos said that if the people of Philadelphia did not like what was happening with the Cable TV franchises in the city, they could always bring a lawsuit to test the legality of the franchise transfer. Bastos

concluded by promising to testify before the Sub-committee about the Philadelphia situation with recommendations that any state cable legislation exclude cities of the first class.

The Sub-committee invited all six Cable TV franchisees in Philadelphia to testify. As mentioned earlier, Telesystems responded by giving the committee a guided bus tour. Triangle, Jerrold and Comcast presented statements to the Sub-committee regarding regulation of CATV in general and the merits of House Bill 1448 in particular.

John D. Matthews, an attorney with the Washington, D.C. based law firm of Dell, Lohnes, and Albertson and a legal specialist in CATV law, represented both Jerrold and Comcast in prepared testimony presented to the Sub-committee. The Cable TV industry then argued that they will be the first industry in this country to be regulated to death. They argued that a third tier of regulation would be the death knell for cable as it goes under at the hands of regulatory bureaucrats at the local, state and federal level.

Matthews opposed public utility type regulation at the state level. He contended that this type of regulation must first prove that CATV possesses the following characteristics:

1. CATV service is an essential service.
2. CATV tends towards monopoly because there is no effective competition for it.
3. There has been a trend toward concentration of CATV Systems.
4. Charges to subscribers may be exorbitant.
5. There is no control over the quality of service which is offered or the subscriber is captive to the system.

In each case, Matthews refuted the claim that Public Utility regulation applies to this industry. He contended that CATV Systems lack the most essential

feature of public utilities--they do not provide an essential service; CATV is not a monopoly and is subject to competition from outside antennas; no one company dominates the ownership of CATV; the profits and charges of CATV Systems are not excessive; and there is no need for a state to regulate or to protect the quality of service, since the same market forces of competition with over the air signals ensure high quality service. Matthews argued that there is almost a total lack of complaints about the quality of present CATV service in Pennsylvania.

When questioned by the Sub-committee concerning transfer of unconstructed cable franchise areas, Matthews chose to evade the question by saying, "it would be a matter of local law, local regulation and local concern."

"If the city council refuses to act," Matthews added, "the electorate has the opportunity at the next general election to throw those rascals out and start all over again."

Under present circumstances Matthews saw no need for the kind of regulation in House Bill 1448 and suggested that the General Assembly has a lot of other things to do other than the franchise transfer problem in Philadelphia.

Lacking subpoena power, the Sub-committee was unable to force reluctant witnesses such as the heads of Jerrold and Sammons and the city administration to elaborate on the trafficking in Philadelphia Cable TV franchises.

Sammons Communications did agree to testify before the Sub-committee on the merits of the bill in Harrisburg. The ubiquitous CATV Attorney John Matthew, depending on which client he represents, saw three problems with House Bill 1448 this time: First, the bill appears to add a third tier of regulation; second, the state regulatory role should completely substitute for regulation at the local level, and thirdly, new FCC rules have preempted certain state regulation.

Sammons, taking a moderate approach to state regulation then offered six

recommendations for state regulation of CATV:

1. All regulation should be placed with the state and none left with the municipalities.
2. Cable should be regulated by a separate division or bureau under the control of the P.U.C.
3. Members of the Commission should be appointed by the Chairman of the P.U.C. and the CATV Bureau.
4. Substantial grandfathering of existing CATV Systems and already awarded franchises should be provided for.
5. CATV Systems should have a qualified right of eminent domain but do not define CATV Systems as public utilities.
6. There should be no encouragement of municipal ownership of CATV Systems.

Though the large Multiple System operators who did testify at the public hearings were unanimous in opposition to any kind of cable regulation, Gerry Lenfest, in charge of Cable operations for Triangle Publications, like Matthews, did offer suggestions that he believed would make House Bill 1448 more tolerable to the industry. His recommendations included that an agency could be created that is not a part of the P.U.C. or dedicated to utility regulation; the agency should develop model procedures and CATV model ordinances that would depend on the municipality to help them at their request to know how to proceed to get a CATV Franchise; the agency should be empowered to investigate and determine the propriety of a franchise award; the awarding of the franchise should be left to the local municipality; the agency should hear complaints arising out of the operations of a franchise from the subscribers, the operators or the municipality; the agency should act as a clearing house for the future uses of cable; the agency should seek federal or state appropriations for experimental

and social uses of cable; the agency should represent the state before the F.C.C.; and the P.U.C. should assume jurisdiction subject to any federal preemption of utility charges for use of the utility poles and ducts by cable companies.

The cable industry cited the five year F.C.C. freeze which prohibited any distant television signal to be imported into the top 100 markets from December 1966 to March 31, 1972 and legal objections raised by the Philadelphia Community Cable Coalition to F.C.C. certificates of compliance as reasons for the delays in cable construction in Philadelphia.

All of the non-industry witnesses who testified before the Sub-committee supported state cable regulation. Some of them did object to cable regulation by the P.U.C. because they argued that P.U.C. regulation stresses regulation of rates, profits, monopolies and certification. William Melody, a professor at the University of Pennsylvania saw P.U.C. regulation of CATV meaning a jurisdictional shift from local to state regulation and limit of non-broadcast cable communications to favor the telephone monopolies.

Melody's testimony paralleled the intent in House Bill 1448 to the extent that if an independent separate cable commission is not established, steps should be taken to maximize the independence of the cable bureau from the P.U.C. This would apply to the funding, the people involved, the initiation of issues and the right to go to court.

Melody recommended appointment by the Governor rather than the P.U.C. Chairman whom he views as more likely to represent the interests of the telephone industry which he said does not want to see CATV develop as a competitive force. He urged that House Bill 1448 clearly establish that telephone companies do not have a monopoly on all non-television services that could be supplied over Cable TV.

The telephone interests did testify on the merits of House Bill 1448.

Bell Telephone of Pennsylvania was deeply concerned that an over zealous Cable TV regulator would interpret the terms "cable communications, cable systems, cable communication companies and communications industry" to include Pennsylvania Bell. Ben Wright, Pennsylvania Bell's cable expert, argued that, unless amended, House Bill 1448 would include all telephone companies, Western Union, other common carriers and even power, water, gas, police, fire and other companies which operate communications systems within the state.

The Pennsylvania Bell's spokesman suggested that Section 13, which calls for the proposed cable committee to come up with rules for the leasing of utility poles in two years, be deleted. Pennsylvania Bell took the position that the CATV industry, privately owned and organized to provide a service at a profit, should assume its own costs and not be a burden to the rate payers and owners of a public utility.

The February 28 hearing in Erie placed further emphasis on the citizens' demand for state regulation of CATV. Of 30 witnesses who appeared before the Sub-committee in Philadelphia, 26 favored some kind of state regulation of CATV. In Erie, with the exception of PCTA's General Counsel George Barco, 16 of the 17 witnesses there backed the concepts laid down in House Bill 1448. The usual modification was that an independent commission rather than the P.U.C. should do the regulating.

With such popular support for the intent and purpose of the bill, the Sub-committee chairman decided to send a letter inviting Governor Milton J. Shapp to testify before the Sub-committee at the March 7 Harrisburg public hearing. The Sub-committee expected that the Governor, anxious to testify before other House legislative committees on liquor control, would offer his wide and varied experience in cable communications in public testimony to aid in the Sub-committee deliberations on House Bill 1448. The Governor never

responded to the Sub-committee Chairman's letter. (See Appendix V for a copy of the letter.)

The Sub-committee was later to learn that Milton J. Shapp owns a 65% interest with his wife in Astro Cablevision Corporation in Coraopolis, Pennsylvania valued at \$814,000 at 1972 and \$397,000 in 1973. Also, the Sub-committee's staff was to learn later from informed sources that the Governor's position was "the time to regulate cable has not yet come."

Turning out in force at the final Sub-committee hearing in Harrisburg, the Pennsylvania Cable Television Association lined up witness after witness, first to educate then to challenge the intent of House Bill 1448. At the conclusion of P.C.T.A.'s four hour presentation, Representative C. L. Schmitt made a request to General Counsel George Barco who summarized P.C.T.A. case against state CATV regulation.

Schmitt asked, "Do you think it would be wise for you and the association to prepare what you (P.C.T.A.) might consider model legislation that might preempt or avoid you from being punitively legislated against?"

Barco testified that he would cooperate since they (P.C.T.A.) have studied all model bills. The extent of cooperation from P.C.T.A. took the form of a meeting with Barco and Robert Tarlton, Executive Director of P.C.T.A. in Representative Geesey's Office a week after the March 7 hearing. An agreement was reached that the Sub-committee would wait to receive the P.C.T.A.'s model recommendations before taking any further action. Without explanation nothing has been heard from the Pennsylvania Cable Television Association since the mid March meeting after promises the recommendations would be forwarded to the Sub-committee.

Only by reading newspaper accounts on August 6, 1974, did the Sub-committee's staff learn that by unanimous action by the board of directors and the membership,

P.C.T.A. went on record officially opposed to any state regulation at this time according to John Arnts, President.

Representative Geesey then decided to place in the Consumer Services Review Agency amendment to Senate Bill 1410 a provision allowing this proposed agency to also appear before local municipalities when CATV rate hike requests are filed. Currently no state regulation of any kind exists to protect the public in this area. The C.S.R. Agency amendment was adopted by the House on June 12, 1974. The Senate voted for nonconcurrency in the House amendment. As of September 9, Senate Bill 1410 remains in a House-Senate Conference Committee.

During the summer recess of the General Assembly, Philip P. Kalodner, special legal counsel to the Governor and a former CATV attorney in Philadelphia, protested the inclusion of CATV rate requests as an area under which the proposed C.S.R. Agency can intervene in behalf of the public.

Kalodner stated in a memo to the six conference committee members, "The power of the Consumer Advocate to appear in connection with authority and municipally owned utilities and cable television companies must, in my view, be deleted if the bill is to avoid uniform opposition from municipalities which will make its passage impossible."

State Government Activity in CATV

In summing up the P.C.T.A.'s testimony before the Sub-committee on March 7, General Counsel George Barco outlined a bold plan that his association has been developing in conjunction with the Department of Education to interconnect all CATV Systems in the state via microwave relay system constructed on the state fire towers in Pennsylvania. A verbatim report of Barco's testimony from the March 7th hearing reads as follows:

"We offered as an association to build an interconnection of all cable systems in Pennsylvania. We offered to raise \$3½ million ourselves. Now, their consultant engineer (Department of Education) said it would take 15 years to do this, one channel at a cost of \$25 to \$30 million. We had, I think, two of the finest experts in the country and their experts of the department (Education) admitted that our plan was good, if they would let us use, just for school purposes and informational purposes only, if they would let us use the fire towers as our sites, if they would get the channel capacity for the microwave from the F.C.C. which is available to educational institutions. And every town where there is a system could provide up to four channels of programming for them, the capacity for it. Our system even went further than that...we would even make available to every school district in the state at a cost at the most of \$1,000 to \$1,500 for the receiver up to four channels of educational and informational service. Now this would cost us, if you please, something like \$6.00 a subscriber. Now, we have to build our own dishes, receiving dishes to operate the thing, and each system would cost anywhere from \$3,000 to \$5,000 to \$6,000 on top of the \$3½ million."

Marylou Hollowell writing in Broadband Communication Report, May 12, 1974, said that this so called "Backbone Proposal" is a joint effort of the Pennsylvania Cable Television Association and the State Department of Education. The article

went on to state that P.C.T.A. has committed \$5,000,000 to the project and that five towers would be used for microwave interconnection to all the CATV Systems in the state, using a central control "spine" with seven "ribs" extending across it.

In the May 16, 1974 edition of the Philadelphia Daily News an advertisement appeared, submitted by the Department of Property and Supplies, requesting bids for construction of five fire towers. According to Warren Ely, Department of Environmental Resources, most fire towers were constructed in the 1930's and a replacement program has begun to replace 5 of the 118 towers located in Clearfield, Berks, Northumberland, and Cambria at a cost to the Commonwealth of \$50,000 per tower. (See Appendix VI.)

Elmer Metz, cable consultant to the Governor said that the state report he and John Christopher of the Education Department have been doing secret and will not be released to the public.

However, in a May 5, 1974, Philadelphia Bulletin story, Christopher said the report is to be forwarded to Governor Shapp "in the next couple of weeks."

The same Bulletin article contended that the P.C.T.A. members would stand to benefit financially by the interconnect because they would lease channels to the Department of Education and local school districts and the cable operators would also gain the use of the fire towers for their regular business.

In a Cable TV workshop sponsored by the Department of Education attended by committee staff at a hotel in Reading this April, Christopher stated that in August of 1973, Secretary of Education, John Pittenger assigned him, then Director of the Department's Bureau of Instructional Support Services, to work with Metz-Jarvis Associates, CATV consultants, on a CATV Study. The committee staff has learned that this study is an 18 month research project and is supposed to be a technological assessment of cable in Pennsylvania including Barco's "Backbone Proposal."

At the April Reading CATV workshop, Christopher stated that he personally leans toward a "model interconnection system" somewhere in the state which would be backed by Federal and state money.

On May 29, a staff investigator met with Christopher about the Department's CATV study. Still insisting that the final report would be completed for the Governor, "in the next couple of weeks," Christopher expressed reservations about the "backbone proposal." Instead, a source in the Department elaborated on Christopher's Reading CATV workshop remarks by stating that the Department was leaning towards a model system "to interconnect six suburban Pittsburgh school systems by CATV" to determine if the programming and the equipment can be utilized in Pennsylvania's secondary school system.

The Sub-committee's staff later learned, according to Broadcasting Cable Sourcebook 1974, and confirmed by the F.C.C., the suburban Pittsburgh area also is the home of Astro Cablevision Corporation, 1014 Fifth Avenue, Coraopolis. The 1974 cable sourcebook reveals that W. Elmer Metz, Levittown, is the President/Director with 10% of the 1.3 million shares of common stock issued with 200,000 shares unissued. In addition to Metz, the following persons also hold common stock interest in the corporation: Milton J. Shapp, Harrisburg, Pennsylvania--40%; A. Arthur Miller, Rydal, Pennsylvania, Sec.-Dir.,--3%; Israel Packel, Philadelphia, Pennsylvania--3%; Muriel Shapp, Harrisburg, Pennsylvania--25%; Ralph Fratkin, Philadelphia, Pennsylvania--10%; Bernard Rapoport, New York--4%; Florence Satinsky, Merion Station, Pennsylvania--3%; and Alex Satinsky, Merion Station, Pennsylvania, Treas.-Dir.; James Craig, Upper Darby, Pennsylvania, Officer.

On June 24, 1974, the Governor's Science Advisory Committee held a seminar on Cable Television in Pennsylvania. Mr. Blaze Gusic, Educational Communications Coordinator for the Department of Education, said at the seminar,

in the presence of a Sub-committee staff person, that the "Metz-Christopher" Report probably would not be released until after the November Election since the Governor had received adverse publicity from his Williamsport CATV sale in 1971 in the Press.

Again on July 23, in a story appearing in the Philadelphia Bulletin, John Christopher said that "the report on the possible use of state fire towers to interconnect all of the existing Cable TV Systems in the state and allow for a statewide four-channel hookup for educational programming would not be concluded and sent to the Governor for another couple of weeks. A Sub-committee investigator, that same week, placed a call to Christopher's office. An assistant who answered the telephone said he had the preliminary "Metz-Christopher Report" before him but could not release it. Later, when Christopher returned the call, he told the investigator to talk directly to Secretary of Education John Pittenger about the "Report."

On July 24, Secretary Pittenger fired off a letter to Otis W. Littleton, Executive Director of the full Consumer Protection Committee requesting a meeting about the Sub-committee's staff demands from Christopher. (See Appendix VII, for a copy of the letter.)

Two staff members met with Secretary Pittenger on August 8. The Secretary expressed reservations about the use of Cable TV as an educational tool and down played the Department of Education's efforts in CATV. The Secretary would not release the "Metz-Christopher Report" because he did not feel the "Report" related to the Sub-committee's deliberation of CATV legislation.

Sub-committee investigators learned, and later confirmed, that on August 28, 1974, John Christopher traveled to Tulsa, Oklahoma to study the interconnection CATV Systems in that city. On September 3, Christopher told a Sub-committee investigator, in a telephone conversation, that the Metz-Christopher Report has

not been released to the public because Elmer Metz, the Governor's Cable TV Consultant, continued to be unavailable to meet with him. Christopher said, in that same conversation, that a meeting with Metz has been tentatively scheduled for September 14 and 15 between the two to continue work on the final report.

Part III

Governor Milton J. Shapp and CATV

In 1948, Milton J. Shapp founded the Jerrold Electronics Corporation and eventually developed the Community Antenna Television industry. Shapp resigned as president and board chairman of Jerrold in 1966, a millionaire. In 1970, Jerrold Electronics sold all of its operating and nonoperating cable franchises to Sammons Communications of Dallas, Texas for \$30,200,000 and today Jerrold, owned by General Instrument Corporation, remains exclusively in the manufacturing of CATV electronic equipment.

A Philadelphia Bulletin story, during the fall of 1970, stated that Shapp sold his holdings in the Jerrold Corporation in 1966 for "between \$7.5 and \$8 million and about 30% of that went for taxes. Shapp went on to say that much of his estimated net worth at that time was invested in three cable television companies.

Shapp stated in the same article, "I am a major stockholder in Citizens Cable Company, Williamsport; Astro Corporation, Coraopolis and WHJB, Inc. which operates a radio station and Cable TV Service in Greensburg (Westmoreland County)...My wife has some stock in these companies as well."

The 1970 Bulletin account also went on to say that if Shapp were elected he promised to divest himself of the cable television stock, since there was legislation pending at that time to bring cable television companies under control of the Public Utility Commission.

Shapp stated, "This would represent a conflict of interest and I would sell my holdings in these firms if elected."

On January 19, 1971, Milton J. Shapp was sworn in as Governor of Pennsylvania. Confronted by the problem of his CATV holdings which he promised during the 1970 campaign to divest himself of, the Governor planned with his soon to

be appointed Horse Racing Commission Chairman and CATV business partner in Williamsport, Joseph Lecce, to sell the CATV franchise in that town.

A major problem stood in the way of the two Cable TV entrepreneurs. The Citizen's Cable Company franchise had only 10 months to go before it expired at the end of 1971. Certainly, no prospective buyer would purchase a franchise with 10 months left before it had to be renegotiated with the city fathers. After the purchase by the new firm, a recalcitrant city council could decide to put anything into that CATV ordinance such as limiting the franchise duration to a reasonable period or requiring equitable fees to be paid into the city treasury for the rights to wire the community.

According to accounts in the Philadelphia Bulletin, April 30, 1974, after Shapp became Governor, some unknown person introduced and city council passed on February 25, 1971, a new ordinance to replace the 1965 CATV ordinance which still had ten months to run. The new ordinance gave Citca a nonexclusive franchise for 25 years--the F.C.C. since allows 15 years--and a one percent fee--the F.C.C. allows a maximum fee of 3-5% based on the CATV's gross revenue to go to the regulating body.

One Williamsport city councilman chose to resign from council that very same night to accept an \$18,000 a year political patronage job as county highway superintendent with the only admitted qualification that he worked on the Shapp campaign. This councilman was soon to be followed by yet another councilman who joined the state payroll in a \$12,000 a year job that he considers part time as head of the Williamsport state income tax office. This councilman chose to wait ten months until his council term had expired before accepting the state job.

Obviously pleased by the quick turn of events in the lucrative Williamsport CATV area was Fred Lieberman of Telesystems, Inc., who moved in and purchased

Citca on April 30, 1971 for about \$5 million. Up until 1968, Telesystem mainly constructed Cable System but since that time had entered into actually operating the CATV System.

The actual profit of the Shapp-Lecce transaction remains secret.

The Philadelphia Bulletin which broke the Williamsport CATV deal lists seven questions that still remain unanswered by Milton Shapp:

1. How did Horse Racing Commission Chairman Joseph Lecce get control over patronage appointments in Lycoming County?
2. Who in the Governor's Office approved the appointment to two former Williamsport city councilmen to state patronage jobs after the franchise was granted?
3. Was it just a coincidence that Councilman William F. Verdini was appointed to a state job on the day the council approved Shapp's franchise?
4. Why was former Councilman Toselle (Tony) Meconi at his flower and gift shop, instead of his office as head of the State Income Tax Office in Williamsport, on a day in the week before the tax filing deadline?
5. Why did Citizen Cable seek a new franchise at a time when its franchise still had 10 months to run?
6. Why won't Shapp disclose his profits on the deal?
7. Why hasn't any competing company set up a Williamsport operation if the franchise is truly nonexclusionary?

With one cable franchise sold, Governor Shapp turned his attention to the Greensburg CATV franchise. On January 11, 1972, The Philadelphia Inquirer stated, "Shapp in his revised disclosure statement said he had sold his 37% interest in WHJB, Inc., Greensburg, a cable television firm. Shapp and eight partners operated the 11,000 subscriber system in Westmoreland County."

Like Shapp's Williamsport CATV deal, no profit figure was listed in the

Greensburg transaction according to the newspaper accounts. Staff investigators were refused access to the Shapp financial disclosures. Aid Norval Reece said that only reporters can see the Governor's financial disclosure statement. The Cable TV part of WHJB, Inc. was purchased by Covenant Cable, Inc. of Riverside Connecticut, a wholly owned subsidiary of Broad Street Communications Corporation.

On February 13, 1974, an ownership certificate was filed and approved by the F.C.C. The certificate listed the general partners in WHJB-AM and WOKU-FM in Greensburg as Melvin Goldberg 35.39%, President; Leonard Cohen, 4.99%; Herbert Javery, 2.34%; Leonard Loufe, 7.02%; Herbert Miller, 3.16%; Sidney Stark, 3.17%; and Norton Zavon, 3.67%. Milton J. Shapp is listed as a limited partner with 37.74% ownership. Shapp disposed of the cable franchise but has retained interest in the two radio stations.

Governor Shapp failed in his 1970 campaign promise to avoid a conflict of interest with pending CATV legislation in the General Assembly by not divesting himself of suburban Pittsburgh's Astro Cablevision Corporation in Coraopolis, Pennsylvania. In addition to Coraopolis Borough, Astro Cablevision serves Crescent, Moon and Neville Townships in Allegheny County. The four municipalities have a combined population of 31,661. Currently Astro Cablevision has 4,200 subscribers with facilities for CATV passing in front of 9,100 homes. All together Astro Cablevision has strung 85 miles of cable according to the latest figures in Broadcasting Cable Sourcebook, 1974.

Based on newspaper reports, Milton Shapp's holdings in Astro Cablevision Corporation were worth \$814,000 at the end of 1972. Shapp's Philadelphia accounting firm which prepared his financial statement listed the Cable corporation stock as worth only \$397,000 at the end of 1973. This represents over a 100% decline in the value of Shapp's Astro Cablevision corporation stock.

The 4,000 subscriber Astro Cablevision franchise was the smallest of the three Shapp owned cable interests. The ownership of this franchise has many interesting names as mentioned on page 16.

A picture begins to emerge as to the role the Cable TV industry is playing in Pennsylvania government under Milton J. Shapp. For instance, George Barco, General Counsel to the Pennsylvania Cable Television Association turns up as a Shapp appointee to the Pennsylvania Crime Commission.

Barco also has been instrumental, as outlined earlier, in proposing to the Department of Education, use of state fire towers to interconnect all of Pennsylvania's CATV Systems.

Philip P. Kalodner, a former Shapp appointee as counsel to the Public Utility Commissioner where House Bill 1448 proposed state regulation of CATV, served as general counsel for Telesystems Incorporated to which Shapp sold his Williamsport CATV holdings in 1971. Kalodner, now serving as special legal counsel to the Governor for consumer affairs, sent the memo to the conferees on the Consumer Advocate Bill (S. B. 1410) urging them to remove the provision which allows the consumer advocate to represent the subscribers in rate hike requests of CATV operators before local governments.

Joseph Lecce, now a \$25,000 a year President of Telesystem's CATV franchise in Williamsport, is a Shapp appointee to the Pennsylvania Horse Racing Commission. Lecce reportedly is the political patronage chief of the Democratic Party in Lycoming County.

Attorney General Israel Packel owns a 3% interest in Astro Cablevision Corporation. He served as legal counsel to Jerrold Electronics when Shapp headed up the firm prior to 1966.

Ralph Fratkin, a Shapp appointee to the Pennsylvania Securities Commission and owner of 10% of Astro Cablevision, was Jerrold Electronics Certified Public

Accountant during Shapp's tenure.

Elmer Metz, the Governor's CATV consultant and author of the classified "Metz-Christopher Report" in the Department of Education, worked at Jerrold Electronics as a CATV engineer before founding his own CATV consulting firm in Philadelphia. Metz is also President of Astro Cablevision, owning 10% of the stock.

Dr. Zalmon Garfield, who resigned as executive assistant to the Governor only two months after Shapp took office and now is employed in the Shapp re-election campaign, was a former Shapp associate in cable television according to reports.

Shapp's Astro Cablevision Corporation is represented by the Washington legal firm of Dow Lohnes and Albertson. This is the same firm that represented Comcast Communications, Jerrold Electronics and Sammons Communications when those CATV companies testified in opposition to state regulation of CATV in public hearings before the House Public Utilities Sub-committee. In each case, Counsel Jack Matthews of Dow Lohnes and Albertson presented the arguments against the legislation in the hearings.

Summary and Recommendations

Summary I (For additional background on CATV legislation, see Appendix VIII.)

The series of Public Hearings on Cable TV would appear to confirm the staff study completed in August of 1973 and the need for State Regulation of Cable Communications Systems not now subject to State regulation.

At the present time, Cable Television is generally considered in the context of an alternative to bringing video entertainment into areas in which broadcast television is either weak or nonexistent. This view fails to recognize the potential of Cable Television as a communications media capable of bringing into reality a vast system and range of two-way information services that can and will dramatically change human life in a number of important ways.

The new services that can be delivered by means of a cable, according to the Sloan Commission Report, "will carry with it social, political and economic implications of unparalleled significance dwarfing the changes that were brought about by such earlier developments as the development of television itself or by the creation of the present highway network."

The Sloan Commission pointed out that, based upon past, present and projected growth rates, cable television will reach a market penetration of over 50% by 1980.

Some experts have estimated that by the year 1989 Cable Communications will have developed into a \$20 billion annual market for two way home information services. This is approximately what the consumer spends today for all electricity and telephone services combined.

A recent U. S. Department of Commerce Study says that some 50,000 new engineering jobs may be created over the next 5 years by the cable television industry. Ron Whittaker, of the College of Journalism and Communications at the

University of Florida, has stated that this forecast is reasonable in view of the potential of Cable TV for two way communications.

The potential use of satellites and coaxial cable have expanded not only the prospects of availability, but the potential end uses of Cable TV as a new and exciting communications system that is limited in application by only the imagination.

Applications of cablecasting, cable television, and the transmission of communications by broadband communications systems employing coaxial cable and/or communications satellites, range from unlimited business and commercial applications to education, consumer services, health services and political and governmental applications.

For example, the potential political applications of cable communications, while holding out the promise of many advantages on the one hand, creates new problems with which the politician must learn to cope. "Public access" channels may make it possible to conduct Nationwide or local surveys of voter sentiment on vital issues. It will even be possible to vote via cable communications. Candidates will have greater access to more "free air time" with the ability to confine the video presentation to their voting districts.

One can expect that as a result, more candidates can be expected to run, especially in local elections. There is also included an increased potential for invasion of privacy. Dissident political activists or malcontents, under the free access provisions, would be able to utilize the "free" air time thereby providing them with greater opportunity to espouse their views on an audience that would have greater susceptibility to those views as a consequence, in part, of the fractionalization of television audiences.

Additionally, we could anticipate an acceleration of the trend to participatory government at the expense of representative government. Generally, there would

be easier and more equitable access by all political views to the voters, regardless of their financial considerations.

When we also consider the potential applications to Governmental operations, Education, Industry, Business and Commerce, and Health Care and Household uses and the effects and consequences of those applications whether or not directed in the public interest, the effect on the mind is staggering.

It can be expected that there will be an increase in activity concerning the regulation of this as yet nonexistent industry, as a result of the potential of Cable TV. The fight will be between the Federal, State or Local Governments and between the executive and legislative bodies and will be especially active over control of local cable franchises.

Barry Head, Associate Director of the Design Center for Public Interest Communications, says that Cable Communications can:

1. Provide new access to decisionmakers
2. Give us a survival kit for the disadvantaged by bringing them essential information on employment, housing, health, nutrition, day care, etc.
3. Significantly raise the level of public education
4. Provide means to monitor and combat environmental deterioration
5. Permit the population of our overcrowded cities to disperse, and enable those who remain to form cohesive communities with easy and effective access to each other
6. Enable minority interest groups to reach their members, each other and the rest of us
7. Bring new methods to bear on crime prevention and control
8. Carry family-planning information beyond the reach of field workers to those who most need it

9. Make many business trips unnecessary by making two-way video communication, data transmission, and facsimile printouts possible

These observations are important because they print out the ultimate dependency upon Cable Communications as a necessity and way of life in the future. Within 20 years these futuristic dreams will be a reality and a necessity. For this reason Cable Communications operators must be classified with public utilities and regulated in the public interest.

Operators of Systems have gone on record in opposition to state regulation, especially under the jurisdiction of the Public Utility Commission. The Cable Industry cites regulation by the Federal Communications Commission and local government entities in an attempt to establish proof that they are already over regulated. They claim that State regulation would create a third tier of regulation that would limit their growth, deny them access to capital resources and eventually drive them out of business.

They say that the State's role should be to bring pressure to bear on the F.C.C. to liberalize its regulation of Cable TV. They charge that the F.C.C. is "Broadcast oriented and that F.C.C. regulations favor Broadcast TV at the expense of cable. While there may be some basis of truth to this charge, the charge is diversionary to the issue of state regulation and does not speak to the public utility nature of Cable TV and the lack of effective local, state and federal regulation.

If it were proposed that State regulation would be established for the purpose of placing restrictions on operations, and practices, regulation and supervision of service charges and limitations on rates of return and all other negative things that regulation infers, then the plea to avoid state regulation might be well founded. However, the type of regulation proposed by House Bill 1448 is not of that nature and would instead aid and accelerate the development of this industry in the best interests of the public.

In its origin, Cable TV has had little need of State Regulation. It was developed to bring the fruits of Broadcast TV to remote TV market areas and enhanced the Broadcast System.

Recommendation I

Now that the potential of Cable TV as a revolutionary communications system has been recognized, the saturation of major market areas by Cable TV as an entertainment value will be developed primarily as a means to amortizing the construction of the Cable System in these major urban areas in order to provide the cable operators the opportunity and resources to develop the long range two way communications potential.

These ambitions and goals are healthy and should be encouraged. At the same time the Commonwealth, through constructive regulation should direct the initiative and thrust of these ambitions and goals to the mutual advantage of the public and this infant industry.

Summary II - State Government Activity in CATV

Since August 1973, the Department of Education has assigned a staff person, John Christopher, to work on developing a cable television program in the Pennsylvania school systems. As late as August 28, 1974, it was learned that this Department employee toured CATV operations in Tulsa, Oklahoma.

In testimony before the House Public Utility Sub-committee on March 7, 1974, George Barco reported that a study has been done proposing to interconnect the State's 400 cable television systems by using the state fire towers to hold microwave dishes for educational and general purposes. This plan, offered by the state's cable television owners would cost a minimum of \$4 million to install. The state's cable television system owners would financially benefit by such a system because they would lease channels to the state Department of Education and local school districts for use.

Elmer Metz, Barco and Christopher collaborated on the plan nicknamed the "Backbone Proposal." This proposal was to be released last May. As late as September 9, 1974, the document remains classified within the Department of Education with conflicting accounts of what the report is to consist of and even questions as to whether the report actually exists. The Governor's cable consultant Metz refuses to discuss it and now Christopher has been told to refer all inquiries to Secretary of Education Pittenger who has denied that such a report even exists.

A Department source said that a model-interconnect system involving six suburban Pittsburgh school systems should be recommended. Barco favors the state fire tower microwave interconnect plan and Metz refuses comment. A Department employee stated in a public meeting on Cable that the "Report" will not be released until after the election because of the adverse publicity the Governor received on his Williamsport CATV deal. A meeting with Secretary Pittenger and

Sub-committee staff to obtain a copy of the "Report" failed.

The following questions need to be answered:

1. If the Secretary's position is that CATV has a low priority in the Department, why has a staff person been assigned to this area since August 1973 and two weeks ago visited a CATV system in Tulsa, Oklahoma?
2. Do any of the six suburban Pittsburgh School Systems suggested by the Department source include Coraopolis Borough, Moon, Crescent or Neville Townships?
3. Is it just coincidental that on May 16, 1974 bids were advertised for five new state fire towers and published reports state that the "Backbone Proposal" will use five fire towers?
4. Wouldn't use of state fire towers for private use be a conflict?
5. Are operators to pay rent for the towers?
6. Where are four channels coming from when some cable systems has only five channels and most 12?
7. Who paid for the Metz-Christopher Report?
8. What will the lease fees be to the state?
9. What other than educational purposes will the interconnect system be used for?
10. Who will pay for programming?
11. Who will build the system and supply the electronic cable equipment?

Recommendation II

Governor Milton Shapp must release the "Metz-Christopher Report" which has been proven to exist beyond a "shadow of a doubt" in order to explain the ramifications of the proposal to the public and General Assembly.

The question of a conflict of interest is raised by Governor Shapp's holdings in Astro Cablevision Corporation and any proposed state authorized interconnection of the Commonwealth's CATV system or the state plans for a model CATV education system. The CATV industry, including the stockholders of Astro Cablevision Corporation, will gain financially from such an expenditure of public funds or use of state property for private purposes.

Summary III - Governor Shapp and CATV

On April 10, 1974, the Governor promulgated an Executive Order (4 Pa. B. 79B) establishing the Code of Ethics for appointed officials and state employees. Section 7.142 (a) of the Code states in part: "An appointed official or state employee who participates in the negotiation of contracts, the settlement of any claims or charges in any contracts, the making of loans, the granting of subsidies, the fixing of rates or the issuance of valuable permits or certificates to, with or for any entity shall not have, directly or indirectly, any financial or personal interest in that entity.

Robert M. Landis, Chairman of the Governor's Board of Ethics on August 10, 1974, (4 Pa. B. 1688) stated, "The words of this section of the Code are clear and mandatory. They state that an employee shall not have directly or indirectly any financial interest in an entity with which he deals on behalf of the state. They contain no element of degree or substantiality for the measurement of his financial interest. And it cannot be disputed that ownership of stock is a financial interest."

"Since the Code promulgated by the Governor leaves no measure of discretion that would permit the Board of Ethics to make a judgment on the substantiality of any financial interest which might adversely influence the judgment of an employe in dealing with a company in which he owns stock, we hold that he is precluded from representing the state in negotiations with such a company."

"While it might seem in the circumstances here presented that an employe should not be disabled from dealing with a large corporation simply because of a modest investment in the company's fortunes and the unlikelihood that this could adversely affect his faithful representation of the state's interests, it is not difficult to imagine circumstances where the elements of financial interest of the employe in the company and of the company in the successful consummation

of contract negotiations with the state are more nearly balanced so that the degree of possible adverse influence would loom large. And it must be remembered that the preamble of the Code states that government officials must seek to avoid even the appearance of improper conduct."

"The Code provides no measure of discretion that would justify this Board in imposing its own standards of degree and influence to alter the plain prohibition of the conflict of interest section. We hold that the facts set forth in this inquiry present an impermissible conflict of interests."

The employee in question above had only \$4,600 of IBM Stock. The Ethics Commission ruled that the facts represented a conflict of interest since the employee negotiates contracts for the Commonwealth with suppliers of data processing devices manufactured by IBM.

The preamble of the State Ethics Code states that government officials must seek to avoid even the appearance of improper conduct. Governor Shapp has an estimated \$400,000 to \$800,000 investment in Astro Cablevision. With legislation pending in the House of Representatives to regulate CATV in Pennsylvania, it appears that a conflict of interest exists between the Governor's 65% of 1.2 million shares of Astro Cablevision Corporation stock and pending legislation in the General Assembly.

In addition, the Governor has constantly failed to cooperate with the Public Utility Sub-committee of the House of Representatives by refusing to testify before the Sub-committee on the subject of State CATV regulation. The Governor's appointee to the Pennsylvania Crime Commission and contributor to the secret Metz-Christopher Report, George Barco in his role as general counsel to the Pennsylvania Cable Television Association, drafted a resolution approved unanimously in August 1974 by the board of directors and the membership of the association opposing any state regulation of CATV at this time. Astro

Cablevision Corporation is a member of P.C.T.A.

Elmer Metz, cable consultant to the Governor and writing a Report on CATV uses for education purposes for the Department of Education, owns ten percent of stock in Astro Cablevision Corporation where he serves as President. This would appear to be a conflict of interest.

Recommendation III

Governor Milton Shapp should divest himself of Astro Cablevision Corporation stock to meet his commitment to the people of Pennsylvania by avoiding a conflict of interest with pending CATV legislation based on the Ethics Code of the Commonwealth of Pennsylvania.

"After the typing of this Report additional information was discovered relating to the Governor's CATV Consultant Elmer Metz which appears below."

On October 4, 1974, State Librarian Ernest Doerschuk and the Board of Directors of the Scranton Public Library finalized a one year \$17,227 Federal Title I Library Service Assistance grant, in this case for Public Access cablecasting facilities in the Scranton Public Library.

The Title I grant called the Scranton Video Project, Contract No. 40039-ME02-242-11 awarded by the state librarian under the State Secretary of Education calls for \$11,534 for CATV equipment, \$1,300 for a Cable TV studio and \$1,500 for a CATV seminar.

The Cable TV consulting firm of Metz-Jarvis Associates, Newtown, Pennsylvania has been designated in the contract grant to conduct the \$1,500 CATV seminar for the Scranton Public Library. The President of the firm is Elmer Metz, Cable TV consultant to Governor Milton J. Shapp.

A September 6th, 1974 inner-office memo from Charles Pequese, Title I coordinator, Bureau of Library Development to Blaze Gusic, Educational Communications Coordinator in the Education Department states that the Metz-Jarvis Associates Seminar, "will be designed primarily to acquaint local government officials, representing the political subdivisions within the Pocano District Service Area with the major points to be considered before signing or renewing a CATV franchise contract. Also stressed will be some of the uses that governmental agencies can make of CATV."

The file memos in the office of Mr. Pequese states that the Scranton Public Library filled out a Title I Library Development application form estimating the cost of the CATV equipment to cost \$8,180.00.

In July, 1974, a second application was submitted by the Scranton Library which included a request for an additional \$1,300 for a CATV Studio to be located within the library, \$3,354 for additional CATV equipment and a \$500 request for the CATV seminar to be conducted by Metz-Jarvis Associates.

When the contract was finalized on October 3, 1974, by the state librarian, \$1,500 for the seminar was line budgeted. The contract adds that Bryon D. Jarvis "will conduct a cable TV workshop."

Sumner White, Librarian of the Scranton Library said that the Title I money will allow the library to set up CATV videotaping operations and direct broadcasting facilities to provide for direct broadcasting into the existing CATV system in the City of Scranton for public access.

White went on to state that the purpose of this grant is to increase use of the public access channel by the public, to train citizens to use the CATV equipment and to record interviews at the library for later broadcasting over the local CATV system.

The grant money will include two TV cameras, videotaping equipment, cablecasting studio equipment and the cable seminar according to White.

Appendix I

Excerpts From the 1973 Consumer Protection Committee "Report on CATV Systems and Need For State Regulation"

PRESENT STATE OF REGULATION

A. Local Level

Until March 1973, regulation of the development of Cable Communications System rested primarily with local governments. However, the inadequacy of municipal facilities to deal with this development has been made clear through the frequent misuse and ineffectual handling of franchises granted to various companies for the construction of cable systems. It is the great frequency of these incidents which leads to the conclusion that the fault lies not with any particular city government, but rather with the structure and nature of all local governments.

First of all, the franchise procedure implemented in most areas is much less equitable than it would desirably be. The authorities tend to look upon the advent of cable communications as merely another source of insuring increased city revenue, rather than also as a matter of crucial importance to the consumer. In most cases, this limited view has resulted in a lack of public notice and deliberation, and consequently a lack of competition in the awarding of franchises. In addition, if local government continues to exist as the only source of control of cable communications; the chances are great that because both parties would be receiving revenues, a business partner relationship would arise. Empowering the state and federal levels of government to control might at least lessen the cooperation usually tending to arise between regulated and regulator. Furthermore, after the franchise has been awarded companies are free to transfer or delay construction for great periods of time. There are rarely, if ever, any service or construction deadlines -- a problem of added importance when one

considers that franchises have been granted for periods of up to twenty-five years.

Perhaps one of the reasons for the inability of municipal governments to cope effectively with the development of Cable Communications is a lack of expertise on the part of local officials. These officials probably cannot develop and maintain the necessary awareness of issues due to both the length of time local officials generally remain in office and the number and length of franchises. In addition, the extension of franchise territories into more than one municipality frequently renders control by one local government ineffectual. Not only is a municipal authority unable to govern beyond certain boundaries, but also probably unable to acquire the costly machinery necessary for continued supervision of Cable Systems.

Finally, before extensive construction is begun on systems already having been awarded franchises, these systems should be updated. Because an effort by a local government to pass ordinances effecting contracts created through previous ordinances would be more questionable than a similar effort by a higher branch of government; it might be wise to reduce the vulnerability of regulatory measures to constitutional objections based on the contract clause, by vesting regulatory powers in state or federal agencies.

In sum, it may be concluded that theoretical speculation would lead one to believe that local government is both less able and less willing, and therefore, less likely to institute effective regulations -- either remedial or preventative -- for the Cable Communications Industry. In light of the great potential for expansion which this industry possesses, it would thus seem that regulations should be instituted at other levels.

Appendix II

Bill Analysis - House Bill 1448, P. N. 1839 "Cable Television Act"

Section 2. Declaration of Legislative Findings and Intent

The Legislature has determined that operations of cable communications involving public rights-of-way, municipal franchising and community service are of State concern. They must be protected from undue restraint and regulation so that cable systems can develop for the educational and public services that it has to offer with the rapid growth of this industry. Many municipalities lack the necessary resources to function in the public interest in regard to cable franchising.

A State agency is needed to develop a State Cable communications policy with authority in the Public Utilities Commission to review the suitability of practices to franchise cable companies, to set standards for cable communications systems and franchise practices; to limit cross ownership in the field of communication; to assure that cable communication systems meet minimum Federal Communications Commissions requirement; to provide consultant services to community organizations and municipalities in franchise negotiations.

Section 3. Definitions

Cable communications system means any system which operates for the service of receiving and amplifying programs broadcast by one or more television and/or radio stations and any other programs originated by a cable communications company. The term "cable communications system" does not include any system which serves fewer than 50 subscribers or any master antenna television system.

Section 4. Application of Act

Section 5. Committee Created

Cable communication is a public utility and a State Committee on Cable

Communication is created in the Public Utilities Commission, consisting of five members appointed by the Chairman of the P.U.C. The Governor appoints one member as the chairman. The Committee appoints an executive director and employees as needed and prescribe their duties and fix compensation. The Committee will be created within two months of the effective date of this act.

Section 6. Duties of the Committee

- (1) Enforce requirements set up by the F.C.C.
- (2) Prescribe standards for franchises such as public notice to compete for the franchise, standard application form, a construction schedule supported by a performance bond, estimated subscriber fees, hold public hearings for applicants and submit a report of findings.
- (3) Prescribe minimum standards for inclusion in franchises, including channel capacity, access, facilities, channels for education, government and public access, two-way capability, etc.
- (4) Provide advice and technical assistance to the cable industry.
- (5) Establish minimum specifications for equipment, service and safety of cable communications systems.
- (6) Encourage the creation of public and community groups interested in cable.
- (7) Set standards for the size of cable territories.

Section 7. Powers of Committee

The Committee may promulgate orders, rules and regulations as needed. The Commission may require cable companies to file reports and any other data deemed necessary under oath. The Committee can obtain necessary documents and testimony to carry out this act.

Section 8. Costs and Expenses of the Committee

The Committee by regulation will bill and collect from each cable communications company a fee to carry out the provisions of this act.

Section 9. Municipal Fees, Taxes or Charges

Nothing in this act limits the power of any municipality to impose upon any cable communications company a fee, tax or charge.

Section 10. Franchise Requirements

No cable communication system can operate or expand the area after the effective date of this act unless it has been franchised by each municipality.

Section 11. Construction of Systems

Every cable communications system constructed after the effective date of this act must comply with construction standards established by the Committee.

Section 12. Certificate of Confirmation

No one shall exercise a franchise until the Commission has confirmed that franchise.

The Commission may hold public hearings on any application for a certificate of confirmation if it determines that such a hearing is in the public interest.

The Commission shall issue a certificate of confirmation to the franchisee unless it finds that the applicant, the proposed cable communications system or the proposed franchise does not conform to the standards of the regulations.

Section 13. Poles, Ducts and Conduits

The Committee, within two years from the effective date of this act, will specify rules for use of Public Utility poles by the cable systems.

Section 14. Appeals to the Commission

The aggrieved party has 30 days to appeal for a hearing on a decision by any franchise authority of the P.U.C. When 10% of the subscribers request or by the initiative of the Committee, the staff may investigate the granting, renewal or assignment of a franchise or the conduct of the business. The executive director may after a hearing, modify, suspend, revoke or cancel the license.

Section 15. Ownership and Control

- (1) No firm can own and/or operate cable systems that have the potential to serve more than 40% of the homes in the State.
- (2) No cable company shall be owned or controlled by any company engaged in the sale, rental, lease or repair of television receivers.
- (3) Or in any form of communications media serving the same area as the cable company.

Section 16. Financial Interest of Members and Employees

No member of the cable committee, P.U.C., any elected official of the body

granting franchises and no employee of the P.U.C. or any franchising body can be employed. They may not have any financial interest in any cable communications company holding a franchise in the State or selling or providing equipment, facilities or services to the cable company.

Appendix III

Excerpts relating to Philadelphia Cable transfers from
the 1973 Consumer Protection Committee
"Report on CATV Systems and Need for State Regulation"

There is presently a considerable amount of confusion concerning the movement of franchises in Philadelphia. In 1966 hearings were held, and after bids were taken, franchises issued to six Cable Communications Companies, including the Jerrold Corporations. Because granting of the franchise included the issuance of an ordinance permitting use of city streets, public hearings and bids were mandatory. The FCC requires cities to hold such hearings in any new award in order to insure due process. The ten year franchise awarded to Jerrold was non-exclusive, thus continuing until terminated by another ordinance. Included in the original ordinance was a provision prohibiting a transfer of the franchise to any company not substantially owned by Jerrold.

'The authorization granted by this ordinance may be exercised only by the Jerrold Corporation except that it may be assigned to an affiliate or subsidiary of the Jerrold Corporation substantially owned by the Jerrold Corporation.'

However, on October 8, 1971, Jerrold sold all of its cable systems, both operating and non-operating, to National Trans-Video (a subsidiary of Sammons Corporation) for thirty million dollars. The price of the Philadelphia franchise was seventy-five thousand dollars. The contract for the sale of these interests does acknowledge that municipal approval is necessary for the final transfer. The contract also provides that if after two years approval has not been obtained, Jerrold will surrender the franchise, or any part not transferred, to the municipality. However, both companies now hold that a sale was nevertheless consummated due to the fact that money did change hands.

After this sale, both companies underwent certain corporate reorganizations.

Control of the Jerrold Corporation was transferred to General Instrument Corporation. Jerrold was then merely a holding company, as all assets other than non-operating franchises had been removed. Jerrold was then transferred to Sammons and re-named East Coast Cable-Vision Incorporated. The name of Jerrold Corporation was then sold back to General Instrument. Although the necessity for municipal approval was acknowledged in the contract, Sammons holds that due to the above reorganization in which a company, not a franchise was sold, there was in actuality no transfer and approval is no longer required.

In March of 1972, the FCC passed new regulations whereby before a franchisee can begin construction of a cable system, that company must obtain a Certificate of Compliance (with the new rules) from the FCC. On January 24, 1973, Jerrold received the Certificate of Compliance, but Jerrold still does not wish to operate the system. Because no construction had begun prior to the passage of the new FCC Regulations, Jerrold has no vested interest at stake. Also, according to the new regulations, there is a thirty day period after the awarding of a Certificate of Compliance during which a Petition for Reconsideration can be filed with the FCC. Metrotel Communications, Inc., has expressed a desire to join with the city of Philadelphia in filing such a petition. Metrotel urges this action so that neither Jerrold nor Sammons will be able to later contend that the city's negligence in filing no protest was a forfeiture of the option to act at some future date. The grounds for the protest would be that an illegal transfer of the franchise has taken place because it is no longer owned by the company to which it was granted. Meanwhile, the PCCC (headed by Reverend Ralph Pitman, Jr.) has challenged the certificates because its members believe franchises should be subject to a process of public consideration. Thus far, the city has taken no action.

However, FCC certification is not necessary if the city wishes to revoke a

franchise. The franchise can be declared void and new bids taken. Metrotel would favor this action for several reasons. One major reason which cannot be discounted is that Metrotel itself would bid on the franchise. Such franchises are presently being sold for millions of dollars and are undoubtedly assets of great value to any communications company. In addition, the officers of Metrotel, along with representatives of various area consumer groups, point out other reasons why new bids on the franchise would be in the public interest.

FCC requirements specify that before a city can make any new franchise award, public hearings with competitive bids must be held as a part of "public notice" and "public proceedings." The services offered in new bids would have to meet FCC requirements; including a minimum of twenty channels with at least one public access channel available on a first come first served non-discriminatory basis, one channel for use by local educational authorities and one channel for use by the local government. The services planned by the Sammons Corporation have not, as yet, been described. Public hearings would also provide the chance for community groups to become informed as to the content of various bids, and to express their preferences. Open bidding would, therefore, probably result in the provision of higher quality service. Officers of Metrotel also hold that the transfer of franchises should continue to be prohibited because the subsequent price inflation is felt directly by the consumer. They also assert that municipal ownership is an unfavorable and unwise alternative due to the experimental nature of cable systems. Municipal governments cannot afford the great cost and large element of risk involved in the pursuit of such an innovative industry. There is also the ever present danger of government encroachment on freedom of expression. In short, a "re-opening of the franchise would provide the opportunity for public participation in the awarding of a new franchise, with attendant disclosure of plans and pressure for greater responsiveness to community needs."

Recognizing the crucial nature of the dispute and believing that the current situation needs correction, Councilwoman Ethel Allen has introduced to City Council an ordinance revoking the Jerrold franchise and allowing new bids as part of a public planning process. Two drawbacks of this plan have been noted. First, the great delay in the development of Cable Communications Systems would only be extended; and second, there is the chance of awarding the franchise to a company offering services inferior to those planned by Sammons. However, no hearings have been scheduled on the bill which is under the jurisdiction of the Law and Government Committee. Certain individuals have speculated that it is something more than coincidence that the Committee is chaired by Isadore Bellis, who in 1966 granted the six Philadelphia franchises and is now under investigation for bribery and other abuses of power. Certain observers have speculated that Councilman Bellis is now attempting to stifle the opposition. However, Mr. Bastos of the Mayor's Office maintains that the city wishes to remain neutral in the controversy.

Believing that a need exists to halt further development of franchises until the Jerrold transactions have been officially investigated, early in June Councilwoman Beatrice Chernock proposed a measure to the City Solicitor which would place a moratorium on further franchise development. However, the City Solicitor refused to enact such a measure. Mrs. Chernock's next possible alternative was to inform the press of her attempted action. However, chances of any fruitful results from this action seemed slim due to the fact that Philadelphia newspapers own interests in certain of the remaining franchises.

More recently Triangle Publications, a subsidiary of Commonwealth Cable TV sold a great many of its cable holdings, including the Philadelphia franchise, for eleven million dollars. However, there are conflicting reports concerning

the amount of the entire company that was sold. The question remains concerning who will build and manage the systems, even if fifty percent or less was transferred.

The third reported transfer involves Communications Properties, Inc., Mid-New York Broadcasting, and Delaware County Cable TV. The franchise awarded to Mid-New York Broadcasting Corporation is now owned by a trust. All three trustees are principals in Communications Properties, Inc., the owner of Telesystems. This change has been reflected in the applications for certification filed with the FCC. In addition, it seems that copies of the application are to be on file for public inspection in the Office of the Clerk of Council, but that such copies have in actuality not been available. It would appear that either access is being denied, or that the copies were never filed.

It would, therefore, appear that there are serious differences in the ability of the local government to deal fairly and equitably with the problems of the development of the Cable Communications Industry. The only channels offering information and assistance to interested citizens are consumer groups such as Ralph Pittman's PCCC. Thus, both experience and theory have demonstrated that, as Bea Kinney in her role as a member of the Philadelphia Community Cable Coalition has stated, "There is a big fat vacuum at the local level." The local government appears much less likely to try to effect remedial measures for the inadequacies of present franchises than is necessary. State or Federal intervention is therefore essential to protect the public interest.

PERCY G. FOOR, MEMBER

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COMMITTEES

CONSUMER PROTECTION, CHAIRMAN
AGRICULTURE AND DAIRY INDUSTRIES

HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG

June 20, 1974

Mr. Charles M. Firestone
Citizens Communications Center
1914 Sunderland PL., N.W.
Washington D. C. 20036

Dear Mr. Firestone:

During the course of the Public Utility Subcommittee's investigation into Cable Television Systems in Pennsylvania we received information that appears to substantiate your belief that a Mr. Shelly Gross and/or Music Fair Enterprises, Inc., have a financial interest in the Greater Philadelphia Franchise.

According to our records, Mr. Gross and Mr. Milton Shapp of Jerrold Electronics met in Mr. Shapp's office on Monday afternoon of December 14, 1964, to discuss certain business agreements. Included in these discussions were:

1. An agreement with respect to a "Baltimore Collaboration" to "push ahead with all haste" to avoid multiple applications as in Philadelphia and New York.

2. That with respect to the Philadelphia application, Music Fair Enterprises would not testify before City Council and that should Jerrold Electronics obtain an exclusive Franchise for one area of the city or for the entire city, Music Fair Enterprises "would have a 10% share" of the CATV expense and income unless Jerrold obtained the Franchise applied for in collaboration with other principles in which case Music Fair Enterprises would have only 5% of Jerrold's end.

This understanding was confirmed in correspondence between Milton Shapp and Shelly Gross dated December 17, 1964, January 8, 1965, and January 12, 1965.

Evidence that the deal was consummated is supported in the Purchase Agreement between the Jerrold Corporation and the National Trans Video Inc., buyer, a wholly owned subsidiary of Sammons Enterprises according to information available to our Committee.

Mr. Charles M. Firestone
June 20, 1974
Page 2.

On or about May 13, 1974, a Mr. John Matthews, Attorney for Sammons Enterprises and a Mr. Mark Weber, East Coast Director of Sammons Enterprises, confirmed to me in the presence of the Committee's Administrative Assistant, Mr. Stephen Dull, that Music Fair Enterprises and/or Shelly Gross still has a 10% interest in the Philadelphia Franchise.

It is my understanding that copy of Agreement of Sale is on file with the Securities and Exchange Commission in Washington and is available for duplication.

It was also reported to our Committee that Philadelphia City Councilwoman, Isadore Bellis, Chairman of the Committee that considered franchises had an ownership interest in Music Fair Enterprises, Inc. We have been unable to confirm this information from our usual search of public records.

For your information, we have recently informed the U. S. Attorney, Eastern District of Pennsylvania of these transactions for his consideration.

It would appear that the conduct agreed to in the December 14, 1964 meeting may involve possible violations of the Anti-Trust Laws regarding unlawful restraint of trade.

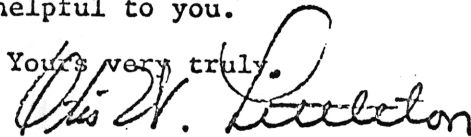
The Agreement of Sale between Jerrold and National Trans Video covered the sale of common stock in certain corporations owned by Jerrold which directly or indirectly operated and non-operated CATV Franchises in various parts of the United States. The agreement also extended to business and citizens radio services licenses which required the approval of the F.C.C.

It is our understanding that the Agreement was effective in October of 1971.

It is our understanding from citizens and citizens groups in Philadelphia that this sale of Jerrold Electronics interests in operating and non-operating franchises effectively circumvented a city ordinance prohibiting the transfer of city franchises to other interests.

We trust this information will be helpful to you.

Yours very truly,



Otis W. Littleton, Executive Director
Consumer Protection Committee

OWL:des

December 17, 1964

Mr. Milton Shapp
JERROLD ELECTRONICS CORP.
15th and Lehigh
Philadelphia, Penna.

Dear Milton:

Although we both understand that conditions might change to affect these preliminary agreements, I thought you would like to have a record of our discussions held in your office on Monday afternoon, December 14.

1. We are to push ahead with all haste in the Baltimore collaboration in an effort to avoid multiple applications as in Philadelphia and New York. Our agreement there was as outlined in our prior meetings. You stated that Jerrold would not be seeking public financing but would either supply its share of the money from its own treasury or from borrowed funds.

2. With regard to the Philadelphia application, it is outlined that:

a. Music Fair Enterprises would not testify before City Council.

b. Should Jerrold obtain an exclusive franchise for one area of the city - or for the entire city should that somehow develop - Music Fair Enterprises would have a 10% share of the CATV expense and income.

(over)

Mr. Milton Shapp
Page 2
December 17, 1964

Should Jerrold do this in collaboration with other principals, Music Fair Enterprises would only have 5% of Jerrold's end. It was agreed that when Pay TV became a factor, Music Fair Enterprises would pay all of the capital and operating expenses for the Pay TV operation and own it in its entirety, paying a reasonable royalty to the mother company which would own the CATV.

Sincerely,

MUSIC FAIR ENTERPRISES, INC.

Shelly Gross

SG:mae

MILTON J. SHAPP

Room #18 • Suburban Station Building • Philadelphia 3, Pa.

January 8, 1965

Mr. Sheldon Gross
Music Fair Enterprises, Inc.
Bourse Building
Philadelphia, Pennsylvania 19106

Dear Shelly:

Just returned from vacation and note your letter of December 17th.

I agree with you that the conversations held on December 14th should be recorded so that there is no misunderstanding regarding the operation.

In regard to item 2-b, it is my understanding that whether we have an exclusive or non-exclusive franchise for all or part of the City, if we do not take in other financial interests we would be very glad to have Music Fair invest with us up to a 10% interest in the company.

However, in the event that Jerrold should bring in other investors who would furnish all or almost all of the capital, then Music Fair would have the opportunity to invest up to 5% of Jerrold's end of the operation.

As far as Pay-TV is concerned, your statement is in strict accordance with my recollection of the conversation. I think it should be pointed out that in my mind, Pay-TV is a system whereby the company charges its customers on a program basis to watch specially produced programs and this would not necessarily cover a system of CATV operation in which we might have two classes of customers receiving monthly bills-- one class getting off the air programming, background music and things of this sort, and another receiving all the above, plus movies and closed circuit events for a flat additional monthly fee. In this latter case, there would be no increase in capital or operation expenses, merely the cost of obtaining programs for this purpose.

I have not heard as yet when City Council expects to resume its hearings on CATV in Philadelphia. I will review with you in advance our presentation to City Council.

Best regards,


Milt

MJS:clk

January 12, 1965

Mr. Milton J. Shapp
Suburban Station Building
Room 1148
Philadelphia 3, Pa.

Dear Milt:

Received your letter of January 8th this morning.
We are in complete accord with its terms.

Regards

MUSIC FAIR ENTERPRISES, INC.

Shelly

SG:mac



HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG

February 15, 1974

Honorable Milton J. Shapp
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, Pennsylvania

Dear Governor Shapp:

As you may or may not be aware of, the Consumer Protection Sub-Committee on Public Utilities has been in the process of holding hearings around the state on the cable communications systems in the Commonwealth.

We have written House Bill 1448 which provides for a state agency to develop a state cable communications policy with authority in the Public Utilities Commission to review the practices of franchising cable companies; to set standards for cable communications systems and franchise practices; to limit cross ownership in the field of communication; to assure that cable communication systems meet minimum Federal Communications Commission's requirement; and to provide consultant services to community organizations and municipalities in franchise negotiations.

The need for a state cable informational body can be seen in every township, borough, and city of our Commonwealth. Part-time local officials are easy prey to the "pie in the sky" promises of any entrepreneur with expertise. The granting of cable television franchises is an example of local government inadequacy. As cable wires are now being strung over the hills and valleys of the 92nd Legislative District, the Federal Communication Commission is a distant bureaucracy in Washington to turn for help and private consultants are an expense they cannot bear. I suggest that a state cable committee is the only recourse for the local municipality and to the cable industry itself.

Your support for this important legislation is needed for its ultimate success. Your wide and varied experience in the cable communications industry serves as a unique source of expertise to be tapped for the cable subscribers of this Commonwealth. We, on the Sub-Committee, feel House Bill 1448 can only benefit from any suggestions or amendments you may have on the substance of the bill.



HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG

Honorable Milton J. Shapp
February 15, 1974
Page 2

The Public Utility Sub-Committee will hold its final hearing on House Bill 1448 on Thursday, March 7, in the Majority Caucus Room of the House of Representatives. On behalf of the Public Utility Sub-Committee, I invite you to present testimony on the merits or defects of House Bill 1448 and ask for your support in establishing a state cable communications committee. The full Consumer Protection Committee plans to send this legislation to the Floor of the House no later than April 1.

Kindest personal regards.

Very truly yours,

Eugene R. Geesey
Chairman - Sub-Committee
Public Utilities

ERG:fs

Appendix VI

The five towers are expected to replace the existing fire towers at those locations.

Phila Daily
News
5/16/74

CONSTRUCTION OF FOREST
FIRE TOWER, FOREST DISTRICT
NO. 6, LOWER YODER TOWNSHIP,
CAMBRIA COUNTY, PENNSYLVANIA.
PROJECT NO. ER 9653-1-4 — General
and Electrical Construction —
Deposit Check — \$ 5.00
CONSTRUCTION OF FOREST
FIRE TOWER, FOREST DISTRICT
NO. 9, PINE TOWNSHIP, CLEAR-
FIELD COUNTY, PENNSYLVANIA.
PROJECT NO. ER 9654-1-4 — General
and Electrical Construction —
Deposit Check — \$ 5.00
CONSTRUCTION OF FOREST
FIRE TOWER, FOREST DISTRICT
NO. 18, WINDSOR TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA.
PROJECT NO. ER 9655-1-4 — General
and Electrical Construction —
Deposit Check — \$ 5.00
CONSTRUCTION OF FOREST
FIRE TOWER, FOREST DISTRICT
NO. 20, EAST CAMERON TOWNSHIP,
NORTHUMBERLAND COUNTY,
PENNSYLVANIA.
PROJECT NO. ER 9656-1-4 — General
and Electrical Construction —
Deposit Check — \$ 5.00
IMPORTANT: SEPARATE DEPOSIT
CHECKS DRAWN TO THE
ORDER OF THE COMMON-
WEALTH OF PENNSYLVANIA
MUST BE SUBMITTED FOR EACH
PROJECT. PLANS AND SPECIFICATIONS
WILL NOT BE SUPPLIED UNLESS A CHECK(S) ACCOMPANIES THE REQUEST.
Plans, Specifications and Proposal
Forms may be secured by prospective
bidders by applying to the attention
of L. A. DOMLESKY, P.E., DIRECTOR,
BUREAU OF ENGINEERING AND CONSTRUCTION,
DEPARTMENT OF PROPERTY AND SUPPLIES,
2221 FORSTER STREET, HARRISBURG,
PENNSYLVANIA, and depositing the amount
stated above, which deposit will be
refunded only upon return of the
plans and specifications in good
order within thirty (30) days after the
opening of Bids.
Plans and Specifications may be reviewed
free of charge at the office of the
Bureau of Engineering and Construction,
Department of Property and Supplies,
2221 Forster Street, Harrisburg,
Pennsylvania, or when requesting plans
and specifications, write to P.O. Box
3361, Harrisburg, Pennsylvania (17125).
Each Proposal must be accompanied
by a Certified Check, Bank Cashier's
Check or Surety Bid Bond, drawn to
the order of the Commonwealth of
Pennsylvania, in the amount stated
on Page 1 of the Bid Proposal.
Bidders are requested to review the
manner and form of executing Bid
Proposal in accordance with the
INSTRUCTIONS TO BIDDERS under
the heading - PROPOSAL FORMS.
The Commonwealth of Pennsylvania
reserves the right to reject any or all
Bids and to accept or reject any part
of any Bid.
Charles Adler II, Deputy Secretary
of Property and Supplies for
Frank C. Hilton, Secretary of Property
and Supplies.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
HARRISBURG, PENNSYLVANIA 17126

JOHN C. PITTENGER
SECRETARY

AREA CODE 717
787-5820

July 24, 1974

Mr. Otis Littleton
Education Director
Consumer Protection Committee
115 Main Capitol
Harrisburg, Pennsylvania

Dear Mr. Littleton:

I learned from Mr. John Christopher, Director of the Bureau of Instructional Support Services, that you are interested in obtaining some information about plans which we have been discussing for some two years relating to a possible statewide interconnecting cable system.

As I listened to Mr. Christopher's account of your conversation with him, it occurred to me that you may have ended with a rather negative view of our willingness to cooperate in this matter.

I think I have a reputation for dealing candidly with the General Assembly and its staff, and wish to maintain that reputation.

I will be out of town next week, but will return on August 5 and then be here the rest of the summer. May I suggest that you call me sometime that week in order that we may sit down and discuss the matter in greater detail.

Sincerely,

John C. Pittenger
John C. Pittenger

cc: Mr. Christopher

Appendix VIII

VIEWS AND OPINIONS ON THE CONFERENCE ON CABLE COMMUNICATIONS
IN ALBANY NEW YORK AND ON THE FUTURE STATE REGULATION OF CABLE IN PENNSYLVANIA

by Stephen Dull
Administrative Assistant
Consumer Protection Committee

Approximately 60 legislator, staff and industry representatives participated in the National Convocation of Legislative Leaders on Cable Communications in Albany, New York on June 6, 7, and 8. Vince Carocci represented the Senate Majority Leader.

Two basic questions were to be answered at this meeting: 1. Is there a role for State Government in cable communications? 2. If states do become involved in cable communications, in what matters and in what ways can they make the most positive contributions?

Before a state role can be outlined, the role of the Federal Communication Commission in regulation of Cable Television must be ascertained. This role is not clear and, therefore, it makes the scope of state regulation of cable difficult to determine at this time. The implied powers delineated within the Communications Act of 1934 according to case law give the F.C.C. power to completely eliminate state and local regulation of cable television if the commissioners so decide.

In 1972, the F.C.C. issued a Cable Television Report and Order and Reconsideration. This Report attempted to define the F.C.C.'s role in regulating cable television. Many questions arose over the Report and Order. Subsequently, the Commission issued a clarification of the cable television rules and notice of proposed rule

making and inquiry on April 15, 1974. Section V, paragraph 42 of the report contains a key section concerning federal, state, and local relationships. This paragraph states that the F.C.C., in the near future, will deal with the three-tier regulation more specifically. The new three-tier regulation of cable exists in 7 states. Four states, Connecticut, Nevada, Rhode Island and Vermont, do not give the local government a role in cable regulation.

David Kinley, head of the Commission's Cable Bureau, perhaps gave an inclination of the direction the F.C.C. will take on the regulatory burden of the cable industry. Kinley believes that a nonfederal tier of cable regulation can play six roles:

1. Public proceedings. This would include due process in awarding a franchise. The F.C.C. is reluctant to get into this area. The states can outline procedures that the F.C.C. will certify.
2. Legal, technical, financial, and character of the applicant. Currently, the F.C.C. requires that only the franchising authority inquire into these categories. The state can spell out these categories and the F.C.C. would certify the procedures.
3. Line extension problems. The state could require the franchise holder to provide on a reasonable and equitable basis, cable lines into low density areas.
4. Process of franchise amendment. The states can set rules for amending or transferring original franchise agreement. This would include setting of rates to subscribers.
5. Require designation of local officials to receive complaints.
6. Right of the state to designate cable franchise areas.

It would appear that the F.C.C. does believe that there is a role for a nonfederal level of government regulation in cable communications. The latitude and scope of that role have yet to be clearly defined. Also, Dr. Clay T. Whitehead, Director of

the Office of Telecommunications, who prepared the "Cabinet Committee on Cable Communications Cable Report to the President," in January, 1974, came out in support of a larger state and local role in cable. He contended that the climate in Washington is unhealthy for cable and the "Feds" should set only technical standards and distant signal regulations. He went on to support the concepts of the Cable Report which call for the cable system or the hardware, to be separate from the programming or software. The cable system would resemble a common carrier under Whitehead's plan with no control over the nature of programming on the system. Legislation to this effect reportedly is on the President's desk for consideration.

If state government is to take part in directing the cable industry to function in the public interest, the general consensus at the conference was that it should be a limited part at this stage of cable development. Keynote speaker, Professor James Q. Wilson of Harvard, said that in regulating do what is essential and not what is desirable. He suggested that all regulations must make the consumer better off in the long run rather than popular short term exigencies which deceive the public over time. Wilson argued that the F.C.C. has fought cable development at all levels to protect the telephone and the television industries.

What role should the State Cable Agency assume? Dr. Thomas Muth, Assistant Professor in the Department of Television and Radio at Michigan State University, outlined 5 types of positions a state could take regarding cable: 1. a new agency or commission which serves a wholly advisory role; 2. an advisory role and maintain standards and rules; 3. an advisory role with confirmation of franchise; 4. a private agency such as a state association; or 5. play no role at all.

The eleven states that have chosen to regulate cable have schemes that vary between an advisory role with a maintenance of franchise quality standards and, in addition

to advising, the state completely takes over the confirmation of franchising. Seven states have chosen the Public Utility Commission to regulate cable while the other four states have chosen some type of independent agency or commission.

To determine which state bureaucracy should be designated to regulate cable appears to depend on whether the Legislature decides to take a long or short term view of cable's prospects for development. Dr. William Melody, Associate Professor of Communications Economics at the Annenberg School of Communications, University of Pennsylvania, contended that the Public Utility Commission represents the telephone companies and should the P.U.C. regulate cable it would be better if no state regulation of cable existed. So, in the short term with a new fledgling industry such as cable, an independent commission which would advocate the interests of cable development may better foster the growth of this industry. However, if cable does ultimately realize its projected potential, it may well become a necessity and a monopoly with common carrier and rate of return provisions which are characteristics of public utility commission regulation.

Currently, in most areas cable television is a monopoly but in few areas is it a necessity. In the future with the two way potential of cable which would include: face to face communication, dialing a computer library for taped entertainment or information; three-dimensional movies on the living room wall; shopping, banking and paying bills at home; facsimile print outs of newspapers; and mail delivery by facsimile over the coaxial cable, it may become more of a necessity. The seven states that have placed cable television in a bureau with the P.U.C. have recognized that cable television companies of today could easily become a classic public utility tomorrow.

The New York State Cable Commission came under study at the Conference. This large

year old bureaucracy has grown into a 50 employee commission with a budget of \$800,000 to regulate cable in New York State. A one percent fee is charged against the gross income of the cable companies in the state to pay for this commission. The F.C.C. has ruled that no more than 3 percent of the cable company's gross income can be charged as a regulatory fee. The remaining two percent can be retained by the local municipality which awards the franchise in New York State. At this time, the one percent fee only brings in half of the needed operating revenue for the State Commission. The other half comes from the general revenues of the state with the provision when the 1% state fee income exceeds the operating budget of the Commission, the excess surplus money is to be paid back to the general fund. Approximately one-third of the time spent by the Cable Commission staff is devoted to complaints.

Lynn Wickwire, Executive Director of the New York Cable Commission, outlined four areas that he saw the state playing a role in cable development. They include advice and assistance to local government which the F.C.C. is reluctant to do because of staff limitations; a regulatory role, which in the New York Cable Commission example enforces stricter rules and regulation than the F.C.C.'s cable requirements; establish a long range state cable policy; and cable experimentation.

A spokesman for Viacom with 280,000 cable subscribers nationwide presented the position of the cable industry. The industry's position centered on opposition to state involvement in cable television regulation. Viacom favored a federal-local regulation and opposed a third level of state regulations.

CONCLUSIONS

The state does have a role to play in future cable television development. At this time the tendency of states to over regulate is an apparent danger to cable's

future. It cannot be denied that local governments in Pennsylvania lack the expertise and manpower to regulate cable adequately. A state cable bureau can fill the void in an advisory role to local townships, boroughs and cities in Pennsylvania. The bureau can assume the state roles outlined by the F.C.C.'s cable bureau. However, the F.C.C. appears to be leaning towards permitting only two levels of cable regulations: the federal and one non-federal level.

Pennsylvania is one of the most heavily cabled states in the nation. The Commonwealth has 926,491 cable subscribers or near 20% of the total households in the state are wired for cable television reception. Currently, the local municipalities franchise and regulate cable. The F.C.C. allows a 3% fee to be collected by the non-federal regulators. If Pa. would create a State Cable Bureau, the 3% fee would have to be divided between local and state governments. Certainly complete state preemption of cable regulation and franchising would be strongly opposed by the local municipalities without some type of fee sharing between the two levels,

The State Cable Bureau should be placed in the Public Utility Commission. In the classic sense, cable television is not yet a public utility. In most areas cable is a monopoly but in few areas is it a necessity. Cable Television Communication is not yet a common carrier, nor should a guaranteed rate of return be prescribed but in long range planning cable may well take on the characteristics of a public utility. At this early stage, taking into account the views expressed at the National Convocation of Legislative Leaders on Cable Communications, an advisory cable bureau on cable television with limited powers to issue and enforce rules and regulations through the Public Utility Commissioners with franchising remaining at the local level seems most appropriate for Pennsylvania.