

JOINT CABLE T. V. SUBCOMMITTEES  
SACRAMENTO CITY COUNCIL  
AND  
BOARD OF SUPERVISORS

JULY 22, 1981 - MEETING

AGENDA  
(With Staff Comments)

1. Call to Order.
2. Organization.
  - a. Determination of regular meeting dates;
  - b. Format. Staff proposes round table discussion with staff - no public testimony.
3. Presentation of Issues.
  - a. Regulation of Anti-competitive practices.
    - (1) Regulations Contained in April 22, 1981, Draft.
      - (a) Franchisee prohibited from selling or repairing communications receivers.
      - (b) Franchisee required to provide Lease Access under reasonable and non-discriminatory terms. Commission entitled to enact rules and regulations implementing requirement that terms be reasonable, or other aspects of anti-competitive practices.
      - (c) Franchisee prohibited from providing any service in a manner which unlawfully damages business competitors, and prohibited from engaging in any unlawful anti-competitive practice. Any party alleging injury may sue. Agencies held harmless.
    - (2) Staff Recommendation.
      - (a) That anti-competitive regulations be omitted, except provision which generally makes unlawful activities remedial by injured parties in private suits.
  - I- Anti-trust regulation and enforcement requires a special legal expertise, retention of special counsel to prosecute anti-trust violations, and will involve significant expense;

-II- Anti-trust regulation by a local agency for the purpose of limiting anti-competitive practices by a Franchisee, also risks perpetration by the agency of anti-trust violations against the Franchisee, with potential damage liability.

(b) Alternatively, staff recommends retention of special counsel to give legal advice concerning the right of a local agency to regulate in this area, and to draft appropriate regulations at the policy direction of the governing bodies which are lawful in scope and do not expose the local agency to anti-trust liability.

b. Rate Regulation.

(1) Regulations Contained in March 1, 1981, Draft.

- (a) Applicants are authorized but not required to waive immunity from rate regulation under Government Code Section 53966.1. Waiver of immunity applies only to rates for Basic Service.
- (b) Basic Service rates may not be increased above bid rate until system has been completed.
- (c) Thereafter Franchisee may increase rates for Basic Service at will.
- (d) However, at any time, Commission may hold hearing to determine whether rates for Basic Service are too high. Commission may not reduce rates lower than necessary to yield "fair rate of return" on investment.
- (e) Commission's decision subject to review by arbitrator.

(2) Operator's Concerns.

- (a) "Fair Rate of Return" standard is vague and indefinite, requires application of PUC approach to rate control, and is otherwise an objectionable standard.
- (b) Franchisee should be allowed to increase Basic Service rate equal to 100% of the annual CPI, annual increases higher than that to be subject to regulation according to discretionary standards.

- (c) Regulation of Basic Service rates in the manner proposed is marginally tolerable. Regulation of other rates grossly violates the intent of 53066.1 and the movement towards deregulation.

(3) Policy Issues.

- (a) To what extent is, and what form of, rate regulation is necessary to protect the public interest?
- (b) To what extent, if at all, should discretionary rate regulation be utilized as an indirect means of leveraging compliance with the requirements of the franchise?

(4) Staff Recommendation.

- (a) If rate regulation is to be an enforcement measure, the following form of regulation.

- I- Operators may waive immunity of Section 53066.1 for Basic Service and any higher tier of service. Rate regulation applies to all tiers with respect to which the Franchisee has waived immunity.
- II- Bid rates may not be increased until completion of System.
- III- Thereafter, bid rates may be increased not to exceed 65% of the annual CPI.
- IV- Additional annual increases permitted not to exceed prevailing rates. Commission determines prevailing rates, subject to review by arbitrator. Systems deemed to be comparable for purposes of determining prevailing rate could be:

Fort Worth (160,000 homes passed)  
Indianapolis (140,000 homes passed)  
New Orleans (220,000 homes passed)  
Cincinnati (160,000 homes passed)  
San Diego  
Dallas (400,000 homes passed)  
Portland (120,000 homes passed)  
Omaha (125,000 homes passed)  
Pittsburgh (180,000 homes passed)

Homes passed in Sacramento will be approximately 250,000. Comparability factors would be listed. Penetration ratios would be excluded from consideration. Fictional adjustments would be required in order to derive comparable rates. Studies by experts would be required in order to provide comparability data.

- V- All services for which a special charge is identified in the bid would be excluded from rate regulation -- i.e., paid movies, paid sports, paid special entertainment, etc.
  - VI- Elimination from, addition to and substitution of broadcast services within various tiers would be regulated by the Commission, subject to review by an arbitrator, for the purpose of insuring that distortions in tiers does not occur in a manner undermining the effect of rate regulation.
- (b) If rate regulation is not to be utilized as an enforcement measure, staff recommends:
- I- Operators permitted to waive rate regulation as to Basic Service only.
  - II- Bid rates for Basic Service not to be increased until System is 100% complete.
  - III- Thereafter rates for Basic Service not to exceed annual increments equal to 50% of CPI.
  - IV- No other increases of Basic Service rates permitted, but no rate regulation of any other services. In effect Basic Service would be guaranteed at nominal charges. Any losses would be borne by loads on higher unregulated tiers or other services.

#### 4. Adjournment.

CABLE TELEVISION  
JOINT SUB-COMMITTEE

~~August 26, 1981~~  
Sept 2, 1981

CONTENTS

POLICY--MINORITY CONCERNS

ORDINANCE--RECOMMENDED DRAFT

Section 4d-Franchise Fees and Rates

City Clerk